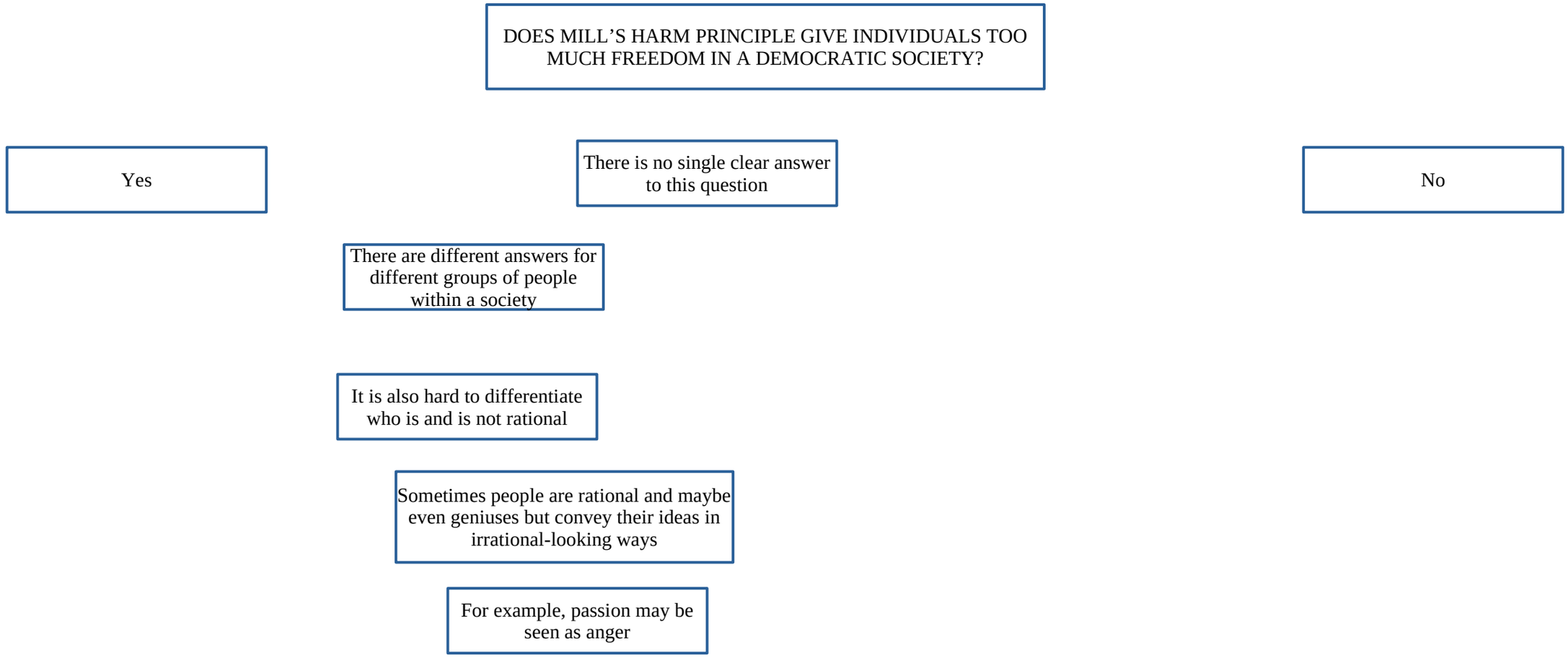
Questions

Racism – American Government/Leader spreading systemic racism

- even if the Harm Principle is in place, will it stop racism?
- Harm Principle is for freedom of speech and expression
- Even though USA is the closest example to a society living in with the Harm Principle at witness the problems that may be caused in part by the Harm Principle, at least we can hear the problems – versus if everyone was silenced and all of these problems just went under the surface
- sometimes the extremes of the Harm Principle are necessary to be exercised to get the attention of government officials

MILL’S HARM PRINCIPLE GIVE INDIVIDUALS TOO MUCH FREEDOM IN A DEMOCRATIC SOC

ESSAY QUESTION ROUTES



BRINK

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Recommended pages: pp. 40-53

Is Freedom of Expression and Freedom of Speech the same?

CHAPTER 2

Mill's liberal principles and freedom of expression

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Chapter 11 of *On Liberty* contains John Stuart Mill's now classic defense of freedom of expression. This defense of expressive liberties has proved extremely influential and finds important echoes in First Amendment jurisprudence within United States constitutional law. Though important in its own right, Mill's defense of freedom of expression also plays an important, though sometimes overlooked, role in his more general defense of individual liberties. Mill turns to freedom of expression immediately after his introductory chapter in the belief that there is general agreement on the importance of freedom of expression and that, once the grounds for expressive liberties are understood, this agreement can be exploited to support a more general defense of individual liberties.

It will be convenient for the argument if, instead of at once entering upon the general thesis [the defense of various individual liberties], we confine ourselves in the first instance to a single branch of it on which the principle here stated is, if not fully, yet to a certain point, recognized by the current opinions. This one branch is the Liberty of Thought, from which it is impossible to separate the cognate liberty of speaking and writing. Although these liberties … form part of the political morality of all countries which profess religious toleration and free institutions, the grounds, both philosophical and practical, on which they rest are perhaps not so familiar to the general mind … Those grounds, when rightly understood, are of much wider application than to only one division of the subject, and a thorough consideration of this part of the question will be found the best introduction to the remainder. (*CW* XVIII, 227 [I, 16])

This means that a proper understanding of the significance of Mill's defense of freedom of expression requires not only reconstructing his arguments on behalf of expressive liberties and exploring their bearing on issues of freedom of expression, but also seeing how these arguments generalize to other kinds of liberties. In this regard, it will be especially instructive to consider how his claims about freedom of expression inform his liberal principles, especially what his discussion of the best grounds for expressive liberties can

tell us about the best grounds for opposing paternalism. But it is also worth exploring whether philosophical pressure runs in the other direction as well – whether Mill's discussions of liberalism, in general, and paternalism, in particular, have implications for the proper articulation of principles governing expressive liberties. This perspective requires that we view Mill's defense of freedom of expression in the context of his liberalism.

MILLIAN PRINCIPLES

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Mill begins *On Liberty* by distinguishing old and new threats to liberty. The old threat to liberty is found in traditional societies in which there is rule by one (a monarchy) or a few (an aristocracy). Though one could be worried about restrictions on liberty by benevolent monarchs or aristocrats, the traditional worry is that when rulers are politically unaccountable to the governed they will rule in their own interests, rather than the interests of the governed. In particular, they will restrict the liberties of their subjects in ways that benefit the rulers, rather than the ruled. It was these traditional threats to liberty that the democratic reforms of the Philosophical Radicals were meant to address.[1] But Mill thinks that these traditional threats to liberty are not the only ones to worry about. He makes clear that democracies contain their own threats to liberty – this is the tyranny, not of the one or the few, but of the majority (*CW* XVIII, 217–20 [I, 1–5]). Mill sets out to articulate the principles that should regulate how governments and societies, whether democratic or not, can restrict individual liberties (*CW* XVIII, 220–1 [I, 6]).

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In an early and famous passage Mill offers one formulation of his basic principles concerning liberties.

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The object of this essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties or the moral coercion of public opinion. That principle is that 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,

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[1] See, for example, Jeremy Bentham, *Constitutional Code* and *Plan for Parliamentary Reform*, in *The Works of Jeremy Bentham*, vols. IX and III, ed. J. Bowring (New York: Russell & Russell, 1962); and James Mill, *Essay on Government* (1824), in Jack Lively and John Rees, eds., *Utilitarian Logic and Politics* (Oxford: Clarendon Press, 1978), 53–95.

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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 opinions of others, to do so would be wise or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of anyone for which he is amenable to society is that which concerns others. In the part which merely concerns himself, his independence, is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign. (*CW* XVIII, 223–4 [I, 9])

Notice that Mill is concerned with articulating principles to apply to restrictions on liberty in various contexts. He is perhaps most interested in cases where the state uses civil or criminal law to forbid conduct and applies sanctions for noncompliance. But he is also interested here and elsewhere – for instance, in *The Subjection of Women* – in other sorts of cases, including those in which social groups or individuals use the threat of force or disapprobation to limit liberty and ensure conformity. Having noted these complexities, let us focus, as Mill himself does, on the central case of legal prohibition by the state.

In this passage, Mill distinguishes paternalistic and moralistic restrictions of liberty from restrictions of liberty based upon the harm principle.

- *A*'s restriction of *B*'s liberty is *paternalistic* if it is done for *B*'s own benefit.
- *A*'s restriction of *B*'s liberty is *moralistic* if it is done to ensure that *B* acts morally or not immorally.
- A's restriction of *B*'s liberty is an application of the *harm principle* if *A* restricts *B*'s liberty in order to prevent harm to someone other than *B*.

Here, Mill seems to say that a restriction on someone's liberty is legitimate if and only if it satisfies the harm principle (cf. *CW* XVIII, 223–4 [IV, 1–4, 6; V, 2]). Later, he distinguishes between genuine harm and *mere offense*. In order to satisfy the harm principle, an action must actually violate or threaten imminent violation of those important interests of others in which they have a right (*CW* XVIII, 225–6 [I, 12], 260–1 [III, 1], 276 [IV, 3], 281–2 [IV, 10], 283–4 [IV, 12], 293–5 [V, 5]). So he seems to be saying that the harm principle is always a good reason for restricting liberty, but that mere appeals to morality, paternalism, or offense are never good reasons for restricting liberty.

As this recounting of Mill's principles suggests, his defense of individual liberties appears to be part of what might be called a *categorical approach*. To decide whether an individual's liberty ought to be protected, we must

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ascertain to which category the potential restriction of liberty belongs. The main categories for potential restrictions are these:

- offense (mere offense)
- moralism (mere moralism)
- paternalism (mere paternalism)
- harm principle

The potential restriction is permissible if and only if it is an application of the harm principle; if not, the restriction is impermissible and the liberty must be protected.[2]

It is generally thought that by applying this categorical approach to liberty and its permissible restrictions Mill is led to offer a fairly extensive defense of individual liberties against interference by the state and society. In particular, it is sometimes thought that Mill recognizes a large sphere of conduct that it is impermissible for the state to regulate. We might characterize this sphere of protected liberties as Mill's conception of *liberal rights*. On this reading, Mill is deriving his conception of liberal rights from a prior commitment to the categorical approach and, in particular, to the harm principle.[3]

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MILL AGAINST PATERNALISM

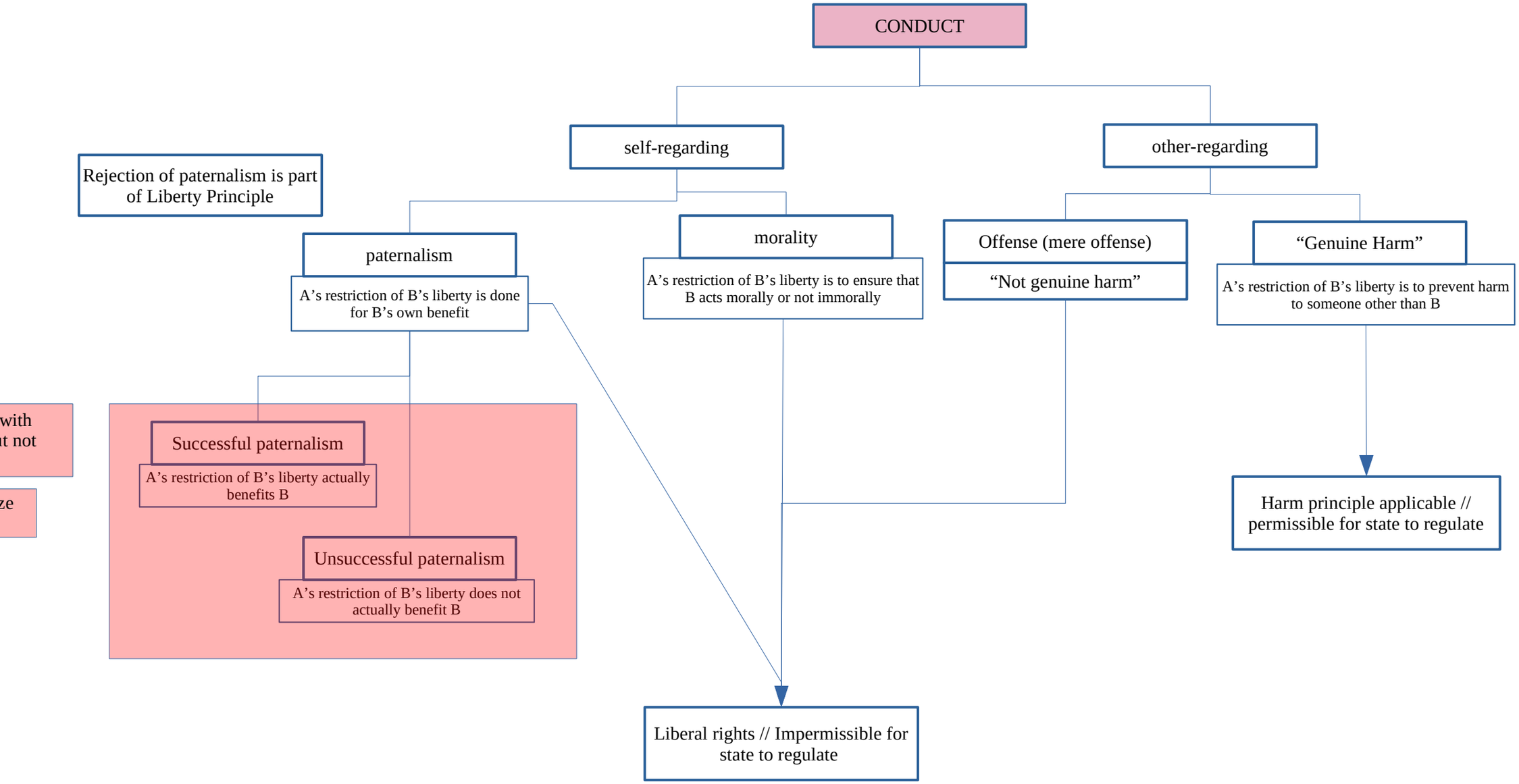
Consider Mill's opposition to paternalism. Presumably, Mill's concern with paternalism is general and includes paternalism practiced by individuals or groups, as well as by states. But, as we have already noticed, his focus is on paternalism practiced by the state. Why the blanket prohibition on paternalism? He offers two explicit reasons.

First, state power is liable to abuse. Politicians are self-interested and corruptible and will use a paternalistic license to limit the freedom of citizens in ways that promote their own interests and not those of the citizens whose liberty they restrict (*CW* XVIII, 306–10 [V, 20–3]).

[2] Sometimes Mill suggests that the harm principle is equivalent to letting society restrict other-regarding conduct (*CW* XVIII, 224–5 [I, 11], 276 [IV, 2]). On this view, conduct can be divided into self-regarding and other-regarding conduct. Regulation of the former is paternalistic, and regulation of the latter is an application of the harm principle. So on this view it is never permissible to regulate purely self-regarding conduct and always permissible to regulate other-regarding conflict. But this is over-simple. Some other-regarding conduct causes mere offense, not genuine harm (*CW* XVIII, 276 [IV, 3], 283–4 [IV, 12]). So Mill cannot equate harmful behavior and other-regarding behavior and cannot think that all other-regarding behavior may be regulated.

[3] For a contrasting reading, which treats Mill's commitment to liberal rights as constraining the proper interpretation of the harm principle, see Daniel Jacobsen, "Mill on Liberty, Speech, and the Free Society," *Philosophy & Public Affairs*, 29 (2000), 276–309.

Another source?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Rejection of paternalism is part of Liberty Principle
paternalism
A's restriction of B's liberty is done for B's own benefit
morality
A's restriction of B's liberty is to ensure that B acts morally or not immorally
Offense (mere offense)
"Not genuine harm"
"Genuine Harm"
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Successful paternalism
A's restriction of B's liberty actually benefits B
Unsuccessful paternalism
A's restriction of B's liberty does not actually benefit B
Harm principle applicable // permissible for state to regulate
Liberal rights // Impermissible for state to regulate

Why will dogma lose meaning?

Second, even well-intentioned rulers will misidentify the good of citizens. Because an agent is a more reliable judge of his own good, even well-intentioned rulers will promote the good of the citizens less well than would the citizens themselves (*CW* XVIII, 276–7 [IV, 4], 283–4 [IV, 12]).

These are reasonably strong consequentialist arguments against giving the state a broad discretionary power to engage in paternalistic legislation whenever it sees fit. However, they do not support a categorical ban on paternalism. In particular, these arguments provide no *principled* objection to paternalism – no objection to *successful* paternalistic restrictions on *B*'s liberty that do in fact benefit *B*. Perhaps some who object to paternalism are concerned only with unsuccessful paternalism. They would have no objection to successful paternalism. But, for many, doubts about paternalism run deeper. They would be inclined to think that much, if not all, paternalism would be impermissible even if it was successful. For it is common to think that individuals have a right to make choices in their own personal affairs and that this includes a right to make choices that are imprudent.

Mill's view of paternalism is ultimately more complicated than these explicit arguments suggest. In particular, he has the resources for another, stronger argument against paternalism. These resources are clearest in his defense of free speech. As noted earlier, Mill thinks that there is general agreement on the importance of free speech and that, once the grounds for free speech are understood, this agreement can be exploited to support a more general defense of individual liberties (*CW* XVIII, 227 [I, 16], 260–1 [III, 1]). So his defense of expressive liberties is important not only in its own right but also insofar as it lays the foundation of his liberal principles.

MILL AGAINST CENSORSHIP

Mill's discussion of censorship in chapter II focuses on censorship whose aim is to suppress false or immoral opinion (*CW* XVIII, 228–9 [II, 1–2]). Here too, Mill is apparently concerned with censorship whether practiced by individuals, groups, or states. However, here, as elsewhere, he focuses on restrictions on liberty imposed by the state. He mentions four reasons for maintaining free speech and opposing censorship:

1. A censored opinion might be true (*CW* XVIII, 228–43 [II, 1–20], 258 [II, 41]).
2. Even if literally false, a censored opinion might contain part of the truth (*CW* XVIII, 252 [II, 34], 257 [II, 39], 258 [II, 42]).

3. Even if wholly false, a censored opinion would prevent true opinions from becoming dogma (*CW* XVIII, 228–9 [II, 1–2], 231–2 [II, 6–7], 243–5 [II, 22–3], 258 [II, 43]).
4. As a dogma, an unchallenged opinion will lose its meaning (*CW* XVIII, 247 [II, 26], 258 [II, 43]).

It is natural to group these four considerations into two main kinds: the first two invoke a truth-tracking defense of expressive liberties, while the second two appeal to a distinctive kind of value that free discussion is supposed to have.

(i) *The truth-tracking rationale*

The first two claims represent freedom of expression as instrumentally valuable; it is valuable, not in itself, but as the most reliable means of producing something else that Mill assumes is valuable (either extrinsically or intrinsically), namely, true belief. Though Mill seems to assume that true belief is valuable, it is not hard to see how true beliefs would possess at least instrumental value, if only because our actions, plans, and reasoning are likely to be more successful when based on true beliefs. Of course, the most reliable means of promoting true belief would be to believe everything. But that would bring a great deal of false belief along too. A more plausible goal to promote would be something like the ratio of true belief to false belief. Freedom of expression might then be defended as a more reliable policy for promoting the ratio of true belief to false belief than a policy of censorship. This rationale for freedom of expression is echoed by Justice Oliver Wendell Holmes, in his famous dissent in *Abrams* v. *United States*,[4] when he claims that the best test of truth is free trade in the marketplace of ideas.

Notice that this instrumental defense of freedom of expression does not require the mistaken assumption, which Mill sometimes makes, that the censor must assume his own infallibility (*CW* XVIII, 229 [II, 3]). The censor need not assume that he is infallible. He can recognize that he might be mistaken, but insist that he must act on the best available evidence about what is true. Mill's better reply is that proper recognition of one's own fallibility should generally lead one to keep discussion open and not foreclose discussion of possibilities that seem improbable.

This instrumental rationale may justify freedom of expression in preference to a policy of censorship whenever the censor finds the beliefs in

[4] 250 U.S. 616 (1919) (upholding the conviction of a wartime pamphleteer on behalf of the Russian Revolution under the Espionage Act of 1917).

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question implausible or offensive. But it does not justify freedom of expression in preference to more conservative forms of censorship. If the question is what policies are likely to increase the ratio of true to false belief, we would seem to be well justified in censoring opinions for whose falsity there is especially clear, compelling, and consistent or stable evidence. We would be on good ground in censoring flat-earthers (both literal and figurative).

Another way to see the weakness of the truth-tracking justification of freedom of expression is to notice a parallel with Mill's explicit arguments against paternalism. Mill's instrumental opposition to paternalism, we saw, could not explain principled opposition to successful paternalism (cases in which *A*'s restriction of *B*'s liberty does in fact benefit *B*). In a similar way, Mill's instrumental defense of freedom of expression cannot explain what is wrong with censorship that is successful in truth-tracking terms. Suppose we lived in a society of the sort Plato imagines in the *Republic* in which cognitive capacities are distributed unequally between rulers and citizens and in which maximally knowledgable and reliable censors – call them "philosopher-kings" – censor all and only false beliefs. The truth-tracking argument would provide no argument against censorship in such circumstances. This shows that the truth-tracking argument condemns only *unsuccessful* or *incompetent* censorship. For some, this may be the biggest worry about censorship. But many would have residual worries about *successful* or *competent* censorship. They would object to censorship, even by philosopher-kings. Answering this worry requires a more robust defense of expressive liberties.

(ii) The deliberative rationale

The resources for a more robust defense of freedom of expression can be found in Mill's claim that it is needed to keep true beliefs from becoming dogmatic, because this reason for valuing freedom is intended to rebut the case for censorship even on the assumption that all and only false beliefs would be censored (*CW* XVIII, 229 [II, 2], 243 [II, 21]). Mill's argument here is that freedoms of thought and discussion are necessary for fulfilling our natures as progressive beings (*CW* XVIII, 242–3 [II, 20]). We can and should read Mill as appealing to his perfectionist assumptions about happiness to defend expressive liberties.

In his introduction to *On Liberty*, Mill claims that his defense of liberty relies on claims about the happiness of people as progressive beings:

> It is proper to state that I forgo any advantage which could be derived to my argument from the idea of abstract right as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being. (*CW* XVIII, 224 [I, II])

Mill thinks that it is our deliberative capacities, especially our capacities for practical deliberation, that mark us as progressive creatures and that, as a result, the principal ingredients of our happiness or well-being must be activities that exercise these deliberative capacities. At its most general, practical deliberation involves reflective decision-making. In *On Liberty*, Mill thinks of practical deliberation in terms of capacities to form, assess, choose, and implement projects and goals.

> He who lets the world, or his own portion of it, choose his plan of life for him has no need of any other faculty than the ape-like one of imitation. He who chooses his plan for himself employs all his faculties. He must use observation to see, reasoning and judgment to foresee, activity to gather materials for decision, discrimination to decide, and when he has decided, firmness and self-control to hold his deliberate decision. And these qualities he requires and exercises exactly in proportion as the part of his conduct which he determines according to his own judgment and feelings is a large one. It is possible that he might be guided in some good path, and kept out of harm's way, without any of these things. But what will be his comparative worth as a human being? (*CW* XVIII, 262–3 [III, 4])

Mill makes similar claims about the importance of self-examination and reflective decision-making in his discussion in *Utilitarianism* of the higher pleasures doctrine, where he recognizes a categorical preference on the part of competent judges for activities that exercise their higher capacities – claiming that "it is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied."[5]

Even if we agree that these deliberative capacities are unique to humans or that humans possess them to a higher degree than other creatures, we might wonder in what way their possession marks us as progressive beings or their exercise is important to human happiness. Mill thinks an account of human happiness ought to reflect the kinds of beings we are or what is valuable about human nature. Though he is not as clear about this as one might like, his discussion of responsibility in *A System of Logic* ("Of Liberty and Necessity") suggests that he thinks that humans are responsible agents and that this is what marks us as progressive beings. There he claims that capacities for practical deliberation are necessary for responsibility. In

[5] John Stuart Mill, *Utilitarianism* (1861), in *The Collected Works of John Stuart Mill*, vol. X: *Essays on Ethics, Religion and Society*, ed. John M. Robson (Toronto: University of Toronto Press; London: Routledge & Kegan Paul, 1969), 212 (ii, 6).

particular, he claims that moral responsibility involves a kind of self-mastery or self-governance in which one can distinguish between the strength of one's desires and their suitability or authority and in which one's actions reflect one's deliberations about what is suitable or right to do.[6] Non-responsible agents, such as brutes or small children, appear to act on their strongest desires or, if they deliberate, to deliberate only about the instrumental means to the satisfaction of their strongest desires. By contrast, responsible agents must be able to deliberate about the appropriateness of their desires and regulate their actions according to these deliberations. If this is right, then Mill can claim that possession and use of our deliberative capacities mark us as progressive beings, because they are what mark us as moral agents who are responsible. If our happiness should reflect the sort of being we are, then Mill is in a position to argue that higher activities that exercise these deliberative capacities form the principal or most important ingredient in human happiness.

Mill's claim that the value of freedom of expression lies in keeping true beliefs from becoming dogmatic reflects his view that freedoms of thought and discussion are necessary for fulfilling our natures as progressive beings (*CW* XVIII, 242–3 [II, 20]). For instance, we can see Mill appealing to a familiar distinction between *true belief*, on the one hand, and *knowledge*, understood as something like *justified true belief*, on the other hand.[7] Progressive beings seek knowledge or justified true belief, and not simply true belief. Whereas the mere possession of true beliefs need not exercise one's deliberative capacities, because they might be the product of indoctrination, their justification would. One exercises deliberative capacities in the justification of one's beliefs and actions that is required for theoretical and practical knowledge. This is because justification involves comparison of, and deliberation among, alternatives (*CW* XVIII, 231 [II, 6], 231–2 [II, 7], 232 [II, 8], 243–5 [II, 22–3], 258 [II, 43]). Freedoms of thought and discussion are essential to the justification of one's beliefs and actions, because individuals are not cognitively self-sufficient (*CW* XVIII, 256–7 [II, 38–9], 260 [III, 1]). Sharing thought and discussion with others, especially about important matters, improves one's deliberations. It enlarges the menu of options, by identifying new options worth consideration, and helps one better assess the merits of these options, by forcing on one's attention new

[6] *A System of Logic Ratiocinative and Inductive* (1843; 8th edn. 1871), vols. VII–VIII of *The Collected Works of John Stuart Mill*, ed. John M. Robson, introduction by R. F. McRae (Toronto: University of Toronto Press; London: Routledge & Kegan Paul, 1973), vol. VIII, 839–42 (Bk. VI, III, 3).

[7] See T. M. Scanlon, "A Theory of Freedom of Expression," *Philosophy & Public Affairs*, 1 (1972), 204–26; and C. L. Ten, *Mill On Liberty* (Oxford: Clarendon Press, 1980), 126–8.

considerations and arguments about the comparative merits of the options. In these ways, open and vigorous discussion with diverse interlocutors improves the quality of one's deliberations. If so, censorship, even of false belief, can rob both those whose speech is suppressed and their audience of resources that they need to justify their beliefs and actions (*CW* XVIII, 228–9 [II, 1]).

We should be careful not to overstate the significance of this argument against censorship. Deliberative values may not always speak in favor of expanding one's option set.[8] Cognitively limited agents cannot consider all logically possible options, and careful consideration of many options – especially irrelevant options and options known to have failed – is likely to retard, rather than advance, their deliberations. More options are not always better than fewer. Nonetheless, it is important to note that this perfectionist appeal to deliberative values can explain why it is often wrong to censor even false beliefs. In this way, Mill's defense of expressive liberties that relies on his perfectionist appeal to deliberative values is a more robust defense than the one provided by his truth-tracking arguments alone.

FROM EXPRESSIVE LIBERTIES TO LIBERAL PRINCIPLES

Though important in its own right, Mill's defense of freedom of thought and discussion provides the resources for an argument for various basic liberties. The deliberative rationale for freedoms of thought and discussion is a special case of a more general defense of basic liberties of thought and action that Mill offers in the balance of *On Liberty*. A good human life is one that exercises one's higher capacities (*CW* XVIII, 224 [I, 11], 242–3 [II, 20], 260–82 [III, 1–10]). A person's higher capacities include her deliberative capacities: in particular, capacities to form, revise, assess, select, and implement her own plan of life. This kind of self-government requires both positive and negative conditions. Among the positive conditions it requires is an education that develops deliberative competence by providing understanding of different historical periods and social possibilities, developing cultural and aesthetic sensibilities, developing skills essential for critical reasoning and assessment, and cultivating habits of intellectual curiosity, modesty, and open-mindedness (*CW* XVIII, 301–5 [V, 12–15]). Among the negative conditions that self-government requires are various liberties of thought and action. If the choice and pursuit of projects and plans are to be

[8] Cf. Gerald Dworkin, "Is More Choice Better than Less?," in Gerald Dworkin, *The Theory and Practice of Autonomy* (Cambridge and New York: Cambridge University Press, 1988), 62–81.

deliberate, they must be informed as to the alternatives and their grounds, and this requires intellectual freedoms of speech, association, and press that expand the menu of deliberative options and allow for the vivid representation of the comparative merits of options on that menu. If there is to be choice and implementation of choices, there must be liberties of action such as freedom of association, freedom of worship, and freedom to choose one's occupation.

Indeed, liberties of thought and action are importantly related. Mill values diversity and experimentation in lifestyles not only insofar as they are expressions of self-government but also insofar as they enhance self-government. For experimentation and diversity of lifestyle expand the deliberative menu and bring out more clearly the nature and merits of options on the menu (*CW* XVIII, 244, 245 [II, 23, 38], 260–1 [III, 1]). So experiments in living not only express the autonomy of the agent at the time of action, but they provide materials for the agent and others in future deliberations. But diversity and experimentation presuppose liberties of action, and in this way liberties of action, as well as thought and discussion, are essential to the full exercise of deliberative capacities.

This interpretation provides Mill with a robust rationale for various liberties of thought and action; they are important as necessary conditions for exercising our deliberative capacities and so for producing the chief ingredients of human happiness. In particular, it provides a more robust defense of Mill's general anti-paternalism. For if a person's happiness depends on her exercise of the capacities that make her a responsible agent, then a principal ingredient of her own good must include opportunities for responsible choice and reflective decision-making. But then it becomes clear how autonomy is an important part of a person's good and how paternalism undercuts her good in important and predictable ways. Mill may still not have an argument against successful paternalism, but his perfectionist defense of basic liberties does give him an argument that successful paternalism is much harder to achieve than one might have thought, because it is very hard to benefit an autonomous agent in paternalistic ways.

LIMITS ON LIBERTY

Despite this robust rationale for liberties of thought and action, it is also important to see that Mill is not treating liberty as an intrinsic good or endorsing an unqualified right to liberty.

First, insofar as Mill defends individual liberties by appeal to deliberative values, he can distinguish the importance of different liberties in terms of

their role in practical deliberation. A central part of practical deliberation is forming ideals and regulating one's actions and plans in accordance with these ideals. But some liberties seem more central than others to the selection of personal ideals. For instance, it seems plausible that liberties of speech, association, worship, and choice of profession are more important than liberties to drive in either direction on streets designated as one-way, liberties not to wear seatbelts, or liberties to dispose of one's gross income as one pleases, because restrictions on the former seem to interfere more than restrictions on the latter with deliberations about what sort of person to be. If so, Millian principles arguably defend rights to certain *basic liberties*, rather than a right to liberty *per se*. If so, Mill's liberalism should not be confused with traditional libertarianism, which does recognize a right to liberty *per se*.

Second, even the exercise of basic liberties is limited by the harm principle, which justifies restricting liberty to engage in actions that cause harm or threaten imminent harm to others. There are interesting questions about the correct interpretation of the harm principle, such as how we draw the line between harm and offense.[9] But his commitment to some version of the harm principle as a ground for restricting liberty is hard to dispute.

Third, it is important to be clear about how Mill values basic liberties. To account for the robust character of his perfectionist argument, it is tempting to suppose that Mill thinks these basic liberties are themselves important intrinsic goods.[10] But limitations in the scope of Mill's argument show that this cannot be his view.

> It is, perhaps, hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties … Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion. (*CW* XVIII, 224 [I, 10])

So, for instance, the scope of Mill's prohibition on paternalism does not include paternalistic restrictions on the choices of the very young. Presumably, Mill is also willing to permit some forms of censorship for the young that he would reject for mature adults. Such restrictions on the

[9] Some of these questions about the proper interpretation of the harm principle are taken up in David Lyons, "Liberty and Harm to Others," reprinted in Lyons, *Rights, Welfare, and Mill's Moral Theory* (New York: Oxford University Press, 1994), 89–108; Ten, *Mill On Liberty*, ch. 4; and David Brink, "Mill's Moral and Political Philosophy," in Edward N. Zalta, ed., *Stanford Encyclopedia of Philosophy* (2007).

[10] Cf. Fred Berger, *Happiness, Justice, and Freedom* (Los Angeles: University of California Press, 1984), 41, 50, 199, 231–2; and James Bogen and Daniel Farrell, "Freedom and Happiness in Mill's Defence of Liberty," *Philosophical Quarterly*, 28 (1978), 325–8.

scope of Mill's principles make no sense if basic liberties are dominant intrinsic goods, for then it should always be valuable to accord people liberties – a claim that Mill here denies. These restrictions make perfect sense if the liberties in question, though not intrinsically valuable, are necessary conditions to realizing dominant goods, for then there will be, or need be, no value to liberty where, as in these circumstances, other necessary conditions for the realization of these higher values – in particular, sufficient rational development or normative competence – are absent.

LIMITS ON FREEDOM OF EXPRESSION

Does Mill recognize any limitations on his defense of free speech? If one read only chapter II of *On Liberty* one might be excused for concluding that Mill is a free-speech absolutist who believes that censorship is never permissible (at least for mature competent adults). Were we to combine this free speech absolutism with the assumption that liberty can be restricted if and only if it causes harm, we would have to conclude that Mill believes that speech can never be harmful – "sticks and stone can break my bones, but words can never hurt me." However, Mill does recognize that speech can be harmful, and he applies the harm principle to speech, as well as other action, when he claims that the regulation of incendiary speech is permissible.

> Even opinions lose their immunity when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act. An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justifiably incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard. (*CW* XVIII, 260 [III, 1])

One question that the corn-dealer passage raises is how much censorship would be justified by applying the harm principle. Mill would presumably accept at least some aspects of First Amendment jurisprudence. He would agree with some version of the "clear and present danger test" recognized by Justice Holmes in his majority opinion in *Schenck* v. *United States*.[11]

> The most stringent protection of free speech would not protect a man in falsely shouting fire in a crowded theater, and causing a panic … The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger.

[11] 249 U.S. 47 (1919) (upholding conspiracy convictions, under the Espionage Act of 1917, for the distribution of literature aiming to obstruct the military draft).

This raises the more general question of how good the match is between Mill's defense of freedom of expression and some central aspects of First Amendment jurisprudence. This is especially relevant to ascertaining which limitations Mill can and should recognize on freedom of expression, because First Amendment jurisprudence is not absolutist.

DELIBERATIVE VALUES AND FIRST AMENDMENT CATEGORIES

It is a general proposition governing the adjudication of cases involving individual rights within constitutional law in the United States that when a court determines that an individual's interest or liberty is a fundamental constitutional value it accords that value special protection by subjecting legislation that interferes with that value to *strict scrutiny* or some comparable standard. To pass strict scrutiny, legislation must pursue a compelling state interest in the least restrictive manner possible. Strict scrutiny and its relatives contrast with a weaker standard of review, known as *rational basis review* that is applied to legislation affecting interests and liberties that are not fundamental. To pass rational basis review, legislation need only pursue a legitimate interest in a reasonable manner. With some notable exceptions in which courts recognize intermediate levels of scrutiny, the analysis of the importance of interests or liberties and associated standards of scrutiny is generally *bivalent*: interests or liberties are either fundamental or they are not; fundamental ones trigger strict scrutiny or some comparable standard, whereas non-fundamental ones trigger rational basis review or some comparable standard.[12] For the most part, liberties of expression are treated as fundamental liberties, because of the central role open discussion plays in both public and private deliberations. Insofar as liberties of expression are fundamental, the court protects them by subjecting legislation that interferes with them to strict scrutiny or some comparably exacting standard, such as the clear and present danger test.

However, not all liberties of expression are treated the same. For instance, First Amendment analysis distinguishes between *content-neutral* restrictions

[12] The treatments of commercial speech, under First Amendment jurisprudence, and gender classifications, under Equal Protection jurisprudence, are among the exceptions to this rule, insofar as the court subjects restrictions on commercial speech and regulations distributing social benefits and burdens by gender to an intermediate standard of review.

on speech that restrict the time, manner, and place of speech but not its content, and *content-specific* restrictions that restrict some forms of speech on account of the topic discussed or the viewpoint expressed in the speech. Whereas content-specific restrictions are subject to heightened scrutiny, content-neutral restrictions are subject to weaker forms of scrutiny. Deliberative values would seem to explain the Supreme Court's special concern with content-specific restrictions. Often, time, manner, and place restrictions leave open many avenues of expression and so do not significantly restrict the production, distribution, or consumption of ideas. By contrast, content-specific, especially viewpoint-specific, restrictions make it harder for certain messages to be heard and evaluated. If the representation of diverse perspectives, even mistaken ideas, can improve public and private deliberations, then there is general reason to think that content-specific restrictions constrain deliberative values in unacceptable ways.

However, not all content-specific regulations are thought to restrict fundamental liberties. First Amendment jurisprudence also distinguishes between *low-value* and *high-value* speech. The liberty to engage in low-value speech is not a fundamental liberty; content-specific regulation of low-value speech, as a result, need not satisfy strict scrutiny. By contrast, other forms of speech are high-value, and the liberty to engage in them is a fundamental liberty; as a result, content-specific regulation of high-value speech must satisfy strict scrutiny or some comparable standard. The court formulated the distinction between low-value and high-value speech in *Chaplinsky* v. *New Hampshire*:

> There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and the obscene, the profane, the libelous, and the insulting or "fighting" words – those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.[13]

Here the court associates central First Amendment liberties with what is an essential part of the exposition of ideas and what is of value as a step toward truth. Like Mill, the court justifies freedom of expression as a way of promoting true belief. However, if the court values freedom of expression only as a means of promoting true belief, then it becomes difficult to extend

[13] 315 U.S. 568 (1942) (upholding a state prohibition on the use of offensive language in face-to-face exchanges in public spaces), at 571–2.

protection to false beliefs, as the court has. But we need not interpret the court as valuing freedom of expression only as a means of acquiring true beliefs. The court appeals to what is an essential part of the exposition of ideas and what is of value as a step toward truth. We can see this rationale as invoking, as Mill also does, deliberative values about the value of free inquiry to the promotion of knowledge, and not just true belief. If we interpret the court's rationale this way, we can provide a more wide-ranging conception of high-value speech that includes the advocacy of some false beliefs.

What would Mill think about low-value speech and the permissibility of regulating it? He might well think that some examples of low-value speech violate the harm principle. For instance, it is not hard to see how libelous speech – roughly, false and defamatory speech in which the speaker knew that her statement was false and defamatory or acted in reckless disregard of these matters – might be harmful. And some kinds of fighting words might also be harmful. Certainly, fighting words that incite pugilistic responses can be harmful, as Mill recognizes in the corn-dealer case (*CW* XVIII, 260 [III, 1]). In other situations, fighting words may cause genuine psychic harm that is serious in its consequences and goes beyond mere offense. It is less clear what Mill would think about the permissibility of anti-discriminatory regulations of speech of the sort embodied in employment discrimination law, hate speech regulations, and policies regulating certain kinds of pornography. Mill's commitments here would depend, in part, on whether the regulations in question targeted mere offense or genuine harm. Insofar as such regulations target genuine harm, and not mere offense, some of them may be defensible according to Millian principles.

Insofar as these forms of speech are harmful, they would be regulable under the harm principle. But the harm principle applies to high-value speech; it says that speech can be regulated no matter how valuable it is if it is harmful. If the harm principle is Mill's only reason for regulating speech, then he would appear to be committed to regulating harmful speech *in spite* of its high value. But then Mill could not really agree with *Chaplinsky*'s distinction between high-value and low-value speech and its claim that low-value speech possesses no significant expressive interest.

FROM LIBERAL PRINCIPLES TO EXPRESSIVE LIBERTIES

But this overlooks a way in which Mill might appeal to deliberative values to determine the comparative value of speech interests. To appreciate this possibility, consider how one might understand his free-speech principle in

light of his considered views about paternalism. Previously, we examined how his discussion of free speech could inform his liberalism and, in particular, his anti-paternalism. Now I would like to explore a way in which his liberalism and, in particular, anti-paternalism can inform his position on free speech.

Despite Mill's many blanket prohibitions on paternalism, he does not (consistently) reject paternalism *per se*. For instance, he qualifies his blanket prohibition on paternalism to allow that no one should be free to sell himself into slavery.

> The ground for thus limiting his power of voluntarily disposing of his own lot is apparent, and is very clearly seen in this extreme case … by selling himself for a slave, he abdicates his liberty; he forgoes any future use of it beyond that single act. He, therefore, defeats in his own case, the very purpose which is the justification of allowing him to dispose of himself. (*CW* XVIII, 299 [V, 11])

Because it is the importance of exercising one's deliberative capacities that explains the importance of certain liberties, the usual reason for recognizing liberties provides an argument against extending liberties to do things that will permanently undermine one's future exercise of those same capacities. In this case, an exception to the usual prohibition on paternalism is motivated by appeal to the very same deliberative values that explain the usual prohibition. So this seems to be a principled exception to the usual prohibition on paternalism. We might call these *autonomy-enhancing* or *deliberation-enhancing* forms of paternalism.[14]

There might be similar deliberation-enhancing forms of censorship. There might be speech that does not engage or tends to undermine the very deliberative values that explain why content-specific forms of censorship are normally impermissible. On this view, whereas speech that engages or promotes deliberative values is high-value, speech that fails to engage or frustrates deliberative values would be low-value. I should note that Mill does not explicitly endorse the distinction between high-value and low-value speech or recognize deliberation-enhancing forms of censorship, but doing so would be one way to make his liberal principles more consistent and allow him to accept some central aspects of First Amendment jurisprudence. To see how such limitations on freedom of expression might work, reconsider two categories of low-value speech: libel and fighting words.

[14] Notice that Mill claims that the reasons for allowing paternalism in "this extreme case" are "evidently of far wider application" (*CW* XVIII, 299–30 [V, 11]). That raises the question of what other forms of paternalism might be justified as principled exceptions to the usual prohibition on paternalism. Mill does not directly address this question.

Though libel can cause harm and so could be regulated even if it were high-value speech, in spite of the fact that it is high-value, it is also arguable that libel does not properly engage deliberative values and so should be treated as low-value speech, which requires no especially compelling justification to regulate. Libel is false and defamatory speech in which the speaker knew that her statement was false and defamatory or acted in reckless disregard of these matters. It is true, as Mill claims, that the careful consideration of claims, advanced in good conscience, that are in fact false can advance deliberation by forcing us to consider the grounds of their falsity. But libelous speech is not advanced in good conscience. It is arguably a case in which more speech is not better insofar as the introduction of false and harmful claims with no concern for their truth and consequences arguably hinders, rather than promotes, reasoned assessment of issues. But then for that reason libel could be viewed as low-value speech and its censorship could be treated as a principled exception to the usual prohibition on censorship.

Deliberative values might also explain why fighting words are low-value speech. *Chaplinsky* characterizes fighting words as those that "by their very utterance inflict injury or tend to incite an immediate breach of the peace." As a matter of subsequent constitutional doctrine, the court has interpreted the category of fighting words narrowly, focusing on their tendency to incite violence. Fighting words, so understood, are words that in their context tend to evoke visceral and violent – rather than articulate – responses. However, it would be a mistake to focus on pugilistic responses, and this is why *Chaplinsky* rightly construes fighting words more broadly, so as to include words whose utterance would cause injury in a reasonable person. A natural response to the use of insulting epithets in many such contexts is visceral but non-violent; the victim of fighting words might be intimidated and silenced as well as provoked. Whether silence or fisticuffs, the natural response is not articulate. But then fighting words simply express, without articulating, the speaker's perspective, and they invite various inarticulate responses. If so, we can see why the court might reasonably claim that they do not contribute to deliberative values, but often hinder them. If so, there is a case to be made for thinking that fighting words are low-value speech and that the censorship of fighting words would be a principled exception to the usual prohibition on censorship.[15]

[15] In this connection, one might note that Mill does consider restrictions on "intemperate" speech that exceeds "the bounds of fair discussion" (*CW* XVIII, 258–9 [II, 44]). He observes that there is more to be

Another potential form of deliberation-enhancing censorship concerns campaign finance reform. Campaign finance reform is obviously a large and complex debate that cannot be satisfactorily addressed here. Nonetheless, we can put parts of this debate in a new perspective by viewing some such reforms as deliberation-enhancing censorship. Campaign finance reform can take many forms, from limitations on private expenditures by candidates, political parties, and individual donors, to the public financing of elections. There are different rationales for different kinds of reforms. Some reforms, such as expenditure limits on private donors, have as their main aim the regulation of influence-peddling. While such reforms and rationales are important in their own right, their connections with deliberative values are unclear or, at best, indirect. Of more direct relevance to our present concerns are those campaign finance reforms that limit spending by candidates and donors or that ban private expenditures and provide for equal public funding for candidates as a way of addressing concerns about the impact of unequal resources on the character of political campaigns and political debate. At least since the landmark case of *Buckley* v. *Valeo*,[16] US courts have been generally skeptical about the permissibility of the limitations on political expression inherent in such reforms. Skeptics of such reforms have generally viewed this as a conflict between equality and First Amendment rights, concluding that the interest "in equalizing the relative financial resources of candidates competing for elective office is clearly not sufficient to justify the provision's infringement of fundamental First Amendment rights."[17] But our Millian defense of limitations on speech that enhance deliberative values suggests a different perspective. In circumstances of significant inequalities in resources, *laissez-faire* political campaigning, in which campaigns are privately funded and in which candidates

said on behalf of such restrictions when they are applied to the expression of prevailing views than when they are applied to the expression of minority views: "In general opinions contrary to those commonly received can only obtain a fair hearing by studied moderation of language and the most cautious avoidance of unnecessary offence, from which they hardly ever deviate even in a slightest degree without losing ground, while unmeasured vituperation employed on the side of the prevailing opinion really does deter people from professing contrary opinions and from listening to those who profess them. For the interest, therefore, of truth and justice it is far more important to restrain this employment of vituperative language than the other" (*CW* XVIII, 259 [II, 44]). But he ultimately rejects all such restrictions, claiming that it is "obvious that law and authority have no business … restraining either" (*CW* XVIII, 259 [II, 44]). I discuss Mill's concern and caution about regulating intemperate speech and argue that Millian principles may actually support narrowly crafted hate speech regulations in David Brink, "Millian Principles, Freedom of Expression, and Hate Speech," *Legal Theory* 7 (2001), 119–57.

[16] 424 U.S. 1 (1976) (invalidating legislation imposing limits on campaign expenditures by candidates and private donors and creating a system of public funding for presidential campaigns).

[17] Ibid., at 54.

and donors operate under no serious restrictions on the amounts they spend, gives a significant advantage in political debate and electioneering to candidates and causes backed by the most resources. But then a *laissez-faire* regime makes the representation of candidates, issues, and policies hostage to economic interests in a way that is likely to prevent political dialogue from representing diverse views and tracking the merits of viewpoints as required by the sort of free and open inquiry essential to the exercise of deliberative values. Insofar as this is true, *laissez-faire* harms the deliberative interests of Haves, as well as Have-Nots. If we appeal to the deliberative values that justify freedom of expression to help distinguish between fundamental and non-fundamental expressive liberties, then there is an interesting case to be made for the idea that campaign finance reforms designed to redress the effects of economic inequalities on political dialogue do not infringe central First Amendment liberties and that such reforms would be a principled exception to the usual prohibition on the censorship of political expression.[18]

Yet another way in which Mill's conception of freedom of expression might be articulated in light of his liberal principles concerns the obligation of public institutions to represent diverse points of view. Mill insists that in order to exercise our deliberative capacities properly it is essential not only to represent diverse perspectives on important moral, political, and spiritual matters but also to represent their merits faithfully and vigorously. This discipline of fair representation of alternatives is "so essential … to a real understanding of moral and human subjects that, if opponents of all important truths do not exist, it is indispensable to imagine them and supply them, with the strongest arguments which the most skilful devil's advocate can conjure up (*CW* XVIII, 245 [II, 23]).

What is true of the need to represent false opinion applies *a fortiori* to true opinion and opinion whose truth value is not yet known. Mill's defense of proportional, rather than winner-take-all, representation in *Considerations on Representative Government*[19] and state support for the

[18] In "Thoughts on Parliamentary Reform" (1859), Mill expresses serious reservations about the effects of economic inequalities among candidates in elections that allow for unrestricted private expenditure by candidates and mentions publicly financed elections as a possible antidote (*CW* XIX, 320). However, he does not object to the effects of inequalities among private donors, and he does not make explicit this deliberation-enhancing rationale for restrictions on private campaign finance.

[19] John Stuart Mill, *Considerations on Representative Government* (1861), in *The Collected Works of John Stuart Mill*, vol. XIX: *Essays on Politics and Society*, Part II, ed. John M. Robson, introduction by Alexander Brady (Toronto: University of Toronto Press; London: Routledge & Kegan Paul, 1977), 371–577 (VII).

arts in the *Principles of Political Economy*[20] are examples of institutional mechanisms designed to increase the diversity and salience of political, intellectual, and artistic activities and voices so as to enhance the character of public and private deliberations. One application of this concern with the fair representation of alternatives in the domain of expression would be support for a fairness in broadcasting doctrine, of the sort at stake in *Red Lion Broadcasting Co.* v. *FCC*,[21] that would, at least in some contexts, condition access to broadcast time by some candidates and viewpoints on the provision of access to broadcast time by opposing candidates or points of view. Insofar as making public speech by some conditional on the provision of public speech by others can be understood as a restriction of expressive liberties, it too can be represented as a form of deliberation-enhancing censorship.

Mill's position on the limits of freedom of expression requires reconstruction. He is clearly not a free-speech absolutist, as his application of the harm principle to the corn-dealer case illustrates. The more interesting question is whether he can accept some other limitations on freedom of expression of the sort embodied in some central First Amendment principles and doctrines. Millian principles provide a good rationale for First Amendment doctrines about the importance of high-value speech. While Mill does not himself explicitly distinguish between high-value and low-value speech, one way to reconcile his free-speech principles with his other liberal principles would be to treat speech that fails to engage or retards deliberative values as low-value speech whose suppression could be justified as a form of deliberation-enhancing censorship, akin to the autonomy-enhancing paternalism that he explicitly recognizes.

CONCLUSION

Mill's defense of expressive liberties has been deservedly influential, and it is important in its own right to understand these arguments. But Mill intended his free-speech principles to play a larger role in articulating and grounding more general liberal principles governing thought and action. Once we appreciate the way in which his defense of expressive liberties

[20] John Stuart Mill, *Principles of Political Economy with Some of Their Applications to Social Philosophy*, Part II (1848), vol. III of *The Collected Works of John Stuart Mill*, ed. John M. Robson, introduction by V. W. Bladen (Toronto: University of Toronto Press; London: Routledge & Kegan Paul, 1965), 968–10 (Bk. V, XI, 15).

[21] 395 U.S. 367 (1969) (upholding the FCC's fairness doctrine and, in particular, the personal attack rule against First Amendment challenge).

appeals to the distinctive value of our nature as progressive beings – specifically, our capacities as agents – we can see how he thinks that free-speech principles, properly understood, support a broader array of individual liberties. In particular, we can see how the importance of deliberative values provides Mill with a reasonably robust defense of his general anti-paternalistic doctrine. But just as Mill's free-speech principles can shed light on his liberal principles, so too his liberal principles can shed light on his free-speech principles. Reconciling his expressive and liberal commitments suggests some ways of extending and qualifying his explicit commitments about freedom of expression. Though Mill initially says that he will defend one "very simple" liberal principle – the harm principle – as governing the limits of the authority that the state or anyone else may have over another, this turns out to be an over-simple statement of his liberal principles. Several potential qualifications are in order.[22] One qualification is that the harm principle need not be invoked to justify restricting liberty, for Mill endorses deliberation-enhancing forms of paternalism, as in his discussion of the permissibility of restrictions on selling oneself into slavery. This feature of his considered liberal principles has a direct bearing on freedom of expression. Mill can and does recognize permissible forms of censorship whose aim is to prevent harm, as in the corn-dealer example. But if we try to square Mill's expressive principles with his other liberal principles, this suggests that he can and should recognize the permissibility of other forms of censorship whose aim is not to prevent harm but to advance the very deliberative values that explain why censorship is normally impermissible. When Mill's free-speech principles are understood in this light, they provide an interesting and generally supportive perspective on some central First Amendment categories and doctrines. Viewing Mill's principles governing freedom of expression in the context of his more general liberal principles provides distinctive and instructive information about the proper interpretation of both sets of commitments.

[22] See Brink, "Mill's Moral and Political Philosophy," for fuller discussion of ways in which Mill's commitment to the harm principle must be qualified.

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12

Free speech: the Tower of Babel; the Serpent of Silence

The Tower of Babel is described in Genesis, though not by that name. It is a magnificent creation, a city of storeys – no doubt, more to be added – a city that stretches higher and higher to the heavens, to God. The inhabitants were once all of one voice, one language, one faith. All, it would seem, were in harmony in the quest of reaching up to the divine – until, courtesy of that divinity, they were cast into confusion, into chaos, finding themselves speaking different languages, in conflicting tongues. They failed to understand each other; they heard only babble. God, it is said, had taught the people not to be so arrogant in aspiring to reach Heaven.

Thus it was, some argue, that the Tower became that of 'Babel', for the term, deriving from the Hebrew word *balal*, means 'to jumble', 'to confuse'.

We have a Babel of today. Through social media – through Facebook, Twitter and much more – through urgent online debates and instant reactions in the media, there is a cacophony of speech, of texts, of shouts and shrills, pronouncements of anger, of retorts, of rebuffs. Of course, it is not all like that and not even all like that within the social media. Within some Facebook groups, there is considered discussion; some tweets offer useful information of local events, traffic jams – and, more importantly, can provide instant evidence of terrorist attacks or police brutality. Further, well before the presence of social media, broadcasters would often demand immediate political reactions to events, with politicians only too eager to oblige. The days are long gone when a politician would act as did British Prime Minister Clem Attlee, interviewed in a 1950s election campaign. Attlee, having said very little, is asked – the interviewer desperate for something – 'Have you anything to add, Prime Minister?' Attlee, with no concern for spin, soundbites or image, simply replies, 'No, I don't think so' – and is no further badgered.

Without much reflection, we may yet think how splendid it is that people from across the globe are interacting, engaging in discussion. Let us note, though, that many people tweet and post only within pockets of the like-minded – they are in echo chambers, tweet bubbles – and, as such, there is no stimulation for understanding, merely an addiction to repetition of soundbites, of mantras. When others from outside enter, deviating from those tongues, the communication is often nothing but shouts and shrieks, abuse and nastiness; such

communication would paradoxically be unheard of and unspoken by many of the participants were they face to face and in each other's direct hearing.

Clashing communications are not necessarily manifestations of misunderstandings; rather, there is often no desire for understanding. There is little eagerness for engagements to reach the truth or to reach reconciliation of competing views. The 'true or false' division may, in fact, mislead. We need scope to allow for those linguistic acts that are nonsense, waffle, vacuous, guff or 'bullshit', though some writings on the latter may well be self-referential.

There are, of course, exceptions.

Our Tower of Babel is not restricted to the social media and cyberspace dealings. Witness how rarely interviewers are seeking the truth or reasoned debate; news programmes are described as 'shows' or, at least show themselves as attempts at entertainment. Witness how rarely those in power address questions or produce reasoning or evidence relevant to the questions. Witness, indeed, how often they begin 'let's be absolutely clear', continuing with obscurity, distractions or platitudes. Exactly how the interplay between social media and mainstream media interactions operates is a moot question, but what is not moot is that the vast number of interactions on social media enables Big Data collection, unheard of a decade ago. Moneyed parties, be they political or corporate, target individuals, voters' groups and groups under celebrity influence, with aims of affecting consumer or voter behaviour, downplaying reflection.

It can be easy to forget that corporate aims are often intimately linked with the political. In Britain, an independent report on the 2015 election of Jeremy Corbyn as Labour Party leader established that high percentages of newspaper articles, designed to damage him amongst the mainstream electorate, were misleading. It is hardly helpful for democracy, where an informed electorate is required, if such media powers deliberately conflate commentary, conjecture and facts – and, in many cases, with mis-facts.

Picture our Tower of Babel, as a modern city, or modern country, or indeed the global village, with the babble and 'baa, baa's which, despite the millions of instant communications – or maybe because of them – ensures little communication by way of understanding. 'Baa baa' – the sound of sheep – is the supposed ancient Greek source of the term 'barbarians', the barbarians with their 'blah, blah' speech, lacking the language of civilization, of the Greeks. Our Tower of Babel is the Tower of Blah Blah. The blah blah is not to seek the truth, to follow arguments where they lead; it is not a spread of understanding, though it can and does change behaviour.

Kurt Gödel, a twentieth-century Austro-American, considered one of the greatest logicians of all time, claimed that reason never errs. We may doubt that claim – well, certainly, reasoning can err – but he is right that error is typically due to extraneous factors

such as emotion and poor education; we could add: and simply poor eyesight or poor intellectual-sight. Vested interests, be they political or corporate or a combination, rarely seek to argue their case, providing good reasons; rather, they appeal to emotion, with reliance on 'alternative facts', contributing to the noise of the blah.

Vulnerable groups, minorities, often find themselves attacked, or so they feel, in today's Babel – attacks based, for example, on race or sexual orientation. When in colleges, at meetings, in seminars, such groups can feel exposed, uneasy, offended – or too easily offended. Lovers of 'free speech', even when away from the mass of mindless blah and when keen for engagement, have little regard for such feelings – well, so some vulnerable groups apparently experience. Mind you, majority groups are sometimes much disparaged by minorities.

HATE SPEECH: THE UNITED STATES AND EUROPE

Our Tower of Babel is built on free speech – well, that is the tale – though we should not ignore the commercial foundations. Free speech, some argue, is a precious jewel to preserve, even if we have to suffer offended feelings and considerable nonsense. Does that mean we should leave our Tower of Babel untouched by constraint?

The great political philosopher Thomas Hobbes, in his 1651 work *Leviathan*, expressed the central problem for arranging a justified State: 'For in a way beset with those that contend, on one side for too great Liberty, and on the other side for too much Authority, 'tis hard to passe between the points of both unwounded.'

Hobbes, having lived through the seventeenth-century English Civil War, concentrated on the need for stable government. The State of Nature – a state without government, without society – is, he argued, a state of war, where the life of man is 'solitary, poor, nasty, brutish, and short'. Of course, the obvious reply is, 'It could be worse, dear Thomas; it could be solitary, poor, nasty, brutish – and long.'

That reflection to one side, this chapter is dealing with a particular problem of authority and liberty – that of passing unwounded between censorship and free speech. This is where Western democracies divide. European governments try to contain and restrain elements of the babble by law, social pressure and regulation; the United States does not – well, not as keenly so. The United States is hostage to its First Amendment: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.'

The Tower of Babel, American-style, flourishes because of the Amendment's protection of the freedoms of religion, speech and the press – though on American campuses there are increasingly calls for safe spaces, to protect members of vulnerable groups, members who feel under attack from the blah. Those on the political right tend to be keen to invite

controversial speakers to campus, while many of the liberally minded seek, paradoxically, to prevent – well, so it is anecdotally reported. That liberal response is more typical in Europe, at both college and national levels.

In Europe, in contrast to the States, there is a variety of anti-discrimination legislation, legislation that in part is designed to prohibit 'hate speech'. The European Court of Human Rights upholds the principle of freedom of expression – views may be expressed that 'offend, shock or disturb society or sections of it' – but the court makes illegal the expression of 'hate speech'. European countries, through their own laws, also maintain such restrictions:

> In Great Britain, the 1986 Public Order Act declares: 'a person who uses threatening, abusive, or insulting words or behaviour, or displays any written material which is threatening, abusive, or insulting, is guilty of an offence if: a) he intends to thereby stir up racial hatred, or; b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.'
>
> Sweden prohibits hate speech, and defines it as publicly making statements that threaten or express disrespect for an ethnic group or similar group regarding their race, skin colour, national or ethnic origin, faith or sexual orientation.
>
> Denmark's Criminal Code makes it an offence to use threatening, vilifying or insulting language against a racial group or religion.
>
> The Netherlands has a Criminal Code that prohibits making public intentional insults, as well as engaging in verbal, written or illustrated incitement to hatred, on account of one's race, religion, sexual orientation or personal convictions.
>
> France criminalizes incitement to racial discrimination, hatred or violence on the basis of one's origin or membership (or non-membership) in an ethnic, national, racial or religious group.

In Britain, the 'protected characteristics' designated in the hatecrime legislation are race, religion and sexual orientation; the coverage is much smaller than that of the Equality Act (2010), regarding equal opportunities, as encountered in Chapter 5. There are, though, proposals for extension, to include hostility towards women as women, men as men and the elderly as the elderly. We may wonder how far that should go: should not hate crimes include coverage of hostility towards punks, hippies, intellectuals? Why not against Conservative voters, the unemployed, the poor or the wealthy?

The underlying thought is that hate speech reduces the standing of whole groups and attacks the dignity of their members; hence, it should be prohibited. We see, though, how it is far from clear what determines which groups merit inclusion and which do not – and also what counts as disrespecting a group. Here a paradox, or at the very least a tension, hovers on the horizon. According to certain fundamentalist Islamic groups, for example, Muslims who reject their religion or dishonour Muhammad merit punishment, even death. In many European countries, the law, at the very least, restrains the expression of such beliefs – and that smacks of the law disrespecting those groups. Contrary to what is often casually proclaimed in liberal societies, not all views should be respected. Disrespecting views is, though, compatible with tolerating their expression. Liberal societies are, then, muddled in

their glib comments about encouraging respect, while upholding laws that aim to prevent the expression of certain views from even being tolerated.

Some countries ban the public denial of certain truths, notably those relating to the Holocaust. Some countries criminalize groups that express commitment to the Nazis, whether or not that commitment is a denial of the Holocaust or an approval. Such countries include Austria, Belgium, the Czech Republic, France, Germany, Switzerland – and Israel. By the way, let us ignore questions of defamation law, though in that arena, the American slander and libel laws tend to be more defendant-friendly than those in other countries such as Great Britain.

Overall, in Europe, insulting certain groups of people is much condemned and has various associated laws that restrain it, but, curiously, insulting individuals, though not in terms of such group membership, is – legally at least – acceptable. Insults aimed at political stances – apart from Naziism and terrorist-based ones – are usually legally permissible. Trouble by way of inconsistencies and conflations, inevitably, can arise because politics and stances on ethnic groupings and religion intermingle. For example, anti-Semitism and anti-Zionism are clearly distinct positions, but a frequent way of discrediting anti-Zionist positions is by claiming that they are a cover for anti-Semitism, conveniently forgetting, for a start, that many fundamentalist Jews object to Israel as a Jewish state.

The cacophony of the European Tower of Babel or Blah Blah seems, from the above, to be matched by the cacophony of laws and conventions against hate speech. From the citizens' perspective, there is a reasoned distrust of those who would restrict free speech, yet also distrust of allowing free rein in view of the prevalence of speakers whose sole aim may be to manipulate, offend or cause trouble.

In 2018, Boris Johnson, before becoming British prime minister, referred to the burqa as ridiculous because women who wear it look like 'letter boxes and bank robbers'. Instead of just casting doubts on the closeness of that similarity, people demanded investigations, deeming him manifestly Islamophobic even before those investigations. Christian hoteliers Ben and Sharon Vogelenzang were accused by a Muslim patron of calling Muhammad a 'warlord', leading them to be formally charged, though they were ultimately acquitted. Some politicians in Britain who point to Hitler's one-time interest in the Jews having their own State in the Middle East are deemed anti-Semitic – and so it goes on.

Although there are the European attempts to limit free speech in certain arenas, free speech is sometimes heralded and praised. In 2015 there was outrage at the French satirical magazine *Charlie Hebdo*; the magazine had published cartoons of Muhammad, leading to the murder of some staff. The big 'I am Charlie' protest in Paris that followed, with many political leaders marching, spectacularly supported the freedom to publish. Bizarrely, a Saudi Arabia representative also marched; 'bizarre', of course, because Saudi Arabia is a country where protestors against the State and Islam, even mildly protesting, are thrown into gaol for

years and flogged – or worse.

Banning words, in certain contexts, is nothing new. In 2017, there was a banning of Harper Lee's novel *To Kill a Mockingbird*, this time by the Biloxi School Board in Mississippi: 'there is some language in the book that makes people uncomfortable.' Once, the Church, philistines and morality defenders were major condemners of freedom of expression; these days, many of those well committed to culture, and far away from religion, seek to cut free expression down to size. Lee's novel, in fact, has often been banned by school boards: it 'represents institutionalized racism under the guise of good literature'. In 1981, North Carolina parents objected to *Lord of the Flies* on the curriculum because it implies 'man is little more than an animal'. Yes, as noted at the time, the truth can get banned.

There was – and still exists – the 1989 fatwa, issued by Iran's Ayatollah Khomeini, against Salman Rushdie, then living in Britain, calling for his murder because of *The Satanic Verses*. Virtually all Muslims who supported the fatwa – and, for that matter, non-Muslims who criticized Rushdie for writing the book – had not read the book and were under no obligation to do so. 'Do not open if likely to be offended' is an impotent recommendation; it is impotent for, it seems, just knowing that something exists may be offensive enough. Many argued that Rushdie should have been sensitive to the feelings even of those who would never read the book. Canada initially banned the work; sensitivity – or fear? – stopped many bookshops from holding copies or at least from displaying them. The then Chief Rabbi in Britain, Rabbi Jakobovits, condemned the publication; he proclaimed that it is wrong 'to tolerate a form of denigration and ridicule which can only breed resentment'.

In Britain, as seen, there is a mishmash of laws limiting the right to free speech. We may be committing a crime if using abusive words likely to cause harassment, alarm or distress or cause a breach of the peace. There are laws against indecency; any incitement to racial hatred; to religious hatred; incitement to, or encouragement of, terrorism; or the glorifying of terrorism. There exists treason for advocating the abolition of the monarchy or imagining the death of the monarch. Pressure groups and fashions of the day can, of course, restrict speech, even song. Frank Loesser's 1944 'Baby, It's Cold Outside', very popular and much covered, is now frowned upon by some, with stations refusing airtime. Men, it is said, may hear it as encouragement to inveigle women into seductions undesired. The objectors apparently are unaware that another verse has the woman inviting in the man.

The list of attempts to restrict expression could go on.

The Tower of Blah Blah is, of course, a challenge to those restrictions, for it is currently highly difficult to monitor and control. One reason for that difficulty is that it forms a vast commercial and successful enterprise, so there are powerful vested interests at work, unconcerned about what actually goes on. There is a similar conflict with regard to pornography available online. Family-orientated politicians and others in authority keenly condemn pornography's easy availability, yet permit it for, again, it is lucrative business –

and business that one way or another often helps to fund political parties keen on free markets.

THE SERPENT OF SILENCE

Dangers of physical attack, as with the murders related to *Charlie Hebdo* and those of some Danish cartoonists, together with legal and social dangers through anti-discrimination legislations, can lead to self-censorship. Various plays, works of art, publications – and political engagements – have not, it seems, seen the light of day; understandably, many people have preferred to play safe.

Just raising questions about or criticizing certain groups can lead to a flurry of complaints. In Britain, mainstream Jewish organizations promoted the International Holocaust Remembrance Alliance (IHRA) definition of anti-Semitism and its examples, eager to deem those who question it, be they Jews, academics or lawyers – be they from families who suffered in the Holocaust – as anti-Semitic. People who challenge Islam, criticizing the Islamic treatment of women, doubting whether it is intrinsically a religion of love, often receive the charge of being Islamophobic. Later, we see that those who question whether trans women are really women are deemed transphobic. There is a lot of the 'phobic' around – well, accusations of such.

We may picture such moves, and the legislation against hate crimes, as unfurling a serpent of silence. The Serpent of Silence winds through the Tower of Babel, ever growing, ever expansive, leading, perhaps one day, to a Tower of Silence – well, silence with regard to everything deemed controversial by those with certain power or authority. A day may arrive when people are so scared or numbed that they dare not challenge the status quo for fear of offending this group or that group – or perhaps even themselves. That may appear far-fetched, but the value of picturing the far-fetched, bringing it vividly to mind, may alert us to dangers of travelling much in its direction. Of course, some people use such possible dangers in bad faith – to justify their disregard of hate-speech restrictions. Others, also in bad faith, may use fears of 'hate speech' accusations to smother debate, at least public debate.

Once there was a great worry about blasphemy and how to prevent it. Blasphemous speech, it was thought, could offend God, bringing the whole community into disrepute. For liberal democrats, blasphemy no longer matters with regard to upsetting God. What matters is whether freedom of expression gives licence to upset certain groups, be those groups identified by their religion, race, gender, sexual orientation or disabilities.

The worry about causing offence and the desire to avoid giving offence can paradoxically lead not merely to some silences but also to 'compelled speech'. A nice example occurs with the court rulings in the United States regarding the Masterpiece Cakeshop: the owner argued that his having to create an iced wedding cake for a same-sex marriage ceremony offended his sincerely held religious beliefs about marriage, thus violating the Free Speech or Free

Exercise clauses of the First Amendment. Ashers Bakery of Northern Ireland was at first deemed to have broken British anti-discriminatory law because it declined to supply a gay customer with a cake iced with the slogan 'Support Gay Marriage'. Did that manifest the owners' support for such a message – and hence were they being compelled to assert what they deeply rejected? The eventual Supreme Court ruling, in 2018, happily found them not guilty of illegal sexual-orientation discrimination: the ruling noted that the Ashers would have refused to make such a cake for any customer, irrespective of their sexual orientation; their objection was to supplying the message on the cake, not to the personal characteristics of the would-be purchaser.

Imagine the Tower of Babel transformed into a Tower of Silence, of silence on controversial matters. No longer would people feel sufficiently confident to make any jokes or serious observations – for fear of upsetting this or that group. Utter not a word against this or against that… Because of the absence of the relevant words – absence of the relevant deeds – there could be no justified accusations of racism, anti-Semitism, Islamophobia and so forth. Of course, it is rather difficult to imagine the scene, for many Muslims would need to go quiet about their views of Jews, while traditional Christians would be unable to say what they really thought about same-sex relationships. Certain Orthodox Jews would not dare to announce their belief that a Jewish Israel created by man ought not to exist. Palestinians – and Daniel Barenboim, to name but one Jew of many – would keep quiet about how in their view the 2018 Basic Law: Israel as the Nation State of the Jewish People is akin to the introduction of apartheid, given its explicit statement that the Jewish people have an exclusive right to national self-determination in Israel.

All would be silent; well, we could no doubt comment on the weather, the storms and floods, so long as not attributing them to the wrath of God upset by the existence of sexual promiscuity and greed in the world – a claim made in Britain by the Bishop of Carlisle in 2007.

'Lock up your libraries if you like; but there is no gate, no lock, no bolt that you can set upon the freedom of my mind.' Thus wrote the novelist and leading member of the Bloomsbury Group, Virginia Woolf, in her 1929 *A Room of One's Own*. Well, we may question whether there can be such freedom of mind – certainly, its having much value – without expression of that freedom by way of public speech. We may warm to Spinoza's view in his 1670 *Tractatus Theologico-Politicus*:

> No one can surrender his freedom to judge and think what he likes; everyone, by the utmost right of nature, is master of his own thoughts. From this it follows that if the sovereign authorities of a State try to make men (with all their different and conflicting views) always speak according to what *they* prescribe, they will get only the most unfortunate result.

Mind you, the work was first published anonymously to protect both Spinoza and the publisher from political retribution and was written in New Latin in the hope of avoiding censorship by the Dutch authorities.

Although we have encountered the odd example of prescribed speech by way of the Masterpiece Cakeshop, the focus here has been on the envisaged Tower of Silence where the customary prescription has been for silence. We may envisage things getting much worse. Recall Anonymous, from Chapter 3.

By way of attire – 'A-ttire' as it was called – Anonymous sought to protect herself from intrusions, from being observed, her movements noted, her purchases made – her identity publicized. With the development of technologies, there may well come a time when not merely physical movements can be registered globally, but also thoughts. And let us not immediately ridicule or dismiss such an idea; after all, think how amazed the ancient Greeks would be at today's communications. The Serpent of Silence may invade minds such that we dare not even think what we should like to think – and we dare not even think of what it is that we should like to think.

That possibility moves us into much worse scenarios; after all, once technology arrives to detect thoughts, it will be a small step to move to inserting thoughts – and a small step into collapse of any sense of how these are *my* authentic thoughts rather than ones deliberately imposed from outside. We, indeed, suffer this already in a mild way through the media and subtle means of advertising and marketing, as seen in Chapter 4.

'OFFICIALLY, FINE'

There used to be a quip in Romania, when under the old so-called communist regime. If someone in the street came up to you and asked, 'How are you?', the wise reply – in a sense the only reply – would be, 'Officially fine.' It summed up the idea that one ought not to say anything against the official line. And that is, in effect, a generation of the Tower of Silence. That silence maintains the status quo, whatever that happens to be, when the Silence descends. We may be lucky in that status quo; it may accord with our desires. One aspect of human life, though, as distinct from robotic life, is that our freedom to express ourselves is essential to flourishing lives. Think also of how protests and demonstrations, publications and pamphlets, have helped in promoting social justice. Without them, who could honestly be sure that any such changes for the better over the decades would have occurred? Some supporters of parliamentary democracy vehemently object to extra-parliamentary influences by way of protest marches, civil disobedience, and certainly unlawful activities, as being undemocratic, conveniently forgetting how they have sometimes led to beneficial outcomes – and may do so again.

In France, for instance, regular and significant protests by the 'Gilets Jaunes' (the 'yellow vests') in 2018–19 brought about some easement of the economic plight of many citizens. The force deployed against the protestors by the State, though, was such that the United Nations Human Rights Council called for investigations. Indeed, President Macron has supported policies to limit demonstrations and prohibit dissidents' networks. When protests turn into riots, it is worth reflecting on reasons why many people stay away; one reason was highlighted by Benjamin Zephaniah's cutting poem of the 1980s. There he drew attention to those who do *not* riot, observing that people 'don't riot' if with comfortable homes, good jobs and secure futures.

Freedom to speak – as opposed to the 'Officially, fine' speak – has a long history of defenders. In 1644, Milton published a speech for the Liberty of UNLICENC'D PRINTING, to the PARLIAMENT of ENGLAND, which includes: 'And though all the windes of doctrin were let loose to play upon the earth, so Truth be in the field, we do injuriously, by licencing and prohibiting to misdoubt her strength. Let her and Falshood grapple; who ever knew Truth put to the wors, in a free and open encounter.'

Milton believed that free speech would enable truth to triumph, for truth could never be shown to be worse. Many years later, Mill, as noted, strongly defended free speech, even speech that offends, and insisted in his 1859 *On Liberty*: '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.'

For Mill freedom to speak is essential to our liberty, our autonomy – and, as with Milton, it is also a means of reaching the truth. On the autonomy consideration, many of us can recognize how a flourishing life requires our being free to express ourselves, to say what we think; it involves a freedom to know our minds by speaking our minds. Further, as mentioned, there is the value of reaching the truth.

What is spoken may be true – and that is an obvious benefit, unless one wants to lose touch with reality – but even if what is spoken is false, it should benefit by way of being tested, challenged and eventually overcome. That latter 'overcoming' may be wildly optimistic – just as may be the defence of free speech more explicitly in market terms: namely, its providing a marketplace of ideas to be probed. In 1919 Justice Oliver Wendell Holmes's defence for supporting the United States' First Amendment was based on the claim, 'The best test of truth is the power of the thought to get itself accepted in the competition of the market.'

Understanding the presentation of ideas, beliefs, morality as taking place in the marketplace, though, ignores questions of how truth should be discovered and transmitted, how to select truth from falsehood and how to distinguish fine valuable ideas from the trivial and frivolous. It also ignores the power discrepancies between the players in the market. The

marketplace of ideas, if taken on the economic model, generates gatekeepers whose motives usually are not to maximize access to truth or serious debate. Witness the power of media groups, where newspaper proprietors typically seek advertisers and readers, not to inform, but to generate profits directly or indirectly through promoting free-market governments. As Tawney observed, the media's activities seem largely to be to sell pieces of paper with nonsense on one side and advertisements on the other – and these days, we should add, the news, advertisements and commentary can be difficult to distinguish.

The mainstream media and politicians, those who benefit from such, talk up the freedom of the press and other media, conveniently forgetting how these gatekeepers are owned by a wealthy few who, in the case of Britain, mainly live offshore with their own political motives. Let us not, though, think of the past, when Mill was writing, as some golden age. Yes, there were papers that gave space to heavy debate, with full reports of parliamentary proceedings, but they were available to, and appealed to, only a few – and probably did little directly for democracy.

Plato was sceptical, with good reason, of the marketplace analogy. He tells us to beware the sophists, the teachers, in the marketplace, in the agora. Only if you are already a knowledgeable consumer can you safely buy teachings. If you are not, 'Do not risk what is most dear to you on a roll of the dice, for there is a far greater risk in buying teachings than in buying food.' When you buy food, Plato reflects, you can take it back home, see if it is stale, taste it and so forth, before eating. Teachings are different. 'You put down your money and take the teaching away in your soul by having learned it.' We may understand Plato's objection as that, when confronted by newspaper commentary, advertising and similar, we may be in no position to make a rational assessment of what has been said.

The Tower of Blah Blah may be seen as offering some degree of correction to the marketplace model, where there are powerful gatekeepers, but the Tower has no structure for understanding, for selection, for truth. After all, the noisiest, the most noticed, the most *believed* are not thereby communicators of truth or inspirers of cultural progress.

We may remove the commerciality implied in the 'marketplace of ideas' and understand the marketplace, rather optimistically, as one where the aim of the participants is to reach the truth through the cut and thrust of debate, of university seminars and erudite papers in leading journals, of scientific research and theory testings, on conjectures and refutations, of examinations on the model of law-court proceedings. Note, though, none of that just mentioned coheres well with a 'free-market' idea in the sense of an unregulated 'free for all' where anyone can contribute. There are academic qualifications needed, entry requirements, structures of debate, peer reviews, institutional support and much more.

Both the Tower of Blah Blah and the Tower of Silence are uncomfortable towers in which to reside. As ever with matters of the real world, we have to find compromises. We put up with some Blah Blah; we accept some Silence. The underlying question here is how to assess

the dangers of 'hate speech' compared with the dangers of 'hate-speech laws'. It is, though, a myth to think that there is a clear means for determining where lines should be drawn between prohibited speech and speech permitted.

CONFLICT, CIVILITY AND CONTEXT

There have to be some limits on the chatter, on the blah blah and on serious free speech; however great the advocacy of free speech, there are good reasons for restrictions. As the well-known quip goes, from Justice Holmes: 'You ought not falsely to shout "fire" in a crowded theatre – for that is likely to lead to an unnecessary stampede with consequent injury.' Mind you, the observation often omits the 'falsely'.

A much lesser-known example is that of the 'corn-dealer'. Mill, in his 1859 work *On Liberty*, told of a mob outside a corn-dealer's house being incited by a speaker to burn it down.

> No one claims that actions should be as free as opinions. On the contrary, even opinions lose their immunity when the circumstances in which they are expressed are such that merely expressing them is a positive incitement to some harmful act. The opinion that corn-dealers are starvers of the poor ought to be allowed to pass freely when it is simply presented to the world in print; but someone can justly be punished for announcing it orally or passing it out on a placard to an excited mob that has gathered in front of a corn-dealer's house.

Mill made the point that acts of any kind which harm others without justifiable cause may be – and in the more important cases absolutely must be – brought under control. Unless such likely harm, maybe direct harm, can be shown, people should be free to speak and, indeed, to express themselves, as they want; and, sceptical as some of us are, we may readily observe how there are many cases where the demand to repress, censor or close down has nothing to do with preventing harm to people.

We may be reminded of various 'non-disclosure agreements' – gagging clauses – where the 'agreements' can be challenged, for they have often been made when powerful and wealthy individuals have sought to silence apparent victims of abuse. We may also be reminded of how corporations proclaim, rather too readily, 'commercially sensitive information' and how governments, despite insisting on their love of democratic participation, resist calls under the 'freedom of information' legislation. When outsourcing, governments often add clauses to prevent contracting parties from revealing embarrassing motives or unwanted truths.

We may, then, certainly question the motives of some who seek to curtail free speech, just as we may question the motives of some who offer it strong support. In the main, powerful groups flip between sides as it suits their interests. On the one hand, corporations demand the freedom to publicize their products and services; the public has a right to know what is on offer. On the other hand, corporations resist revealing their internal business machinations and complex structures for tax avoidance; the public has no right to know what goes on

behind the scenes.

As ever with social matters, there are grey areas. Mill gave us the excited mob being incited to burn down the dealer's house there and then; we need to recognize, though, that there are degrees and degrees, nearer and further proximities to dangers. What may be said here ought not to be said there.

Other elements that swirl within the maelstrom are, as mentioned earlier, those concerning anti-discrimination restrictions on free speech, such restrictions being common to European countries and their laws. That mishmash of laws could of course be regimented. There is then the conflict with countries such as the United States that resist those restrictions. The conflict can be seen thus: free speech in terms of what can be said takes priority, as with the United States' First Amendment, but for the Europeans, free speech in terms of who gets to speak comes first. If the vulnerable are to be able to speak freely, the privileged, the majority, may need to embrace some degree of silence.

In 2009, for example, Daniel Féret, a right-wing Belgian politician, distributed leaflets advocating the policy of 'Belgians and Europeans first', saying that non-European job-seekers should be returned to their countries of origin and that we should stand up against Belgium's Islamification. He was convicted of breaking anti-discrimination law and was disqualified from running for election. We may wonder whether that serves democracy and whether it is helpful to try to maintain such views under wraps rather than openly debating them. Defenders of free speech may, indeed, insist that such advocacy should not be banned, but tolerated. That liberal attitude of toleration could well be disingenuous. We tolerate views with which we disagree and which we feel will have no impact. Once the views gather support, then we cease to tolerate.

In ancient Athens, there were two concepts that may be understood as giving voice to different ways of viewing free speech. The Greek *parrhesia* is the freedom to say what one pleases, as and when one pleases; that chimes with the First Amendment. The Greek *isegoria* pointed to the freedom expressed by citizens having an equal right to participate in debate in the democratic assembly; that may chime with the European approach, where 'hate speech' is seen as disrespecting individuals and deterring them from entering debate – as well as having the danger of inciting violence.

For the ancient Greeks, it seems, spoken truth lacked the value we theoretically give it today; but what was valued was speaking out. That 'speaking out', in our times, is often presented as 'speaking truth to power'. To do that, one may need to be outspoken, to whistle-blow – and for some to manage that, they need the space of safety.

Civility relates to 'our ways of doing things' and those ways are usually ones established by the civilization. Presentation may trump content. What may be said and how it may be said

can be a means for maintaining those in power. Aristotle, in his *Constitution of Athens*, commented critically on the demagogue Cleon who was 'the first who shouted on the public platform, who used abusive language and who spoke with his cloak girt around him, while all the others used to speak in proper dress and manner'.

An underlying and philosophical question here is how people should come to believe. Philosophers seek good reasons and evidence – and politicians, when it suits them, maintain the same aim – yet we may wonder whether rhetoric and emotion is not at times just as good, if not better, when the outcome is good. We may have sympathy for those speakers who lack the knowledge or awareness of how 'one ought to speak'. On the one hand, the negative hand, demands for civility may be demands for a certain conformity; that may silence dissent, for it prevents those who lack the necessary rhetorical skills from joining in. On the other hand, the positive hand, demands for civility may be out of respect for people engaging in public discourse, encouraging that engagement.

The call for civility surely comes, and rightfully so, when we read, for example, a newspaper commentator of Britain's *The Sun*, Katie Hopkins – well-known, it seems, solely for outrageous remarks – announcing with regard to the desperate people crammed on boats in the Mediterranean: 'Rescue Boats? I'd use gunships to stop illegal immigrants. Make no mistake, these migrants are like cockroaches.' Being poor, desperate or fleeing are not, apparently, 'protected characteristics' regarding hate speech; were they to be so, speech disparaging individuals on those grounds would be illegal. 'Protected characteristics' is, of course, a curious concept to deploy here; the world would be a better place if the poor were not poor, the fleeing were not compelled to flee. The need is not to protect the characteristics, but to protect people being abused because they possess those characteristics.

Hopkins continued with how towns are 'festering sores, plagued by swarms of migrants and asylum-seekers'. In that spirit, David Cameron, when Britain's prime minister, spoke of 'a swarm of people coming across'. Such descriptions, of people as akin to insects, of certain people, 'illegal immigrants', as automatically criminals, offends civil discourse by offending people. That rhetoric is nasty and is intended to silence those who would seek to defend the 'cockroaches'.

In a liberal society, supportive of free speech, we should accept ridicule, mockery and vivid language, but – as ever – there are degrees and degrees, matters of taste and the context of the speaking. In the seventeenth century, the theologian Roger Williams was much exercised by the 'persecution of the tongue'. Williams is little known today; he was born in London, educated in Cambridge, with much of his life spent in Massachusetts. He founded the American colony of Providence Plantation and co-founded the First Baptist Church in America. His works, such as *The Bloudy Tenent of Persecution, for Cause of Conscience* (1644), argued for religious freedom; he was eager to loosen tongues, accepting that toleration and disagreement may well be disagreeable yet remain immensely valuable. Of

course, whether disagreeable or not, there is the basic worry, much aggravated by today's social media, that free speech can give rise to blatant falsehoods spreading across the population – as apparently in the case of alleged dangers of the MMR vaccine (for measles, mumps and rubella). Should the defence of free speech include a defence of deliberate deceit being circulated through, for example, false identities where some may parade as Democratic Party supporters, urging people not to vote? That happened in the United States congressional elections of 2018.

Minimally, one should expect that in the regulated media, errors ought to be corrected with greater prominence given to the corrections than the errors. After all, is freedom of speech so valuable that speakers must not be deterred by requirements to correct and make amends, if what they broadcast is false, misleading or without evidence? Would we – should we – seriously believe that there is considerable value in the media being at liberty to seek to indoctrinate people into believing that drinking highly-sweetened drinks is excellent for health, that if they vote for left-wing parties they are traitors to their country and that extramarital sexual activity leads to eternal damnation? Those are cited because for commercial, political and religious reasons respectively they have at times been promoted one way or another.

There are ways of saying things without saying – well, recall how the cake-makers and bakers worried regarding what they would be taken to be saying. There are times and places when truths ought not to be said – out of courtesy, sensitivity and diplomacy. There are also times and places when truths ought to be said – and often they ought to be said when authorities, conventions or vested interests conspire against the saying. With that in mind, this chapter ends with a touching example.

Some years ago, a young man, an intellectual, someone who wanted to change the world, mimed in a city's public square. People could tell what he was miming. His mime was of someone giving a protest speech; it was, though, a speech without words. People drew round to watch and 'to listen'. They saw the expressive gestures, the flicker of tongue, the mouthing lips; they listened to – silence. The authorities also watched and listened, but did nothing; after all, he was not speaking out loud. Had he done so, he would have been arrested and silenced. To protest, he had paradoxically silenced himself.

The incident occurred in 1986, Zagreb, Yugoslavia, when under dictatorial rule. The incident, although silent, said much and says much. It is a tribute to humanity – to the young man's ingenuity, courage and commitment to free speech. It may also be a condemnation of humanity: the authorities' desire for power, conformity, repression. The incident displays human absurdity – a protest speech without words. A protest was being made, as all could tell, yet the law – *the law* – remained unbroken. The protestor obeyed the law's demand not

to speak, yet spoke. The police were dutiful in stopping protest, yet allowed protest.

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To my teachers

Who are 'Utopian Socialists'?

What is 'Love Thy Neighbor'? Is it a reference to something?

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But secondly, note that these were Utopian *Socialists.* This meant they were *economic* reformers. Utopia builders had existed since Plato, but it was not until the French Revolution that they had begun to react to economic as well as political injustice. And since it was early capitalism that provided the chamber of horrors against which they revolted, not unnaturally they turned their backs on private property and the struggle for private wealth. Few of them thought of reform *within* the system: remember that this was the age of the very first watered-down factory legislation and that such grudging reforms as were painfully won were largely honored in the breach. The Utopians wanted something better than reform—they wanted a new society in which Love Thy Neighbor could somehow be made to take priority over the mean gouging of each for himself. In the communality of property, in the warmth of common ownership, were to be found the touchstones of human progress.

They were men of very good will. And yet, for all their good intentions and their earnest theories, the Utopians lacked the stamp of respectability; they needed the imprimatur of someone with them in heart but whose head would be somewhat more firmly attached to his shoulders. And they found such a person in the most unlikely place—in the ultimate conversion to socialism of the person who was by common consent the greatest economist of the age: John Stuart Mill.

Everyone in this chapter is a somewhat unbelievable character, but perhaps J. S. Mill is the most remarkable of them all. His father was James Mill, historian, philosopher, pamphleteer, friend and intimate of Ricardo and Jeremy Bentham, one of the leading intellects of the early nineteenth century. James Mill had definite ideas about almost everything, and especially about education. His son, John Stuart Mill, was the extraordinary result.

John Stuart Mill was born in 1806. In 1809 (not 1819) he began to learn Greek. At age seven he had read most of the dialogues of Plato. The next year he began Latin, having meanwhile digested Herodotus, Xenophon, Diogenes Laërtius, and part of Lucian. Between eight and twelve he finished Virgil, Horace, Livy, Sallust, Ovid, Terence, Lucretius, Aristotle, Sophocles, and Aristophanes; had mastered geometry, algebra, and the differential calculus; written a Roman History, an Abridgment of the Ancient Universal History, a History of Holland, and a few verses. "I never composed at all in Greek, even in prose, and but little in Latin," he wrote in his famous *Autobiography*. "Not that my father could be indifferent to the value of this practice . . . but because there really was not the time for it."

At the ripe age of twelve, Mill took up logic and the work of Hobbes. At thirteen he made a complete survey of all there was to be known in the field of political economy.

It was a strange, and by our standards a dreadful, upbringing. There were no holidays "lest the habit of work should be broken, and a taste for idleness acquired," no boyhood friends, and not even a real awareness that his education and rearing were significantly different from the normal. The miracle is not that Mill subsequently produced great works, but that he managed to avoid a complete destruction of his personality. He did have a kind of nervous breakdown: in his twenties; the delicate dry intellectual world of work and effort on which he had been nourished suddenly became sterile and unsatisfying, and while other youths had to discover that there could be beauty in intellectual activity, poor Mill had to find that there could be beauty in beauty. He underwent a siege of melancholy; then he read Goethe, then Wordsworth, then Saint-Simon—all people who spoke of the heart as seriously as his father had spoken of the brain. And then he met Harriet Taylor.

There was, worse luck, a Mr. Taylor. He was ignored; Harriet Taylor and Mill fell in love and for twenty years wrote each other, traveled together, and even lived together—all (if we are to believe their correspondence) in perfect innocence. Then the barrier of Mr. Taylor was removed by his death and the two finally married.

It was a superlative match. Harriet Taylor (and later, her daughter, Helen) completed for Mill the emotional awakening that had begun so late; together, the two women opened

his eyes to women's rights and, even more importantly, to mankind's rights. After Harriet's death, when he was reflecting on the story of his life, he reviewed their converging influences on himself, and he wrote: "Whoever, either now or hereafter, may think of me and of the work I have done, must never forget that it is the product not of one intellect and conscience, but of three."

Mill, as we have seen, learned all the political economy there was to know at the age of thirteen. It was not until thirty years later that he wrote his great text, the two long, masterful volumes of the *Principles of Political Economy*. It was as if he had accumulated thirty years of knowledge just for this purpose.

The book is a total survey of the field: it takes up rent and wages and prices and taxes, and retreads the paths that had been first mapped by Smith and Malthus and Ricardo. But it is far more than a mere updating of doctrines that had by now received the stamp of virtual dogma. It goes on to make a discovery of its own, a discovery that Mill believed to be of monumental importance. Like so many great insights, the discovery was very simple. It consisted in pointing out that the true province of economic law was production and not distribution.

What Mill meant was very clear: the economic laws of production concern nature. There is nothing arbitrary about whether labor is more productive in this use or that, nor is there anything capricious or optional about such a phenomenon as the diminishing powers of productivity of the soil. Scarcity and the obduracy of nature are real things, and the economic rules of behavior which tell us how to maximize the fruits of our labor are as impersonal and as absolute as the laws of the expansion of gases or the interaction of chemical substances.

But—and this is perhaps the biggest *but* in economics—the laws of economics have nothing to do with distribution. Once we have produced wealth as best we can, we can do with it as we like. "The things once there," says Mill, "mankind, individually or collectively, can do with them as they please. They can place them at the disposal of whomsoever they please, and on whatever terms. . . . Even what a person has produced by his individual toil, unaided by anyone, he cannot keep, unless by the permission of society. Not only can society take it from him, but individuals could and would take it from him, if society . . . did not . . . employ and pay people for the purpose of preventing him from being disturbed in [his] possession. The distribution of wealth, therefore, depends on the laws and customs of society. The rules by which it is determined are what the opinions and feelings of the ruling portion of the community make them, and are very different in different ages and countries, and might be still more different, if mankind so chose. . . ."

It was a body blow to the followers of Ricardo who had rigidified his objective findings into a straitjacket for society. For what Mill said was transparently obvious—once it had been said. Never mind if the "natural" action of society was to depress wages or to equalize profits or to raise rents or whatever. If society did not like the "natural" results of its activities, it had only to change them. Society could tax and subsidize, it could expropriate and redistribute. It could give all its wealth to a king, or it could run a gigantic charity ward; it could give due heed to incentives, or it could—at its own risk—ignore them. But whatever it did, there was no "correct" distribution—at least none that economics had any claim to fathom. There was no appeal to "laws" to justify how society shared its fruits: there were only men sharing their wealth as they saw fit.

Actually, Mill's discovery was not quite so monumental as he believed. For as conservative economists quickly pointed out, when men intervene into the distribution process, they cannot help intervening into the production process as well: a 100 percent tax on profits, for example, would certainly have a terrific impact on how much there was, as well as on who got it. And as Marx was to point out from another perspective, one cannot separate distribution and production as cleanly as Mill thought, because different societies arrange their modes of payment as integral parts of their modes of production: feudal societies, for example, do

not have "wages," any more than capitalist societies have feudal dues.

Thus from both Right and Left came the criticism that there were *limits* on the freedom with which societies could restructure their distribution—much narrower limits than Mill implied. And yet it would be wrong to undervalue Mill's insight, just as it is wrong to exaggerate it. For the existence of limits means that there is room for maneuver, that capitalism is not beyond reform. Indeed, the New Deal and the welfare capitalisms of Scandinavia are the direct expressions of Mill's vision of a society that would try to remedy its "natural" workings by imposing its moral values. Who is to say that this has not led to important social change, even if the change is limited?

Certainly in Mill's own time, his findings came as a breath of fresh air. In an age when smugness and cant were the order of the day, Mill spoke out with a voice of extraordinary moral clarity. In his *Principles,* for example, after making his great division between Production and Distribution, he went on to examine the contemporary schemes of "communism" proposed by various Utopian reformers—not, let us hasten to add, the communism of Marx, of whose existence Mill was quite unaware.

Mill considered the various objections that could be lodged against these "communistic" schemes, and saw some merit in many of them. But then he summed up his opinion in this thunderous paragraph:

> If . . . the choice were to be made between Communism with all its chances, and the present state of society with all its sufferings and injustices; if the institution of private property necessarily carried with it as a consequence, that the produce of labour should be apportioned as we now see it, almost in an inverse ratio to the labour—the largest portions to those who have never worked at all, the next largest to those whose work is almost nominal, and so in a descending scale, the remuneration dwindling as the work grows harder and more disagreeable, until the most fatiguing and exhausting bodily labour cannot count with certainty on being able to earn even the necessaries of life; if this or Communism were the alternatives, all the difficulties, great or small, of Communism would be as dust in the balance.

But, Mill went on to add, this was not quite the choice. For the principle of private property, he believed, had not yet had a fair trial. The laws and institutions of Europe still reflected the violent feudal past, not the spirit of reform that Mill believed attainable through the application of the very principles he was writing about.

Thus in the end, he stopped short of advocating really revolutionary change for two reasons. First, he saw in the rough and harsh contest of daily life a necessary vent for the energies of mankind.

"I confess," he wrote, "I am not charmed with an ideal of life held out by those who think that the normal state of human beings is that of struggling to get on; that the trampling, crushing, elbowing, and treading on each other's heels, which form the existing type of social life, are the most desirable lot of human kind, or anything but the disagreeable symptoms of one of the phases of industrial progress."

But a distaste for acquisitiveness did not blind him to its usefulness: "That the energies of mankind should be kept in employment by the struggle for riches as they were formerly by the struggle for war, until the better minds succeed in educating the others into better things, is undoubtedly better than that they should rust and stagnate. While minds are coarse they require coarse stimuli and let them have them."

And then there was a second, perhaps more cogent, reservation. Weighing up the pros and cons of the imagined society of communism, Mill saw a difficulty that he expressed in these words:

> The question is whether there would be any asylum left for individuality of character; whether public opinion would not be a tyrannical yoke; whether the absolute dependence of each on all, and the surveillance of each by

all, would not grind all down into a tame uniformity of thoughts, feelings, and actions. . . . No society in which eccentricity is a matter of reproach can be in a wholesome state.

This is the "political" Mill speaking, later to be the author of the tract *On Liberty*, which is, perhaps, his greatest work. But we are interested here in the economist Mill. For his *Principles* was much more than an exploration of the possibilities for social reform. It was also a large-scale social model that projected a trajectory for the capitalist system, much as had the models of Smith and Ricardo before him. But Mill's model had a destination different from any theretofore. As we have seen, Mill was above all else a believer in the possibility of *changing* social behavior. Therefore he no longer swallowed the main mechanism of gloom for Ricardo—the population reflex that vitiated all chances for substantial working-class improvement. Instead, Mill thought that the working classes could be educated to understand their Malthusian peril, and that they would thereupon voluntarily regulate their numbers.

With the pressure of population on wages removed, Mill's model took a different turn from those of Ricardo and Smith. As before, the tendencies of the accumulation process would bid up wages, but this time there would be no flood of children to lessen the pressure of wages on profits. As a result, wages would rise and the accumulation of capital would come to an end. Thus Mill's system approached a high *stationary* plateau, just as Smith's or Ricardo's would have done had it not been for their relentless population pressures.

But now comes another departure. Rather than seeing a stationary state as the finale for capitalism and economic progress, Mill sees it as the first stage of a benign socialism, where mankind would turn its energies to serious matters of justice and liberty, not just to economic growth. Within this impending stationary society, great changes could be made. The state would prevent landlords from reaping unearned benefits, just as it would tax away inheritances. Associations of workmen would displace the organization of enterprises in

which men were subordinate to masters. By their sheer competitive advantages, the workers' cooperatives would win the day. Capitalism would gradually disappear as former masters sold out to their workingmen and retired on annuities.

Is it all just a Utopian fantasy? Looking back on a century of enormous economic expansion that followed the last edition of the *Principles*, we can only smile when we realize that Mill believed England (and by extension, world capitalism) to be within a "hand's breadth" of a stationary state. And yet, looking ahead at the problems that will face capitalist expansion over the next generation or two, and reflecting again on the degree to which some capitalist nations, such as Holland or the Scandinavian trio, have managed to introduce a high level of social responsibility into their economic framework, we cannot dismiss his vision as mere Victorian wishful thinking. Perhaps because he *is* a Victorian, Mill is too easily dismissed, for his calm reasoned prose, restrained even in his heights of eloquence, does not speak in the tones that attract the modern ear. Yet, Mill has a way of returning—of finding his way to the back door after he has been ushered out the front.

So let us bid him a respectful adieu. He lived until 1873, a venerated, almost worshiped man, his mildly Socialistic leanings forgiven in exchange for his vista of hope and his removal of the pall of Malthusian and Ricardian despair. After all, what he advocated was not so shocking but that it could be embraced by many who were not Socialists: taxation of rents, and inheritance taxes, and the formation of workmen's cooperatives. He was not very sanguine about the possibilities of trade unions, and that was all to the good, as far as respectable opinion went. It was a doctrine English to the core: gradualist, optimistic, realistic, and devoid of radical overtones.

Principles of Political Economy was an enormous success. It went into seven editions in the expensive two-volume edition during his own lifetime, and, characteristic of Mill, he had it printed at his own expense in one cheap volume that would be within the reach of the working class. Five cheap editions also sold out before he died. Mill became the Great

Economist of his day; he was talked of as Ricardo's rightful successor and heir, and compared not unfavorably with Adam Smith himself.

And economics aside, the man himself was so respected. In addition to *On Liberty,* Mill was the author of *Logic,* of *Considerations on Representative Government,* and of *Utilitarianism,* all classics in their fields. And more than merely brilliant, he verged on being saintly. When Herbert Spencer, his great rival in the area of philosophy, found himself so straitened in circumstances that he was unable to complete his projected series on social evolution, it was Mill who offered to finance the project. "I beg that you will not consider this proposal in the light of a personal favor," he wrote his rival, "though even if it were I should still hope to be permitted to offer it. But it is nothing of the kind—it is a simple proposal of cooperation for an important public purpose, for which you give your labor and have given your health."

There was never a more typical gesture. Mill cared only for two things: his wife, for whom he conceived a devotion that his friends thought verged on blindness, and the pursuit of knowledge, from which nothing could deflect him. When he was elected to Parliament his defense of human rights exceeded the temper of the day; he was thereupon defeated, but he cared not a whit either way. As he saw the world, so he wrote and spoke, and the only person who mattered, as far as approval went, was his beloved Harriet.

After she died, there was her daughter, Helen, now equally indispensable. In gratitude, Mill wrote in his *Autobiography:* "Surely no one before was so fortunate as, after such a loss as mine, to draw another such prize in the lottery of life." He retired to spend his last days with Helen in Avignon, near Harriet's grave, a wonderfully wise and thoroughly great man.

One last coincidence. His masterwork on economics, with its message of progress and the opportunity for peaceful change and betterment, was published in 1848. Perhaps it was not an epoch-making book, but it was certainly an epoch-marking one. For by a curious quirk of fate another, far

smaller book—a pamphlet—was published in the same year. It was entitled *The Communist Manifesto,* and in its few pages it undid, in bitter words, all the calm and buoyant reasonableness with which J. S. Mill had endowed the world.

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ANDREW
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POLITICAL IDEOLOGIES

AN INTRODUCTION

4TH EDITION

palgrave
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To Jean

Questions for discussion

- Are 'practical men' really the slaves of 'academic scribblers' Keynes)
- How does the Marxist concept of ideology differ from the mainstrea concept?
- Is ideology necessarily false? If so, why?
- Can 'socially unattached' intellectuals rise above ideology?
- Are all sets of political ideas ideologies, or only some?
- What is new about the 'new' ideologies'?
- To what extent has ideological commitment become lifestyle choice?
- Does the rise of 'new' ideologies mean that the old ones are now defunct?

Further reading

Eagleton, T., *Ideology: An Introduction* (London and New York: Verso, 1991). An examination of the different definitions of ideology that considers the ideas of key Marxist thinkers through to the various poststructuralists.

Festenstein, M. and M. Kenny, *Political Ideologies: A Reader and Guide* (Oxford): Oxford University Press, 2005). A very useful collection of extracts from key texts on ideology and ideologies, supported by lucid commentaries.

Freeden, M., *Ideology: A Very Short Introduction* (Oxford: Oxford University Press, 2004). An accessible and lively introduction to the concept: an excellent starting place.

McLellan, D., *Ideology* (Milton Keynes: Open University Press, 2nd edn, 1995). A clear and short yet comprehensive introduction to the elusive concept of ideology.

Schwartzmantel, J., *The Age of Ideology: Political Ideologies from the American Revolution to Post-Modern Times* (Basingstoke: Palgrave Macmillan, 1998). A broad-ranging analysis of how the major ideological traditions are coping with the challenge of postmodern society.

Seliger, M., *Ideology and Politics* (London: Allen & Unwin, 1976). A very thorough account of ideology, considered by some to be the classic treatment of the subject.

CHAPTER 2

LIBERALISM

The term 'liberal' has been in use since the fourteenth century but has had a wide variety of meanings. The Latin *liber* referred to a class of free men; in other words, men who were neither serfs nor slaves. It has meant generous, as in 'liberal' helpings of food and drink; or, in reference to social attitudes, it has implied openness or open-mindedness. It also came to be increasingly associated with ideas of freedom and choice. The term 'liberalism' to denote a political allegiance made its appearance much later: it was not used until the early part of the nineteenth century, being first employed in Spain in 1812. By the 1840s, the term was widely recognized throughout Europe as a reference to a distinctive set of political ideas. However, it was taken up more slowly in the UK: although the Whigs started to call themselves Liberals during the 1830s, the first distinctly Liberal government was not formed until Gladstone took office in 1868.

The central theme of liberal ideology is a commitment to the individual and the desire to construct a society in which people can satisfy their interests and achieve fulfilment. Liberals believe that human beings are, first and foremost, individuals, endowed with reason. This implies that each individual should enjoy the maximum possible freedom consistent with a like freedom for all. However, although individuals are entitled to equal legal and political rights, they should be rewarded in line with their talents and their willingness to work. Liberal societies are organized politically around the twin principles of constitutionalism and consent, designed to protect citizens from the danger of government tyranny. Nevertheless, there are significant differences between classical liberalism and modern liberalism. *Classical liberalism* is characterized by a belief in a 'minimal' state, whose function is limited to the maintenance of domestic order and personal security. *Modern liberalism*, in contrast, accepts that the state should help people to help themselves.

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Origins and development

As a systematic political creed, liberalism may not have existed before the nineteenth century, but it was based on ideas and theories that had developed during the previous three hundred years. Indeed, as Paul Seabright (2004) argued, the origins of liberalism can perhaps be traced back as far as to early agricultural societies, when people started living in settled communities and were forced, for the first time, to find ways of trading and living with strangers. Nevertheless, liberalism as a developed ideology was a product of the breakdown of **feudalism** in Europe, and the growth, in its place, of a market or capitalist society. In many respects, liberalism reflected the aspirations of the rising middle classes, whose interests conflicted with the established power of absolute monarchs and the landed aristocracy. Liberal ideas were radical: they sought fundamental reform and even, at times, revolutionary change. The English Revolution of the seventeenth century and the American and French Revolutions of the late eighteenth century each embodied elements that were distinctively liberal, even though the word 'liberal' was not at the time used in a political sense. Liberals challenged the absolute power of the monarchy, supposedly based on the doctrine of the '**divine right** of kings'. In place of **absolutism**, they advocated constitutional and, later, representative government. Liberals criticized the political and economic privileges of the landed aristocracy and the unfairness of a feudal system in which social position was determined by the 'accident of birth'. They also supported the movement towards freedom of conscience in religion and questioned the authority of the established church.

Feudalism: A system of agrarian-based production that is characterized by fixed social hierarchies and a rigid pattern of obligations.

Divine right: The doctrine that earthly rulers are chosen by God and thus wield unchallengeable authority; divine right is a defence for monarchical absolutism.

Absolutism: A form of government in which political power is concentrated in the hands of a single individual or small group, in particular, an absolute monarchy.

The nineteenth century was in many way the liberal century. As industrialization spread throughout western countries, liberal ideas triumphed. Liberals advocated an industrialized and market economic order 'free' from government interference, in which businesses would be allowed to pursue profit and nations encouraged to trade freely with one another. Such a system of industrial capitalism developed first in the UK, from the mid-eighteenth century onwards, and was well established by the early nineteenth century. It subsequently spread to North America and throughout Europe, initially into western Europe and then, more gradually, into eastern Europe. From the twentieth century onwards industrial capitalism exerted a powerful appeal for developing states in Africa, Asia and Latin America, especially when

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social and political development was defined in essentially western terms. However, developing-world states have sometimes been resistant to the attractions of liberal capitalism because their political cultures have emphasized community rather than the individual. In such cases, they have provided more fertile ground for the growth of socialism, nationalism or religious fundamentalism, rather than western liberalism. Where capitalism has been successfully established, as in Japan, it has tended to assume a corporate rather than an individualistic character. Japanese industry, for example, is motivated more by traditional ideas of group loyalty and duty than by the pursuit of individual self-interest.

Liberalism has undoubtedly been the most powerful ideological force shaping the western political tradition. Indeed, some portray liberalism as the ideology of the industrialized West and identify it with western civilization itself. Nevertheless, historical developments since the nineteenth century have clearly influenced the nature and substance of liberal ideology. The character of liberalism changed as the 'rising middle classes' succeeded in establishing their economic and political dominance. The radical, even revolutionary edge of liberalism faded with each liberal success. Liberalism thus became increasingly conservative, standing less for change and reform, and more for the maintenance of existing – largely liberal – institutions. Liberal ideas, too, could not stand still. From the late nineteenth century onwards, the progress of industrialization led liberals to question, and in some ways to revise, the ideas of early liberalism. Whereas early liberals had wanted government to interfere as little as possible in the lives of its citizens, modern liberals came to believe that government should be responsible for delivering welfare services such as health, housing, pensions and education, as well as for managing, or at least regulating, the economy. This led to the development of two traditions of thought within liberalism, commonly called **classical liberalism** and **modern liberalism**. As a result, some commentators have argued that liberalism is an incoherent ideology, embracing contradictory beliefs, notably about the desirable role of the state.

Classical liberalism: A tradition within liberalism that seeks to maximize the realm of unconstrained individual action, typically by establishing a minimal state and a reliance on market economics.

Modern liberalism: A tradition within liberalism that provides (in contrast to classical liberalism) a qualified endorsement for social and economic intervention as a means of promoting personal development.

The twentieth century appeared to culminate in the worldwide triumph of liberalism, as the liberal model of representative government combined with market-based economics that had dominated political and social development in the West since the nineteenth century spread remorselessly throughout the globe. In the context of the collapse of communism, the US social theorist Francis Fukuyama (1989, 1992) memorably

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proclaimed that: 'We are witnessing the end of history as such: that is, the endpoint of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government.' Philip Bobbitt (2002) articulated a similar idea in arguing that the 'long war' between liberal parliamentarianism, communism and fascism to define the constitutional structure of the nation-state, which had dominated world politics between 1914 and 1990, had ended in the victory of liberalism over its rivals. This was demonstrated, moreover, by the process of 'democratization' that was underway in Africa, Asia and Latin America, which involved the spread of competitive party systems and a growing enthusiasm for market reforms. By 2000, about two-thirds of the states in the world had political systems that exhibited significant liberal-democratic features. However, as discussed in the final section of the chapter, at the very point of its 'triumph' liberalism was confronted with the rise of markedly illiberal forces, most notably religious fundamentalism, both in the developing world and in its western homeland.

Core themes – the primacy of the individual

Liberalism is, in a sense, the ideology of the industrialized West. So deeply have liberal ideas permeated political, economic and cultural life that their influence can become hard to discern, liberalism appearing to be indistinguishable from 'western civilization' in general. Liberal thinkers in the eighteenth and nineteenth centuries, influenced by an **Enlightenment** belief in universal reason, tended to subscribe to an explicitly foundationist form of liberalism, which sought to establish fundamental values and championed a particular vision of human flourishing or excellence, usually linked to personal autonomy. This form of liberalism was boldly universalist, in that it implied that human history would be marked by the gradual but inevitable triumph of liberal principles and institutions. Progress, in short, was understood in strictly liberal terms.

Enlightenment, the: An intellectual movement that reached its height in the eighteenth century and challenged traditional beliefs in religion, politics and learning in general in the name of reason and progress.

During the twentieth century, however, it became fashionable to portray liberalism as morally neutral. This is reflected in the belief that liberalism gives priority to 'the right' over 'the good'. In other words, liberalism strives to establish the conditions in which people and groups can pursue the good life as each defines it, but it does not prescribe or try to promote any particular notion of what is good. From this perspective, liberalism is not simply an ideology but a 'meta-ideology'; that is, a body of rules that lays down the

grounds on which political and ideological debate can take place. However, this does not mean that liberalism is simply a philosophy of 'do your own thing'. While liberalism undoubtedly favours openness, debate and self-determination, it is also characterized by a powerful moral thrust. The moral and ideological stance of liberalism is embodied in a commitment to a distinctive set of values and beliefs. The most important of these are the following:

- the individual
- freedom
- reason
- justice
- toleration.

The individual

In the modern world, the concept of the individual is so familiar that its political significance is often overlooked. In the feudal period, there was little idea of individuals having their own interests or possessing personal and unique identities. Rather, people were seen as members of the social groups to which they belonged: their family, village, local community or social class. Their lives and identities were largely determined by the character of these groups in a process that changed little from one generation to the next. However, as feudalism was displaced by increasingly market-orientated societies, individuals were confronted by a broader range of choices and social possibilities. They were encouraged, perhaps for the first time, to think *for* themselves, and to think *of* themselves in personal terms. A serf, for example, whose family may always have lived and worked on the same piece of land, became a 'free man' and acquired some ability to choose who to work for, or maybe the opportunity to leave the land altogether and look for work in the growing towns or cities.

As the certainties of feudal life broke down, a new intellectual climate emerged. Rational and scientific explanations gradually displaced traditional religious theories, and society was increasingly understood from the viewpoint of the human individual. Individuals were thought to possess personal and distinctive qualities: each was of special value. This was evident in the growth of natural rights theories in the seventeenth and eighteenth centuries, which are discussed later, in relation to classical liberalism. The German philosopher Immanuel Kant (1724–1804) expressed a similar belief in the dignity and equal worth of human beings in his conception of individuals as 'ends in themselves' and not merely as means for the achievement of the

INDIVIDUALISM

Individualism is the belief in the supreme importance of the individual over any social group or collective body. In the form of methodological individualism, this suggests that the individual is central to any political theory or social explanation – all statements about society should be made in terms of the individuals who compose it. Ethical individualism, on the other hand, implies that society should be constructed so as to benefit the individual, giving moral priority to individual rights, needs or interests Classical liberals and t new right subscribe to *egoistical* individualism, which places emphasis on self-interestedness and self-reliance. Modern liberals, in contrast, have advanced a *developmental* form of individualism that prioritizes human flourishing over the quest for interest satisfaction.

ends of others. However, emphasizing the importance of the individual has two contrasting implications. First, it draws attention to the uniqueness of each human being: individuals are primarily defined by inner qualities and attributes specific to themselves. Second, they nevertheless each share the same status in that they are all, first and foremost, individuals. Many of the tensions within liberal ideology can, indeed, be traced back to these rival ideas of uniqueness and equality.

A belief in the primacy of the individual is the characteristic theme of liberal ideology, but it has influenced liberal thought in different ways. It has led some liberals to view society as simply a collection of individuals, each seeking to satisfy his or her own needs and interests. Such a view has been equated with **atomism**; indeed, it can lead to the belief that 'society' itself does not exist, but is merely a collection of self-sufficient individuals. Such extreme individualism is based on the assumption that the individual is egoistical, essentially self-seeking, and largely self-reliant. C. B. Macpherson (1973) characterized early liberalism as 'possessive individualism', in that it regarded the individual as 'the proprietor of his own person or capacities, owing nothing to society for them'. In contrast, later liberals have held a more optimistic view of **human nature**, and have been more prepared to believe that egoism is tempered by a sense of social responsibility, especially a responsibility for those who are unable to look after themselves. Whether egoism is unrestrained or is qualified by a sense of social responsibility, liberals are united in their desire to create a

Atomism: A belief that society is made up of a collection of self-interested and largely self-sufficient individuals, or atoms, rather than social groups.

Human nature: The essential and innate character of all human beings: what they owe to nature rather than to society.

John Stuart Mill (1806–73)

UK philosopher, economist and politician. Mill was subjected to an intense and austere regime of education by his father, the utilitarian theorist James Mill, resulting in a mental collapse at the age of 20. He went on to found and edit the *London Review* and was MP for Westminster from 1865 to 1881.

Mill's varied and complex work was crucial to the development of liberalism because, in many ways, it straddled the divide between classical and modern theories. His opposition to collectivist tendencies and traditions was firmly rooted in nineteenth-century principles, but his emphasis on the quality of individual life, reflected in a commitment to 'individuality', as well as his sympathy for causes such as female suffrage and, later, workers' cooperatives, looked forward to twentieth-century developments. Mill's major writings include *On Liberty* (1859), *Considerations on Representative Government* (1861) and *The Subjection of Women* (1869).

Mill 1

Mill 2

society in which each person is capable of developing and flourishing to the fullness of his or her potential.

Freedom

A belief in the supreme importance of the individual leads naturally to a commitment to individual **freedom**. Individual liberty (liberty and freedom being interchangeable) is for liberals the supreme political value and, in many ways, the unifying principle within liberal ideology. For early liberals, liberty was a natural right, an essential requirement for leading a truly human existence. It also gave individuals the opportunity to pursue their own interests by exercising choice: the choice of where to live, who to work for, what to buy and so forth. Later liberals have seen liberty as the only condition in which people are able to develop their skills and talents and fulfil their potential. Nevertheless, liberals do not accept that individuals have an absolute entitlement to freedom. If liberty is unlimited it can become 'licence', the right to abuse others. In *On Liberty* ([1859] 1972, p. 73) John Stuart Mill argued that 'the only purpose for which power can be rightfully exercised over any

Freedom (or liberty): The ability to think or act as one wishes, a capacity that can be associated with the individual, a social group or a nation.

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FREEDOM

LIBERALS give priority to freedom as the supreme individualist value. While classical liberals support negative freedom, understood as the absence of constraints – or freedom of choice – modern liberals advocate positive freedom in the sense of personal development and human flourishing.

CONSERVATIVES have traditionally endorsed a weak view of freedom as the willing recognition of duties and responsibilities, negative freedom posing a threat to the fabric of society. The new right, however, endorses negative freedom in the economic sphere, freedom of choice in the marketplace.

SOCIALISTS have generally understood freedom in positive terms to refer to self-fulfilment achieved through either free creative labour or cooperative social interaction. Social democrats have drawn close to modern liberalism in treating freedom as the realization of individual potential.

ANARCHISTS regard freedom as an absolute value, believing it to be irreconcilable with any form of political authority. Freedom is understood to mean the achievement of personal autonomy, not merely being 'left alone' but being rationally self-willed and self-directed.

FASCISTS reject any form of individual liberty as a nonsense. 'True' freedom, in contrast, means unquestioning submission to the will of the leader and the absorption of the individual into the national community.

ECOLOGISTS, particularly deep ecologists, treat freedom as the achievement of oneness, self-realization through the absorption of the personal ego into the ecosphere or universe. In contrast with political freedom, this is sometimes seen as 'inner' freedom, freedom as self-actualization.

RELIGIOUS FUNDAMENTALISTS see freedom as essentially an inner or spiritual quality. Freedom means conformity to the revealed will of God, spiritual fulfilment being associated with submission to religious authority.

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libertarian

member of a civilized community, against his will, is to prevent harm to others'. Mill's position is libertarian (see p. 86) in that it accepts only the most minimal restrictions on individual freedom, and then only in order to prevent 'harm to others'. He distinguished clearly between actions that are 'self-regarding', over which individuals should exercise absolute freedom, and those that are 'other-regarding', which can restrict the freedom of others or do

them damage. Mill did not accept any restrictions on the individual that are designed to prevent a person from damaging himself or herself, either physically or morally. Such a view suggests, for example, that laws forcing car drivers to put on seat belts or motor cyclists to wear crash helmets are as unacceptable as any form of censorship that limits what an individual may read or listen to. Radical libertarians may defend the right of people to use addictive drugs such as heroin and cocaine on the same grounds. Although the individual may be sovereign over his or her body and mind, each must respect the fact that every other individual enjoys an equal right to liberty. This has been expressed by John Rawls (see p. 58) in the principle that everyone is entitled to the widest possible liberty consistent with a like liberty for all.

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John Rawls

Although liberals agree about the value of liberty, they have not always agreed about what it means for an individual to be 'free'. In his 'Two Concepts of Liberty' ([1958] 1969), the UK historian of ideas Isaiah Berlin (1909–97) distinguished between a 'negative' theory of liberty and a 'positive' one. Early or classical liberals have believed in **negative freedom**, in that freedom consists in each person being left alone, free from interference and able to act in whatever way they may choose (negative freedom). This conception of freedom is 'negative' in that it is based on the absence of external restrictions or constraints on the individual. Modern liberals, on the other hand, have been attracted to a more 'positive' conception of liberty – **positive freedom** – defined by Berlin as the ability to be one's own master, to be autonomous. Self-mastery requires that the individual is able to develop skills and talents, broaden his or her understanding, and gain fulfilment. This led to an emphasis on the capacity of human beings to develop and ultimately achieve self-realization. These rival conception of liberty have not merely stimulated academic debate within liberalism, but have encouraged liberals to hold very different views about the desirable relationship between the individual and the state.

Negative freedom: The absence of external restrictions or constraints on the individual, allowing freedom of choice.

Positive freedom: Self-mastery or self-realization; the achievement of autonomy and the development of human capacities.

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(1) Negative

(2) Positive

Reason

The liberal case for freedom is closely linked to a faith in reason. Liberalism is, and remains, very much part of the Enlightenment project. The central theme of the Enlightenment was the desire to release humankind from its bondage to superstition and ignorance, and unleash an 'age of reason'. Key Enlightenment thinkers included Jean-Jacques Rousseau (see p. 153), Immanuel Kant, Adam Smith (see p. 50) and Jeremy Bentham (see p. 49).

RATIONALISM

Rationalism is the belief that the world has a rational structure, and that this can be disclosed through the exercise of human reason and critical enquiry. As a philosophical theory, rationalism is the belief that knowledge flows from reason rather than experience, and thus contrasts with empiricism. As a general principle, however, rationalism places a heavy emphasis on the capacity of human beings to understand and explain their world, and to find solutions to problems. While rationalism does not dictate the ends of human conduct, it certainly suggests how these ends should be pursued. It is associated with an emphasis on principle and reason-governed behaviour, as opposed to a reliance on custom or tradition, or on non-rational drives and impulses.

Enlightenment rationalism influenced liberalism in a number of ways. In the first place, it strengthened its faith in both the individual and liberty. To the extent that human beings are rational, thinking creatures, they are capable of defining and pursuing their own best interests. By no means do liberals believe that individuals are infallible in this respect, but the belief in reason builds into liberalism a strong bias against **paternalism**. Not only does paternalism prevent individuals from making their own moral choices and, if necessary, from learning from their own mistakes, but it also creates the prospect that those invested with responsibility for others will abuse their position for their own ends.

Paternalism: Authority exercised from above for the guidance and support of those below, modelled on the relationship between fathers and children.

A further legacy of rationalism is that liberals are inclined to view human history in terms of progress. Progress literally means advance, a movement forward. In the liberal view, the expansion of knowledge, particularly through the scientific revolution, enabled people not only to understand and explain their world but also to help shape it for the better. In short, the power of reason gives human beings the capacity to take charge of their own lives and fashion their own destinies. Reason thus emancipates humankind from the grip of the past and from the weight of custom and tradition. Each generation is able to advance beyond the last as the stock of human knowledge and understanding progressively increases. This also explains the characteristic liberal emphasis on education. People can better or improve themselves through the acquisition of knowledge and the abandonment of prejudice and superstition. Education, particularly in the modern liberal view, is thus a good in itself. It is a vital mean of promoting personal self-development and, if extended widely, of achieving historical and social advancement.

Reason, moreover, is significant in highlighting the importance of discussion, debate and argument. While liberals are generally optimistic about human nature, seeing people as reason-guided creatures, they have seldom subscribed to the utopian creed of human perfectibility because they recognize the power of self-interest and egoism. The inevitable result of this is rivalry and conflict. Individuals battle for scarce resources, businesses compete to increase profits, nations struggle for security or strategic advantage, and so forth. The liberal preference is clearly that such conflicts be settled through debate and negotiation. The great advantage of reason is that it provides a basis on which rival claims and demands can be evaluated – do they 'stand up' to analysis, are they 'reasonable'? Furthermore, it highlights the cost of not resolving disputes peacefully: namely, violence, bloodshed and death. Liberals therefore typically deplore the use of force and aggression; for example, war is invariably seen as an option of the very last resort. From the liberal perspective, the use of force is justified either on the grounds of self-defence or as a means of countering oppression, but always and only after reason and argument have been exhausted.

Justice

Justice denotes a particular kind of moral judgement, in particular one about the distribution of rewards and punishment. In short, justice is about giving each person what he or she is 'due'. The narrower idea of social justice refers to the distribution of material rewards and benefits in society, such as wages, profits, housing, medical care, welfare benefits and so on. The liberal theory of justice is based on a belief in equality of various kinds. In the first place, individualism implies a commitment to foundational **equality**. Human beings are seen to be 'born' equal in the sense that each individual is of equal moral worth, an idea embodied in the notion of natural rights or human rights. Second, foundational equality implies a belief in formal equality, the idea that individuals should enjoy the same formal status in society, particularly in terms of the distribution of rights and entitlements. Consequently, liberals fiercely disapprove of any social privileges or advantages that are enjoyed by some but denied to others on the basis of factors such as gender, race, colour, creed, religion or social background. Rights should not be reserved for any particular class of person, such as men, whites, Christians or the wealthy. This is the sense in which liberalism is 'difference blind'. The most important forms

Justice: A moral standard of fairness and impartiality; social justice is the notion of a fair or justifiable distribution of wealth and rewards in society.

Equality: The principle that human beings are of identical worth or are entitled to be treated in the same way; equality can have widely differing applications.

of formal equality are legal equality and political equality. The former emphasizes 'equality before the law' and insists that all non-legal factors be strictly irrelevant to the process of legal decision-making. The latter is embodied in the idea of 'one person, one vote; one vote, one value', and underpins the liberal commitment to democracy.

Third, liberals subscribe to a belief in equality of opportunity. Each and every individual should have the same chance to rise or fall in society. The game of life, in that sense, must be played on an even playing field. This is not to say that there should be equality of outcome or reward, that living conditions and social circumstances should be the same for all. Liberals believe social equality to be undesirable because people are not born the same. They possess different talents and skills, and some are prepared to work much harder than others. Liberals believe that it is right to reward merit, ability and the willingness to work – indeed, they think it essential to do so if people are to have an incentive to realize their potential and develop the talents they were born with. Equality, for a liberal, means that individuals should have an equal opportunity to develop their unequal skills and abilities.

This leads to a belief in '**meritocracy**'. A meritocratic society is one in which inequalities of wealth and social position solely reflect the unequal distribution of merit or skills amongst human beings, or are based on factors beyond human control: for example, luck or chance. Such a society is socially just because individuals are judged not by their gender, the colour of their skin or their religion, but according to their talents and willingness to work, or on what Martin Luther King called 'the content of their character'. By extension, social equality is unjust because it treats unlike individuals alike. However, liberal thinkers have disagreed about how these broad principles of justice should be applied in practice. Classical liberals have endorsed strict meritocracy on both economic and moral grounds. Economically, they place heavy stress on the need for incentives. Morally, justice requires that unequal individuals are not treated equally. Modern liberals, on the other hand, have taken social justice to imply a belief in some measure of social equality. For example, in *A Theory of Justice* (1970), John Rawls argued that economic inequality is only justifiable if it works to the benefit of the poorest in society.

Meritocracy: Literally, rule by those with merit, merit being intelligence plus effort; a society in which social position is determined exclusively by ability and hard work.

Toleration

The liberal social ethic is very much characterized by a willingness to accept and, in some cases, celebrate moral, cultural and political diversity. Indeed, an acceptance of **pluralism** can be said to be rooted in the principle of individualism, and the assumption that human beings are separate and unique creatures. However, the liberal preference for diversity has more commonly been associated with **toleration**. This commitment to toleration, attributed to the French writer Voltaire (1694–1778), is memorably expressed in the declaration that, 'I detest what you say but will defend to the death your right to say it'. Toleration is both an ethical ideal and a social principle. On the one hand, it represents the goal of personal autonomy; on the other, it establishes a set of rules about how human beings should behave towards one another. The liberal case for toleration first emerged in the seventeenth century in the attempt by writers such as John Milton (1608–74) and John Locke to defend religious freedom. Locke argued that since the proper function of government is to protect life, liberty and property, it has no right to meddle in 'the care of men's souls'. Toleration should be extended to all matters regarded as 'private' on the grounds that, like religion, they concern moral questions that should be left to the individual.

Pluralism: A belief in diversity or choice, or the theory that political power is or should be widely and evenly dispersed (see p. 325).

Toleration: Forbearance; a willingness to accept views or action with which one is in disagreement.

In *On Liberty* ([1859] 1972), J. S. Mill developed a wider justification for toleration that highlighted its importance to society as well as the individual. From the individual's point of view, toleration is primarily a guarantee of personal autonomy and is thus a condition for moral self-development. Nevertheless, toleration is also necessary to ensure the vigour and health of society as a whole. Only within a free market of ideas will 'truth' emerge, as good ideas displace bad ones and ignorance is progressively banished. Contest, debate and argument, the fruit of diversity or multiplicity, are therefore the motor of social progress. For Mill, this was particularly threatened by democracy and the spread of 'dull conformism', linked to the belief that the majority must always be right. Mill ([1859] 1972) was thus able to argue as follows:

> 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.

Sympathy for toleration and diversity is also linked to the liberal belief in a balanced society, one not riven by fundamental conflict. Although individuals and social groups pursue very different interests, liberals hold that there is a deeper harmony or balance amongst these competing interests. For example, the interests of workers and employers differ: workers want better pay, shorter hours and improved working conditions; employers wish to

increase their profits by keeping their production costs – including wages – as low as possible. Nevertheless, these competing interests also complement one another: workers need jobs, and employers need labour. In other words, each group is essential to the achievement of the other group's goals. Individuals and groups may pursue self-interest but a natural equilibrium will tend to assert itself. The relationship between liberalism and social harmony in a diverse society is examined further in Chapter 11, in connection with multiculturalism.

Liberalism, government and democracy

The liberal state

Law: Established and public rules of social conduct, backed up by the machinery of the state: the police, courts and prisons.

Government: The machinery through which collective decisions are made on behalf of the state, usually comprising a legislature, executive and judiciary.

State: An association that establishes sovereign power within a defined territorial area, usually possessing a monopoly of coercive power.

Social contract: A (hypothetical) agreement amongst individuals through which they form a state in order to escape from the disorder and chaos of the 'state of nature'.

Liberals do not believe that a balanced and tolerant society will develop naturally out of the free actions of individuals and voluntary associations. This is where liberals disagree with anarchists, who believe that both **law** and **government** are unnecessary. Liberals fear that free individuals may wish to exploit others, steal their property or even turn them into slaves if it is in their interests to do so. They may also break or ignore their contracts when it is to their advantage. The liberty of one person is always, therefore, in danger of becoming a licence to abuse another; each person can be said to be both a threat to and under threat from every other member of society. Our liberty requires that they are restrained from encroaching on our freedom and, in turn, their liberty requires that they are safeguarded from us. Liberals have traditionally believed that such protection can only be provided by a sovereign **state**, capable of restraining all individuals and groups within society. Freedom can therefore only exist 'under the law'; as John Locke put it, 'where there is no law there is no freedom'.

This argument is the basis of the **social contract** theories, developed by seventeenth-century writers such as Thomas Hobbes (see p. 72) and John Locke, which, for liberals, explains the individual's political obligations towards the state. Hobbes and Locke constructed a picture of what life had been like before government was

John Locke (1632–1704)

English philosopher and politician. Born in Somerset, Locke studied medicine at Oxford before becoming secretary to Anthony Ashley Cooper, first Earl of Shaftesbury. His political views were developed against the background of, and were shaped by, the English Revolution.

A consistent opponent of absolutism and often portrayed as the philosopher of the 'Glorious Revolution' of 1688, which established a constitutional monarchy, Locke is usually seen as a key thinker of early liberalism. Although he accepted that by nature humans are free and equal, the priority he accorded property rights prevented him from endorsing political equality or democracy in the modern sense. Locke 's most important political works are *A Letter Concerning Toleration* (1689) and *Two Treatises of Government* (1690).

State of nature: A pre-political society characterized by unrestrained freedom and the absence of established authority.

formed, in a stateless society or what they called a **'state of nature'**. As individuals are selfish, greedy and power-seeking, the state of nature would be characterized by an unending civil war of each against all, in which, in Hobbes' words, human life would be 'solitary, poor, nasty, brutish and short'. As a result, they argued, rational individuals would enter into an agreement, or 'social contract', to establish a sovereign government, without which orderly and stable life would be impossible. All individuals would recognize that it is in their interests to sacrifice a portion of their liberty in order to set up a system of law; otherwise their rights, and indeed their lives, would constantly be under threat. Hobbes and Locke were aware that this 'contract' is a historical fiction. The purpose of the social contract argument, however, is to highlight the value of the sovereign state to the individual. In other words, Hobbes and Locke wished individuals to behave as if the historical fiction were true, by respecting and obeying government and law, in gratitude for the safety and security that only a sovereign state can provide.

The social contract argument embodies two important liberal attitudes towards the state in particular, and political authority in general. In the first place, it suggests that, in a sense, political authority comes 'from below'. The state is created *by* individuals and *for* individuals; it exists in order to serve their needs and interests. Government arises out of the agreement, or consent, of the governed. This implies that citizens do not have an absolute

obligation to obey all laws or accept any form of government. If government is based on a contract, made by the governed, government itself may break the terms of this contract. When the legitimacy of government evaporates, the people have the right of rebellion.

Second, social contract theory portrays the state as an umpire or neutral referee in society. The state is not created by a privileged elite, wishing to exploit the masses, but out of an agreement amongst all the people. The state therefore embodies the interests of all its citizens and acts as a neutral arbiter when individuals or groups come into conflict with one another. For instance, if individuals break contracts made with others, the state applies the 'rules of the game' and enforces the terms of the contract, provided, of course, each party had entered into the contract voluntarily and in full knowledge. The essential characteristic of any such umpire is that its actions are, and are seen to be, impartial. Liberals thus regard the state as a neutral arbiter amongst the competing individuals and groups within society.

Constitutional government

Although liberals are convinced of the need for government, they are also acutely aware of the dangers that government embodies. In their view, all governments are potential tyrannies against the individual. On the one hand, this is based on the fact that government exercises sovereign power and so poses a constant threat to individual liberty. On the other hand, it reflects a distinctively liberal fear of power. As human beings are self-seeking creatures, if they have power – the ability to influence the behaviour of others – they will naturally use it for their own benefit and at the expense of others. Simply put, the liberal position is that egoism plus power equals corruption. This was expressed in Lord Acton's famous warning: 'Power tends to corrupt, and absolute power corrupts absolutely', and in his conclusion: 'Great men are almost always bad men'. Liberals therefore fear arbitrary government and uphold the principle of limited government. Government can be limited, or 'tamed', through the establishment of constitutional constraints and, as discussed in the next section, by **democracy**.

Democracy: Rule by the people; democracy implies both popular participation and government in the public interest, and can take a wide variety of forms.

A constitution is a set of rules that seeks to allocate duties, powers and functions amongst the various institutions of government. It therefore constitutes the rules that govern the government itself. As such, it both defines the extent of government power and limits its exercise. Support for constitutionalism can take two forms. In the first place, the powers of government bodies and politicians can be limited by the introduction of

CONSTITUTIONALISM

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Constitutionalism, in a narrow sense, is the practice of limited government brought about by the existence of a constitution. Constitutionalism in this sense can be said to exist when government institutions and political processes are effectively constrained by constitutional rules. More broadly, constitutionalism refers to a set of political values and aspirations that reflect the desire to protect liberty through the establishment of internal and external checks on government power. It is typically expressed in support for constitutional provisions that establish this goal; notably, a codified constitution, a bill of rights, separation of powers, bicameralism and federalism or decentralization. Constitutionalism is thus a species of political liberalism.

external and, usually, legal constraints. The most important of these is a so-called written constitution, which codifies the major powers and responsibilities of government institutions within a single authoritative document. A written constitution thus constitutes 'higher' law. The first such document was the US Constitution, written in 1787, but during the nineteenth and twentieth centuries written constitutions were adopted in all liberal democracies, with the exception of the UK, Israel and New Zealand. In many cases, bills of rights also exist, which entrench individual rights by providing a legal definition of the relationship between the individual and the state. The first ten amendments of the US Constitution, for example, list individual rights and are collectively called the 'Bill of Rights'. A similar 'Declaration of the Rights of Man' (1789) was adopted during the French Revolution. Where neither written constitutions nor bills of rights exist, as in the UK, liberals have stressed the importance of statute law in checking government power through the principle of the rule of law. This was most clearly expressed in nineteenth-century Germany in the concept of the *Rechtsstaat*, a state ruled by law.

Second, constitutionalism can be established by the introduction of internal constraints which disperse political power among a number of institutions and create a network of 'checks and balances'. As the French political philosopher Montesquieu (1689–1775) put it, 'power should be a check to power'. All liberal political systems exhibit some measure of internal fragmentation. This can be achieved by applying the doctrine of the separation of powers, proposed by Montesquieu himself. This holds that the legislative, executive and judicial powers of government should be exercised by three independent institutions, thus preventing any individual or small group from

gaining dictatorial power. The US presidential system of government, for example, is based on a strict separation of powers between Congress, the presidency and the Supreme Court. The principle of judicial independence is respected in all liberal democracies. As the judiciary interprets the meaning of law, both constitutional and statutory, and therefore reviews the powers of government itself, it must enjoy formal independence and political neutrality if it is to protect the individual from the state. Other device for fragmenting government power include cabinet government (which checks the power of the prime minister), parliamentary government (which check the power of the executive), bicameralism (which check the power of each legislative chamber) and territorial divisions such as federalism, **devolution** and local government (which check the power of central government).

Devolution: The transfer of power from central government to subordinate regional bodies, without (unlike federalism) leading to shared sovereignty.

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Liberal democracy

Liberal democracy is the dominant political force in the developed world, and increasingly in the developing world. Indeed, the collapse of communism and the advance of 'democratization' (usually understood to imply the introduction of liberal-democratic reforms; that is, electoral democracy and economic liberalization) in Asia, Latin America and Africa, especially since the 1980s, led 'end of history' theorists to proclaim the worldwide triumph of western liberal democracy. However, what is liberal democracy? Liberal democracy is a form of political rule that balances the principle of limited government against the ideal of popular consent. Its 'liberal' features are reflected in a network of internal and external checks on government that are designed to guarantee liberty and afford citizens protection against the state. These goals are essentially achieved through constitutional government, as previously discussed. The 'democratic' character of liberal democracy is based on a system of regular and competitive elections, conforming to the principles of universal suffrage and political equality. Although it may be used to describe a political principle, the term 'liberal democracy' more commonly describes a particular type of regime.

Liberal democracy: A form of democracy that incorporates both limited government and a system of regular and competitive elections; liberal democracy is also used as a regime type.

The core features of a liberal-democratic regime are the following

- constitutional government based on formal, usually legal, rules;
- guaranteed **civil liberties** and individual rights;

- institutional fragmentation and a system of checks and balances;
- regular elections respecting the principle of universal suffrage and 'one person, one vote';
- political pluralism, in the form of electoral choice and party competition;
- a healthy **civil society** in which organized groups and interests enjoy independence from government;
- a capitalist or private-enterprise economy organized along market lines.

Civil liberty: The private sphere of existence, belonging to the citizen not to the state; freedom from government.

Civil society: A realm of autonomous associations and groups, formed by private citizens and enjoying independence from the government; civil society includes businesses, clubs, families and so on.

The hybrid nature of liberal democracy reflects a basic ambivalence within liberalism towards democracy. In many ways, this is rooted in the competing implications of individualism, which both embodies a fear of collective power and leads to a belief in political equality. In the nineteenth century, liberals often saw democracy as threatening or dangerous. In this respect, they echoed the ideas of earlier political theorists such as Plato and Aristotle, who viewed democracy as a system of rule by the masses at the expense of wisdom and property. The central liberal concern has been that democracy can become the enemy of individual liberty. This arises from the fact that 'the people' are not a single entity but rather a collection of individuals and groups, possessing different opinions and opposing interests. The 'democratic solution' to conflict is a recourse to numbers and the application of majority rule: the principle that the will of the majority or greatest number should prevail over that of the minority. Democracy thus comes down to the rule of the 51 per cent, a prospect that the French politician and social commentator Alexis de Tocqueville (1805–59) famously described as 'the tyranny of the majority'. Individual liberty and minority rights can thus be crushed in the name of the people. James Madison articulated similar views at the US Constitutional Convention in Philadelphia in 1787. Madison argued that the best defence against **majoritarianism** is a network of checks and balances that would make government responsive to competing minorities and also safeguard the propertied few from the propertyless masses.

Majoritarianism: A belief in majority rule; majoritarianism implies either that the majority dominates the minority, or that the minority should defer to the judgement of the majority.

Liberals have expressed particular reservations about democracy not merely because of the danger of majority rule, but also because of the make-up of the majority in modern, industrial societies. As far as J. S. Mill was concerned, for instance, political wisdom is unequally distributed and is

James Madison (1751–1836)

US statesman and political theorist. Madison was a Virginian who was a keen advocate of American nationalism at the Continental Congress, 1774 and 1775. He helped to set up the Constitutional Convention in 1778, and played a major role in writing the Constitution. Madison served as Jefferson's Secretary of State, 1801–9, and was the fourth President of the United States, 1809–17.

Madison was a leading proponent of pluralism and divided government, urging the adoption of federalism, bicameralism and the separation of powers as the basis of US government. Madisonianism thus implies a strong emphasis upon checks and balances as the principal means of resisting tyranny. Nevertheless, when in office, Madison was prepared to strengthen the powers of national government. His best-known political writings are his contributions to *The Federalist* (1787–8), which campaigned for Constitutional ratification.

largely related to education. The uneducated are more liable to act according to narrow class interests, whereas the educated are able to use their wisdom and experience for the good of others. He therefore insisted that elected politicians should speak for themselves rather than reflect the views of their electors, and he proposed a system of plural voting that would disenfranchise the illiterate and allocate one, two, three or four votes to people depending on their level of education or social position.

Ortega y Gasset (1883–1955), the Spanish social thinker, expressed such fears more dramatically in *The Revolt of the Masses* ([1930] 1972). Gasset warned that the arrival of mass democracy had led to the overthrow of civilized society and the moral order, paving the way for authoritarian rulers to come to power by appealing to the basest instincts of the masses. By the twentieth century, however, a large proportion of liberals had come to see democracy as a virtue, although this was based on a number of arguments and doctrines. The earliest liberal justification for democracy was founded on consent, and the idea that citizens must have a means of protecting themselves from the encroachment of government. In the seventeenth century, John Locke developed a limited theory of protective democracy by arguing that voting rights should be extended to the propertied, who could then defend their natural rights against government. If government, through taxation, possesses the power to expropriate property, citizens are entitled to protect themselves by controlling the composition of the tax-making body – the legislature. During the American Revolution, this idea was taken up in the slogan: 'No taxation without representation'. Utilitarian theorists such as Jeremy Bentham and James Mill (1773–1836) developed the notion of democracy as a form of protection for the individual into a case for universal suffrage. **Utilitarianism** implies that individuals will vote so as to advance or defend their interests as they define them. Bentham came to believe that universal suffrage (conceived in his day as manhood suffrage) is the only way of promoting 'the greatest happiness for the greatest number'.

Utilitarianism: A moral and political philosophy that evaluates 'goodness' in terms of pleasure and pain, and ultimately seeks to achieve 'the greatest happiness for the greatest number' (see p. 48).

A more radical endorsement of democracy is linked to the virtues of political participation. This has been associated with the ideas of J.-J. Rousseau but received a liberal interpretation in the writings of J. S. Mill. In a sense, J. S. Mill encapsulates the ambivalence of the liberal attitude towards democracy. In its unrestrained form, democracy leads to tyranny, but, in the absence of democracy, ignorance and brutality will prevail. For Mill, the central virtue of democracy is that it promotes the 'highest and most harmonious' development of human capacities. By participating in political life, citizens enhance their understanding, strengthen their sensibilities and achieve a higher level of personal development. This form of developmental democracy holds democracy to be, primarily, an educational experience. As a result, although he rejected political equality, Mill believed that the franchise should be extended to all but those who are illiterate and, in the process, suggested (radically for his time) that suffrage should also be extended to women. However, since the twentieth century, liberal theories about democracy have tended to focus less on consent and participation and more on the need for consensus in society. This can be seen in the writings of pluralist theorists, who have argued that organized groups, not individuals, have become the primary political actors and portrayed modern industrial societies as increasing complex, characterized by competition between and amongst rival interests. From this point of view, the attraction of democracy is that it is the only system of rule capable of maintaining equilibrium within complex and fluid modern societies. As democracy gives competing groups a political voice it binds them to the political system and so maintains political stability.

Classical liberalism

Classical liberalism was the earliest liberal tradition. Classical liberal ideas developed during the transition from feudalism to capitalism, and reached their high point during the early industrialization of the nineteenth century.

DEMOCRACY

LIBERALS understand democracy in individualist terms as consent expressed through the ballot box, democracy being equated with regular and competitive elections. Whilst democracy constrains abuses of power, it must always be conducted within a constitutional framework in order to prevent majoritarian tyranny.

CONSERVATIVES endorse liberal-democratic rule but with qualifications about the need to protect property and traditional institutions from the untutored will of 'the many'. The new right, however, has linked electoral democracy to the problems of over-government and economic stagnation.

SOCIALISTS traditionally endorsed a form of radical democracy based on popular participation and the desire to bring economic life under public control, dismissing liberal democracy as simply capitalist democracy. Nevertheless, modern social democrats are now firmly committed to liberal-democratic structures.

ANARCHISTS endorse direct democracy and call for continuous popular participation and radical decentralization. Electoral or representative democracy is merely a façade that attempts to conceal elite domination and reconcile the masses to their oppression.

FASCISTS embrace the ideas of totalitarian democracy, holding that a genuine democracy is an absolute dictatorship, as the leader monopolizes ideological wisdom and is alone able to articulate the 'true' interests of the people. Party and ele competition are thus corrupt and degenerate.

ECOLOGISTS have often supported radical or participatory democracy. 'Dark' greens have developed a particular critique of electoral democracy that portrays it as a means of imposing the interests of the present generation of humans on (unenfranchised) later generations, other species and nature as a whole.

As a result, classical liberalism has sometimes been called 'nineteenth-century liberalism'. The cradle of classical liberalism was the UK, where the capitalist and industrial revolutions were most advanced. Its ideas have always been more deeply rooted in Anglo-Saxon countries, particularly the UK and the USA, than in other parts of the world. However, classical liberalism is not merely a nineteenth-century form of liberalism, whose ideas are now only of historical interest. Its principles and theories, in fact, have had growing appeal from the second half of the twentieth century onwards. Although what is called neoclassical liberalism, or neoliberalism, initially

had greatest impact in the UK and the USA, its influence has spread much wider, in large part fuelled by the advance of globalization.

Classical liberal ideas have taken a variety of forms but they have a number of common characteristics. First, classical liberals subscribe to egoistical individualism. They view human beings as rationally self-interested creatures, who have a pronounced capacity for self-reliance. Society is therefore seen to be atomistic, composed of a collection of largely self-sufficient individuals, meaning that the characteristics of society can be traced back to the more fundamental features of human nature. Second, classical liberals believe in negative freedom. The individual is free insofar as he or she is left alone, not interfered with or coerced by others. As stated earlier, freedom in this sense is the absence of external constraints on the individual. Third, the state is regarded at best as, in Thomas Paine's words, a 'necessary evil'. It is necessary in that, at the very least, it lays down the conditions for orderly existence; and it is evil in that it imposes a collective will on society, thereby limiting the freedom and responsibilities of the individual. Classical liberals thus believe in a minimal state, which acts, using Locke's metaphor, as a 'nightwatchman'. In this view, the state's proper role is restricted to the maintenance of domestic order, the enforcement of contracts, and the protection of society against external attack. Finally, classical liberals have a broadly positive view of civil society. Civil society is not only deemed to be a 'realm of freedom' – by comparison to the state, which is a 'realm of coercion' – but it is also seen to reflect the principle of balance or equilibrium. This is most clearly expressed in the classical liberal belief in a self-regulating market economy. Classical liberalism nevertheless draws on a variety of doctrines and theories. The most important of these are the following:

- natural rights
- utilitarianism
- economic liberalism
- social Darwinism
- neoliberalism

Natural rights

The natural rights theorists of the seventeenth and eighteenth centuries, such as John Locke in England and Thomas Jefferson in America, had a considerable influence on the development of liberal ideology. Modern political debate is littered with references to 'rights' and claims to possess 'rights'. A right, most simply, is an entitlement to act or be treated in a particular way.

Natural rights: God-given rights that are fundamental to human beings and are therefore inalienable (they cannot be taken away).

Human rights: Rights to which people are entitled by virtue of being human; universal and fundamental rights.

Such entitlements may be either moral or legal in character. For Locke and Jefferson, rights are 'natural' in that they are invested in human beings by nature or God. **Natural rights** are now more commonly called **human rights**. They are, in Jefferson's words, 'inalienable' because human beings are entitled to them by virtue of being human: they cannot, in that sense, be taken away. Natural rights are thus thought to establish the essential conditions for leading a truly human existence. For Locke, there were three such rights: 'life, liberty and property'. Jefferson did not accept that property was a natural or God-given right, but rather one that had developed for human convenience. In the American Declaration of Independence he therefore described inalienable rights as those of 'life, liberty and the pursuit of happiness'.

The idea of natural or human rights has affected liberal thought in a number of ways. For example, the weight given to such rights distinguishes authoritarian thinkers such as Thomas Hobbes from early liberals such as John Locke. As explained earlier, both Hobbes and Locke believed that government was formed through a 'social contract'. However, Hobbes ([1651] 1968) argued that only a strong government, preferably a monarchy, would be able to establish order and security in society. He was prepared to invest the king with sovereign or absolute power, rather than risk a descent into a 'state of nature'. The citizen should therefore accept *any* form of government because even repressive government is better than no government at all. Locke, on the other hand, argued against arbitrary or unlimited government. Government is established in order to protect natural rights. When these are protected by the state, citizens should respect government and obey the law. However, if government violates the rights of its citizens, they in turn have the right of rebellion. Locke thus approved of the English Revolution of the seventeenth century, and applauded the establishment of a constitutional monarchy in 1688.

For Locke, moreover, the contract between state and citizen is a specific and limited one: its purpose is to protect a set of defined natural rights. As a result, Locke believed in limited government. The legitimate role of government is limited to the protection of 'life, liberty and property'. Therefore, the functions of government should not extend beyond the 'minimal' function of preserving public order and protecting property, providing defence against external attack and ensuring that contract are enforced. Other issues and responsibilities are properly the concern of private individuals. Thomas Jefferson expressed the same sentiment a century later when he declared: 'That government is best which governs least'.

Thomas Jefferson (1743–1826)

US political philosopher and statesman. Jefferson was a wealthy Virginian planter who was a delegate to the Second Continental Congress, 1775, and Governor of Virginia, 1779–81. He served as the first Secretary of State, 1789–94, and was the third President of the United States, 1801–9. Jefferson was the principal author of the Declaration of Independence and wrote a vast number of addresses and letters.

Jefferson developed a democratic form of agrarianism that sought to blend a belief in rule by a natural aristocracy with a commitment to limited government and *laissez-faire*. He also exhibited sympathy for social reform, favouring the extension of public education, the abolition of slavery (despite being a slave-owner) and greater economic equality. In the USA, Jeffersonianism stands for resistance to strong central government and a stress on individual freedom and responsibility, and states' rights.

Utilitarianism

Natural rights theories were not the only basis of early liberalism. An alternative and highly influential theory of human nature was put forward in the early nineteenth century by the utilitarians, notably Jeremy Bentham and James Mill. Bentham regarded the idea of rights as 'nonsense' and called natural rights 'nonsense on stilts'. In their place, he proposed what he believed to be the more scientific and objective idea that individuals are motivated by self-interest and that these interests can be defined as the desire for pleasure, or happiness, and the wish to avoid pain, both calculated in terms of **utility**. The principle of utility is, furthermore, a moral principle in that it suggests that the 'rightness' of an action, policy or institution can be established by its tendency to promote happiness. Just as each individual can calculate what is morally good by the quantity of pleasure an action will produce, so the principle of 'the greatest happiness for the greatest number' can be used to establish which policies or institutions will benefit society at large.

Utility: Use-value; in economics, utility describes the satisfaction that is gained from the consumption of material goods and services.

Utilitarian ideas have had a considerable impact on classical liberalism. In particular, they have provided a moral philosophy that explains how and

UTILITARIANISM

Utilitarianism is a moral philosophy that was developed by Jeremy Bentham and James Mill. It equates 'good' with pleasure or happiness, and 'evil' with pain or unhappiness. Individuals are therefore assumed to act so as to maximize pleasure and minimize pain, these being calculated in terms of utility or use-value, usually seen as satisfaction derived from material consumption. The 'greatest happiness' principle can be used to evaluate laws, institutions and even political systems. *Act* utilitarianism judges an act to be right if it produces at least as much pleasure-over-pain as any other act. *Rule* utilitarianism judges an act to be right if it conforms to a rule which, if generally followed, produces good consequences.

why individuals act as they do. The utilitarian conception of human beings as rationally self-interested creatures was adopted by later generations of liberal thinkers. Moreover, each individual is thought to be able to perceive his or her own best interests. This cannot be done on their behalf by some paternal authority, such as the state. Bentham argued that individuals act so as to gain pleasure or happiness in whatever way they choose. No one else can judge the quality or degree of their happiness. If each individual is the sole judge of what will give him or her pleasure, then the individual alone can determine what is morally right. On the other hand, utilitarian ideas can also have illiberal implications. Bentham held that the principle of utility could be applied to society at large and not merely to individual human behaviour. Institutions and legislation can be judged by the yardstick of 'the greatest happiness'. However, this formula has majoritarian implications because it uses the happiness of 'the greatest number' as a standard of what is morally correct, and therefore allows that the interests of the majority outweigh those of the minority or the rights of the individual.

Economic liberalism

The late eighteenth and early nineteenth centuries witnessed the development of classical economic theory in the work of political economists such as Adam Smith and David Ricardo (1770–1823). Smith's *The Wealth of Nations* ([1776] 1976) was in many respects the first economics text book. His ideas drew heavily on liberal and rationalist assumptions about human nature and made a powerful contribution to the debate about the desirable

Jeremy Bentham (1748–1832)

UK philosopher, legal reformer and founder of utilitarianism. Bentham's ideas formed the basis of philosophical radicalism, which was responsible for many of the reforms in social administration, law, government and economics in Victorian Britain.

Bentham developed a supposedly scientific alternative to natural rights theory, in the form of a moral and philosophical system based upon the belief that human beings are rationally self-interested creatures, or utility maximizers. Using the principle of general utility – 'the greatest happiness for the greatest number' – he developed a justification for *laissez-faire* economics, constitutional reform and, in later life, political democracy. Bentham's utilitarian creed was developed in *Fragments on Government* (1776) and more fully in *Principles of Morals and Legislation* (1789).

Mercantilism: A school of economic thought that emphasizes the state's role in managing international trade and delivering prosperity.

role of government within civil society. Smith wrote at a time of wide-ranging government restrictions upon economic activity. **Mercantilism**, the dominant economic idea of the sixteenth and seventeenth centuries, had encouraged governments to intervene in economic life in an attempt to encourage the export of goods and restrict imports. Smith's economic writings were designed to attack mercantilism, arguing instead for the principle that the economy works best when it is left alone by government.

Smith thought of the economy as a **market**, indeed as a series of interrelated markets. He believed that the market operates according to the wishes and decisions of free individuals. Freedom within the market means freedom of choice: the ability of the businesses to choose what goods to make, the ability of workers to choose an employer, and the ability of consumers to choose what goods or services to buy. Relationships within such a market – between employers and employees, and between buyers and sellers – are therefore voluntary and contractual, made by self-interested individuals for whom pleasure is equated with the acquisition and consumption of wealth. Economic theory therefore drew on utilitarianism, in constructing the idea of 'economic man', the notion that human beings are essentially egoistical and bent on material acquisition.

Market: A system of commercial exchange between buyers and sellers, controlled by impersonal economic forces: 'market forces'.

The attraction of classical economics was that, although each individual is

Adam Smith (1723–90)

Scottish economist and philosopher, usually seen as the founder of the 'dismal science'. After holding the chair of logic and then moral philosophy at Glasgow University, Smith became tutor to the Duke of Buccleuch, which enabled him to visit France and Geneva and develop his economic theories.

In *The Theory of Moral Sentiments* (1759), Smith developed a theory of motivation that tried to reconcile human self-interestedness with unregulated social order. His most famous work, *The Wealth of Nations* (1776), was the first systematic attempt to explain the workings of the economy in market terms, emphasizing the importance of a division of labour. Though often seen as a free-market theorist, Smith was nevertheless aware of the limitations of *laissez-faire*.

materially self-interested, the economy itself is thought to operate according to a set of impersonal pressures – market forces – that tend naturally to promote economic prosperity and well-being. For instance, no single producer can set the price of a commodity – prices are set by the market, by the number of goods offered for sale and the number consumers who are willing to buy. These are the forces of supply and demand. The market is a self-regulating mechanism: it needs no guidance from outside. The market should be 'free' from government interference because it is managed by what Smith referred to as an 'invisible hand'. This idea of a self-regulating market reflects the liberal belief in a naturally existing harmony amongst the conflicting interests within society. Smith ([1776] 1976) expressed the economic version of this idea as follows:

> It is not from the benevolence of the butcher, the brewer or the baker that we expect our dinner, but from their regard to their own interests.

Free-market ideas became economic orthodoxy in the UK and the USA during the nineteenth century. The high point of free-market beliefs was reached with the doctrine of ***laissez-faire***, meaning 'let [them] act'. This is the idea that the state should have no economic role, but should simply leave the economy alone and allow businesspeople to act however they please. *Laissez-faire* ideas opposed all forms of factory legislation, including restrictions on the employment of children, limits to the number of hours worked and any regulation of working conditions. Such economic individualism is usually based on a belief that the unrestrained pursuit of profit will ultimately lead to general benefit. *Laissez-faire* theories remained strong in the UK throughout much of the nineteenth century, and in the USA they were not seriously challenged until the 1930s. Since the late twentieth century, faith in the free market has been revived through the rise of neoliberalism and its assault on the 'dead hand' of government, examined later in this section. The other manifestation of economic liberalism, a commitment to free trade, is discussed in Chapter 5 in relation to liberal internationalism.

Free market: The principle or policy of unfettered market competition, free from government interference.

Laissez-faire: The doctrine that economic activity should be entirely free from government interference, an extreme belief in the free market.

Social Darwinism

One of the distinctive features of classical liberalism is its attitude to poverty and social equality. An individualistic political creed will tend to explain social circumstances in terms of the talents and hard work of each individual human being. Individuals make what they want, and what they can, of their own lives. Those with ability and a willingness to work will prosper, while the incompetent or the lazy will not. This idea was memorably expressed in the title of Samuel Smiles' book *Self-Help* ([1859] 1986) which begins by reiterating the well-tried maxim that 'Heaven helps those who help themselves'. Such ideas of individual responsibility were widely employed by supporters of *laissez-faire* in the nineteenth century. For instance, Richard Cobden (1804–65), the UK economist and politician, advocated an improvement of the conditions of the working classes, but argued that it should come about through 'their own efforts and self-reliance, rather than from law'. He advised them to 'look not to Parliament, look only to yourselves'.

Ideas of individual self-reliance reached their boldest expression in Herbert Spencer's *The Man versus the State* ([1884] 1940). Spencer (1820–1904), the UK philosopher and social theorist, developed a vigorous defence of the doctrine of *laissez-faire*, drawing on ideas that the UK scientist Charles Darwin (1809–82) had developed in *The Origin of Species* ([1859] 1972). Darwin presented a theory of evolution that explained the diversity of species found on Earth. He proposed that each species undergoes a series of random physical and mental changes, or mutations. Some of these changes enable a species to survive and prosper: they are pro-survival. Other mutations are less favourable and make survival more difficult or even impossible. A process of 'natural selection' therefore decides which species

are fitted to survive by nature, and which are not. By the end of the nineteenth century, these ideas had extended beyond biology and were increasingly affecting social and political theory.

Spencer, for example, used the theory of natural selection to develop the social principle of 'the survival of the fittest'. People who are best suited by nature to survive, rise to the top, while the less fit fall to the bottom. Inequalities of wealth, social position and political power are therefore natural and inevitable, and no attempt should be made by government to interfere with them. Spencer's US disciple William Sumner (1840–1910) stated this principle boldly in 1884, when he asserted that 'the drunkard in the gutter is just where he ought to be'.

Neoliberalism

Neoliberalism, sometimes called neoclassical liberalism, refers to a revival of economic liberalism that has taken place since the 1970s. Neoliberalism is counter-revolutionary: its aim is to halt, and if possible reverse, the trend towards 'big' government and state intervention that had characterized much of the twentieth century. Neoliberalism had its greatest initial impact in the two states in which free-market economic principles had been most firmly established in the nineteenth century, the UK and the USA. However, in the case of both 'Thatcherism' in the UK and 'Reaganism' in the USA, neoliberalism formed part of a larger, new right ideological project that sought to fuse *laissez-faire* economics with an essentially conservative social philosophy. This project is examined in Chapter 3. Neoliberalism, nevertheless, is not merely an arm of the new right. It has been shaped by wider forces, notably those of economic globalization, and it has had an effect on liberal and socialist parties as well as conservative ones, and has been influential well beyond its Anglo-American homeland.

Neoliberalism amounts to a form of **market fundamentalism**. The market is seen to be morally and practically superior to government and any form of political control. In that sense, neoliberalism goes beyond classical economic theory. For instance, although Adam Smith is rightfully viewed as the father of market economics, he also recognized the limitations of the market and certainly did not subscribe to a crude utility-maximizing model of human nature. From the neoliberal perspective, the defects of government are many and various. Free-market economists, such as Friedrich von Hayek (see p. 90) and the US economist Milton Friedman (1912–2006), attacked the economic role of government. Hayek (1944) advanced a damning economic and political critique of central planning in particular and economic intervention in general. He argued that planning in any form is bound to be economically inefficient because state bureaucrats, however competent they might be, are confronted by a range and complexity of information that is simply beyond their capacity to handle. Friedman criticized **Keynesianism** on the grounds that 'tax and spend' policies fuel inflation by encouraging governments to increase borrowing without, in the process, affecting the 'natural rate' of unemployment.

Market fundamentalism: An absolute faith in the market, reflecting the belief that the market mechanism offers solutions to all economic and social problems.

Keynesianism: A theory (developed by J. M. Keynes) or policy of economic management, associated with regulating aggregate demand to achieve full employment (see p. 59).

In contrast, the market has near-miraculous qualities. First and foremost, because they tend towards long-term equilibrium, markets are self-regulating. Re-stating Smith's idea of the 'invisible hand', Hayek likened the market to a vast nervous system that is capable of regulating the economy because it can convey an almost infinite number of messages simultaneously via the price mechanism. Second, markets are naturally efficient and productive. Market economies are efficient at a macroeconomic level because resources are drawn inexorably to their most profitable use, and because rich and poor alike have an incentive to work. At a microeconomic level, private businesses are inherently more efficient than public bodies because they are disciplined by the profit motive, forcing them to keep costs low, while the taxpayer will always pick up the bill for public losses. Third, markets are responsive, even democratic, mechanisms. Competition guarantees that producers produce only what consumers are willing to buy, and at a price they can afford; the consumer, in short, is king. Finally, markets deliver fairness and economic justice. The market gives all people the opportunity to rise or fall on the basis of talent and hard work. Material inequality thus simply reflects a natural inequality amongst humankind.

Modern liberalism

Modern liberalism is sometimes described as 'twentieth-century liberalism'. Just as the development of classical liberalism was closely linked to the emergence of industrial capitalism in the nineteenth century, so modern liberal ideas were related to the further development of industrialization. Industrialization had brought about a massive expansion of wealth for some, but was also accompanied by the spread of slums, poverty, ignorance and disease. Moreover, social inequality became more difficult to ignore as a growing industrial working class was seen to be disadvantaged by low pay,

unemployment and degrading living and working conditions. These development had an impact on UK liberalism from the late nineteenth century onwards, but in other countries they did not take effect until much later; for example, US liberalism was not affected until the depression of the 1930s. In these changing historical circumstances, liberals found it progressively more difficult to maintain the belief that the arrival of industrial capitalism had brought with it general prosperity and liberty for all. Consequently, many came to revise the early liberal expectation that the unrestrained pursuit of self-interest produced a socially just society. As the idea of economic individualism came increasingly under attack, liberals rethought their attitude towards the state. The minimal state of classical theory was quite incapable of rectifying the injustices and inequalities of civil society. Modern liberals were therefore prepared to advocate the development of an interventionist or enabling state.

However, modern liberalism has been viewed in two, quite different, ways. Classical liberals in particular have argued that it effectively broke with the principles and doctrines that had previously defined liberalism, notably that it had abandoned individualism and embraced collectivism (see p. 104). Modern liberals, however, have been at pains to point out that they built on, rather than betrayed, classical liberalism. In this view, whereas classical liberalism is characterized by clear theoretical consistency, modern liberalism represents a marriage between new and old liberalism, and thus embodies ideological and theoretical tensions, notably over the proper role of the state. The distinctive ideas of modern liberalism include the following:

- individuality
- positive freedom
- social liberalism
- economic management.

Individuality

John Stuart Mill's ideas have been described as 'the heart of liberalism'. This is because he provided a 'bridge' between classical and modern liberalism: his ideas look both back to the early nineteenth century and forward to the twentieth century. Mill's interests ranged from political economy to the campaign for female suffrage, but it was the ideas developed in *On Liberty* ([1859] 1972) that most clearly show Mill as a contributor to modern liberal thought. This work contains some of the boldest liberal statements in favour of individual freedom. Mill suggested that 'Over himself, over his own body and mind, the individual is sovereign' (1972, p. 73), a conception

of liberty that is essentially negative for it portrays freedom as the absence of restrictions on an individual's 'self-regarding' actions. Mill believed this to be a necessary condition for liberty, but not in itself a sufficient one. He thought that liberty was a positive and constructive force. It gave individuals the ability to take control of their own lives, to gain autonomy or achieve self-realization.

Mill was strongly influenced by European romanticism and found the notion of human beings as utility maximizers both shallow and unconvincing. He believed passionately in **individuality**. The value of liberty is that it enables individuals to develop, to gain talents, skills and knowledge and to refine their sensibilities. Mill disagreed with Bentham's utilitarianism insofar as Bentham believed that actions could only be distinguished by the quantity of pleasure or pain they generated. For Mill, there were 'higher' and 'lower' pleasures. Mill was concerned to promote those pleasure that develop an individual's intellectual, moral or aesthetic sensibilities. He was clearly not concerned with simple pleasure-seeking, but with personal self-development, declaring that he would rather be 'Socrates dissatisfied than a fool satisfied'. As such, he laid the foundations for a developmental model of individualism that placed emphasis on human flourishing rather than the crude satisfaction of interests.

Individuality: Self-fulfilment achieved through the realization of an individual's distinctive or unique identity or qualities; that which distinguishes one person from all others.

Positive freedom

The clearest break with early liberal thought came in the late nineteenth century with the work of the UK philosopher T. H. Green (1836–82), whose writing influenced a generation of so-called 'new liberals' such as L. T. Hobhouse (1864–1929) and J. A. Hobson (1854–1940). Green believed that the unrestrained pursuit of profit, as advocated by classical liberalism, had given rise to new forms of poverty and injustice. The economic liberty of the few had blighted the life chances of the many. Following J. S. Mill, he rejected the early liberal conception of human beings as essentially self-seeking utility maximizers, and suggested a more optimistic view of human nature. Individuals, according to Green, have sympathy for one another; they are capable of **altruism**. The individual possesses social responsibilities and not merely individual responsibilities, and is therefore linked to other individuals by ties of caring and empathy. Such a conception of human nature was clearly influenced by socialist ideas that emphasized the sociable and cooperative nature of

Altruism: Concern for the interests and welfare of others, based either upon enlightened self-interest or a belief in a common humanity.

humankind. As a result, Green's ideas have been described as 'socialist liberalism'.

Green also challenged the classical liberal notion of liberty. Negative liberty merely removes external constraints on the individual, giving the individual freedom of choice. In the case of the businesses that wish to maximize profits, negative freedom justifies their ability to hire the cheapest labour possible; for example, to employ children rather than adults, or women rather than men. Economic freedom can therefore lead to exploitation or the 'freedom to starve'. Freedom of choice in the marketplace is therefore an inadequate conception of individual freedom.

In the place of negative freedom, Green proposed the idea of positive freedom. Freedom is the ability of the individual to develop and attain individuality; it involves the ability of the individual to realize his or her potential, attain skills and knowledge, and achieve fulfilment. Thus, whereas negative freedom acknowledges only legal and physical constraints on liberty, positive freedom recognizes that liberty may also be threatened by social disadvantage and inequality. This, in turn, implied a revised view of the state. By protecting individuals from the social evils that threaten to cripple their lives, the state can expand freedom, and not merely diminish it. In place of the minimal state of old, modern liberals have therefore endorsed an enabling state, exercising an increasingly wide range of social and economic responsibilities.

Although such ideas undoubtedly involved a revision of classical liberal theories, it did not amount to the abandonment of core liberal beliefs. Modern liberalism drew closer to socialism, but it did not place society before the individual. For T. H. Green, for example, freedom ultimately consisted in individuals acting morally. The state could not force people to be good; it could only provide conditions in which they can make more responsible moral decisions. The balance between the state and the individual has been altered, but the underlying commitment to the needs and interests of the individual remains. Modern liberals share the classical liberal preference for self-reliant individuals who take responsibility for their own lives; the essential difference is the recognition that this can only occur if social conditions are conducive to it. The central thrust of modern liberalism is therefore to help individuals to help themselves.

Social liberalism

The twentieth century witnessed the growth of state intervention in most western states and in many developing ones. Much of this intervention took the form of social welfare: attempts by government to provide welfare

Welfare State: A state that takes primary responsibility for the social welfare of its citizens, discharged through a range of social-security, health, education and other services.

support for its citizens by overcoming poverty, disease and ignorance. If the minimal state was typical of the nineteenth century, during the twentieth century modern states became **welfare states**. This occurred as a consequence of a variety of historical and ideological factors. Governments, for example, sought to achieve national efficiency, more healthy work forces and stronger armies. They also came under electoral pressure for social reform from newly enfranchised industrial workers and, in some cases, the peasantry. The political argument for welfarism has not been the prerogative of any single ideology. It has been put, in different ways, by socialists, liberals, conservatives, feminists and even at times by fascists. Within liberalism, the case for social welfare is made by modern liberals, in marked contrast to classical liberals, who extol the virtues of self-help and individual responsibility.

Modern liberals defend welfarism on the basis of equality of opportunity. If particular individuals or groups are disadvantaged by their social circumstances, then the state possesses a social responsibility to reduce or remove these disadvantages to create equal, or at least more equal, life chances. Citizens have thus acquired a range of welfare or social rights, such as the right to work, the right to education and the right to decent housing. Welfare rights are positive rights because they can only be satisfied by the positive actions of government, through the provision of state pensions, benefits and, perhaps, publicly funded health and education services. During the twentieth century, liberal parties and liberal governments were therefore converted to the cause of social welfare. For example, the expanded welfare state in the UK was based on the Beveridge Report (1942), which set out to attack the so-called 'five giants' – want, disease, ignorance, squalor and idleness. It memorably promised to protect citizens 'from the cradle to the grave'. In the USA, liberal welfarism developed in the 1930 during the administration of F. D. Roosevelt, but reached its height in the 1960s with the 'New Frontier' policies of John F. Kennedy and Lyndon Johnson's 'Great Society' programme. Social liberalism was further developed in the second half of the twentieth century with the emergence of so-called social-democratic liberalism, especially in the writings of John Rawls. Social-democratic liberalism is distinguished by its support for relative social equality, usually seen as the defining value of socialism. In *A Theory of Justice* (1970), Rawl developed a defence of redistribution and welfare based on the idea of 'equality as fairness'. He argued that, if people were unaware of their social position and circumstances, they would view an egalitarian society as 'fairer' than an inegalitarian one, on the grounds that the desire to avoid poverty is greater than the attraction of riches. He therefore proposed the 'difference principle':

John Rawls (1921–2002)

US academic and political philosopher. Rawls' major work, *A Theory of Justice* (1970), is regarded as the most important work of political philosophy written in English since the Second World War, and it has had a crucial influence on both modern liberal and social democratic thought.

Rawls used a form of social contract theory to reconcile liberal individualism with the principles of redistribution and social justice. His notion of 'justice as fairness' is based upon the belief that behind a 'veil of ignorance' (that is, not knowing our own social position and circumstances) most people would favour two basic principles: (a) that the liberty of each person should be compatible with a like liberty for all, and (b) that social inequality should only exist if it works to the benefit of the poorest in society. The universalist presumptions of his early work were somewhat modified in *Political Liberalism* (1993).

that social and economic inequalities should be arranged so as to benefit the least well-off, recognizing the need for some measure of inequality to provide an incentive to work. Nevertheless, such a theory of justice remains liberal rather than socialist, as it is rooted in assumptions about egoism and self-interest, rather than a belief in social solidarity.

Economic management

In addition to providing social welfare, twentieth-century western governments also sought to deliver prosperity by 'managing' their economies. This once again involved rejecting classical liberal thinking, in particular its belief in a self-regulating free market and the doctrine *of laissez-faire*. The abandonment of *laissez-faire* came about because of the increasing complexity of industrial capitalist economies and their apparent inability to guarantee general prosperity if left to their own devices. The Great Depression of the 1930s, sparked off by the Wall Street Crash of 1929, led to high levels of unemployment throughout the industrialized world and in much of the developing world. This was the most dramatic demonstration of the failure of the free market. After the Second World War, virtually all

western states adopted policies of economic intervention in an attempt to prevent a return to the pre-war levels of unemployment. To a large extent these interventionist policies were guided by the work of the UK economist John Maynard Keynes (1883–1946).

In *The General Theory of Employment, Interest and Money* ([1936] 1963), Keynes challenged classical economic thinking and rejected its belief in a self-regulating market. Classical economists had argued that there was a 'market solution' to the problem of unemployment and, indeed, all other economic problems. Keynes argued, however, that the level of economic activity, and therefore of employment, is determined by the total amount of demand – aggregate demand – in the economy. He suggested that governments could 'manage' their economies by influencing the level of aggregate demand. Government spending is, in this sense, an 'injection' of demand into the economy. Taxation, on the other hand, is a 'withdrawal' from the economy: it reduces aggregate demand and dampens down economic activity. At time of high unemployment, Keynes recommended that governments should 'reflate' their economies by either increasing public spending or cutting taxes. Unemployment could therefore be solved, not by the invisible hand of capitalism, but by government intervention, in this case by running a budget deficit, meaning that the government literally 'overspends'.

Keynesian demand management thus promised to give governments the ability to manipulate employment and growth levels, and hence to secure general prosperity. As with the provision of social welfare, modern liberals have seen economic management as constructive in promoting prosperity

KEYNESIANISM

Keynesianism refers, narrowly, to the economic theories of J. M. Keynes (1883–1946) and, more broadly, to a range of economic policies that have been influenced by these theories. Keynesianism provides an alternative to neoclassical economics and, in particular, advances a critique of the 'economic anarchy' of *laissez-faire* capitalism. Keynes argued that growth and employment levels are largely determined by the level of 'aggregate demand' in the economy, and that government can regulate demand, primarily through adjustments to fiscal policy, so as to deliver full employment. Keynesianism came to be associated with a narrow obsession with 'tax and spend' policies, but this ignores the complexity and sophistication of Keynes' economic writings. Influenced by economic globalization, a form of *neo-Keynesianism* has emerged that rejects 'top-down' economic management but still acknowledges that market are hampered by uncertainty, inequality and differential levels of knowledge.

and harmony in civil society. Keynes was not opposed to capitalism; indeed, in many ways, he was its saviour. He simply argued that unrestrained private enterprise is unworkable within complex industrial societies. The first, if limited, attempt to apply Keynes' ideas was undertaken in the USA during Roosevelt's 'New Deal'. By the end of the Second World War, Keynesianism was widely established as an economic orthodoxy in the West, displacing the older belief in *laissez-faire*. Keynesian policies were credited with being the key to the 'long boom', the historically unprecedented economic growth of the 1950s and 1960s, which witnessed the achievement of widespread affluence, at least in western countries. However, the re-emergence of economic difficulties in the 1970s generated renewed sympathy for the theories of classical political economy, and led to a shift away from Keynesian priorities. Nevertheless, the failure of the free-market revolution of the 1980s and 1990s to ensure sustained economic growth resulted in the emergence of the 'new' political economy, or neo-Keynesianism. Although this recognized that the 'crude' Keynesianism of the 1950s and 1960s had been rendered redundant by globalization, it also marks a renewed awareness of the fact that unregulated capitalism tends to bring low investment, short-termism and social fragmentation.

TENSIONS WITHIN

CLASSICAL LIBERALISM	v.	MODERN LIBERALISM
economic liberalism	←→	social liberalism
egoistical individualism	←→	developmental individua
maximize utility	←→	personal growth
negative freedom	←→	positive freedom
minimal state	←→	enabling state
free-market economy	←→	managed economy
rights-based justice	←→	justice as fairness
strict meritocracy	←→	concern for the poor
individual responsibility	←→	social responsibility
safety-net welfare	←→	cradle-to-grave welfare

Liberalism in the twenty-first century

The high point of liberal optimism came in the aftermath of the collapse of communism. A new world order appeared to have come into effect in which, as 'end of history' theorists proclaimed, liberal democracy was revealed as the final solution to the problem of political organization. This was confirmed both by a further wave of democratization in developing and postcommunist states, and by the 'liberal peace' that appeared to reign in international affairs once the Cold War was over. There are two main reasons for believing that these trends, despite, perhaps, temporary setbacks, will continue through the twenty-first century, making it the century of global liberalism. First, as societies become increasingly complex and diverse, the task of maintaining political stability requires the existence of sophisticated channels of communication between government and the people that only a liberal polity can provide. Rule-based governance, regular and competitive elections and freedom of association allow the political process to be responsive to societal pressures coming from various directions. This suggests that political systems around the world will, sooner or later, be reconfigured on the basis of liberal-democratic principles. Second, the advance of liberalism is closely linked to the seemingly remorseless construction of a global capitalist system. Economic globalization has been driven by market forces that liberal theorists have long believed are both irresistible and bent on delivering general prosperity. A globalized twenty-first century will therefore coincide with the establishment of global liberalism, in both its economic and political forms.

However, liberal triumphalism needs to be tempered by the recognition of new challenges and threats to liberalism. One of these comes from the nature of capitalism and the implications of a global capitalist system. Although the socialist challenge appears to have been defeated, is this defeat, or the defeat of other forms of anti-capitalism, permanent? The tendency within capitalism towards inequality, an inevitable feature of private enterprise and market economics, suggests that oppositional forces to liberal capitalism may always arise. Indeed, the basis for this may already have been laid by the contemporary anti-globalization or anti-capitalist movement. A second challenge to liberalism comes from a recognition of the growing importance of difference or diversity. This challenges the universalist assumptions of liberalism, highlighting the fact that it is increasingly difficult to root values and identity in the abstract notion of the individual, as 'the particular' gains credibility over 'the universal'. The earliest such attack on liberalism was launched by communitarian thinkers, who rejected individualism as facile, on the grounds that it suggests that the self is 'unencumbered'. In this view, identity does not derive from within,

POSTMODERNISM

Postmodernism is a controversial and confusing term that was first used to describe experimental movements in western arts, architecture and cultural development in general. As a tool of social and political analysis, post-modernism highlights the shift away from societies structured by industrialization and class solidarity to increasingly fragmented and pluralistic 'information societies', in which individuals are transformed from producers to consumers, and individualism replaces class, religious and ethnic loyalties. Postmodernists argue that there is no such thing as certainty; the idea of absolute and universal truth must be discarded as an arrogant pretence. Emphasis is placed instead on discourse, debate and democracy.

but rather from the social, historical or cultural context in which people live. Such a view has also been advanced by multiculturalists, who advance a collective notion of identity based on culture, ethnicity, language or religion. At best, such ideas may only be accommodated within a 'post-liberal' framework (Gray, 1995b), and many believe that liberalism and multiculturalism are opposing forces.

Finally, in this respect, the very foundations of liberalism have been questioned by postmodernism, which has proclaimed the effective collapse of the Enlightenment project. This project was based on the assumption that a set of universally applicable rational principles can lay down conditions that allow individuals to pursue incommensurable ends. However, post-modern thinkers, such as Richard Rorty (1989), have questioned the idea of objective truth and argued that liberalism, like other ideologies and indeed all belief systems, is merely a 'vocabulary' that cannot be viewed as any more 'accurate' than other 'vocabularies'.

Challenges to liberalism also come from outside its western homeland. There is as much evidence that the end of the bipolar world order, dominated as it was by the clash between a capitalist West and the communist East, has unleashed non-liberal political forces, as there is evidence of the 'triumph' of liberal democracy. In eastern Europe and parts of the developing world, resurgent nationalism, whose popular appeal is based on strength, certainty and security, has often proved more potent than equivocal liberalism. Moreover, this nationalism is more commonly associated with ethnic purity and authoritarianism than with liberal ideals such as

self-determination and civic pride. Various forms of fundamentalism (see p. 288), quite at odds with liberal culture, have also arisen in the Middle East and parts of Africa and Asia. Indeed, political Islam may prevail over liberalism in much of the developing world precisely because of its capacity to offer a non-western, even anti-western, stance. Furthermore, where successful market economies have been established they have not always been founded on the basis of liberal values and institutions. For instance, the political regimes of East Asia may owe more to Confucianism's ability to maintain social stability than to the influence of liberal ideas such as competition and self-striving. Far from moving towards a unified, liberal world, political development in the twenty-first century may be characterized by growing ideological diversity. Political Islam, Confucianism and even authoritarian nationalism may yet prove to be enduring rivals to western liberalism.

Questions for discussion

- Why do liberals reject unlimited freedom?
- How convincing is the liberal notion that human beings are reason-guided creatures?
- Which forms of equality do liberals support, and which do they reject?
- Why do liberals believe that power tends to corrupt, and how do they think it can be 'tamed'?
- Why have liberals sometimes questioned the benefits of democracy?
- How do classical liberals defend unregulated capitalism?
- How far are modern liberals willing to go in endorsing social economic intervention?
- Do modern liberals have a coherent view of the state?
- Is liberal democracy the final solution to the problem of political organization?

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Third Edition

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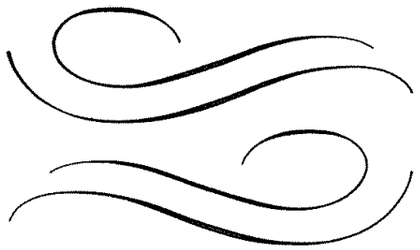

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JOHN STUART MILL

1806–1873

I. Method in Political Philosophy

John Stuart Mill was plunged into the problem of determining the proper method for the study of politics by the appearance of Macaulay's criticism of *Essay on Government* by his father, James Mill. Up to that time, J. S. Mill, along with other Utilitarians (or Philosophical Radicals as they called themselves), had accepted the deductive method of Bentham and James Mill as the proper one for political science. According to their conception of deductive method, the principles of political philosophy and the practical rules of political action were to be deduced from a few simple laws of human nature, *i.e.*, psychological axioms. Bentham enunciated these principles, and James Mill worked out the theory of government based on them.

Thomas Macaulay presented a brief but devastating criticism of this approach to politics.[1] He argued that the theory of human nature on which it was based was incorrect: men were guided in their action by more than the desire for their own pleasure. He thus showed that even as a deductive theory, James Mill's view was too narrow. More important, he questioned the possibility of developing a theory which would have relevance to practice from a priori first principles. What we know about politics we learn from observation and from the study of history. With observed and recorded historical events and sequences of events as our data, the fruitful procedure, Macaulay thought, was to classify and generalize in the manner advocated by Francis Bacon. These generalizations, continually tested by comparison with new facts, would constitute political knowledge, both theoretical and practical,

and would lead to a science of politics far superior to the barren a priori theories of the Philosophical Radicals.

J. S. Mill was much impressed by these and other criticisms made by Macaulay.[2] However, he believed that the Utilitarians were correct in the essentials of their theory, and that the error of his father was one of form and not of content. He held the *Essay on Government* to be a polemic for parliamentary reform rather than a systematic treatise and regretted that his father did not admit this. Thus, while the essay was correct in its major conclusions, it was inadequate in its method. In his own thinking he tried to formulate a method which would do justice both to the insights of utilitarianism and to the strictures of Macaulay.

His own conclusions concerning method rest on distinguishing three kinds of deduction: direct, concrete, and inverse.[3] Thus he recognized four methods, all scientific, but applicable to different subject matters. Induction proper, or, as he called it, the "Chemical Method," establishes causal laws by comparing specifically observed cases using the canons of induction: the methods of Agreement, Difference, Concomitant Variations, and Residues. While applicable to chemistry and useful to some extent in the study of history, this approach is inapplicable to the science of politics. The direct deductive or "Geometric" method, that used by James Mill, argues by syllogistic reasoning from first principles to less general laws. This method is applicable only in those areas where there are no other causes to impede the operation of the cause being studied. It can therefore be used in mathematics, but not in mechanics or politics. The concrete deductive or "Physical" method infers the laws of effects not from one causal law, but from a number of them taken together, considering all the causes which influence the effect and compounding their laws with one another. The aggregation of causes is possible because the effect which is produced is the sum of the effects which would be produced by the causes taken singly. Simple aggregation is not operative in chemistry but is in mechanics and social science, since men remain men even when they act on or in conjunction with other men. Thus the concrete deductive method is proper for that part of social science which is concerned with determining the effect of a given cause, *e.g.*, a new law, in a given condition of society.

On the other hand, to ascertain how conditions, or states of society, themselves are determined, we must invoke the inverse deductive, or "Historical" method. The procedure here is to develop empirical laws of society on the basis of induction and then to "verify" those laws by deducing them from the a priori laws of human nature. The inductive approach in itself is not sufficient because we have too few cases to use as data. Any generalization we develop gains plausibility only by its

deductive connection with a general theory. It was from Comte that Mill drew the general theory he believed to be necessary for bringing human progress itself within the scope of science. Usually, and for practical purposes, the physical method is serviceable. It breaks down when progress becomes a factor in political action, that is, when the circumstances which are the background for an action cannot be assumed to remain constant. Thus there are two branches of social science, one which supposes that conditions remain the same but that new or different factors or agencies are introduced (*e.g.*, political economy), and one which attempts to determine how it is that conditions themselves change (*i.e.*, philosophy of history). In Mill's view, no social science is complete without both branches, and the latter historical branch is basic. As will appear, both are directly applicable to political studies, the physical when considering the value of a specific legislative proposal in a particular stage of society, the historical when considering the effects of particular proposals on the progress of society to the next stage.

II. Philosophy of History

The content of Mill's philosophy of history was strongly influenced by eighteenth-century French thought, by the movement for reform in England to which he contributed, and by his study of nineteenth-century French philosophies of reform, especially those of the Saint-Simonians and Comte.[4] He believed in the possibility and desirability of social progress, but not in its inevitability. Mankind, we know from history, is capable of moving from barbarism to civilization, and this forward movement takes different forms and occurs at various paces in different societies, although, he admits, there is a certain order of human progress. By the use of the proper historical method we can determine the stages through which any people must pass in its progress, and this understanding of the pattern of historical change provides the coordinates within which it is possible to determine what steps must be taken to advance to the next stage. Thus the philosophy of history, understood as the philosophy of the progress of society, is basic for the practical science of politics and gives that science an added dimension. It is not merely necessary to know what must be done in the present situation to achieve the ends of the presently existing government in the present society. It is also necessary to know how that should be done so as to enable mankind to move to the next higher stage of civilization. Even this must be done in such a way as to pave the way for the stage of civilization beyond the next. Such a theory, it may be pointed out, is satisfactory as long as we are looking at less advanced societies from the

point of view of the more advanced. We ask, What do such societies require to achieve the level of civilization that we have already reached? This is the kind of question that Mill raises about primitive societies. It is more difficult to determine what our society, a highly civilized one, requires to move on to its next stages of which we at present have no example and no clear conception. The gap in the philosophy of history is filled by the ideal derived in a deductive fashion from a theory of human nature and a theory of ethics.

When he was still a young man, Mill formulated a suggestive approach to this problem.[5] He distinguished two basic states of society: the natural and the transitional. The natural state of society was that in which those best fitted to govern were actually the governors. In the transitional state, on the other hand, individuals other than those best fitted were in power. Natural states tend to be undermined by the rise of new leaders; the struggle between them and the old leaders produces the state of transition which is eventually replaced by a new natural state. While Mill later seems to have abandoned this type of analysis, there remained a residue of it in his thinking, namely, that no state of society is satisfactory unless those who are best fitted to rule exercise the major authority in society.

Mill was also impressed by the three-stage analysis of Comte. That the intellectual development of mankind has had a theological and a metaphysical stage, and is now in a positive (or as Mill would prefer to call it experimental) stage, he thought quite correct, and his acceptance of this doctrine survived his disillusionment with Comte's later social philosophy.

If we ask Mill what is the efficient cause of social progress, we find that he has no simple answer. At each stage of civilization certain conditions may be produced which make possible the next stage; *e.g.*, he points out that the first lesson that must be learned before any social progress is possible is the lesson of obedience. Yet the existence of the conditions of progress does not guarantee that progress will occur. The forward movement of society is actually produced by the ideas, example, and moral and intellectual leadership of superior individuals. Superior individuals have flourished chiefly under conditions of liberty, so that liberty becomes a necessary condition for progress. The argument is fairly simple: Progress depends on the emergence of new ideas; new ideas emerge only as challenges to old and accepted ideas, and then only if there is freedom to challenge the existing beliefs and to suggest alternatives. That the existing beliefs provide a basis for the stability of society Mill recognized. That the challenging of those beliefs was a threat to society he also recognized. The implicit tension between the demands

of stability and the demands for reform is considered at length by Mill in his *Representative Government* (to be discussed below).

Another question that must be considered by any philosophy of history if it wishes to contribute to the study of politics is the place of the existing society in the pattern of history. Mill had no doubt that the societies of western Europe and the United States were civilized. There were also areas in the world which were uncivilized, and others at various stages of civilization below the levels achieved in western Europe. The signs of civilization are the existence of responsible government and the emergence of scientific knowledge. Mill seems to believe that the measure of a society's advance is the state of the intellect, and he seems to have little doubt that the future progress of mankind is tied to the continued development of scientific knowledge, especially in the area of social science (since he believed that the physical sciences were on the verge of becoming complete). That further progress remains to be achieved is a foundation stone of his whole system of political thinking, and that it can only be achieved deliberately through a science of society is a corollary for which he is indebted to Comte and the French Socialists.

To understand Mill's philosophy of history in its relation to his political science, one must appreciate the influence upon him of Tocqueville.[6] Mill accepted Tocqueville's thesis that the movement toward more and more democracy, that is, toward greater and greater equality of status, was almost inevitable. Like Tocqueville he felt not that this movement was in itself progress, but rather that it indicated the problem to be faced by those who wished to promote progress. Equality carried too far interferes with justice and can undermine both the liberty and the respect for intellectual and moral excellence that is the condition for further progress. It is from this analysis that Mill was led to qualify in his own theory the faith in radical democracy of the earlier Utilitarians.

III. Moral Considerations

The philosophy of history adopted by Mill required a revision of the ethical theory of utilitarianism in so far as it was applied to politics.[7] The end of the state, for the earlier Utilitarians, was the good of the individuals who composed the state, and that good was defined in hedonistic terms as the maximum of pleasure attainable with the minimum of pain. Thus government was looked upon as an agency for increasing pleasure and decreasing pain. That Mill accepted this view in principle is true without a doubt, but he found it inadequate, both in

neglecting one aspect of human nature and in misunderstanding the aspects it included. The burden of Mill's argument in "Utilitarianism" is directed against the intuitionists who, he believed, claimed that the distinction between right acts and wrong acts, or between correct moral principles and incorrect ones, could be known a priori. He rejected this view and claimed that the fundamental principle of morality is known by experience, and he even goes so far as to offer a sort of inductive proof for the greatest happiness principle.

Mill revises the theory of Bentham in the course of his attempt to answer specific objections to the earlier version of utilitarianism. The objection that seemed to concern him most was that utilitarianism took a low view of human life, not distinguishing a life fit for animals from what is fit for men. In reply to this, Mill introduced a qualitative distinction among pleasures to supplement the merely quantitative distinctions of Bentham, and he traces this qualitative distinction back to ancient Epicureanism. Some pleasures, specifically the mental and spiritual ones, are in themselves superior to the bodily pleasures, regardless of quantitative or circumstantial considerations. Thus happiness would require not only a life of pleasure without pain, but the achievement of the superior pleasures even at the cost of pain and the sacrifice of the inferior pleasures.

This point is significant for Mill's political philosophy in three ways. First, it is connected with his theory of human progress. A society in which people pursue the superior pleasures is more advanced in civilization than one in which they do not. Thus the promotion of the pursuit of the higher pleasures is at the same time the promotion of the advancement of society. In the second place, the cultivation of the higher pleasures requires social freedom, so that only a free society can be truly civilized in Mill's sense. Finally, men can live together more justly and with higher human achievements to the extent that they pursue the higher pleasures rather than the lower. Thus the problem of government is partly solved by the pursuit of the higher pleasures, because those traits of character which are developed from that pursuit are the very traits of character which are necessary to achieve the best form of political organization. Science, the highest achievement of the intellectual life, requires just that objectivity and disinterestedness that man requires to be a truly moral being, and hence to be a citizen in the best type of state.

Thus, while the core of utilitarianism is present in Mill's assertion that those actions, individual or social, are right which produce the greatest happiness of the greatest number, that core has been so modified and expanded that the resultant theory has a cast different from

that of original utilitarianism. Government does not exist merely to produce the maximum of that kind of pleasure which the citizens happen to prefer. Rather some types of pleasure are better than others, and the government has the responsibility for having its citizens educated to pursue the higher pleasures in place of the lower pleasures. Moral education, whether it is actually carried on by the government or by private individuals (and Mill seems to prefer the latter), is thus one of the responsibilities of the good society; and moral education must be directed at man not simply as a pleasure-seeking animal, but as "a progressive being."

Some further distinctions are important for the politically relevant portion of Mill's ethical theory. For Mill the individual is prior to the state, but not the individual as he is, rather the individual as he may become with proper education in a well-organized society. This does not mean that Mill conceives of one pattern of human life which should serve as a model for all men, but rather that there is a great variety of potentials in men, and society should provide the conditions in which each man can develop his special talents and make them available to the community. He can do this best by having the opportunity actively to use his talents. Mill sees the active life as morally superior to one of passive obedience at almost all levels of human achievement. From this it follows that the government which encourages active participation in its operation by all its citizens is better, in spite of the problems which may arise as a consequence, than one which is more orderly but encourages its citizens to be passively obedient to the commands of a ruling group, whatever the morality and justice of those commands.

IV. The End of the State

Mill commences his most extended single treatment of political philosophy, *Considerations on Representative Government,*[8] with a reworking of the old question as to whether governments exist by nature or by convention. He takes this as a question concerning the range of choice as regards forms of government. If government is entirely a matter of convention, then choice is unlimited. If governments exist entirely by nature, then no choice is possible. He rejects both positions and tries to show the element of truth in each by pointing to three conditions that any people must satisfy in order that a particular system of government may succeed among them: They must be willing to accept it, willing to do what is necessary to keep it standing, and willing to do what is necessary to enable it to fulfill its purpose. The conditions favorable to the establishing and maintaining of particular systems of government may be to some extent the result of the education of the people; and within the limits set by these conditions, the specific form of government is a matter of choice.

The choice of one form of government from among the ones whose conditions are present should be guided by an understanding of the purpose or purposes of government. After canvassing some current views on the subject, Mill finds that the most widely held view, even among the Utilitarians, is that governments exist to preserve order and to achieve progress in society. He finds this redundant since the achievement of progress presupposes order, *i.e.,* security in what has been achieved. Mill would thus be willing to say that progress is the whole end of government, but somewhat reluctantly, since saying this does not place sufficient emphasis on the equally important need to guard against the danger of retrogression. A more appropriate way to get at the requisites of a form of government is to recognize that the supposed antithesis between order and progress is merely a reflection of a deeper psychological antithesis between two types of human character, the type in which caution predominates and that in which boldness is dominant. Good government, that which achieves progress on a basis of order, requires men of both types to provide a balance, though no special provision in the constitution is necessary to assure this. All that is necessary is to be sure that neither type is systematically eliminated. What is fundamental is the qualities of the human beings over whom the government is exercised, and this is seen in two perspectives. One test of good government is the extent to which the virtue and intelligence of the people themselves are promoted. The other is the extent to which the machinery of government takes advantage of the good qualities of the populace. Thus, the end of government is to make the people better, and the means are to educate the people and to put to use the highest qualities which they have achieved.

Thus Mill's moral theory provides the basis for his political theory, and both of these are supported by his account of the stages of social progress. While Mill recognizes that the government must take care of the affairs of the community, its responsibility for developing the people is more important. The criterion of its effectiveness in the former is its efficiency, and the standards of efficiency are the same for all forms of government. The criteria of its effectiveness in the education of the people are more complicated and depend on the stage of development in which the people find themselves. Just as there is a natural order in the education of an individual, so there is a natural order in the education of a people. Easiest lessons are learned first; those which presuppose others cannot be learned until those others have been mastered.

If the precivilized condition is barbarism, obedience is the first lesson, labor is the next, and self-government is the final step. Mill sees a continuous line of development from slavery to self-government, with each stage prepared by the learning of a specific lesson, that is, by the acquiring of a new character trait on the part of the population as a whole. Apart from the business side of government, the criterion of the best form of government for any particular people is that it provide what is necessary to teach them the lesson they must learn in order to move to the next more advanced state of society, and that it not hinder them from moving on, after suitable training, to the step beyond. It is in this context that we can understand Mill's view that despotism is "a legitimate mode" of government for barbarians, if "the end be their improvement." [9] For Mill this sequence of steps implies a culmination in the best form of government altogether, one which, if the necessary conditions existed, would promote more than any other, not one form of human improvement, but all forms and degrees of it. This he says is some variety of the representative system.

V. The Argument for Representative Government

Representative government has only one rival for its place as the ideally best polity, and that is benevolent despotism.[10] After considering carefully the benefits to be derived by the absolute rule of an intellectually and morally superior individual, Mill finds several arguments decisive against its claim. One, which comes from the earlier Benthamite theory, rests on the principle that the "rights and interests of any person are only secure from being disregarded when he is able and disposed to stand up for them." In a benevolent despotism, however, the rights of individuals, those limitations on the power of others to interfere with a man's actions which can be justified on the principle of utility, are not secure because they depend on the guarantee of the despot. While specific despots may in some cases protect these rights, human nature being what it is, despotism is not reliable in that respect. Historical evidence, which shows that free people have prospered more than those under despotisms, supports this argument. The other argument goes to the root of what is distinctive in Mill's theory. Despotism requires obedience on the part of the citizen body, that is, passivity. Intellectual, practical, and moral excellence, the highest aims which the state ought to strive to cultivate among its citizens, are all the products of an active character. Thus while despotism may be suitable where a people has to learn obedience to progress to higher stages of civilization, once it has learned that lesson, it ought to be encouraged to active participation, which is

possible only in a popular government. Popular government therefore appears to be the ideal polity for two reasons: It protects the rights of individuals, and it promotes their highest moral and intellectual development. However, Mill has one more step in his argument: The highest development of individuals rests also on an advanced civilization, which is only possible in a large state. Popular government is only possible in small states. The closest approximation to popular government which is feasible in large states is representative government, *i.e.*, representative democracy.

Representative government is not only the ideally best polity, all things considered, but is also a form of government that can be established in the modern world. Its existence depends on the three conditions already mentioned, together with a degree of maturity which makes possible this form of self-government. Where the people have some lesson still to learn, some other form of government will be more suitable for them, *e.g.*, they may learn obedience more easily from a military leader, or a king may teach them to overcome that spirit of locality which prevents them from joining with other localities to set up the central authority which representative government presupposes. Barring such defects as these, and they were certainly, Mill felt, not problems in the England of his time, a properly constituted representative government could do most to aid the people to achieve progress to the next stage of society.

VI. The Analysis of Representative Government

The proper constitution of a representative democracy is not a simple matter, however, and no government of Mill's time exhibited it, chiefly because the role of the representative in government had not been understood correctly. The usual error in conceiving of representative government, Mill believed, was in holding that the representatives of the people should actually govern. The functions of government, executive, legislative, and judicial, are highly skilled activities which require experienced, well-trained individuals whom the populace is not qualified to select. Thus it may be said that Mill believes in government by experts. However, every constitution has "an ultimate controlling power," and this power must in a democracy reside in the people themselves. Not being able to exercise this power themselves, the people exercise it in effect, can control the operations of government in the public interest, through periodically elected deputies. Thus, for Mill, the representatives are not the government, but act for the people to control the government.

A parliament of elected representatives would serve as the controller of the government in the interest of the people. Mill sees this parliament as chiefly a deliberative body, at once a "Committee on Grievances" and a "Congress of Opinions." Containing "a fair sample of every grade of intellect which is at all entitled to a voice in public affairs," its function would be "to indicate wants, to be an organ for popular demands, and a place of adverse discussion for all opinions relating to public matters. . . ."[11]

The point of interest here is that Mill's "Representative Democracy" is two stages removed from democracy in the literal sense of the term, rule by the people. Rule by the representatives of the people is one stage removed, and rule by experts controlled by the representatives of the people is another stage removed. Mill comes to this view not only on the basis of considerations of practicality, but on the basis of his belief that while justice requires democracy, an uncontrolled democracy can be just as much a tyranny as absolute monarchy.

The effective operation of representative democracy requires the presence of conditions not required of other systems of government. A nice balance must be preserved between the representative body and the actually governing bodies. Too strong a representative body will hinder the government from carrying out its functions. One that is too weak will be unable to control the government. The representative body might not have the mental qualifications needed for its work. Sinister interests, interests not identical with the interest of the community as a whole, may gain predominance. These latter defects tend to be present in all constitutions. They are inherent in the nature of monarchy and aristocracy, but by suitable institutions their danger may be reduced to a minimum in a representative system. Mill devoted considerable attention to designing specific arrangements for the representative democracy he favors, to enable it to overcome its possible defects.

The technique of the better monarchies and aristocracies for securing talents of a sufficiently high order for governmental functions is the establishment of a bureaucracy. But bureaucracy relapses into routine, which represses the individuality of its members and becomes a system governed by trained mediocrity. Only popular government (and Mill considers his system of representative democracy the most feasible type of popular government) keeps alive antagonistic interests in the community, and thus stimulates individual thought and initiative, enabling the man of original genius to pierce the barrier of trained mediocrity. However, the freedom produced by the representative system must be combined with trained skill. The distinction between governing and controlling, which is at the basis of Mill's system, produces the

combination. The experts govern, but they are controlled by the representatives of the people.

Mill's specific proposals for the reform of existing representative government can be understood as attempts to secure the establishment of a skilled democracy. Without skill the complex problems of the government of a free society cannot be solved. Without democracy there is no security for good government, that is, for the protection of the rights of citizens. Mill finds that the current conception of democracy is based on an inadequate understanding of majority rule. If democracy means government of the whole by a majority which alone has representation, the ends of democracy are bound to be frustrated, for the minority, having no representatives, has no assurance that its rights will be protected, and the majority will be in a position to pursue its sinister interest. Mill fears, for example, that a representative body representing the interests of the working class will jeopardize the property rights of the wealthy, and thus undermine the economy of the nation. Rule by the majority in its own interest is as much a government of inequality and privilege as rule by a privileged minority in its interest. True democracy on the other hand is government of the whole by the whole equally represented. The existing system of false democracy involves both misrepresentation (of those of the majority party who opposed the candidate chosen) and nonrepresentation (of those who vote for the party which loses). The absence of an effective voice in opposition to the majority in the representative body tends to produce a mediocre and incompetent ruling group.[12]

Mill believed that Thomas Hare's scheme for personal representation provided means for giving representation to each voter. In Hare's variant of proportional representation, each voter votes for a series of candidates, marking them as his first choice, his second choice, his third choice, etc. When a sufficient number of ballots to elect is credited to a candidate, the remainder for him go to second, third, and subsequent choices so that each vote counts for someone who is elected. Every voter has at least one candidate who may be said to represent him. Mill believed that in the existing system in which a majority in a geographic district determines the representation for that district, the voters for the losing candidates are disenfranchised. Under Hare's system every vote counts. On Mill's theory of representation the elected representative had the responsibility of thinking and discussing public issues in the interest of the whole, not merely reflecting the views of his constituency. He argued against pledges on the part of candidates for office and refused to give any when he himself stood for Parliament in 1865.

While the earlier Utilitarians had assumed that the extension of

the suffrage alone would guarantee that the interests of all would be defended, Mill felt that without personal representation universal suffrage would lead to the tyranny of the majority. The earlier reformers also assumed that the lower classes would choose their betters to represent them. Mill was by no means as sanguine. He believed that special measures had to be taken to prevent the views of the instructed classes from being drowned in a flood of votes from the uninstructed classes. The system of personal representation would obviate the rule of the uninstructed by enabling the instructed from all parts of the nation to pool their votes to secure the election of the candidates they preferred. But this was not enough for Mill. To give the instructed an even greater weight than their mere numbers would merit, he advocated plural voting for the professional and other classes that carried greater responsibility in the community. While personal representation has an ambiguous effect on democracy (being democratic in the sense that it gives everyone a voice, and contrary to democracy in that it increases the strength of the minorities in relation to the majority), the system of plural voting is definitely a curb on democracy and indicates the strength of Mill's conviction of the dangers of unlimited democracy. He placed his reliance on a representative body in which the interests of the two major classes in society, the working class and the upper class, were evenly balanced, on the expectation that most of the representatives would vote in accordance with their class interest, while a minority of each group, carrying the balance of power, would vote in the public interest.

VII. Theory of Liberty

The essay *On Liberty* was held by Mill to be his most carefully composed work and the one which was most likely to be of enduring value. We can appreciate why Mill felt this way and judge more adequately of the significance of the book if we consider it in the context of his philosophy of history and his theory of the state.

Believing in the progress of society from lower to higher stages of civilization, Mill saw the political culmination of this development as the emergence of a system of representative democracy. Thus he judged representative democracy to be the ideally best polity, *i.e.*, that form of government toward which mankind was progressing. Nevertheless Mill did not see the emergence of representative democracy as the emergence of utopia. Not only was there an ever-present tendency toward retrogression which society had continually to struggle against, but equally dangerous was the tendency of the most idealistic and high-minded

reform movements to harden into dogmatic systems which forced conformity and thereby inhibited future progress. Just as obedience and work were the main conditions of human progress at earlier stages of man's development, so in the civilized period, obedience and industriousness having been engrained, liberty becomes the condition for subsequent progress.

Evidently Mill's theory of liberty is far from a universal doctrine which applies to all peoples at all times. Rather it is practically relevant only when society becomes more important than the state. As long as there is a recognized opposition of interest between the governors and the governed, the progress of mankind requires that men work to achieve the conditions of representative government. Once these conditions are achieved, a representative democracy can emerge in which the opposition between governors and governed disappears, for the governors then represent the interests of the governed. This condition, which makes possible the liberty of the individual, does not guarantee it. The very emancipation of society from the constraint of a government in the interests of a few creates in society itself, in the great mass of the people, a new and more dangerous threat to the liberty of the individual. In dealing with this newly emerging problem, Mill believes that he is thinking for the future. The problem of subsequent stages of progress is to prevent the individual from being oppressed by the ever more powerful and confident mass of mankind. Progress toward civilization requires curbs on individual liberty; progress in civilization requires the emancipation of the individual from those restrictions.

What is required, Mill believes, is a practical principle which will so define the area of individual liberty as not to prevent government from meeting its obligation to promote the progress of society. Mill grounds this principle in his moral theory: The only thing of ultimate value is the happiness of individuals, and individuals can best achieve their happiness in a civilized society when they are left free to pursue their own interests with their own talents as these have come to be understood and developed by them under an adequate system of education. Underlying all this is the assumption of the ultimate value of individuality, of individual development, both for the individual himself and for the future progress of society—for the individual, once the conditions of free development, namely, civilization and representative government, are achieved; for the society because the progress of civilization depends on the contributions that can be made only by individuals who think for themselves. The civilized man, for Mill, is the one who acts on what he understands, and who exerts every effort to understand. This Socratic model is not meant for the few who have the philo-

sophic bent, but is intended as a model for all men in so far as they are capable of achieving it.

The question then arises as to the conditions under which society can progress toward this goal. The principal condition is self-restraint on the part of the individuals in society, and Mill's theory of liberty is an attempt to spell out in practical terms what that self-restraint requires. It requires as a foundation that each individual, groups of individuals, the government, and the mass of the people refrain from interfering with the thought, expression, and action of any individual. This is the basic principle of liberty.

Radical noninterference with individuals, applied abstractly and absolutely, would of course make government and an orderly society impossible. It is in effect an anarchistic principle. Mill qualifies it in its practical application by recognizing that while thought must be absolutely free, the freedom of action of individuals must be limited for the safety of society. Mill argues that the individual belongs to himself and is subject to social control only for the purpose of preventing him from harming others. The individual is sovereign over himself, and the society is sovereign over the acts of the individual that impinge on others. The thoughts of the individual are part of himself, and therefore the principle requires that society exert no control over them. (Here we must bear in mind that Mill is not talking about any collection of individuals anywhere, but about a mature body of citizens who have been educated to a sense of public responsibility. He explicitly excludes children and savages.)

The public expression of one's private thoughts might be supposed to fall into a different category, that of action. Mill admits that it does so, in some isolated cases, but generally speaking he believes that expression requires the same absolute liberty as thought for the following reasons: First, expression is so closely related to thought that the control of expression would become in effect a control on thought. Second, he asserts that the claim to the right to limit freedom of expression, that is, the claim to the right to silence the expression of opinions in society, presupposes infallibility on the part of those who make the claim. Mill's belief is that no one can legitimately claim infallibility, and hence no one can legitimately claim the right to suppress any opinion. On the contrary, society has everything to gain and nothing to lose by absolute freedom of discussion. An unpopular opinion may be true, in which case the rest of mankind can learn something from the dissident view. This would hold even if it were partly true and partly false. Even if the dissident opinion were entirely false, society would be the gainer by allowing it to be expressed. Society would be kept alert as to the grounds

of its own (true) view, which would become a dead dogma if it went forever unchallenged; and the instruction of the mistaken dissident would always remain as a possibility.

Mill's approach to the problem of the limits, if any, to freedom of public discussion in society assumes, it must be recalled, a mature public carrying on its discussion in a restrained and civilized way. Those who do not live up to the rules of the game have no such rights; they must be restrained in the same way as those whose actions harm others in society. The implicit principle here is that as long as discussion remains discussion, it ought to be permitted absolute freedom; but once it passes beyond discussion to action, it ought to be treated as action. The illustrations that Mill gives of the latter, *e.g.*, telling an excited mob that corn dealers are starvers of the poor in front of the house of a corn dealer, suggest that it is not the opinion alone which determines to which category, thought or action, expressing the opinion belongs, but rather the circumstances in which the opinion is expressed.

It is generally agreed that actions cannot be as free as opinions. Actions must be limited to the extent that they result in harm to others. Mill is very careful to make sure that this rule is not made the basis for a general restriction of liberty of action. When men consent to the action by which they are harmed, that action is of no concern to society. In general, the burden of proof is on society to show that the individual's action is harmful, rather than on the individual to prove that it is harmless. Danger of harm to oneself, once one is a mature individual, is no ground for interference by government. Under that circumstance the individual may be remonstrated with, but not coerced.

The ultimate aim of social action should be "to secure to all persons complete independence and freedom of action." This includes especially freedom to gratify tastes and engage in pursuits, as well as freedom of association, all to the extent that other individuals are not harmed. By education in the self-regarding virtues the individuals in society should be encouraged to use their freedom to advance themselves morally and intellectually; if they succeed, they become suitable objects of admiration and emulation; if they fail, they become objects of distaste and perhaps even contempt. However, they are not to be interfered with by society or by government unless they fail in some social obligation which is ultimately grounded in the utilitarian principle of the greatest happiness of the greatest number. To the objection that it is difficult, if not impossible, to distinguish between that part of a person's life which concerns only himself and that part which concerns society, Mill offers a partial answer in practical terms. If the basis of the objection is that many apparently self-regarding actions do harm to

others, Mill replies that to the extent that they do harm to others they should be punished. Definite damage or harm to others should be punished, but merely contingent injury (that which does not violate a specific duty) ought to be tolerated for the sake of greater freedom. In these terms Mill discusses spending income, drinking fermented beverages, sale of poisons, polygamy, gambling, and other acts which have been objects of legal restriction. He admits that there is no mechanical application of his basic principles, but insists that they are the only proper guides to correct social policy.[13]

He concludes by restating the arguments for individual initiative in preference to social control: Most things tend to be done better when done by individuals than when done by the government; individual action promotes the mental education of the individual, which governmental action does not; and increased governmental action is a threat to liberty.

While Mill does not rule out the interference of government in the economic life of the community as either impossible or undesirable in principle, he would restrict those interferences to the area of the distribution of goods, exempting the area of the production of goods as being governed by laws of nature. Though in later life he came to consider himself something of a Socialist, he also expressed fears of the extension of social control over economic life. Using individuality, liberty, and the progress of society as his standards, he recognized the advantage of "non-authoritative" governmental interference in the form of supplying advice and information and in competing with private enterprise where there was danger of monopoly. Recognizing that the organization of society on a communistic basis might raise the standard of living of the laboring classes, he did not believe that the increased standard of living would be worth the price of restrictions on liberty if these should be the outcome.[14]

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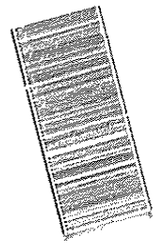

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Liberal Economic Theory

Bourgeois liberals thought that the economy, like the state, should proceed according to natural laws rather than the arbitrary fiat of rulers. Adopting the laissez-faire theory of Adam Smith, they argued that a free economy, in which private enterprise was unimpeded by government regulations, was as important as political freedom to the well-being of the individual and the community. When people acted from self-interest, the liberals said, they worked harder and achieved more. Self-interest and natural competitive impulses spurred economic activity and ensured the production of more and better goods at the lowest possible price, thereby benefitting the entire nation. For this reason, the government must neither block free competition nor deprive individuals of their property, which gave them the incentive to work hard and efficiently. The state contributed to the nation's prosperity when it maintained domestic order; it endangered economic development when it tampered with the free pursuit of profits.

Believing that individuals were responsible for their own misfortunes, liberals were often unmoved by the suffering of the poor. In their eyes, the poor suffered because of their own moral failings, laziness, and vice. Indeed, they used the principle of laissez faire—that government should not interfere with the market—to justify their opposition to humanitarian legislation intended to alleviate the misery of the factory workers. Liberals regarded such social reforms as unwarranted and dangerous meddling with the natural law of supply and demand.

One theorist upholding this view was Thomas R. Malthus (1766–1834), an Anglican cleric and professor of history and political economy. In his *Essay on the Principle of Population* (published in 1798 and then in a second, much-enlarged edition in 1803), Malthus asserted that population grows at a much faster rate than the food supply, resulting in food shortages, irregular employment, lower wages, and high mortality. The poor's distress, said Malthus, was not due to faulty political institutions or existing social and property relations. Its true cause was the number of children they had.

> *When the wages of labour are hardly sufficient to maintain two children, a man marries and has five or six. He of course finds himself miserably distressed. . . . He accuses his parish. . . . He accuses the avarice of the rich. He accuses the partial and unjust institutions of society. . . . In searching for objects of accusation, he never alludes to the quarter from which all his misfortunes originate. The last person that he would think of accusing is himself.*[27]

The state cannot ameliorate the poor's misery, said Malthus; "the means of redress are in their own hands, and in the hands of no other persons whatever."[28] This "means of redress" would be a lowering of the birthrate through late marriages and chastity, but Malthus believed that the poor lacked the self-discipline to refrain from sexual activity. When they receive higher wages, they have more children, thereby upsetting the population–resource balance and bringing misery to themselves and others.* The view of poverty as an iron law of nature, which could not be undone by the good intentions of the state through philanthropy, buttressed supporters of strict laissez faire and eased the consciences of the propertied classes. Compassion for the poor was simply a misplaced emotion; government reforms were doomed to fail, and higher wages provided no relief. Malthus's theory also flew in the face of adherents of human perfectibility and inevitable progress. Poverty, like disease, was simply a natural phenomenon—a law of nature that could not be eliminated. No wonder his contemporaries called economics "the dismal science."

In *Principles of Political Economy* (1817), David Ricardo (1772–1823) gave support to Malthus's gloomy outlook. Higher wages, said Ricardo, lead workers to have more children, causing an increase in the labor supply. Competition for jobs by an expanding labor force brings down

*In later editions of his work, Malthus was more hopeful that checks on fertility through later marriage and "moral restraint" would lead to moderate improvements in the standard of living.

wages. This "iron law of wages" offered bleak prospects for the working poor.

> *When, however, by the encouragement which high wages give to the increase of population, the number of labourers is increased, wages again fall to their natural price [to a subsistence level] and indeed from a reaction sometimes fall below it. . . . It is a truth which admits not a doubt, that the comforts and well-being of the poor cannot be permanently secured without some regard on their part, or some effort on the part of the legislature, to regulate the increase of their numbers, and to render less frequent among them early and improvident [imprudent] marriages.*[29]

Liberals of the early nineteenth century saw poverty and suffering as part of the natural order and beyond the scope of government. They feared that state intervention in the economy to redress social ills would disrupt the free market, threatening personal liberty and hindering social well-being. Thus, on May 13, 1848, an editorial in the *Economist* protesting against a bill before Parliament that sought to improve housing and sanitation declared: "suffering and evil are nature's admonitions; they cannot be got rid of; and the impatient attempts of benevolence to banish them from the world by legislation . . . have always been productive of more evil than good." Government interference, liberals also argued, discouraged the poor from finding work and so promoted idleness. According to liberal political economy, unemployment and poverty stemmed from individual failings.

A particularly glaring example of the coldness and harshness of liberals toward suffering was their response to the Irish famine of 1845 through 1849. While the Irish were dying of starvation, the liberal leadership in Britain, fearing that government intervention would promote dependence, did little to lessen the suffering. "The more I see of government interference," wrote Sir Charles Wood, chancellor of the Exchequer, "the less I am disposed to trust it, and I have no faith in anything but private capital employed under the individual charge."[30] To some hardhearted liberals, the famine, which killed about 1.5 million people, was simply nature's way of dealing with Ireland's excess population. A dogmatic commitment to laissez faire discouraged British officials from coping humanely and creatively with this disaster.

In the last part of the century, liberals modified their adherence to strict laissez faire, accepting the principle that the state had a responsibility to protect the poor against the worst abuses of rapid industrialization.

Liberalism and Democracy

The French Revolution presented a dilemma for liberals. They supported the reforms of the moderate stage: the destruction of the special privileges of the aristocracy, the drawing up of a declaration of rights and a constitution, the establishment of a parliament, and the opening of careers to talent. But they repudiated Jacobin radicalism. Liberals were frightened by the excesses of the Jacobin regime: its tampering with the economy, which, to liberals, violated the rights of private property; its appeal to the "little people," which liberals saw as inviting mob rule; its subjection of the individual to the state, which they regarded as the denial of individual rights; and its use of terror, which awakened the basest human feelings.

To bourgeois liberals, the participation of commoners in politics meant a vulgar form of despotism and the end of individual liberty. They saw the masses—uneducated, unpropertied, inexperienced, and impatient—as lacking both the ability and the temperament to maintain liberty and protect property.

Few thinkers in the first half of the nineteenth century grasped the growing significance of the masses in politics as did Alexis de Tocqueville (1805–1859), the French political theorist and statesman. In the wake of the French Revolution, de Tocqueville, an aristocrat by birth but a liberal by temperament, recognized that the destruction of aristocracy—a system based on rank—and the march toward democracy could not be curbed. In *Democracy in America* (1835–1840), based on his travels in the United States, de Tocqueville analyzed, with cool detachment and brilliance, the nature, merits, and weaknesses of American democratic society.

In contrast to the France of the Old Regime, wrote de Tocqueville, American society had no hereditary aristocracy with special privileges; the avenues to social advancement and political participation were open to all. Arguing that democracy was more just than aristocratic government, de Tocqueville saw it as the political system of the future. But he also recognized the dangers inherent in democracy.

In a democratic society, he noted, people are willing to sacrifice political liberty to improve their material well-being. Consequently, democracies face an ever-present danger that people, craving equality, will surrender their liberty to a central government if it promises to provide them with property and other advantages.

According to de Tocqueville, democracy also spawns a selfish individualism, which could degenerate into vulgar hedonism. Driven by an overriding concern for possessions and profits, people can lose their taste for political participation and their concern for the public good. If narrow self-interest prevails over a sense of public duty, liberty cannot long endure.

Though recognizing the limitations of democracy, de Tocqueville did not seek to reverse its growth. In this new age that is dawning, he wrote,

> *all who shall attempt . . . to base freedom upon aristocratic privilege will fail. . . . All who shall attempt to draw and to retain authority within a single class, will fail. . . . All . . . who would establish or secure the independence and the dignity of their fellow-men, must show themselves the friends of equality. . . . Thus the question is not how to reconstruct aristocratic society, but how to make liberty proceed out of that democratic state of society in which God has placed us.*[31]

The problems of democracy, declared de Tocqueville, must be resolved without jeopardizing freedom. The task of a democratic society is to temper extreme individualism and unrestrained acquisitiveness by fostering public spirit. Without direct participation by cooperating citizens—that is, without a concern for the common good—democracy faces a bleak future. Freedom depends less on laws than it does on cultivating the sentiments and habits of civic virtue.

Because bourgeois liberals feared that democracy could quash personal freedom as ruthlessly as any absolute monarch, they called for property requirements for voting and officeholding. They wanted political power to be concentrated in the hands of a safe and reliable—that is, a propertied and educated—middle class. Such a government would prevent revolution from below, a prospect that caused anxiety among bourgeois liberals.

When liberals of the early nineteenth century engaged in revolutions, their aims were always limited. Once they had destroyed absolute monarchy and gained a constitution and a parliament or a change of government, they quickly tried to terminate the revolution. When the fever of revolution spread to the masses, liberals either withdrew or turned counterrevolutionary, for they feared the stirrings of the multitude.

Although liberalism was the political philosophy of a middle class generally hostile to democracy, the essential ideals of democracy flowed logically from liberalism. Eventually, democracy became a later stage in the evolution of liberalism because the masses, their political power enhanced by the Industrial Revolution, would press for greater social, political, and economic equality. Thus, by the early twentieth century, many European states had introduced universal manhood **suffrage**, abandoned property requirements for officeholding, and improved conditions for workers.

But the fears of nineteenth-century liberals were not unfounded. In the twentieth century, the participation of common people in politics indeed threatened freedom. The granting of political participation to the masses has not always made people freer. The confidence of liberal-democrats was shaken in the twentieth century. Growing impatient, in turbulent times, with parliamentary procedures, people in some European countries gave their support to demagogues who promised swift and decisive action. They were willing to trade freedom for economic security, state authority, and national power. Liberalism is based on the assumption that human beings can and do respond to rational argument and that reason will prevail over base human feelings. The history of the twentieth century shows that this may be an overly optimistic assessment of human nature.

using the state to enhance their own power. They would, said Bakunin, become a "privileged minority . . . of *ex-workers*, who, once they become rulers or representatives of the people, cease to be workers and begin to look down upon the toiling people. From that time on they represent not the people but themselves and their claims to govern the people."[26] Therefore, said Bakunin, once the workers capture the state, they should destroy it forever. Bakunin's astute prediction that a socialist revolution would lead state power to intensify rather than disappear was borne out in the twentieth century in all lands where Communists seized power.

Anarchists engaged in acts of political terrorism, including the assassination or attempted assassination of kings, presidents, and prime ministers, and tossed bombs into crowds, but they never waged a successful revolution. They failed to reverse the trend toward the concentration of power in industry and government, which would characterize the twentieth century.

Liberalism in Transition

In the early 1800s, European liberals were preoccupied with protecting the rights of the individual against the demands of the state. They championed laissez faire because they feared that state interference in the economy to redress social evils would threaten property rights and the free market, which they thought were essential to personal liberty. They also favored property requirements for voting and officeholding because they were certain that the unpropertied and uneducated masses lacked the wisdom and experience to exercise political responsibility.

In the last part of the century, liberals began—not without reservation and qualification—to support extended suffrage and government action to remedy the abuses of unregulated industrialization. This growing concern for the welfare of the laboring poor coincided with and was influenced by an unprecedented proliferation of humanitarian movements on both sides of the Atlantic. Nurtured by the Enlightenment as well as by Christian teachings, reform movements called for the prohibition of child labor, schooling for the masses, humane treatment for prisoners and the mentally ill, equality for women, the abolition of slavery, and an end to war. By the beginning of the twentieth century, liberalism had evolved into liberal democracy, and laissez faire had been superseded by a reluctant acceptance of social legislation and government regulation. But from beginning to end, the central concern of liberals remained the protection of individual rights.

John Stuart Mill

The transition from laissez-faire liberalism to a more socially conscious and democratic liberalism is seen in the thought of John Stuart Mill (1806–1873), a British philosopher and statesman. Mill's *On Liberty* (1859) is the classic statement of individual freedom and minority rights: that the government and the majority may not interfere with the liberty of another human being whose actions do no injury to others.

Mill regarded freedom of thought and expression, the toleration of opposing and unpopular viewpoints, as a necessary precondition for the shaping of a rational, moral, and civilized citizen. Political or social coercion, said Mill, is also a barrier to the full development of individuality. Liberty is a supreme good that benefits both the individual and the community. When we silence an opinion, said Mill, we hurt present and future generations. If the opinion is correct, "we are deprived of the opportunity of exchanging error for truth." If the opinion is wrong—and of this we can never be entirely certain—we "lose the clearer perception and livelier impression of truth produced by its collision with error."[27] Therefore, government has no right to force an individual to hold a view

> *because it will be better for him to do so, because it will make him happier, or because in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him or visiting him with any evil in case he do otherwise.*[28]

Mill would place limits on the power of government, for in an authoritarian state citizens

cannot develop their moral and intellectual potential. Although he feared the state as a threat to individual liberty, Mill also recognized the necessity for state intervention to promote individual self-development: the expansion of individual moral, intellectual, and esthetic capacities. For example, he maintained that it was permissible for the state to require children to attend school against the wishes of their parents, to regulate hours of labor, to promote public health, and to provide workers' compensation and old-age insurance.

In *Considerations on Representative Government* (1861), Mill endorsed the active participation of all citizens, including the lower classes, in the political life of the state. However, he also proposed a system of plural voting in which education and character would determine the number of votes each person was entitled to cast. In this way, Mill, a cautious democrat, sought to protect the individual from the tyranny of a politically and intellectually unprepared majority.

Thomas Hill Green

The leading late-nineteenth-century figures in the shaping of a new liberal position in Britain were Thomas Hill Green (1836–1882), an Oxford University professor; D. G. Ritchie (1853–1903), who taught philosophy at Oxford and Saint Andrews; J. A. Hobson (1858–1940), a social theorist; and L. T. Hobhouse (1864–1929), an academic who also wrote for the *Manchester Guardian*. In general, these thinkers argued that laissez faire protected the interests of the economically powerful class and ignored the welfare of the nation. For example, Green valued private property but could not see how this principle helped the poor. "A man who possesses nothing but his powers of labor and who has to sell these to a capitalist for bare daily maintenance, might as well . . . be denied rights of property altogether."[29]

Green argued that the do-nothing state advocated by traditional laissez-faire liberalism condemned many citizens to destitution, ignorance, and despair. The state must preserve individual liberty and at the same time secure the common good by promoting conditions favorable for the self-development of the majority of the population. Liberalism, for Green, encompassed more than the protection of individual rights from an oppressive government. A truly liberal society, he said, gives people the opportunity to fulfill their moral potential and human capacities. And social reforms initiated by the state assisted in the realization of this broader conception of liberty. Green and other advocates of state intervention contended that the government has a moral obligation to create social conditions that permit individuals to make the best of themselves. Toward that end, the state should promote public health, ensure decent housing, and provide for education. The uneducated and destitute person cannot be morally self-sufficient or a good citizen, Green and other progressives argued.

Green and his colleagues remained advocates of capitalism but rejected strict laissez faire, which, they said, benefitted only a particular class at the expense of the common good. "If the ideal of true freedom is the maximum of power for all members of human society alike to make the best of themselves, we are right in refusing to ascribe the glory of freedom to a state in which the apparent elevation of the few is founded on the degradation of the many."[30] Overcoming a traditional liberal mistrust of state power, they viewed the state as an ethical institution, assigned it a positive role in improving social conditions, and insisted that state actions need not threaten individual freedom.

In general, by the beginning of the twentieth century, liberals in Britain increasingly acknowledged the need for social legislation. The foundations for the British welfare state were being laid. On the Continent, too, social welfare laws were enacted. To be sure, the motives behind such legislation were quite diverse and often had little to do with liberal sentiments. Nevertheless, in several countries liberalism was expanding into political and social democracy, a trend that would continue in the twentieth century.

Herbert Spencer: Rejection of State Intervention

Many traditional liberals regarded state intervention—"creeping socialism," they called it—as a betrayal of the liberal principle of individual freedom. They held to the traditional liberal view

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In memory of
Patrick Sutherland Fallis (1948–1981)
'le feu follet'

For interesting discussions pertaining to any attempt to ground moral rights on some system of social rules, see L.W. Sumner, *The Moral Foundation of Rights* (Oxford, Clarendon Press, 1987); and Joel Feinberg, *Freedom and Fulfillment* (Princeton, Princeton University Press, 1993), Chapters 8–10.

For further discussion of the structure of the liberal rule utilitarianism that I attribute to Mill, see J. Riley, *Mill's Radical Liberalism: An Essay in Retrieval* (London, Routledge, forthcoming), Chapters 5–6; and Riley, *Maximizing Security: A Utilitarian Theory of Liberal Rights* (forthcoming).

For influential statements of the view that liberal utilitarianism is problematic, see H.L.A. Hart, 'Natural Rights: Bentham and John Stuart Mill,' in his *Essays on Bentham* (Oxford, Oxford University Press, 1982), pp. 79–104; C.L. Ten, *Mill on Liberty* (Oxford, Clarendon Press, 1980); C.L. Ten, 'Mill's Defence of Liberty', in J. Gray and G.W. Smith, eds, *J.S. Mill: On Liberty in Focus* (London, Routledge, 1991), pp. 212–38; and John Gray, *Liberalisms: Essays in Political Philosophy* (London, Routledge, 1989), Chapter 10.

Hamburger's argument that Mill's self–other distinction is a rhetorical ploy may be found in Joseph Hamburger, 'Individuality and Moral Reform: The Rhetoric of Liberty and the Reality of Restraint in Mill's *On Liberty*', *The Political Science Reviewer* 24 (1995): 7–70.

Chapter 8

Liberty, individuality and custom

Doesn't Mill's idea of individuality presuppose a radically unsituated individual?

It is often said that liberalism in general, and Mill's doctrine of liberty in particular, posits an incredible personal character ideal, which is incompatible with every civil society's culture and moral traditions. Gray, for example, claims that 'by individuality Mill means a form of self-realizatio in w ic the powers of autonomous thought and choice that mark the human species are exercised [to fulfil] the needs peculiar to each person's nature' (1989, p. 224). Self-realization in this sense is achieved by means of

> experiments of living . . . embodied in plans of life . . . conceived and implemented by individuals who have detached themselves critically from the social conventions which surround them and who, once so detached, are able to discover the unique needs of their natures.
>
> (ibid.)

The growth of knowledge fuelled by those experiments of living is apparently central to Mill's account of human progress or development. 'For Mill', says Gray, 'progress is an inherent tendency of the human mind, with historical development being controlled ultimately by innovation in the realm of ideas. What is most noteworthy is that the growth of knowledge is theorized as an autonomous tendency of the mind' (ibid., p. 227), manifested in the conception and implementation of experiments of living by critically detached individuals.

Gray rightly claims that there are fatal objections to this way of thinking about individuality and progress. The conception of individuality is incredible because it requires the individual to be 'radically unsituated', that is, 'unencumbered' by any social conventions when engaging in discussion or conducting experiments of living. Self-development in that sense is simply not feasible, given that the individual cannot transcend altogether the social context in which he finds himself. Moreover, the approach misleads us into condemning as devoid of individuality all traditional forms of living: 'The man who accepts the way of life in which he was born . . . and who has no interest in trying out alternatives to it, cannot for Mill exhibit individuality, however stylish his personality may be' (ibid., pp. 224–5).

Similarly, the 'idea of an experiment of living is a rationalistic fiction' because it assumes that each individual has 'a quiddity, or unique nature, that is his to realize', independently of cultural circumstances (ibid., pp. 225–6). Custom is then falsely seen as hostile to self-realization when in fact 'personal individuality and human flourishing [depend] on a cultural tradition' (ibid., p. 226). By implication, tradition is not the *enemy* of liberty and progress. Instead, 'social conventions [are] a precondition not only of peace, but also of liberty', because they play an 'indispensable role . . . in enabling diverse individuals and ways of living to coexist without constant recourse to legal coercion. A society without strong conventions would unavoidably be chaotic, resembling . . . a Hobbesian state of nature' (ibid.). Thus, 'convention and tradition are to be regarded as conditions of progress and not (as Mill ignorantly supposes) obstacles to it' (ibid.). Indeed,

> if there is such a thing as an experiment of living, it is collective and not individual, it is conducted by social groups held together by common traditions and practices and it is tried, not over a single lifetime, but across the generations.
>
> (ibid.)

But Mill surely does not think of individuality and progress in the way attributed to him by Gray. By individuality, he apparently means the habitual love of liberty; in other words, the settled disposition to make choices according to one's own judgment and inclinations. It is a descriptive term, in that there can be an ideal liberal (or 'noble') kind of individuality as well as illiberal ('miserable') kinds, depending on the nature of the choices the relevant agent is firmly disposed to make. As we have seen, Mill recommends that the individual should develop a noble Periclean kind of character, and, to that end, insists on a right to complete liberty of purely self-regarding conduct. Outside the purely self-regarding sphere, however, individual liberty is not necessarily permissible, and is never granted as a matter of moral right. Rather, society has the right to employ coercion to prevent harm to others, and should employ it expediently, even though the individual thereby loses the means of self-improvement which 'gratifying his inclinations to the injury of others' would make possible (III.9, p. 266). A person with noble individuality understands this, and voluntarily conforms to the rules of other-regarding conduct which the majority (or its representatives) establishes as reasonable in the given context.

The Millian idea of individuality (noble or otherwise) does *not* presuppose a radically unsituated self. Since his judgments and inclinations are themselves situated in some institutional setting, any person's *liberty* – the choices he freely makes, without interference by others, in accord with his own judgment and inclinations – as well as his *individuality* – his disposition to choose thus – are both inseparable from his cultural beliefs and practices. But the fact of situatedness does not imply that personal character and desires are mechanically determined by existing social conventions. Otherwise, custom would inevitably establish an homogeneous society of distressingly similar individuals, who imitated each other's way of life in all particulars.

Given that we observe the contrary, we are entitled to infer that a person encumbered by popular norms and beliefs is nevertheless capable of deciding to choose differently than the majority of his fellows. No great ingenuity is required to see that the situated individual can do this, provided he can remember and/or imagine beliefs and practices other than those which currently happen to prevail among the majority. He need not be critically detached in the absurd sense that his self-image transcends his society entirely, including its traditions and conceivable futures. How could any reasonable person altogether ignore his society's accepted rules of correct inference, for example, let alone simply abandon its rules of language?

If memory and imagination are not arbitrarily banished from human nature, the idea of an experiment of living is straightforward, independently of all metaphysical talk about quiddities or unique personal natures. Such an experiment is in effect any uncommon choice or practice, that is, any way of living believed by most people to be peculiar or eccentric. By definition, such experiments must be carried out by the individual or by a voluntary group of persons comprising a minority of society.

Against quiddities

It is worth emphasis that quiddities – unique *noumena* whose properties are not contingent on social circumstances – are precisely the sort of merely intuitive entities which Mill seeks to eradicate from his lean *phenomenalist* epistemology (see Riley, 1988, pp. 133–63). So far as I am aware, he never makes the assertion often attributed to him that each of us has some such unique essence awaiting discovery. Rather, he asserts the contrary, in his *Political Economy*: 'Of all vulgar modes of escaping from the consideration of the effect of social and moral influences on the human mind, the most vulgar is that of attributing the diversities of conduct and character to *inherent* natural differences' (1871, p. 319, emphasis added). Indeed, the idea that plural and incommensurable quiddities inhere in different persons or groups seems to rest more easily within a value-pluralistic moral universe, of the sort posited by Gray and Berlin, than within liberal utilitarianism.

As opposed to being possessed of quiddities, Mill suggests that individuals are sufficiently similar by nature that they might ideally come to display unity in their judgments and opinions. Even if such rational unity were attained, however, their personal desires, dispositions and characters may continue to differ in important respects, provided their circumstances (including their endowed capacities) remain heterogeneous. In general, he emphasizes that 'the circumstances which surround different classes and individuals . . . shape their characters' (III.18, p. 274). Diverse characters are apparently caused by diverse environments, not by unique individual essences. Thus, he dismisses the romantic notion that a 'superior excellence' inheres in some individuals, classes or nations. When any such distinction exists, it 'exists as the effect, not the cause' of individuality (ibid.).[1]

His claim that individuals are unequal with respect to their endowed capacities (including their given powers of will) should not be conflated with the claim that each person has a unique essence awaiting discovery. All adults to whom the liberty doctrine applies apparently possess intellectual and moral capacities *to some degree*, although generally to unequal degrees. Individuals do not differ in kind on this score (see, e.g., Mill, 1833). All are fallible and subject to weakness of will.

An unequal distribution of choice-making capacities across individuals does not imply that different persons have distinct essences, or that they must have plural and incommensurable basic values. Despite their unequal powers of judgment, reasoning and willing, for example, all individuals may share a similar nature, insofar as each is motivated in decipherable ways by some basic notion of happiness.

Gray has recently reiterated that Mill wanted to combine two distinct empirical claims, namely, that what makes man happiest is the exercise of his capacities of autonomous thought and action, and that his exercise of those powers will lead each person to the discovery of his unique and peculiar quiddity: 'Mill's theory of individuality, then, combines the claim that man is his own maker with the claim that, for each man, a nature exists which awaits discovery' (1991, p. 207). The first claim may be empirical, although we must be careful

about what Mill is claiming. He does not claim that all persons now actually *do* take pleasure in making their own choices. Most are observed to imitate others blindly, he thinks. Nor does he claim that people *ought* to assign priority to autonomous choice-making if it conflicts with reasonable rule-abidingness and security in other-regarding matters. His claim is that people will be most happy if they develop a certain liberal character, in which autonomy or individuality has come to mean choosing as one pleases in self-regarding matters (for no other reason than it pleases one), and also choosing as required by reasonable general rules in other-regarding matters (because choosing thus is most pleasing to a person of highly developed character).

As for the second claim attributed to Mill by Gray, I have already suggested that Mill never makes it. Moreover, it is difficult to see how quiddities could ever be inferred from empirical observation. What empirical evidence could support such an hypothesis? If two persons had identical choice-making capacities and always occupied the same circumstances, then perhaps we could test it. But such stringent conditions are never met, even in the case of identical twins reared in the same family. Even Kant admits that knowledge of noumena is inaccessible to human beings, in which case we can never really know whether each of us is comprised of some unique substance that distinguishes us from everyone else. The question is irrelevant for practical purposes.

No reliance on ideal observers

Whether or not they are blessed with quiddities, fallible individuals arguably *need* rights to discuss ideas and experiment with distinctive personal environments freely, to improve their imperfect intellectual and emotional capacities. Prior to such discussion and experimentation, we may be expected to hold various more or less ignorant opinions of happiness, and to come into conflict accordingly.

Intellectual and moral development is not, for Mill, some autonomous tendency of the human mind (whether individual or collective). He does not rely on unsituated ideal observers to produce warranted opinions, personal lifestyle choices or reasonable

rules of other-regarding conduct in any social context. Rather, he says that:

> [T]he source of everything respectable in man either as an intellectual or as a moral being [is] that his errors are corrigible. He is capable of rectifying his mistakes by discussion and experience . . . Wrong opinions and practices gradually yield to fact and argument: but facts and arguments, to produce any effect on the mind, must be brought before it. Very few facts are able to tell their own story.
>
> (II.7, p. 231)

Complete liberty of discussion among situated and fallible people replaces the fictitious observer who is 'sufficiently capacious and impartial' to distil truth from conflicting opinions. Similarly, complete liberty of self-regarding conduct replaces the fiction of an ideal mechanism that automatically selects socially optimal rules and customs from conflicting practices.

The motor that drives this halting and imperfect process of improvement is the individual's disposition to choose in accord with his own judgment and wants. Of course, this individuality is situated within and constrained to some extent by a given society's existing customs and beliefs, including its rules of correct inference. But human fallibility implies that no actual society's rules of correct reasoning and judgment are perfect. Thus, there is inevitably room for the individual to discover novel and surprising causal regularities among phenomena (including mental phenomena). In that sense, the idea of 'truth' is open-ended, despite any particular society's attempts to fix its meaning in terms of a set of procedures. No rules and customs can entirely replace the individual's power to discover better alternatives to those very rules and customs. As Mill emphasizes, 'no routine or rule of thumb can possibly make provision' for the 'ever-varying circumstances' in which our mental capacities have occasion to be exercised (1832, p. 338). Individuality remains indispensable for bringing about generally expedient reforms in response to ever-varying circumstances. Thus, every civil society seeking progress should protect by right the individual's liberty to discuss and act upon his opinions without harm to other people.

Isn't the need for liberty inversely related to social progress?

Gray goes on to claim that Mill's argument from human fallibility is ultimately self-defeating:

> If human nature is progressively knowable, and moral knowledge cumulative, the sphere of liberty will wane as human knowledge waxes . . . That progressive enlightenment about the conditions and content of the good life may weaken toleration of forms of life which enlightenment has discredited, is an irony that haunts all those liberalisms which ground the worth of liberty in the fact of human fallibility.
>
> (1986, p. 245)

But is that claim valid?

Assume for the sake of argument that all members of society have progressed as far as human capacities can allow. Does it follow that liberty is no longer desirable? It may seem so because any person of noble character could serve as an infallible dictator, whose enlightened judgments and commands could be recorded and passed down to everybody else (including subsequent generations) as the only beliefs and actions which are tolerable in the best possible human society. Liberty to deviate would carry a chance of social regress. Thus, blind obedience by all to certain utilitarian laws and customs would seem to be called for.[2]

But appearances are deceiving. For the need to *maintain* one's advanced understanding and highly developed moral and aesthetic dispositions remains. Mill implies that even the most developed human faculties would atrophy if left idle (III.4, 6, pp. 263, 265). Even the best people may lose their *acquired* wisdom and noble dispositions through lack of mental exercise. Blind obedience gives the mind no exercise, and thus maintains nothing valuable. In short:

> There shall be as much room and as much necessity for genius when mankind shall have found out everything attainable by their faculties, as there is now; it will still remain to distinguish the man who knows from the man who takes upon trust.
>
> (1832, p. 334)

It follows that in an ideal liberal utilitarian society, individuality and its two requisites – liberty and social pluralism – would remain essential to prevent decline.

The permanent value of liberty

Liberty remains essential because humans ultimately have no other criterion of truth, including truth about their own natures (II.6–8, 26, 31–3, III.1, 3–4, pp. 231–2, 247, 250–2, 260–3). By implication, humans can never be absolutely certain that they have attained the best possible society. Infallibility is not really feasible for human beings. Any person's claim of infallibility is merely an attempt to deny liberty to others (II.11, p. 234). In the absence of liberty of discussion and of personal experimentation, no human can properly claim that his beliefs are warranted by the best available evidence. Thus, even in the best possible society, each person must retain a moral right to make whatever self-regarding choices he likes.

It is true that mere 'automatons in human form' could blindly adhere to the best social beliefs and practices, once established. But human beings are not 'pleasure-machines'. Automatons could never by themselves acquire the wisdom of which human nature is capable. Nor can humans automatically preserve their acquired knowledge by virtue of some innate personal excellence that persists independently of their own mental exercise. Even a person of ideal Periclean character, to retain it, needs to exercise, and thereby preserve, his acquired capacity to judge wisely the grounds of his opinions, as well as his acquired strength of will to choose the lifestyle he preferred on the basis of those judgments. Without such mental exercise, he will gradually lose his capacities to enjoy the 'higher' intellectual and moral activities and pleasures, which mark the noble character: 'it really is of importance, not only what men do, but also what manner of men they are that do it' (III.4, p. 263).

The permanent value of social pluralism

Social pluralism, as the other requisite of individuality, must also remain a feature of liberal utilitarian society. Critics sometimes suggest

that if any ideal utilitarian society were ever realized, then the participants in that ideal social way of life would necessarily be choosing to live every detail of their personal lives in the same way. But that implication simply does not follow. Mill is committed only to the much weaker claim that every participant would choose to conform to rules of justice that distribute and protect the same basic rights for all, including equal rights to liberty with respect to purely self-regarding concerns; that every member would also choose to conform to rules of charity and goodwill that enjoin each person to give help to others when he can reasonably afford to do so; and that, within these limits of justice and charity, every member would also choose to accept fair competitive processes, conducted without force or fraud, to allocate economic goods and services, broadly defined. Even if all are possessed of the same noble character, many personal choices, both self-regarding and other-regarding, may differ. Different personal circumstances may continue to generate different personal judgments and inclinations. Social pluralism need not vanish unless two additional assumptions are introduced arbitrarily, namely, that such highly developed individuals must unanimously want an entirely homogeneous society; and that, having agreed thus, these individuals are omnipotent, having the power to eradicate all natural and artificial differences among individuals. The second assumption may be safely ignored. Moreover, the first is clearly rejected by Mill. Thus, there is nothing incoherent about the idea of a socially optimal way of life that itself admits complete freedom for the individual and voluntary group to experiment with a plurality of self-regarding lifestyles.

Why doesn't the individual have a right to parade his bad manners and indecent behaviour in public?

If the individual has a right to complete liberty of self-regarding conduct, it may be asked, doesn't that imply a right to behave indecently and cause offence in public? Granted that he may be situated in a particular social context, doesn't he still have the right to defy the polite conventions of the majority, since these rules seem to have nothing to do with the prevention of harm to others? And, assuming he has such a right, isn't it reasonable to fear that these

social conventions would tend to erode under Millian liberalism? Indeed, by ushering in this social decline, wouldn't the liberty doctrine indirectly cause a form of severe harm to the public at large?

If three adults engage in consensual sex in a public place to the astonishment of onlookers, for example, or if one person publishes the intimate details of his love affair without the consent of his friend, why is the shock of the onlookers, or the offence taken by the friend, anything other than mere dislike or emotional distress? What is the *perceptible damage* suffered by any of these people? Given that none can be identified, shouldn't the great good of individuality be safeguarded, despite the fact that its pursuit in these ways causes shock and outrage to others?

Similar questions arise when an individual desecrates the flag in front of a group of army veterans, or rudely tells his wife in front of the neighbours to go fuck a donkey, or parades as a member of the Klu Klux Klan down the main street of a city where blacks are residents, or hands his dying Jewish mother a local newspaper ad in which he expresses his joy at her impending death and announces his plan to bury her ashes in an urn engraved with Hitler's image. All of these acts, and countless more like them, may cause intense dislike to other people. But why are they not self-regarding acts on the Millian notion of harm?

Many who consider themselves liberal have decided to jump off the Millian ship at this point. Perhaps the most influential strategy is to admit that these cases cannot be adequately covered by a harm-prevention principle (however 'harm' to others is conceived), and to add a supplementary principle, according to which society has legitimate authority to employ coercion to prevent the individual from causing offence or shock to others in public. Hart, for example, argues that an admittedly fine distinction can and should be drawn between 'shock or offence to feelings caused by some public display', and distress caused by 'the bare knowledge that others are acting in ways you think wrong' or by 'the belief that others are doing what you do not want them to do' (1963, pp. 46–7). The consequences of an act done in public are thereby distinguished from the consequences of the same act done in private. In particular, person A's mere dislike of B's action in public has a different quality, it appears, than A's mere

dislike of B's act in the privacy of, say, his own home. The first sort of dislike may justify coercion, whereas the second sort does not.

But Hart does not clarify why the source or the locale of a person's mere dislike should have this significance. Rather, he jumps quickly to the conclusion that utilitarianism can justify a right to not suffer distress in public, even if a right to not suffer distress from the same conduct in private must be denied for the value of individual liberty to receive any social recognition. As it stands, this seems to give society unlimited jurisdiction over all individual behaviour in public. Remarkably, Hart appears undisturbed by this alarming extension of the legitimate field of coercion by law or stigma. He says only that the individual who is prohibited from engaging in offensive conduct in public, is left 'at liberty to do the same thing in private, if he can' (ibid., p. 48). Why being left free to do the thing in private, 'if he can', provides a reason for prohibiting the thing in public merely because others dislike it, remains mysterious.

The various ways in which Hart's approach has been elaborated in the literature are worth further study (see, e.g., Feinberg, 1984–8, Vols 1–2). But it is more important for our purposes to consider whether the argument of the *Liberty* really requires such modification. Recall that Mill says 'it is unnecessary to dwell' on public violations of good manners, 'as they are only connected indirectly with our subject' (V.7, p. 296). These cases fall outside the ambit of the principle of self-regarding liberty, he seems to be saying, because harm really is suffered by the victims of others' bad manners or shocking behaviour in public. There is something about public performance that can transform what is otherwise a purely self-regarding act into an act that poses a risk of perceptible damage to others against their wishes. What requires clarification from a Millian perspective is how bad manners and indecent conduct in public can be seen to involve harm thus understood, 'directly, and in the first instance'.

In this regard, Mill clearly views as harmful to others the individual's failure to satisfy certain recognized obligations distributed and enforced by established social rules of justice and goodwill (including 'good manners'), which regulate interactions (including interactions in 'public') among the members of society to their mutual benefit. Disappointment of legitimate expectations emanating from these laws

and conventions is a type of perceptible injury suffered against one's wishes, even if the expectations are not protected by recognized rights. According to the liberty doctrine, however, such rules should not create obligations to refrain from causing other people to feel mere dislike or distress. Rather, obligations must be designed solely to prohibit acts which cause perceptible injury to others against their wishes.

Consistently with this, he complains that existing customs of politeness do inhibit the individual from expressing his mere dislike of others' behaviour. One person ought to be far more free than is customary to tell others that he thinks them foolish or despicable in their self-regarding affairs, for example, and to warn them that their company will no longer be welcome unless they smarten up:

> It would be well, indeed, if this good office were much more freely rendered than the common notions of politeness at present permit, and if one person could honestly point out to another that he thinks him in fault, without being considered unmannerly or presuming.
>
> (IV.5, p. 278)

In any case, the key point is that certain reasonable rules of polite behaviour and courtesy toward others are justified to prevent harmful other-regarding conduct. The argument of the *Liberty* goes through, therefore, provided we can identify the relevant forms of harm.

Prevention of disease

Some reasonable rules of polite behaviour can perhaps be seen as social precautions against the risk of disease. Public displays of urination, defecation, vomiting and even sneezing may be regulated to minimize the risk of perceptible damage to the health of others, as might consumption of the various waste materials. 'Public display' seems here to mean 'acting so as to cause a health risk', as determined by social authority (including the sewerage and health authorities).

Worth pondering is that the line between permissible and impermissible behaviour does not seem to correspond to any conventional distinction between private and public. It may be permissible to defecate in remote woods or in a public lavatory but not in a city street,

for example, or in the toilet of a private home but not on the floor. Similarly, a ban against cannibalism or other mistreatment of corpses can be justified for health reasons, however 'private' the acts in question are conventionally thought to be.

Time, place and manner restrictions

Other reasonable rules of decent behaviour toward others seem to be time, place and manner restrictions to prevent nuisances, as argued by Feinberg and Ten. Sexual intercourse between consenting adults may be prohibited in busy public parks or office buildings, for example, because it can be freely practised in less crowded settings, such as homes, hotels and country fields, where it does not inconvenience others by interfering with their activities. The majority has legitimate authority to allocate scarce public space between *competing* uses (each of which necessarily interferes with the others), and ought to enforce effectively such restrictions as it thinks are fair. Given that most think sexual intercourse is not a high priority use of the public space, people who ignore such a restriction *do* pose a threat of perceptible damage to others against their wishes. Crowds of onlookers or imitators may block the free flow of traffic, for example, costing others time and money as they are forced to wait.

It is not that the alternative uses of the public space would cause no such inconvenience to others (including those who want to engage in public sex). *Any* permitted use will render some competing uses impermissible, and thus cause perceptible damage to people who wish to pursue those competing uses freely. But the uses permitted are reasonably judged to be less generally inconvenient than public shows of sexual intercourse.

Many other activities which are liable to draw crowds, including parades, demonstrations, marches and other forms of public expression, are properly subject to suitable time, place and manner restrictions. Also, the liberty principle does not imply that society has to adopt a laissez-faire policy toward those who make it their business to solicit demonstrations or protests which are designed to insult other individuals or groups, or those who sell 'hate literature' and the like for a profit. Analogous things may be said about the producers

and sellers of 'pornographic literature', designed to degrade women or other groups. As Mill suggests repeatedly, generally expedient regulation of the producers and sellers of these forms of public expression is compatible with perfect liberty of the consumer to view them, in times, places or manners deliberately established by society to shield other adults from undue inconvenience and to protect children, and others unable to manage their own affairs, from bad influences.

'Special' restrictions, analogous to the special prohibitions against consumption of alcohol which he recommends for individuals with a history of violent drunken behaviour toward others (V.6, p. 295), may also legitimately be established for individuals or groups (including Nazis and the Klan) with a history of violence toward others of a particular religion, ethnic background, gender or race. Nazis and the Klan have wantonly killed and tortured minorities in the past. Anyone who affiliates himself with such odious organizations, by wearing their uniforms and brandishing their symbols, reveals (intentionally or otherwise) a sympathy for that history. As such, special bans against Nazi marches in communities with Jewish residents may be entirely appropriate, for example, to remove a credible threat that the marchers and their sympathisers will inflict physical injury, property damage and the like, on the residents.[3]

Indeed, special restrictions against the public display and dissemination for profit of hate literature, pornography and the like by such groups might also be justified on similar grounds.

Protection of reputation

Still other rules of polite behaviour can be viewed as precautions against the risk of perceptible damage to the *reputations* of others. Someone's reputation may be damaged by another's misrepresentation to third parties of his personal character or his intimate affairs. By spreading malicious gossip about his personal affairs, against his wishes, for example, the other can harm his standing in the community. Idle rumours may be worked to provoke broad, though unwarranted, resentment against him, and all that that implies. To prevent this sort of harm to reputation, customs against malicious gossiping and the like are legitimate rules of other-regarding conduct.

Mill himself provides an illustration, in which someone publishes personal correspondence not intended by the author for publication. In a letter to Elizabeth Cleghorn Gaskell, probably written during July 1859, he says that the discretion of an editor properly does not extend to such publication:

> The case being simply that in the exercise of the discretion of an Editor you neglected the usual and indispensable duties which custom (founded on reason) has imposed of omiting [sic] all that might be offensive to the feelings of individuals . . . Miss [Charlotte] Bronte [*sic*] was entitled to express any foolish expression that might occur to her [about Mill's wife Harriet] in a private letter – It is the Editor who publishes what may give just offence who is alone to blame.
>
> (1859b, pp. 629–30)

Gaskell herself, in her comments on Mill's letter, refers to the customary obligation 'of omitting what would be offensive to the feelings and perhaps injurious to the moral reputation of individuals' (Haldane, 1930, pp. 269–71). Legitimate offence is linked here to perceptible damage to moral reputation, where the latter is inseparable from existing social conventions of polite behaviour towards others.

Harm to another's reputation can also occur in other ways, perhaps more subtle. Thus, when a husband rudely tells his wife in front of the neighbours to go fuck a donkey, he forces her to endure a public misrepresentation of her character to others, which tends to damage her reputation in the community. By showing her so little courtesy and respect in comparison to what a wife may legitimately expect under existing customs, he raises doubts in the minds of others about her character (not to mention his own) if she continues to live openly with him, unless he makes a similarly public apology. Repeated instances of this sort of thing may force her to consider a separation, in order to preserve her reputation and self-respect. Otherwise, she may be ostracized along with him against her wishes, by neighbours who wish to preserve common standards of public decency.

Rules to prevent loss of reputation may extend far inside what is conventionally considered private space. When a son threatens to bury his Jewish mother's ashes in an urn engraved with Hitler's image,

for example, it does not matter whether he advertises the plan in the local newspaper or whispers it confidentially in her ear. In either case, he threatens perceptible damage to her reputation against her wishes. Even if it is unwitnessed by anyone else, his whispered threat may properly be prohibited by rules of polite behaviour. Perhaps the rules cannot be expediently enforced by law or opinion in cases of whispered as opposed to open threats, so that enforcement is left to the relevant person's conscience, admittedly non-operative in the case at hand. But that does not alter the fact a Millian liberal can legitimately assess the son's action as immoral, by arguing that his mother (and anyone else in her circumstances) ought to have a right to be protected from this (risk of) harm to her reputation. But then a liberal utilitarian code can legally prohibit the son's burial plan, unless he can provide witnessed documentation attesting to her consent. Such precautions arguably help to promote general security of legitimate expectations.

The danger of social decline

These cases should also remind us that public discussion or expression is not truly self-regarding conduct, as Mill admits, although he thinks it should 'almost' always be treated as such because the risk of harm it poses is 'almost' always outweighed by the likely benefits of self-development associated with it (I.12, pp. 22–26). Even two people engaging in a fair and voluntary public debate over some issue do pose a risk of directly misleading others against their wishes about certain facts, warranted conclusions and so on.

At the same time, it is doubtless true that there is a risk of social decline (as opposed to direct harm to other individuals) in a society that virtually never interferes with the content (as opposed to the time, place and manner) of public expression. Reconsider the example of the rude husband telling his wife to fuck off in front of the neighbours. If she relishes this form of public 'expression' and returns the same in kind to him, they pose no risk of harm to each other, since their ugly 'conversation' is mutually consensual. Given that children are not present, any risk of direct harm to others (to others' reputations, for example, or to their understanding of issues related to the 'discussion', including their ideas about the nature of marriage) seems

minimal, so that censorship cannot, under liberal utilitarianism, be generally expedient. Such a rude and tasteless couple might suffer 'natural penalties', as neighbours freely choose to avoid the company of both. Yet, if sufficient numbers engage in this crude sort of public behaviour, such that existing rules and expectations begin to erode, general civility and goodwill are in decline. Society is regressing toward a state of barbarism, in other words, where individuals are as impolite and intimidating to each other as they please.

The question arises here yet again whether Mill may have been overly optimistic in his judgment that it is rarely generally expedient to regulate the content (if not manner) of public expression.[4] Some might claim that his judgment ought to be reconsidered in the context of societies like ours, involving public media, such as television and the World Wide Web, which he could not have anticipated. But I suspect that he would stick to his guns, and reassert that the danger of social decline is unavoidable, even in a society that duly respects individual liberty. Certainly, on his view, social decline cannot be prevented by *suppressing* self-regarding liberty or cognate liberties such as freedom of expression.

No need for modification

Good manners and like rules of decent other-regarding conduct are justified under Mill's doctrine, to prevent various forms of perceptible injury to others against their wishes. The majority has every right to employ such forms of coercion as are considered generally expedient to prevent the relevant risks of disease, undue waste of time or money, loss of reputation and so on, which would otherwise be suffered unwillingly by others. Society may sometimes decide to leave enforcement of the rules to the internal sanctions of conscience, or to rely on stigma rather than legal penalties. But it has legitimate jurisdiction, and the liberty principle does not apply.

At the same time, it is rarely generally expedient to regulate by law or stigma the content and perhaps even manner (as opposed to time and place) of public discussion and expression. Even violent and pornographic materials should rarely be suppressed, for example, since, with suitable caveats relating to those with a history of

violence toward other people, consumers of these materials can and do use them without harming others. Virtually perfect freedom to engage in a public debate over some dirty book or to watch a live sex show at a public theatre is, however, quite compatible with expedient time, place and manner restrictions, as well as expedient regulation of the for-profit producers and sellers of the relevant goods and services.

In short, there is no need to modify Millian liberalism in the direction proposed by Hart and others (let alone in the directions proposed by conservatives). Indeed, from Mill's perspective, Hart's approach essentially begs the question. For that approach does not bother to identify the forms of perceptible damage which are suffered unwillingly by the victims of offensive or indecent behaviour in public. The prevention of harm to others in that sense is a *necessary* Millian condition of legitimate social coercion. It is that condition, in other words, which sets a *limit* to social regulation of individual acts, in public as much as in private.

Suggestions for further reading

For arguments that liberalism fails to appreciate adequately the normative significance of the fact that the individual is situated in a particular community, see Michael Sandel, ed., *Liberalism and Its Critics*, 2nd edn (Cambridge, Cambridge University Press, 1995).

For Gray's attack on what he takes to be Mill's view of individuality, see John Gray, *Liberalisms: Essays in Political Philosophy* (London, Routledge, 1989), Chapter 10; and Gray, 'Mill's Conception of Happiness and the Theory of Individuality', in J. Gray and G.W. Smith, eds, *J.S. Mill: On Liberty in Focus* (London, Routledge, 1991), pp. 190–211. Gray's claim that any defence of liberty from human fallibility is self-defeating may also be found therein.

For a liberal view that rational self-determination or autonomy is compatible with the affirmation of reasonable moral rules and obligations, see Gerald Dworkin, *The Theory and Practice of Autonomy* (Cambridge, Cambridge University Press, 1988).

Hart's suggestion that Millian liberalism requires a separate principle recognizing society's legitimate authority to employ coercion to

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3

Liberty

3.1 *Liberty and popular sovereignty*

Of the classic texts of liberalism Mill's essay on *Liberty* stands in the first rank. It expounds a principle that has become, for many people, almost definitive of liberalism itself – I will call it the *Liberty Principle*. This principle says that individual freedom of conduct may be constrained by society only on specific grounds. They resist neat summary, as we shall see, but in broad terms they emerge as the following: the conduct in question is liable to harm others, or it involves a failure to act that can justly be considered a violation of duty to others, or it is a violation of the good manners required in a public place. All other grounds for interference are illegitimate.

Much of Mill's essay is an elucidation of what this means; the wide-ranging and penetrating way in which he does this is one reason for the essay's classic status. Another reason is Mill's account of the philosophical basis of the Liberty Principle. He justifies it in a highly distinctive way, arguing for it from the developmental view of human good considered in the previous chapter. The essay also contains a famous discussion of liberty of thought and discussion – this is done in a free-standing way

which raises the interesting question of how liberty of discussion fits with the Liberty Principle. Does it simply fall under the Principle as a special case, covering one kind of action? Or is there something distinctive to be said about the activity of discussion, as Mill's separate treatment suggests?

On Liberty opens with a question that always preoccupied Mill, the question of liberty and democracy, of how we are to understand the doctrine of the sovereignty of the people. Mill's answer, his liberal critique of popular sovereignty, underlies everything else.

The struggle for liberty had historically been a struggle between subjects and Government. Liberty meant 'protection against the tyranny of political rulers'. Hence, to some radicals, limitations on the power of a *democratic* government seemed pointless. 'The nation did not need to be defended against its own will. There was no fear of its tyrannizing over itself' (XVIII: 217, 8; *L* 1: 2, 3). Mill thinks this a dangerous fallacy. The collective will is one thing, the will of an individual is another. If no limit to the authority of the former over the latter is recognised, there can be no principled check on popular authoritarianism.

This immediately pitches us into a fundamental conflict in modern politics: between liberal and collectivist theories of democracy. The liberal accepts that in the modern world, political authority must derive from the people, but holds that that popular sovereignty has principled limits. The collectivist doctrine is that popular sovereignty has no such limits – 'all power to the people'. The conflict between these two doctrines first came into clear view in the French Revolution. The Liberty Principle expresses the doctrine of its liberal wing, and is in fact stated in the French Assembly's Declaration of Rights of 1789:

> Political Liberty consists in the power of doing whatever does not injure another. Thus the exercise of the natural rights of every man has no other limits than those which

> are necessary to secure to every other member of society enjoyment of the same rights.

Mill did not present his doctrine as new, and anticipated that to some people 'it may have the air of a truism' (XVIII: 226; *L* 1: 14). But like other liberals of the time, especially liberals in France who had the excesses of Jacobinism in the French Revolution, and of Bonapartism after it, fresh in their minds, he wanted to reaffirm the doctrine and have it specifically acknowledged in democratic states.

For democracy threatens a new form of tyranny: a 'tyranny of the majority' (the phrase is de Tocqueville's). Such tyranny might express itself in majoritarian political despotism. But it might also be more insidiously practised as a social tyranny, which leaving 'fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself' could be 'more formidable than many kinds of political oppression' (XVIII: 220; *L* 1: 5). Given Mill's definition of moral obligation (2.5), this means that limits must be recognised on morality as well as law. The fundamental question is how to define those limits. Many 'progressive thinkers' tend to shrug off the question; they are more concerned with deciding what society *should* like or dislike, than with 'questioning whether its likings or dislikings should be a law to individuals' (XVIII: 222; *L* 1: 7). As far as Mill is concerned, they make a profound mistake.

3.2 *The Liberty Principle*

Mill fires off with a powerful statement:

> The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and

> control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that 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 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. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.
>
> (XVIII: 223–4; *L* 1: 9)

He immediately limits the domain of the principle – it does not apply to children or to 'backward states of society'.

> Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement, and the means justified by actually effecting that end. Liberty, as a principle, has no application to any state of things

> anterior to the time when mankind have become capable of being improved by free and equal discussion.
>
> (XVIII: 224; *L* 1: 10)

This remark is not a piece of unthinking prejudice. It reflects Mill's historical conception of progress towards freedom. He thinks of it as a process of mental and moral development, which takes place within individuals but also at the level of social norms. Liberty can prevail in a society only when 'barbarian' self-assertion and its oppressive and violent social structures have been overcome. Prior to that, the best a nation can hope for is the despotic good offices of 'an Akhbar or a Charlemagne'. Historicism in this sense was a deeply considered part of Mill's thinking; we shall come back to it in the next chapter.

The statement of the Liberty Principle itself is so ringing that it is tempting to treat it as though all elucidation and development in the rest of the essay was redundant. That would be wrong. Mill produces no final and canonical statement of his principle. He relies on ordinary words in their ordinary meaning, adding further explanations or qualifications as becomes necessary, and closing the essay with examples of how to apply the principle in practice. It all still leaves much room for interpretation, as is always the case with a basic political idea. We can pick out three themes.

First, the most prominent and celebrated theme is rejection of 'paternalist' reasons for compulsion, that is, reasons directed at the individual's own good. For example, banning drug use on the grounds that it is harmful to the user is forbidden by the Liberty Principle. Furthermore, Mill intends the Principle to apply to all joint activities between freely consenting adults: so it also strikes down any interference based on the claim that the participating individuals who consent are harming each other. It does not of course strike down intervention based on an action's harmful

effects on third parties who are *not* freely participating – but nor does it follow that all such interventions are justified. Their justification will depend on the balance of advantages. And Mill is well aware that something that is in fact disapproved of for other reasons may be persecuted under the claim that it is harmful to others. The effect of the Liberty Principle is to place the onus of proof on those who make that claim. Take suicide (not one of Mill's own examples). Plainly, it may be wrong to commit suicide if others will suffer as a result. But if we accept the Liberty Principle that does not justify a legal or moral prohibition of suicide itself, irrespective of such effects. Nor, by the consenting adults principle, does it justify prohibition of assisted suicide. If the real objection is not the effect on others, but rather that our lives do not belong to us to dispose of but to God, then we are back to the fundamental issue of ultimate sovereignty over one's own life. Mill gives it to the individual, some communitarians give it to society, some religious believers to God.

The Liberty Principle also rejects interventions on grounds of offence to other people's feelings. A prohibition on the eating of pork in a Muslim society, or on forms of worship other than Catholic in a Roman Catholic society (two of Mill's many examples, XVIII: 283; *L* 4:12ff), if put forward on grounds of their offensiveness to the majority, would infringe the Liberty Principle. But – and here is the second theme we should notice – Mill accepts that it can be right to prohibit public behaviour merely on grounds of its intrusiveness, rather than its harmfulness. He thinks that acts which

> are a violation of good manners . . . coming thus within the category of offences against others, may rightly be prohibited. Of this kind are offences against decency; on which it is unnecessary to dwell, the rather as they are only connected indirectly with our subject, the objection to

> publicity being equally strong in the case of many actions not in themselves condemnable, nor supposed to be so.
>
> (XVIII: 295–6; *L* 5: 7)

This prim remark arrives rather clumsily, as one of a series of qualifications in the final chapter that are intended to clarify various issues about the Principle's application. It has considerably more importance than that suggests. Moreover, Mill's choice of the phrase 'offences against others' has caused needless confusion. The point about them is not that they harm others (in the way that smoking has secondary effects on others' health, for example), or even, exactly, that they are offensive. It is simply that they are *intrusions* on other individuals in a public or shared space, and thus a 'violation of good manners', since good manners in public places are in part about not intruding in an unwelcome manner on others' attention.

What this then calls for is a more general account of the notion of intrusiveness, imposition, or nuisance. It will have a lot to do with local expectations, but those expectations themselves have to be justifiable. If a railway carriage is designated as a quiet place, we are not violating the liberty right of an individual who insists on having loud mobile phone conversations when we eject him from it. That is so, even though he neither *harms* nor necessarily *offends* anyone by his conversation. But the legitimacy of stopping him does not arise simply from the existence of prior agreement or warning. Quiet carriages do not infringe the rights of noisy people, whereas 'Whites only' carriages do infringe the rights of non-white people. It is not enough to say that non-whites have been warned. Noise can be properly counted a nuisance or intrusion, whereas the presence of a non-white person in a carriage cannot be, however offended whites may feel. Intrusion, in other words, is a normative concept.

Mill spends no time on these important issues. Still, the principles whereby he distinguishes between *illegitimate* prohibition of

private or public behaviour simply on the grounds that it offends people, and *legitimate* prohibition of nuisance behaviour in a public place, are intuitive and not that controversial. There would, for example, be a fairly wide consensus among broadly liberal-minded people that a play or a novel that is offensive to the feelings of some religious groups cannot be banned solely on that ground, and that the state has an obligation to prevent or punish attacks on the author. Those who do not wish to see the play or read the novel do not have to do so. It is not an intrusion or nuisance in a common space.

In contrast, when Mill sides with liberty against paternalist intervention he takes a line in favour of liberty that is stronger than much current opinion. A couple of examples will help to make that clear. The requirement that motor cyclists wear helmets pretty clearly violates the Liberty Principle. It won't do to reply that those injuries to a motor cyclist that arise from his not wearing a helmet impose on collectively provided health care, and that this 'harms' us all by raising the cost of that provision. In the first place that dangerously stretches the notion of 'harm'. We made a democratic decision to provide collective cover: the costs we incur as a result are down to us. Second, the legislation does not exempt people who are prepared to eliminate extra costs to others by taking out private insurance, or simply by waiving their right to be treated in case of accident. A common argument for compulsion runs as follows: if a person without a helmet does suffer a resulting injury we will have an obligation to provide the care, *even if* he has waived his right to it. That being so, we can insist that he takes precautions. This may be a good argument, but it departs from Mill's Liberty Principle. He allows for no such line of thought.

Next, take drug use. Here a case for legal prohibition or control can be made on grounds of likely harm to others. But often the case is made on the simple grounds that taking drugs is bad for

the drug-taker. Sometimes, more interestingly, it is made on the basis that drug-addiction is a form of self-enslavement which itself reduces personal freedom. The latter argument should have force for a liberal; it is similar to that of 'new liberals' in Britain at the end of the nineteenth century. They wanted to introduce temperance laws controlling the consumption of alcohol precisely, as they argued, to protect 'positive freedom'. They were quite consciously diverging from Mill. His position in *On Liberty* is that drunkenness as such is not 'a fit subject for legislative interference' (XVIII: 295: *L* 5: 6) – though he thinks that a person found guilty of drink-induced violence can subsequently be fined for getting drunk again, and that crimes of violence induced by drink may be punished more severely. A similar approach to drugs would legalise drug use, license drug sales, but introduce relatively more severe penalties for drug-induced offences. And a public health campaign against drug-taking would not violate the Liberty Principle, given Mill's view, which we'll shortly discuss, that we have an obligation to educate each other about what is good.

The third, and very important, aspect of the Liberty Principle is its anti-rigorist side. We saw how firmly Mill distinguishes between actions that can be regarded as moral obligations, and actions that are praiseworthy but not obligatory (2.1). That distinction is vital for the Liberty Principle.

The Liberty Principle requires Mill to distinguish between actions that concern only the individual and actions that concern others. Some critics object that no such distinction can be made. This objection, however, is too brusque to be convincing. Obviously the distinction is discussable at the edges, but many of the most important distinctions are discussable at the edges. We make this one all the time, for example, when we distinguish between what is your business and what isn't. Clearly, though, the distinction must in turn rely on a common-sense distinction

between harming others and omitting to benefit them. If harming or causing evil to others and refraining from benefiting them were morally equivalent, the Liberty Principle would lose all force. A failure to benefit others could always be construed as a 'harm' to others, and hence the state, or coercive public opinion, could not be stopped by the Liberty Principle from compelling people to do anything that is beneficial to others and from penalising them if they did not. There would be no such thing as a domain of actions that concern only the individual himself. That is just the sort of liberticide that Mill feared from Comte.

So the Liberty Principle firmly rests on this basic distinction between harming and omitting to benefit. At the same time, however, we certainly think that there are things that people have a positive obligation to do for the benefit of other individuals, or in general for the public good, and we don't want the Liberty Principle to strike down such obligations just because, when someone fails to do these things, he isn't actually harming others in any ordinary sense of harm. Mill recognises this, and puts down some general principles – rather more carefully than in the case of public nuisance but still without developing what a present-day political theorist might call a *theory* of the obligations of citizenship. So, for example, he says that everyone may be required to bear their fair share 'of the labours and sacrifices incurred for defending the society or its members from injury or molestation' (XVIII: 276; *L* 4: 3).

Such obligations may be required by law, and would be recognised by libertarians who endorse very minimalist notions of the role of the state and law. But Mill goes further. In the first place, he is quite willing to envisage legally enforceable taxation for purely redistributive purposes, in a way that the libertarian wing of liberalism disallows. This issue is not central to *On Liberty*, but is clear in his writings on distributive justice, which we will come to in the next chapter.

Another important point is the following. It would be, Mill says, 'a great misunderstanding' of his doctrine

> to suppose that it is one of selfish indifference, which pretends that human beings have no business with each other's conduct in life, and that they should not concern themselves about the well-doing or well-being of one another, unless their own interest is involved . . . Human beings owe to each other help to distinguish the better from the worse, and encouragement to choose the former rather than the latter.

He means the better or worse for oneself. There are 'self-regarding virtues', qualities required for full self-development, as well as 'social' ones, and 'It is equally the business of education to cultivate both' (XVIII: 276–7; *L* 4: 4).

So we have a moral obligation to help in educating each other how best to live. Mill takes that duty very seriously, to the point where some have seen his eagerness as incipiently authoritarian. That is a mistake, for while Mill's idea of how far we should lecture each other about self-regarding virtues and vices may be alarmingly robust, he has a relevant distinction in place. Morality is concerned with that which an individual may be 'compelled', and not merely 'persuaded and exhorted', to do (2.5). (This distinction, certainly, is another one that is importantly discussable at the edges, but again that does not mean it can do no work.) The apparently paradoxical, but actually consistent, outcome is that we have no moral obligation to cultivate the self-regarding virtues in ourselves, but do have a moral obligation to help each other to cultivate them. Society may censure us if we fail in that duty; it may also, compatibly with the Liberty Principle, raise taxes to ensure that an education in the self-regarding virtues is made available by the state. Whether it should do so is a question

of efficient policy, not a question touching on liberty. So Mill is not an ethical neutralist about the state (5.4). But what the Liberty Principle certainly does rule out is any intervention which *prevents* a group of citizens from justly advancing their own ethical and cultural ideals – however harmful to themselves these may actually be.

Finally, we should sample the way in which Mill seeks to explicate his Liberty Principle over a wide range of applications. In its absence, he thinks, 'liberty is often granted where it should be withheld, as well as withheld where it should be granted' (XVIII: 301; *L* 5: 12):

> When we compare the strange respect of mankind for liberty, with their strange want of respect for it, we might imagine that a man had an indispensable right to do harm to others, and no right at all to please himself without giving pain to anyone.
>
> (XVIII: 304–5; *L* 5: 15)

One of his case studies is family relations. As we would expect from Mill's lifelong battle for the rights of women, he has in mind the 'almost despotic power of husbands over wives' (XVIII: 301; *L* 5: 12). The remedy is exactly equal rights for both. Less comfortably for current opinion, however, he thinks that having and rearing children incurs important obligations whose enforcement should not checked by 'misplaced notions of liberty' (XVIII: 304; *L* 5: 15). Prohibiting marriage to those who cannot show they have the means to support children would not, he says, exceed the legitimate powers of the state. Nowadays in Western societies marriage and procreation have come apart, so that would be a rather bizarre policy. But Mill might very well have favoured the more recent suggestion that a state licence should be required for those wishing to have children.

Education continues the theme. The whole discussion is an important illustration of Mill's attitudes. Society has a duty to enforce universal education, but it is not the state that should provide it. 'That the whole or any large part of the education of the people should be in state hands, I go as far as anyone in deprecating' (XVIII: 302; *L* 5: 13). What the state should provide is financial support for children's education, in part or where necessary in whole – and 'public examinations, extending to all children, and beginning at an early age' (XVIII: 303; *L* 5: 14). If children are unable to read by a fixed age, parents should be fined unless they have some excuse. Later examinations could range over a variety of subjects but should test understanding and factual knowledge, not doctrinal orthodoxy. It is the danger of excessive state power in forming minds and thereby exerting mental despotism that dominates this part of Mill's discussion: 'A general State education is a mere contrivance for moulding people to be exactly like one another' (XVIII: 302; *L* 5: 13). State-run schools should exist, if at all, only as competing experiments among others and to set standards of excellence for the private sector.

In general, Mill's position is that intervention, even when not inconsistent with the Liberty Principle, should be avoided where possible: because things are mostly better done by individuals, because when they are done by individuals that is itself an education in self-governance, and because adding to state power is usually an evil. However, that still leaves him with a range of cases where he thinks, against free marketeers of the time, that legislative intervention can be appropriate. An example is legislation to restrict the working week. Here the point is that such agreed restriction may be in everyone's interests but will be unstable if voluntary. Needless to say, however, legislation that requires respect for the Sabbath, or limits what leisure activities can be done on that day, is something Mill opposes.

3.3 *Spontaneity, conflict, progress*

In his *Autobiography*, Mill described *On Liberty* as:

> a kind of philosophic textbook of a single truth, which the changes progressively taking place in modern society bring out into ever stronger relief: the importance, to man and society, of a large variety in types of character, and of giving full freedom to human nature to expand itself in innumerable and conflicting directions.
>
> (1: 259)

Given the range of applications we have just been surveying, it turns out that exposition of a single truth can be complicated and unexpected! But the third chapter of *On Liberty*, 'Of individuality, as one of the elements of well-being', does indeed focus on the single philosophic truth.

Mill, we saw, insists that the case for the Liberty Principle derives from an account of human well-being (2.3). But our understanding of well-being must take full account of human beings' developmental or 'progressive' nature. The argument is two-fold. First, there is the Millian principle: that the fullest development of potential opens the way to the highest forms of well-being. Then there is the liberal ideal of what constitutes fullest personal development. Its distinctive feature is its stress on wholeness – laying as much stress on the education of feeling as on the education of reason and will (2.3).

Whereas thinking and willing, as they develop, tend to converge on universal principles, feelings, and thus personal ends, preferences and ideals, diverge. Since the emotional potentialities of different human beings differ, cultivation proliferates individualities and forms of experience. Education of the feelings is an element in the fullest self-development and produces diversity; so,

by the Millian principle, diversity is an element of the highest well-being:

> different persons . . . require different conditions for their spiritual development; and can no more exist healthily in the same moral, than all the variety of plants can in the same physical, atmosphere and climate. The same things which are helps to one person towards the cultivation of his higher nature, are hindrances to another. The same mode of life is a healthy excitement to one, keeping all his faculties of action and enjoyment in their best order, while to another it is a distracting burthen, which suspends or crushes all internal life. Such are the differences among human beings in their sources of pleasure, their susceptibilities of pain, and the operation on them of different physical and moral agencies, that unless there is a corresponding diversity in their modes of life, they neither obtain their fair share of happiness, nor grow up to the mental, moral, and aesthetic stature of which their nature is capable.
>
> (XVIII: 270; *L* 3: 14)

In face of this diversity of self-realising paths, people must judge their best path for themselves. That does not mean that they should judge in isolation. One would not expect Mill, given his philosophical view of free inquiry, to dismiss the lessons of custom, discussion, and the experience of others. In particular, a society with a wide variety of characters and 'experiments of living' thereby has an empirical test of the worth for well-being of many different modes of life – a rich database of lessons.

Mill is splendidly individualistic and elitist about culture. All creativity comes from individuals, and from a few individuals only. Neither custom nor any kind of bureaucratic cultural institution

can substitute for the gifted few: 'But these few are the salt of the earth; without them human life would become a stagnant pool.' Genius, however, 'can only breathe freely in an *atmosphere* of freedom' (XVIII: 267; *L* 3: 11). The vital question for modern democracies is whether they can preserve the highest forms of creativity:

> No government by a democracy or a numerous aristocracy, either in its political acts or in the opinions, qualities, and tone of mind which it fosters, ever did or could rise above mediocrity, except in so far as the sovereign many have let themselves be guided (which in their best times they always have done) by the counsels and influence of a more highly gifted and instructed One or Few. The initiation of all wise and noble things must come from individuals; generally at first from some one individual. The honour and glory of the average man is . . . that he can respond internally to wise and noble things, and be led to them with his eyes open.
>
> (XVIII: 269; *L* 3: 13)

It is not Mill's point that the gifted 'One or Few' should have power to force their initiatives on others. The point is precisely the contrary one – in safeguarding the freedom of each individual to draw up his own plan of life, society also safeguards the gifted few and their experiments of living; it gives them 'freedom to point out the way', but not the 'power of compelling others into it' (XVIII: 269; *L* 3: 13).

It is good, too, that they should point out a variety of ways. Progress is not achieved by a united avant-garde phalanx of the creative, marching down a single road. Mill strongly favoured the conflict theory of progress (as one might call it), a theory that French liberal historians had developed, as an explanation of

European progressiveness in comparison with the stagnation of other ancient civilisations:

> What has made the European family of nations an improving, instead of a stationary portion of mankind? Not any superior excellence in them, which, when it exists, exists as the effect, not as the cause; but their remarkable diversity of character and culture . . . Europe is, in my judgement, wholly indebted to this plurality of paths for its progressive and many-sided development.
>
> (XVIII: 274; *L* 3: 18)

Mill's *liberal elitism* is the diametric opposite of authoritarian populism. He combines it with a civic and political egalitarianism which we shall examine in the next chapter. Liberal elitism recognises the objectivity and hierarchy of values, the vital distances between great, good and bad, the insight and creativity of the few. It wants intellectual and moral authority to be widely recognised but gives it no coercive social or political power. Mill feared the authoritarian and populist tendencies of democracy. But he believed – with level-headed calmness, or with complacency, depending on one's point of view – that if his principles of liberty were rigorously upheld, there would be enough openness and freedom for intellectual and moral insight to establish its natural authority. The Liberty Principle, together with liberty of discussion, would safeguard the conditions for spiritual and moral progress, liberating originality and genius and encouraging plenty of healthy conflict, disagreement, and dissent.

Here, then, are some Millian propositions:

1 The greatest fullness of life comes through developing one's nature – in all aspects of feeling, reason and will.
2 Aesthetic, intellectual and moral self-development is open to all.

3 Open and universal culture requires unchecked diversity and dissent.
4 It requires contributions of the highest order of greatness. These can only be made by a creative few, and are most favoured in an atmosphere of freedom.
5 Democracy without an entrenched Liberty Principle threatens mediocre conformism, and even a political despotism of the majority.

3.4 *Liberty of thought and discussion*

There is a puzzle about how the second chapter of *On Liberty*, which deals with liberty of thought and discussion, fits in – not just about how Mill thinks it fits in but about how it *should* fit in. Is liberty of discussion just a special case of the general Liberty Principle? Or is it a supplementary principle, which gives a greater degree of protection to communication and discussion than other actions receive from the Liberty Principle? And if so, why? What is so special about communicative as against any other kind of action? Once we have spelt out a general principle of liberty of action, why do we need a special principle of liberty of discussion?

Mill says that liberty of discussion is a 'single branch' of his 'general thesis' (XVIII: 227; *L* 1:16). But in practice, he seems to think that liberty of discussion merits stronger safeguards than liberty of action in general, and he argues for it on separate grounds. Any restriction on free discussion impedes the progress of truth and impoverishes the qualities of mind of those whose access to discussion is restricted. Even where it does not positively sustain error and block truth's growth, it still draws the life from it, or distorts it by stopping it from flourishing unrestrictedly on all its sides.

Why do these considerations protect discussion in particular over action in general? The main point, it seems, concerns the

social importance of *dialogue*. Dialogue, unconstrained truth-seeking discussion, is nothing but the social expression of free thought. Given human fallibility, and the distortions and manipulations to which free thought is subject, only continued full exposure to free discussion can give us continued rational warrant for our beliefs. Socially possessed truth and disinterested, rational qualities of mind among citizens are public goods. Hence, protection of free dialogue is based directly on its social benefit, rather than indirectly, by an argument going through the rights of the individual.

These are very good thoughts and Mill puts them very memorably. But there are great difficulties in formulating an acceptable principle. How should we take into account various issues about incitement, intimidation, confidentiality, defamation, privacy, trustworthiness in testimony, and so on? On this question, of formulation, Mill does not say much to help us; sadly he does not provide the detailed discussion of the applications and limits of liberty of discussion that he gives for the Liberty Principle itself. He does say this:

> No one pretends that actions should be as free as opinions. On the contrary, even opinions lose their immunity when the circumstances in which they are expressed are such as to constitute their expressions a positive instigation to some mischievous act. An opinion that corn dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard.
>
> (XVIII: 260; *L* 3: 1)

This has two points of interest. It suggests that Mill does think expression of opinion should be more protected than action in

general, and it gives some indication of when it can nonetheless be penalised. Note that the interesting phrase 'positive instigation to some mischievous act', when taken with his example of the excited mob, has two disparate elements: (1) the notion of incitement; and (2) the point that the audience is not in a rational state. Mill links the two; the mob before the corn-dealer's house is not in a rational state and that (by implication) is why, in those circumstances, the opinion constitutes a 'positive instigation to a mischievous act'. But they can be uncoupled. Suppose that an invited speaker at the philosophy seminar argues that political assassination is not always wrong. Beginning with the usual examples, such as Hitler, Stalin, etc., he warms to his theme and eloquently puts the case that the Prime Minister or the President is causing so much harm to so many people that anyone who bumps him off – and here he glances around meaningfully – would be a public benefactor. Is this a 'positive instigation to a mischievous act'? That is literally what it is. Is it all right to prohibit the expression of such opinions by law, in all circumstances including philosophy seminars? No. And bearing in mind that Mill is interested in the legitimacy of moral as well as legal sanction, what should we say on that score? Should we say that this speaker was doing something morally wrong simply in propounding this opinion to the seminar? Again I think not. We might think him wild and dangerous, we might think of warning him, or others about him. Depending on how we read his intentions, we might disapprove of him. But we should not try to prevent him from speaking. He does, after all, make us think harder about when political assassination is legitimate, and that is the kind of thing (among many others) that philosophy seminars should do.

One line of thought, suggested by this kind of example, says that the key question in such cases is not, was there reason to think harm would occur?, but, was there reason to think the

audience was in a rational state? Was it able to assess what it heard, and decide for itself how to act? If so, its actions are its own responsibility and no-one else's. In contrast, the 'excited mob' is not fully responsible for its actions, and in those circumstances we fall back on the Liberty Principle. (Which, of course, still provides a lot of protection – it forbids, for example, restricting speech merely because it is found offensive, or merely because it incites 'religious hatred' as against actual violence.)

Something is right about this, but it is plainly too simple. If a person I know to be intent on blowing up his neighbours asks me how to manufacture a cost-effective bomb, it is no restriction on free speech to require that I do not give him the information – and that applies even if I'm speaking to a highly rational murderer, fully in control of himself. Information should not be made available to people who will foreseeably use it to carry out an existing intention to commit a wrongful act. My responsibility arises because I should have regarded the situation as one in which I am giving someone a means to carry out a pre-intended wrong-doing, not as one in which I am entering into a discussion, for example, with bomb-disposal experts. Formulating a principle of liberty of discussion should take account of that distinction – and of many others that are equally hard to formulate. Take the right to privacy. Whether or not we think it should be illegal, it is surely morally objectionable to broadcast information about an individual's private life which he or she would prefer to remain private, unless an important public interest is served in doing so. So a notion of public interest comes into play, which the political philosopher could usefully try to clarify – it is, for example, not the same as what interests the public. And given the skill Mill shows in illustrating the applications of the Liberty Principle, it would have been very interesting to have from him a similarly considered discussion of Liberty of Discussion. He does not do that, nor has it ever been very successfully done. Perhaps this is

not a subject on which we can get a worked-out principle, as against a list of considerations that need to be kept in balance. That does not make it a less important question for political philosophy to address.

But let's go back to what Mill does do. Allowing that free discussion has the good effects Mill notes, what if it simultaneously fosters the dissemination of harmful error – of crazy beliefs about harmful diets or drugs, enslaving religious cults, paranoid suspicions about the motives of unpopular minorities, or irrational nationalistic obsessions? Can there not, moreover, be harmful truths? Even if it were granted that in a world of perfectly reasonable people, the truth would never be harmful, we know that we do not live in such a world.

There is a tension between unrestricted liberty of discussion and intellectual and moral authority. It is a question of how that authority can achieve a healthy influence. Can it do so in unrestricted open dialogue, or does it need to be instituted in a church, university, ministry or party academy? In Mill's vision, intellectual or moral authority commands freely given respect and spontaneous assent, by citizens who may lack relevant competence or knowledge, but can recognise it when they see it. A common objection to this ideal of democratic intellect (perhaps nowadays more often felt than formulated) is that it assumes unrealistically high standards of integrity and disinterested rationality from too many people on too many subjects. The more struck we are by human irrationality and ignorance – and by its unequal distribution – the more inclined we shall be to restrict open dialogue on this or that important subject to an appropriate elite – at least initially, while the main principles are being worked out.

Yet any elite is itself no more than a group of fallible and corruptible human beings. It will develop the interests and solidarity of a social class, and uncriticisable ideological doctrines to sustain those interests. Dialogue appeals to the common reason of *all*

human beings; to leave it in the hands of one group is to provide no mechanism for eliminating the particular distorting perspectives of that group. Further, rationality and responsibility are qualities developed by education and practice. People who are shut out of free discussion are stunted and diminished – they are prone to the diseases of reason, to paranoia, to the defensive aggression that arises from ignorance and low self-esteem, to exploitation by demagogues.

Mill was absolutely not a thinker to whom the dangers of unrestricted open dialogue had never occurred. Society, he thinks, needs beliefs and feelings which provide enduring rallying points of allegiance and inspiration. Can such sources of allegiance survive if there is total liberty to criticise all sources of allegiance? That is the danger of disintegration; but there is also the danger of uncritical integration. In a democracy, does unrestricted open dialogue check mediocre conformism, or does it, on the contrary, accelerate democracy's tendency to sell out to celebrity, the politics of simple-minded causes, the glamour of simplistic myths? Or rather, since both occur, which prevails?

Mill thought hard about these crucial questions, throughout his adult life. They were central to his assessment of modernity (4.4, 5.3). That should be remembered when we consider that his most extended discussion of the matter comes down so unambiguously for liberty of discussion.

3.5 *Personal independence*

A utilitarian of more authoritarian bent than Mill might well hold that the Liberty Principle is positively incompatible with the Greatest Happiness Principle – in particular, that an element of well-judged paternalism often advances the general happiness. True, Mill cannily restricts the Liberty Principle to societies in which people are 'capable of being improved by free and equal

discussion'. But, one might reply, what if they are then still capable of being improved in other ways too?

Some liberals may say that this question cannot be safely left to utilitarians to debate. For these liberals, the foundation of liberty is not utility but natural right. They must face the philosophical utilitarian's argument (2.5) that all principles are defeasible by the general good, and that rights themselves flourish only if they defend essential human interests.

Among these interests, however, we should factor in personal independence, our demand for a sphere in which what we say goes. It is expressed in the response, 'Who are you to tell me what to do, if it does no harm or injury to other people?' This demand for personal independence is liable to take unkindly even to well-meant and well-merited advice. It certainly draws the line at forcible paternalist intervention.

Personal independence is not a pre-moral notion; it distinguishes between sovereignty over my own life and sovereignty over anyone else's. Suppose I want to go for a walk and I want you to come with me. To stop me from going because it's bad for me would infringe my independence. But it is not infringed if you refuse to go – even though I don't get everything I want. Whether I go for a walk is up to me, whether you accompany me is up to you. I would step over implicitly understood limits if I tried too pressingly to get you to go. In our personal relations we make and understand such distinctions all the time. Where the private spheres of different individuals overlap, they cease to be private, and become a part of public or common space, thereby implying that each independent individual has a say in the use of that space. This explains the difference between what it is permissible for me to do in a public park, on a train, and in my house. In a public space some acts can be prohibited because they invasively privatise, take over, that space.

It is the desirability of personal independence that makes plausible the natural rights model of liberty. But Mill can say, as ever,

that personal independence is desirable because desired. It is an element of distinctively human well-being, not an abstractly intuited political right:

> He who would rightly appreciate the worth of personal independence as an element of happiness should consider the value he himself puts on it as an ingredient of his own. There is no subject on which there is a greater habitual difference of judgement between a man judging for himself, and the same man judging for other people. When he hears others complaining that they are not allowed freedom of action – that their own will has not sufficient influence in the regulation of their affairs – his inclination is, to ask, what are their grievances? what positive damage they sustain? and in what respect they consider their affairs to be mismanaged? and if they fail to make out, in answer to these questions, what appears to him a sufficient case, he turns a deaf ear, and regards their complaint as the fanciful querulousness of people whom nothing reasonable will satisfy. But he has quite a different standard of judgement when he is deciding for himself.
>
> (XXI: 336–7)

Is personal independence valuable to us only as an element of happiness, though? That is an issue between Mill's hedonism and the pluralist view of well-being. If Mill is right, a reduction of my personal independence harms me only if it makes me less happy overall. If the pluralist is right, and personal independence is something I reasonably desire separately from my desire for happiness, then it may be best for me, in some cases, to trade off some happiness to maintain my personal independence.

Either way, personal independence is not an abstract right but a part of 'utility in the largest sense'. The Liberty Principle does not

follow from it as a direct corollary, because in principle the benefit of a paternalistic intervention could outweigh the cost to personal independence. But Mill can certainly argue that personal independence is so essential to human well-being, both in itself and for its good consequences, that it should be respected as a right. Which, of course, is what he does. Personal independence, moral freedom and individual spontaneity are the values that underpin *On Liberty*.

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excluded from serious economic debate. Whereas classical political economy focussed upon macroeconomic questions of growth and income distribution, Neoclassicism moved the microeconomic question of price determination to centre stage. It dispensed with key classical ideas, such as 'natural value' as distinguished from market price, and the distinction between productive and unproductive spending. In his last years Mill knew of, but chose to reject, some of these new developments (*CW*, vol. XVII, p. 1862). But much of Mill's thought was simply incorporated into the new paradigm, and his reflections on economic policy, to be considered in a later chapter, continue to be significant and relevant.

4

UTILITARIANISM AND LIBERTY

The Essays and their Reputation

In his essay *Utilitarianism*, Mill writes that 'The creed which accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness' (*CW*, vol. X, p. 210). By itself this formulation could have come from the pen of Utilitarianism's founding father, Jeremy Bentham. We may unpack Bentham's classic Utilitarianism into three central ideas. First, actions are judged right or wrong with reference to their consequences; Utilitarianism is a *consequentialist* moral theory. Actions are right if they produce *good* consequences, wrong if they produce *bad* ones. Second, *good* and *bad* ultimately mean *happiness* and *unhappiness*. Bentham's Utilitarianism therefore is a form of *hedonism*. Third, in judging actions or types of actions, we are invited to add up the sum of happiness produced and the sum of unhappiness, and to compare the sums. The rightness is determined by the surplus of happiness over unhappiness. Utilitarianism, then, is an *aggregative* moral theory.

Consequentialism, hedonism and aggregation: all three central ideas are contentious and create difficulties. Consequentialism runs up against the belief, held by ordinary persons and by some philosophers, that certain actions are intrinsically wrong, regardless of their good consequences, such as telling a lie so as not to hurt someone's feelings, or helping a terminally ill person to die so as to relieve them of pain. The charge against hedonism was made by critics such as Coleridge and Carlyle, who contended that Utilitarianism was a philosophy for pigs. Their high-minded disdain for sensual pleasure might not have

much resonance today, but still they have a point. Surely there are ultimate goods other than happiness. After all, didn't Mill himself write a passionate defence of liberty, thereby proposing that liberty is an ultimate good? As for aggregation, that would appear to permit the sacrifice of the one or the few for the sake of the many – Iphigeneia so that the Greeks might have a prosperous voyage to Troy, Myra Hindley to appease the British public – but doesn't justice forbid us to do such things? Furthermore, aggregation appears to imply an intolerable moral tyranny. If it is my duty in every action of my life to produce the greatest possible surplus of pleasure over pain, then I will have to spend a great deal of time calculating which is the best action. And the result of my calculations will often require me to sacrifice my own pleasures for the sake of the greater good, never buying a silk tie or a bottle of claret if I might instead give money to Oxfam.

As well as real difficulties, there were bogus ones. In the first half of the century, critics had mauled Utilitarianism, caricaturing Bentham's philosophy and giving it a bad reputation, as Mill was well aware (*CW*, vol. XV, p. 745). Coleridge, fastening upon the emphasis on pleasure, contended that it was a philosophy of selfishness. There was a grain of truth in this charge, in that Bentham and James Mill subscribed to a largely Hobbesian theory of selfish motivation: but essentially it was false, because Utilitarianism prescribes not the agent's happiness but the happiness of all concerned. Then there is the assimilation, implied by Dickens in *Hard Times* for example, of Utilitarianism as a moral philosophy to Utilitarianism as the narrow, philistine pursuit of material gain and heartless efficiency – the unacceptable face of the industrial revolution. Mill himself was far removed from Mr Gradgrind in that novel. He had a Coleridgean disdain for the pure commercial spirit (*CW*, vol. XII, p. 31) and criticized the English and Americans for measuring 'the merit of all things by their tendency to increase the number of steam engines, and to make human beings as good machines and therefore as mere machines as those' (*CW*, vol. XIII, p. 622). After his mental crisis he was a consistent opponent of mere 'utilitarian', professional education, preferring a broad curriculum designed to turn out wise and cultivated individuals (*CW*, vol. XXXII, pp. 21, 186).

Mill's essay on Utilitarianism succeeded in transforming it from a detested object of attack to an account of morality to be discussed seriously and sympathetically by both professional philosophers and the educated public (Schneewind, 1976, pp. 49–52). He easily disposed of the crude misconceptions, and his response to the real difficulties was

to propose a very sophisticated and subtle version of Utilitarianism. The result is much richer than, and in some ways quite different from, the moral philosophy of his father and of Jeremy Bentham. Mill does not definitively resolve all the issues, as we shall see; but his moral theory is a real contender, even today.

Turning now to Mill's other great essay, the best-known passage of the *Liberty* asserts 'one very simple principle' (*CW*, vol. XVIII, pp. 223–4) which proposes Mill's celebrated distinction between 'self-regarding actions' (which when performed intentionally may not be interfered with under any circumstances) and 'other-regarding actions' (which under certain circumstances may be prevented). The principle does not apply to children who must often be protected against themselves, nor to backward peoples, barbarians, for the same reason. The passage also makes it clear that Mill is worried about two modes of interference with individual liberty. The first and obvious one is interference by the state, by means of laws and penalties. Mill fears that democracy may make this worse; a tyranny of the majority may develop, which will use the power of the state to crush nonconforming minorities (*CW*, vol. XVIII, p. 219). The other mode of interference is the pressure of public opinion, the disapproval of society, the attempt to make everyone conform. Mill tells us that in England, in some senses a free country, interference by the state is less than elsewhere. But the pressure of public opinion is heavier (*CW*, vol. XVIII, pp. 222–3). He worried that the proliferation of popular newspapers provided a powerful organ through which this intolerance could be expressed (*CW*, vol. XVIII, pp. 268–9).

Macaulay thought that Mill was crying 'Fire!' in Noah's flood – liberty was in no danger in mid-nineteenth-century England. Macaulay may have felt there was too much liberty: by Mill's standards there was plainly not enough, and some commentators have judged that an illiberal persecuting spirit continued to flourish well into the twentieth century (Russell, 1969, p. 10; Annan, 1969, pp. 40–1). Many contemporary commentators profoundly disagreed with the book, and a recurrent criticism was that the liberty Mill advocated would undermine religion. They were perfectly right to focus on this: both the essay itself and Mill's correspondence confirm Mill's preoccupation with religious intolerance, which could still deny Roman Catholic widows custody of their children, exclude professed unbelievers from parliament and deny them justice in the courts. He must also have been motivated by the social disapproval he experienced on account of his twenty-year friendship with a married woman.

The simple principle, so memorably formulated, raises many difficulties; three of the most important will be highlighted here. First, as Himmelfarb has argued, liberty is a complex matter; how can one simple principle be an appropriate way of tackling it (Himmelfarb, 1974, pp. 132–3, 168)? Is the principle *adequate*? Second, as critics have pointed out from the very beginning, does it make sense to distinguish between self- and other-regarding actions? Unless I am an unobtrusive tramp with no friends and relations, then most of the things I do have the potential to affect or concern others: if I swear, or get drunk, or eat meat, or read the *Satanic Verses*, someone will be offended. The class of actions which are purely self-regarding might be a very small class indeed, and therefore Mill's principle may in practice do little or nothing for the cause of liberty. This second difficulty concerns the *meaning* of the principle. Third, is Mill's defence of liberty *consistent* with his Utilitarianism? This is an obvious difficulty, because Mill has said that 'His own good, either physical or moral, is not a sufficient warrant' (for interference). We may not interfere with an individual's liberty as defined by the principle even for his own good; apparently this is a repudiation of consequentialism.

Mill can be defended against these criticisms of the adequacy, meaning and consistency of his principle of liberty, as we shall see. Part of the defence involves a recognition that the principle is not as simple as he claims. To understand it fully we have to read the two essays *On Liberty* and *Utilitarianism* together, and draw light from other writings. Since the work of Rees, Ryan, Lyons, Berger, Gray and others, it will not do to dismiss Mill (as earlier critics often did) by analysing brief passages hacked out of context. But, on the other hand, we ought not to make Mill more consistent and defensible than he actually was. Have recent commentators 'improved' or rewritten Mill, thereby to an extent losing sight of the nineteenth-century philosopher in nineteenth-century context? A certain amount of careful and sensitive 'improving' is probably legitimate. Mill wrote before the expansion and professionalization of academic philosophy in this century. That professionalization produced standards of precise and technical formulation which Mill did not meet because he was not trying to meet them and because they had not yet been established. It can therefore be argued that it is legitimate to reformulate Mill's moral and political philosophy with the precision he would have employed had he been writing today with an eye to captious critics, always provided that we do not change his meaning in the process.

Mill's Theory of Right and Wrong Actions

Let us begin with his account of duty. Mill's sophisticated version of Utilitarianism does not insist that it is always our duty to act so as to procure the most happiness, immediately and directly. For, first, he had learnt from Carlyle that the direct pursuit of happiness as an end in itself leads to disappointment, and that 'those only are happy ... who have their minds fixed on some other object than their own happiness; on the happiness of others, on the improvement of mankind, even on some art or pursuit, followed not as a means, but as itself an ideal end' (*CW*, vol. 1, pp. 145–7).

On the face of it, this looks like an abandonment of classic Utilitarianism – Mill here recommends other ideal ends than happiness. Later in this chapter we shall see that no abandonment has occurred; but, for the time being, the thesis has been proposed that it is not necessary always to have our sights firmly fixed on happiness. One might make the further point that while it is difficult to make people happy, because happiness is so elusive, suffering is much more concrete, often with obvious causes (crime, poverty, unemployment, lack of liberty) and that therefore, as both Bentham and Mill thought, our first aim should be the 'negative utilitarian' one of alleviating misery (Bentham, 1967, p. 281; *CW*, vol. X, p. 216; Walker, 1974, pp. 424–5).

Second, Mill's Utilitarianism, and Bentham's too, insists that we pay attention to the long-term as well as the short-term consequences of our actions. Seizing the money of a rich man and distributing it among fifty poor ones might look utilitarian – their fifty lots of happiness might outweigh his solitary misery – but taking a longer view, the consequence might be to make all property owners, large and small, feel insecure in their possession, with dire economic consequences and a disastrous increase in the unhappiness of the community. Bentham and Mill insist that security is a vital condition of happiness and this is one reason why our behaviour, much of the time, should be governed, not by calculations of pleasure and pain for each action, but rather by rules of conduct which experience has proved to have generally good consequences. A rule-governed society is one where we know what to expect and therefore feel secure. Another reason for rules is that they save us the time and trouble of calculating the consequences each time before we act, thereby enabling us to act more quickly (*CW*, vol. X, pp. 224–5). A third reason is that, while there is a margin of uncertainty about the consequences of a particular act (telling a lie, for instance, which in

a specific instance might do more good than harm), the consequences of classes of acts are more predictable (a general practice of lying would definitely be harmful – *CW*, vol. X, pp. 180–3). This is not to say, in accordance with twentieth-century philosophical terminology, that Mill is a 'rule Utilitarian' who thinks that the principle of utility is *only* to be used to assess rules of conduct, as opposed to an 'act Utilitarian' who proposes to use it to assess particular actions. Rather, Mill is a 99 per cent *indirect* Utilitarian who thinks that most of the time we apply the principle of utility indirectly by following rules and that only rarely do we need to calculate the consequences of a specific act (primarily when two rules conflict) (*CW*, vol. X, p. 226; Lyons, 1994, p. 17; Hampsher-Monk, 1992, pp. 363–7).

So far, Mill has not departed in essence from classic Utilitarianism: we now come to a place where he does, with much trumpeting. In his essay on *Bentham* he accuses his mentor of excessive moralism. Bentham heaps praise or blame on every action and every character solely in accordance with the criterion of utilitarian morality. Mill argues (not entirely clearly – Ryan, 1974, p. 106) that actions and character traits are also to be evaluated by non-moral criteria: they may be beautiful or loveable rather than right or wrong (*CW*, vol. X, pp. 112–13). Mill develops this somewhat differently in his *Logic*. There he proposes an Art of Life having three departments: Morality, which is concerned with the Right; Prudence or Policy, whose business is with the Expedient; and Aesthetics, dealing with 'the Beautiful or Noble, in human conduct and works' (*CW*, vol. VIII, p. 949). All three departments are grounded ultimately on utility: morality, efficiency and aesthetic considerations have value because they promote happiness. Nevertheless what this implies is that whole areas of human conduct and character are not subject to direct *moral* evaluation at all, but are to be judged instead on criteria of efficiency, beauty and nobility. Morality occupies only a part of the field of utility, sharing it with aesthetics and prudence. Mill's Utilitarianism therefore is by no means an all-embracing moral tyranny.

This is further evidenced by Mill's *Auguste Comte and Positivism* of 1865. He criticizes Comte for being 'a morality-intoxicated man. Every question with him is one of morality, and no motive but that of morality is permitted'. Comte maintains that there can be no distinction between an ordinarily moral person who simply does the minimum that duty requires, and a moral hero who does the maximum, performing acts of 'supererogation' which go beyond the call of duty. For it is

the duty of all of us to do the maximum, to devote all our time and energies to the common good: it is immoral to do less than this. Mill thinks that more happiness will result in the end if we spend most of our time pursuing our own goals, and therefore he leaves, and insists upon, a space for acts of supererogation (*CW*, vol. X, pp. 336–7). Mill's Utilitarianism contracts the domain of morality so that most acts are neither right nor wrong, but rather indifferent, permissible.

So how are we to distinguish between acts which are subject to moral praise or blame, and those which are not? The theory of this is explained in the essay on Comte and in the last chapter of *Utilitarianism*. Mill argues that there is an intrinsic connection between morality and punishment, an idea he may have learnt from Austin's lectures on jurisprudence which he attended in 1829. When we say that an act is morally blameable, we are also saying that it would be appropriate to discourage it by means of a *sanction* or *punishment*. By this Mill does not simply mean a prison sentence or a fine. Punishment can take other forms. As well as legal punishment there is what Bentham calls the *moral or popular sanction*, that is to say the informal punishment which stems from the disapproval of others. Mill adds a further sanction, proclaiming in his essay on *Bentham* that the master failed to observe it: namely the punishment of one's own disapproving conscience in the form of guilt and remorse. An action falls into the province of morality therefore, only if it is appropriate to punish it in one of these three ways. Whether a sanction is appropriate, and which sanction in any particular case, is determined with reference to utility. Punishment directly and immediately causes unhappiness. Only if punishing an action will promote more happiness than it causes unhappiness should it be regarded as an action within the domain of morality.

Some examples will make this clear. The general happiness emphatically requires that acts of murder shall not be committed. It is therefore in accordance with utility that the severest legal punishment shall be attached to the rule 'Thou shalt not kill'. Truthfulness promotes happiness by making society work better, but there would be a net loss of happiness if every liar were imprisoned. It is therefore appropriate to punish lying informally, showing liars that we neither like nor trust them, and that we will not give them our help and support. The general happiness also requires that citizens should be ready to give in order to help those in need. But it would not be in accordance with utility to punish people for not being charitable. The appropriate sanction is the approval and disapproval of one's own conscience, and so it is desirable

to educate children and form public opinion in order to give citizens charitable consciences. Happiness will also be increased by nobility of character, but little would be gained by causing slobs to feel unhappy. Therefore the recommendation, 'Be noble', comes without a sanction attached to it, and hence is not a moral recommendation at all.

In the light of these distinctions we can understand Mill's explanation of justice. Mill acknowledges that justice is very important to us; we care about it deeply. Perceived injustices – when someone is deprived of what is rightfully theirs, or is wrongly imprisoned, or is the victim of a breach of promise – raise up in us a peculiarly strong sense of moral indignation. We seem to care more about justice than we do about utility. We would not wish an innocent person to be imprisoned, even though their imprisonment produced the public good. Does this mean that the morality of justice is different from the morality of utility, more fundamental and important perhaps? Mill insists this is not so. The principles of justice carry the moral weight they do precisely because their observance is conducive to utility. We feel strongly about justice, because injustice is desperately anti-utilitarian. But for most of the time we do not make the connection between justice and utility, because the principles of justice are so familiar to us. The human race has got into the habit of desiring justice for its own sake, and has lost sight of the connection between justice and utility.

Unjust acts arouse our special indignation; we always feel that they should be punished, if not by the state then by public opinion. *Justice*, Mill explains, corresponds to *right*. Justice is owed, not like benevolence to humanity in general, but to assignable persons. An act of injustice violates a specific person's specific right. Rights are enforced by laws and moral rules which are of the most fundamental importance to well being and happiness. These laws and rules protect individuals against harm, and in the exercise of their liberty; they protect them in the enjoyment of those things to which they have a right, for example by promise, contract, labour and inheritance. I have a right not to be harmed, a right to be free, a right to demand that others keep their promises to me, a right to my property and to the fruits of my labour. Violations of my rights are injustice, and ought to be punished. The idea of justice has unique moral force, because justice protects security: 'Nearly all other earthly benefits are needed by one person, not needed by another; and many of them can, if necessary, be cheerfully foregone, or replaced by something else; but security no human being can possibly do without' (*CW*, vol. X, p. 251).

Mill's Theory of the Good

For Mill 'good' means pleasure or happiness; but what he understands by those terms is an especially difficult topic, and a definitive interpretation is not possible. Either Mill's thinking or his expression of it is not perfectly clear, and therefore there has been considerable debate about his meaning.

It is traditional in discussing this to contrast Mill's 'modified hedonism' with Bentham's 'simple hedonism', a contrast caught in Mill's distinction between higher and lower pleasures. Bentham too recognized that pleasures differ in quality (Hoag, 1992, p. 249), but has a notorious reputation as the philosopher who thought that 'Pushpin is as good as poetry'. Mill played his part in creating an image of Bentham as a crude hedonist, arguing that the older man's account of happiness was fundamentally defective. For example, according to Mill, Bentham failed to recognize that humans can find their happiness not only in the enjoyment of simple pleasures but also in the pursuit of spiritual perfection, when they set up a standard of personal excellence and try to live up to it (*CW*, vol. X, p. 95). Mill depicts the older Utilitarianism as thinking of human beings as passive consumers of pleasures.

If these accusations are justified, Bentham is open to the charge that his form of hedonism would be compatible with a condition in which euphoria was achieved by means of drugs as in Huxley's *Brave New World*, or, in Nozick's science-fiction example, by connecting people to pleasure machines. Mill rules these twentieth-century fantasies out in 1832:

> If the multifarious labours of [humanity] were performed for us by supernatural agency, and there were no demand for either wisdom or virtue, but barely for stretching out our hands and enjoying, small would be our enjoyment, for there would be nothing which man could any longer prize in man (*CW*, vol. I, p. 330).

His best-known statement of a modified hedonism is contained in his essay *Utilitarianism*, where he maintains that no developed human being would wish for an animal existence which failed to deploy the higher faculties (*CW*, vol. X, p. 211). Putting the essays on *Bentham* and *Utilitarianism* together it appears that the higher faculties include intellect, and the active capacities associated with power, freedom and creativity.

It is a conception of happiness which lays stress upon sociability, but also upon pride, personal independence and excitement. Finally it idealizes dignity, thereby alluding to that department of the aesthetic, of the noble, which Mill identified when outlining the Art of Life in his *Logic*. Mill's repudiation of passive hedonism is clearest in his insistence that happiness is not the same thing as satisfaction or contentment; a contented fool is less happy than a wise man whose faculties are all at a stretch, even if the wise man is not contented. Mill concludes by saying that 'It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied' (*CW*, vol. X, p. 212).

Mill does not advocate complete abstinence from the 'lower', sensual pleasures; in his diary he wrote that the modern world needed Epicurean enjoyment rather than Stoic or Puritan self-denial (*CW*, vol. XXVI, p. 666). Still, there remains a suspicion that he under-rated simple enjoyments, especially sexual ones. The ideal life will be 'made up of few and transitory pains, many and various pleasures, with a decided predominance of the active over the passive' (*CW*, vol. X, p. 215). How do we know that one pleasure is of a higher quality than another? The only way is to consult those who have experienced both. This sounds élitist, awakening the suspicion that the arbiters are those who like reading philosophy and listening to chamber music, rather than those whose idea of a good day out centres upon football, beer and a vindaloo with friends. This is unfair to Mill; given his stress upon activity, 'passively hearing Mozart or Beethoven may be less valuable than critically listening to "heavy metal"...or Appalachian folk tunes' (Hoag, 1992, p. 276). Also, it cannot be doubted that he would like *everybody* to be educated enough to enjoy Plato and string quartets.

It has been said that to distinguish higher and lower pleasures logically implies the abandonment of hedonism and therefore classic Utilitarianism (Bradley, 1927, p. 119). To prefer one pleasure to another on grounds of *quantity* – for example because it lasts longer – is consistent with maintaining that only pleasure is good. But to prefer it on grounds of *quality*, because it is *better*, implies some other criterion – for example, beauty or dignity – for distinguishing between pleasures. Therefore Mill is no longer saying that only pleasure is good: he must be invoking some other independent good. This criticism is clearly mistaken, as can be shown by the assessment of wine. Drinking wine is a pleasure, variable in terms of quantity: two glasses are more pleasurable than one. The pleasure also varies in terms of quality: good wine is

more pleasurable to drink than ordinary wine. If asked to specify the characteristics making for a better-quality wine, the taster will mention bouquet, colour, complexity, length and so on. But this is not to say that something other than pleasure is good: the characteristics cited are ingredients of the pleasure of drinking wine. Therefore it is logically possible to maintain both that only pleasure is good, and also that pleasures differ in quality. But does Mill really stick to the classic Utilitarian doctrine that only pleasure is good? He recognizes that men and women apparently desire many things other than happiness, such as virtue, money, power and fame. They may be desired for their own sakes, and not merely as a means to happiness. He insists, however, that this does not contradict Utilitarianism; virtue, money, power, fame, etc. are desired as *parts* of happiness. They all bring pleasure.

This idea needs further explanation. Mill, as mentioned earlier, belongs to the tradition of associationist psychology. Associationists believe that many sensations – sights, sounds, smells, tastes, feels – come accompanied with perceptible pleasure or pain. Hence, certain things are naturally pleasurable. Other things, not originally pleasurable, come to be associated by habit with pleasure, as for example the sight of home may call up memories of the pleasures enjoyed within its walls. Mill distinguishes between *mechanical* and *chemical* associations. A mechanical association links two ideas together, but they remain distinct and separable. In a chemical association, the component ideas have become so intensely fused and united that they form an organic whole in the mind, constituting a single experience. This is what has happened in the case of things such as virtue which are desired for their own sake. Originally virtue was mechanically associated with pleasure, because the child was praised and rewarded for virtuous acts. He or she did not desire virtue for its own sake, but as a means to the reward/pleasure. But over a long time and by frequent repetition, the ideas of virtue and pleasure became chemically compounded and inseparable. The idea of virtue became pleasant in and for itself, an intrinsic and essential part of the person's happiness.

In yet another way Mill departs from classic Utilitarianism. The latter, in saying that only pleasure or happiness are good as ends means this in the obvious, commonsense way: what is good are certain feelings in people's minds. Perhaps this is what Mill means most of the time; but not always. I think that Berger and Brink are right to draw attention to the fact that for Mill the happiness which people aim at as a goal or consequence of action can sometimes take the form of

a state of affairs – being virtuous, or wise, or noble – which does not necessarily include pleasurable *feelings* (Berger, 1984, p. 14; Brink, 1992, pp. 69–70). Pleasurable feelings only come in as a *cause* of the action – the agent feels happy at the thought of attaining the goal. They are not proposed as a *consequence* of the action, and indeed may not be a consequence (*CW*, vol. X, p. 12). This is most convincingly implied by Mill's repeated remarks about the death of Lincoln by an assassin's bullet. Mill proposed that Lincoln's death as a martyr in the hour of triumph was an ultimate happiness for him, the crown of a noble life: and he cannot have meant that Lincoln *felt* happy in his death-agony, for he died 'almost unconsciously' (*CW*, vol. XVI, pp. 1044, 1051, 1057, 1063).

Is Mill's theory vulnerable at this point to the kind of criticism Macaulay levelled at James Mill? Only pleasure is good, that is to say, desirable as an end: has Mill, trying to defend this thesis against the charge of falsity, so expanded the meaning of 'pleasure' as to render it vacuous? If we approach his theory as a mere definition of 'good', this conclusion is hard to resist, and we are likely to agree with Skorupski that Mill would have been better advised to retain the consequentialism of classic Utilitarianism while giving up the hedonism, recognizing that there are other goods than pleasure or happiness such as autonomy (Skorupski, 1989, p. 283). But Mill is not primarily concerned with definition, nor with approaching the question as a twentieth-century philosopher would; however mistakenly he is providing a sketch of a scientific account of how an elaborate conception of the good evolves out of a simple psychological structure, remaining rooted in the fundamental human desire for pleasure and aversion to pain.

Has Mill reached the point of abandoning an objective and universal account of the good? Is he in effect saying that happiness varies from person to person; 'one man's meat is another man's poison'; what pleases in Beijing does not please in New York, and so on? If this is so, then Bentham's hedonism, which treats *pleasures* and *pains* as entities largely calculable in abstraction from historical circumstances, has been comprehensively abandoned. Utilitarianism will have turned into 'preference Utilitarianism' which seeks to satisfy people's preferences whatever they may be. In spite of having once written that 'there is nothing whatever which may not become an object of desire or of dislike by association', Mill was not a preference Utilitarian. The distinction between higher and lower pleasures, and the doctrine that competent persons can select the higher ones, not just from their own point of view but for everybody, rules this out. His position was a complex one, combining a belief in moral truth with a recognition of moral evolution. I do not agree with Gray that to all intents and purposes Mill repudiates a universal human essence (Gray & Smith, 1991, p. 205). Though he nowhere provides an extended exposition of a theory of human attributes, he commits himself to the belief that at a deep level human nature is universal and unchanging: 'man's nature changes not, though surrounding circumstances do' (*CW*, vol. XII, p. 101; Robson, 1976, pp. 143–60). The fundamental economy of pleasure and pain is the same for all. On that foundation, a variety of structures can be built – there is more than one pattern of human excellence – but not just *any* structure. Morality evolves and rules of conduct change 'from the progress of intelligence, from more authentic and enlarged experience, and from alterations in the condition of the human race' (*CW*, vol. X, p. 74). This is entirely to be welcomed, for human life would be poorer and less happy 'if there were not this provision of nature, by which things originally indifferent, but conducive to, or otherwise associated with, the satisfaction of our primitive desires, become in themselves sources of pleasure more valuable than the primitive pleasures' (*CW*, vol. X, p. 236). 'Conducive to or associated with' – in other words, things can only become parts of our happiness if they are in some way grounded in our natural desires and pleasures. And finally, Utilitarianism only recognizes as desirable those pleasures which do not excessively diminish other pleasures or cause an excess of pain, either to the individual or to others. This would rule out the pleasure the sadist gets in torturing his victims, and perhaps the pleasure the miser gets by hoarding his money instead of spending it on other enjoyments.

Is the Argument of *On Liberty* Logical?

The essay *On Liberty* also poses problems of interpretation, and has provoked a torrent of scholarly dispute (see especially Berger, 1984; Donner, 1991; Gray & Smith, 1991). I take the now orthodox view that the only way through the difficulties is to read the essay in the light of Mill's Utilitarianism, which is not contradicted by his defence of liberty as an end because, in the first place, liberty is not other than happiness: it is a part of happiness, naturally or chemically associated with pleasure. The human animal takes pleasure in untrammelled action,

the free exercise of its faculties and the sense of power. Liberty is also valuable because it is intrinsically bound up with higher, active pleasures, including those of creation and self-creation. This is the subject of a whole chapter, 'Of individuality, as one of the elements of well-being'. The reader is advised that there is no substitute for reading the text itself, which is memorably eloquent: Mill was self-consciously a rhetorician as well as a logician, and he sets out to persuade the reader by conveying a vivid sense of the pleasure and dignity of free self-development, in accordance with one's natural bent and in defiance of mediocre conformity. He goes so far as to reach forward to Nietzsche in advocating 'Pagan self-assertion' as well as 'Christian self-denial'.

Such a similarity ought not to surprise us, for Mill, like Nietzsche, draws upon a romantic philosophy of the self elaborated in early nineteenth-century German thought. He acknowledges his debt to Wilhelm von Humboldt and, in the *Autobiography*, to Goethe; he learnt about this strand of German thinking also from Coleridge and Carlyle. He purveys to a British readership the idea and ideal of *Bildung*, of the unfolding and expression of the self's mix of powers and inclinations, through free and many-sided experience, and their combination into a rich, unique and coherent whole. This philosophy helps Mill to mount a challenge to the doctrine, long dominant in Western thought, that there is a single pattern of human excellence to which all should aspire. For Mill and the German theorists of *Bildung*, excellence can allow for variety.

Mention should also be made of another source of his ideal of liberty, at once classical and English. In his friend Grote's *History of Greece* Mill found an account of the Athenians under Pericles, 'the greatest people who have yet appeared on this planet', whose tolerance of individual diversity 'is most closely connected with the wonderful display of individual genius which made Athens illustrious, and with the comparative mediocrity of modern times' (*CW*, vol. XXV, pp. 1123, 1129; vol. XI, pp. 319–20). Mill admires the 'liberality and tolerance of Athenian social life', which underlines the point that the interference with liberty that most concerned him, especially in England, was that of public opinion rather than law. Mill goes so far as to praise eccentricity, an aspect of the essay which some Victorian critics thought went too far (*CW*, vol. XVIII, p. 269). But Mill connects eccentricity, and self-formation rather than slavish conformity, with a trait which Victorians greatly admired, namely strength of character (Collini, 1991, p. 93). Liberty

then is not inconsistent with utility because it produces a host of good consequences, happiness in many forms.

It follows from this in the second place that liberty should often be protected, even when it immediately produces harm, because of the long-term good it promotes. What appears to be contrary to utility at first sight is consonant with it in the longer view. Wiser persons might interfere with people for their own good, to rescue them from self-damaging excesses: but in the long term they will be happier by learning from their own mistakes, attaining independence and strength of character; they will be happier knowing they are self-made, not manufactured by others. Consideration of the long-term in this way justifies free speech and 'experiments of living' (*CW*, vol. XVIII, p. 261). Free speech permits the propagation of error, and experiments in living may prove harmful to the experimenter: but an environment of free speech and experimentation is essential to discovery and progress, which in turn are likely to contribute to the diminution of misery and the growth of happiness. If error is proscribed, there is always the danger that elements of the truth will be banned too; for no authority can be sure of infallibility. In the third place, actions which detract from happiness should not always be prevented, because they are not always wrong. They are not wrong if they fall into the domains of prudence and aesthetics rather than morality. And they only come into the latter domain if it would be expedient to discourage them by means of sanctions, which once more invokes consideration of longer-term consequences.

So Mill's passion for liberty is not at odds with his Utilitarianism. But can a distinction between self- and other-regarding actions be elaborated, so as to provide a satisfactory defence of liberty as the 'simple principle' promised? The answer is that it can: but the elaboration reveals that the principle is not so simple. First and most important, when Mill writes about actions that affect or concern others, what he mostly (but not always) means is *actions which affect the interests of others* (some of his formulations actually say this – *CW*, vol. XVIII, p. 292) (Rees, 1960, pp. 113–29). Getting drunk, gambling or being idle may affect others in various ways but should not necessarily be prevented; in themselves they do not always harm the interests of others. But a man who regularly becomes violent when drunk may be placed under an injunction not to drink; and one whose idleness brings his children to want may be forced to work. In both of these cases the interests of others are affected by acts which otherwise would be self-regarding

(*CW*, vol. XVIII, p. 295). Protestants should not be prevented from eating pork in Muslim countries, nor Mormons from taking several wives. Mill finds the latter practice deplorable, but it is wrong to interfere with consenting adults for their own good (*CW*, vol. XVIII, p. 290). Great *offence* may be caused by pork-eating or polygamy, but *interests* have not been affected. I do not think that Mill is saying that Muslims and non-Mormons have not been rendered unhappy, or that their unhappiness does not count, or that 'morality-dependent harm', harm to a person because his peculiar moral convictions have been outraged, is to be ignored. Rather, a utilitarian calculation is going on here, and Mill thinks that in general the unhappiness of being offended is outweighed by other benefits (Honderich, 1982, pp. 506–7). By contrast, other benefits are in general unlikely to compensate for the affecting of people's interests. *In general* needs to be emphasized, for Mill allows exceptions. Public indecency, which offends others but does not harm their interests, may be forbidden. Presumably this is because the unhappiness of being prevented from taking one's clothes off in public weighs light in the scales of utilitarian calculation.

Refining *harm* as *harming interests* helps to get Mill's principle on the road, but raises a new problem: what does he mean by 'interests'? What is to be included in the list of 'interests' has been debated, and has consequences for the general interpretation of Mill's ideological stance. For example, Gray gives the vital interests as security and autonomy (Gray & Smith, 1991, p. 190) which supports a view of Mill as a classic non-interventionist liberal. Donner's list includes interests in self-development for all and sociability, yielding a more 'social-democratic', egalitarian Mill (Donner, 1991, pp. 181–3, 192).

In attempting to fill out Mill's list of interests, the last chapter of *Utilitarianism* helps without providing an exhaustive answer. The individual has an interest, for example, in security. This involves protection from harm to person and property. So an act which affected the person or property of another would not be a self-regarding act, and therefore it would be an open question whether state or society might intervene to prevent it. Intervention, however, would not be automatic. Whether or not to interfere with acts which harm the interests of others has to be decided with reference to utility. Trade is an important case in point. My economic activities may gravely affect the interests of others ('Trade is a social act', Mill concedes – *CW*, vol. XVIII, p. 293) if, for example, I cause them to become unemployed, or drive them out of business. But free trade, Mill thinks, is justified on other grounds, because

it produces efficiency and prosperity; therefore interference with this class of other-regarding actions is not usually warranted.

Second, Mill will usually permit interference only with actions which *directly* harm others (*CW*, vol. XVII, p. 1832). Undoubtedly the reasoning behind this is utilitarian: indirectly an action might cause harm, but the benefit of preventing it is outweighed by the general benefits of liberty. Mill rightly thinks that it would be highly dangerous to liberty to prevent actions on the grounds that they *might* harm the interests of others; the potential scope for interference would be endless. Clear and present danger can alone justify infringements of liberty. So, for example, it would be wrong to prevent the sale of poisons because they might possibly be used to commit a murder (*CW*, vol. XVIII, pp. 293–4). It would be wrong to prevent the publication of a book or article arguing that corn-dealers are starvers of the poor, or that property is theft, on the grounds that the publication might inspire attacks on property: but if a man proclaimed such opinions to an excited mob in front of a corn-dealer's house, it would be right to arrest him. In the latter case, the expression of his opinions would be a positive instigation to a mischievous act (*CW*, vol. XVIII, p. 260).

Finally, interference is permitted not only to prevent positively harmful acts. The state, or society, may rightly interfere if an individual harms others by *failing* to act. It is right to punish a man who fails to bear his share of the common burdens (*CW*, vol. XVIII, p. 276).

Is *On Liberty* Extreme, or Covertly Illiberal?

Does Mill's defence of liberty go too far in the direction of individualism? Does it encourage people to think too much of themselves and too little of others? By leaving each to find their own good in their own way, does it fail to enforce standards? Is it a purely negative or neutral political philosophy which embodies no positive values? Would it in effect leave each individual to sink or swim, to flourish or go to perdition? Would it, by preventing the imposition of moral standards in private life by public opinion, lead to the corruption and disintegration of society? Conservative critics, best represented by the lawyers Fitzjames Stephen from the nineteenth century and Lord Devlin from the twentieth, have levelled such charges (Stephen, 1967; Devlin, 1965). Among many good arguments, one may be highlighted, namely Devlin's insistence that a recognized morality is just as important to a nation's

survival as a recognized government, and that public morality cannot ignore what happens in private life. What, he asks, if half the population got drunk every night, or gambled, or became gay, or thought adultery perfectly acceptable? Could society survive? What if Britain had been a nation of debauchees in 1940? (Devlin, 1965, pp. 9–13, 17, 22, 111).

Without doubt there is a gulf between Devlin and Mill, opened up by a profound difference over the scope of morality. Mill as we have seen thinks that conduct falls within the domain of morality only if it is right to encourage or discourage it by means of sanctions: and such sanctioning is usually appropriate only if the conduct affects the interests of non-consenting others. Therefore Mill's theoretical position was more radical than that of the Wolfenden Report of 1957, which recommended the legalisation of homosexuality and prostitution, and from which Lord Devlin dissented. For Wolfenden recommended that certain immoral, but private, acts should be tolerated by law. Mill's theory implies that drunkenness, gambling, homosexuality, adultery and prostitution are not in themselves moral issues (Ryan, 1991, pp. 162–6). This is what his *theory* implies: in practice his *judgements* are not always consistent with it, and it is faintly anachronistic and out-of-character to suppose him gladly accepting 'licentious' behaviour. When discussing the Contagious Diseases Acts he referred to the use of prostitutes as 'illicit indulgence', 'vicious indulgence', 'questions of simple morality' (*CW*, vol. XXI, pp. 355–6, 360).

Generally speaking though, Mill's position is radical: Hampsher-Monk judges it extraordinary (Hampsher-Monk, 1992, p. 369) and Hart, Devlin's liberal opponent, thought Mill 'fantastic'. There has been a rise of paternalism since Mill's day, which to an extent Hart endorses on the grounds that we are less inclined to think that individuals know their own best interests, and that their choices are generally free (Hart, 1963, p. 32). Mill would legalize the possession and also the sale of all drugs, as in consistency he must: if I go to hell on heroin, I affect nobody's interests but my own, unless I thereby incapacitate myself for the performance of special duties. He would usually forbid censorship, unless a spoken or printed utterance could clearly be demonstrated to be a direct cause of harm to concrete interests. Not only would he condemn Muslim attempts to silence Salman Rushdie: I do not believe that Mill would have favoured the prosecution of those who deny the holocaust or who publish racist arguments. But I am not sure he would reject Andrea Dworkin's and Catherine MacKinnon's recent proposals for legislation against pornography. It cannot be

proved that pornography causes sexual violence against women (or men for that matter), but pornographic images do not express opinions nor address the rational faculty. Mill's case is for freedom of thought and discussion, not for freedom to excite antisocial desires.

But essentially Mill's liberalism is not open to the charges levelled by Stephen and Devlin. A Millite Britain in 1940 would have been filled with self-disciplined patriots, modern heroes out of Plutarch, ready to fight and die. There is something curious here. Mill combines a classic, passionate defence of liberty with 'communitarian' themes of devotion to the common good and a concern to promote shared standards of morality.

Mill is a perfect Victorian in his commitment to altruism and unselfishness; nowhere is this clearer than in *Utilitarianism*, which at times sounds so like a sermon on charity that it comes as no surprise to find Mill insisting that 'In the golden rule of Jesus of Nazareth, we read the complete spirit of the ethics of utility. To do as one would be done by, and to love one's neighbour as oneself, constitute the ideal perfection of utilitarian morality' (*CW*, vol. X, p. 218). Nor is Mill content simply to recommend this disposition and hope it will prevail. He wants it fostered by education and opinion 'until, by the improvement of education, the feeling of unity with our fellow creatures shall be (what it cannot be doubted that Christ intended it to be)... deeply rooted in our character' (*CW*, vol. X, p. 227). There is a natural basis for this in the social feelings of humanity, the desire to be in unity with our fellow creatures; and Mill agrees with Comte that these sociable feelings are weak in primitive societies but get stronger as civilization advances. As time goes on, actions which once were thought to be exceptionally disinterested and benevolent come to be accepted as normal or even obligatory (*CW*, vol. X, p. 338). Here history does not appear to have confirmed Mill's predictions. He did not foresee how nationalism in the twentieth century would narrow rather than enlarge social sympathies, nor could he know how new technologies, such as the motor car and television, would lock people in private spaces.

The essay *On Liberty* is not merely a negative argument for non-interference: it is based upon a positive conception of the good. Liberty is good, Mill believes, not because it allows people to do just as they like, turn off their minds, relax and float downstream. It is good because it is bracing and invigorating, because it fosters strong characters and sturdy individuality and promotes progress. It is by no means clear that Mill's enthusiasm for liberty would be undimmed if it turned

out that it produced weak, apathetic and sensual conformists. (A classic argument against Mill, voiced as early as 1859, is that discipline, not liberty, strengthens the character – Pyle, 1994, p. 22; Stephen, J.F., 1967, p. 83.) Nor does Mill recommend leaving people alone, to vegetate or deteriorate: they should actively be encouraged to develop what is best in them. To be sure, this is to be done by conviction and persuasion, not compulsion; but Mill thinks that individuals should be more ready to point out one another's follies and backslidings to a lower level of being (*CW*, vol. XVIII, p. 278).

Many find traces of illiberalism in the essay. Mill argues for legislation against producing too many children in a state threatened with over-population. In the light of recent developments in China and India, this no longer appears unthinkable: but he also argues for laws forbidding marriage 'unless the parties can show that they have the means of supporting a family' (*CW*, vol. XVIII, p. 304). Anyone who has seen Ken Loach's film *Ladybird, ladybird* will be worried by this, and it raises an important theoretical issue; throughout the essay (though not in other writings such as the *Political Economy* and the *Chapters on Socialism*), Mill largely ignores the relationship between liberty and the distribution of wealth and opportunity. This criticism of Mill is well put by McCloskey:

> The impoverished, unemployed person who, because he cannot secure work, suffers from malnutrition and disease, who would, if he could, marry the woman he loves, have a family, be creatively active in his chosen career ... but who because of his poverty is unable to do any of these things, is a slave compared with the well-paid worker in the modern liberal welfare state (McCloskey, 1971, p. 129).

Mill's essay neglects the possibility that liberty may be enlarged by increasing state activity rather than reducing it, nor is there any sense of the way in which entrenched concentrations of wealth and privilege can limit the liberty of the unprivileged by controlling their thoughts and opinions. Mill is afraid of the 'tyranny of the majority' in democratic societies, but fails (in this essay, though not elsewhere – *CW*, vol. XII, p. 166) to confront the danger that powerful minorities might manipulate and control the mass. He is horrified by the narrow, stifling conformism promoted by newspapers, the so-called organs of public opinion; but he does not ask about the extent to which their proprietors mould opinion. The thinking of the masses 'is done for them

by men much like themselves, addressing them or speaking in their name, on the spur of the moment, through the newspapers' (*CW*, vol. XVIII, p. 269). The wording here implicitly rejects the idea that newspapers represent interests distinct from those of the mass, and that they consciously set about the business of forming the minds of their readers.

There is also an intractable difficulty about the legitimate scope of the 'social sanction', the punishment meted out by the disapproval of public opinion and its consequences. As remarked earlier, Mill is as much concerned to defend liberty against these informal pressures as he is to limit the formal interference of the state. The difficulty arises like this: think of some actions with which, according to the liberty principle, we may not interfere – the taking of dangerous drugs, compulsive and ruinous gambling, behaviour which is grossly ignoble and degrading, such as loutishness, gluttony or personal uncleanliness. But if we do not intervene we open ourselves to the charge of being uncaring, indifferent to others and their fate. Mill does not want this. He wants us to encourage others to improve themselves, and to live fully human, happy lives – happy in the higher sense. But how do you draw the line between helping and encouraging (good), and interfering (bad)? When does friendly advice turn into liberty-threatening pressure of public opinion?

> We have a right ... to act upon our unfavourable opinion of anyone ... We are not bound ... to seek his society; we have a right to avoid it ... We have a right, and it may be our duty, to caution others against him ... We may give others a preference over him in optional good offices (*CW*, vol. XVIII, p. 278).

Isn't this imposing a moral sanction against self-regarding acts, in contradiction of the liberty principle?

Therefore some have argued that there are elements of paternalism in Mill, or even that he was not a liberal at all. Generally speaking, such interpretations are strained, or based upon a narrow interpretation of liberalism. If a man who is committed to improving his fellow citizens is a paternalist, then Mill was one (Kurer, 1991, p. 6): but he explicitly repudiates *forcing* improvement upon adults. If a man who holds that they only are truly happy who are rationally self-directed towards 'higher' pleasures is not a liberal, then Mill was not one. But he forbade interference with the self-regarding conduct of those governed by

appetite, or who pursue 'lower' pleasures. If it is illiberal to advocate self-control and the subordination of the impulses to the will, if this abolishes the distinction between liberty and discipline and turns the individual into a 'perfectly self-regulated panopticon' (Carlisle, 1991, pp. 205, 207), then Mill was illiberal: but the idea that liberty and self-control go hand-in-hand has been an enduring theme in Western thought. To say that Mill's willingness physically to prevent a man from crossing an unsafe bridge if there were no time to warn him (*CW*, vol. XVIII, p. 294) is forcing men to be free, or repressing their actual wills in the interest of their 'real' wills (Bosanquet, 1923, p. 65) is an unconvincing attempt to enlist Mill for a particular, and potentially totalitarian, conception of 'positive' freedom. Nor is Mill's liberalism suspect because he insists that choosing to sell oneself into slavery should not be permitted. It might be a self-regarding act, freely chosen: but the point of the simple principle is to *protect* liberty, not to enable individuals to give it up for ever.

Moral Motivation and Proof

A whole chapter is devoted to 'The Ultimate Sanction of the Principle of Utility', that is to say, to the question of moral motivation. One would not find such a chapter in present-day academic writings on moral philosophy, which largely confine themselves to questions about the meaning and logic of moral discourse. But it was a central issue for Mill's contemporaries, and for some time afterwards (Ryan, 1974, p. 96). They were especially concerned by his widely suspected repudiation of Christianity, and his advocacy of a 'religion of humanity' instead. How, they asked, could sinful humans be made moral if they no longer believed in hellfire? How could the selfish individuals of classic Utilitarianism ever be brought to serve a greater whole? (Stephen, J.F., 1967; Bradley, 1927, pp. 115–16; Willey, 1964, p. 185.) These questions troubled Mill, and he clearly felt the need to answer them. Moral motivation was also important to Mill because of his practical concerns – he wanted to improve the world. And finally his positivistic frame of mind placed the issue on the agenda. He wished to treat morality scientifically, to analyse and explain the facts of moral language and behaviour.

Mill thinks that those who care for others have endless sources of happiness, and that a principal cause of unhappiness is 'caring for

nobody but themselves' (*CW*, vol. X, p. 215). There is a natural basis for altruism and morality: 'The idea of the pain of another is naturally painful; the idea of the pleasure of another is naturally pleasurable' (*CW*, vol. X, p. 60). Fellow-feeling is a natural human capacity (*CW*, vol. XV, p. 650). But in themselves these factors are not sufficient: 'the interest of each is indeed best promoted by the good of the whole, but no selfish person will ever know or believe this' (*CW*, vol. XV, p. 569). Mill therefore turns to the Benthamite theory of sanctions, but adds his own emphasis upon the internal sanction, the inner policeman, the conscience. He rightly thinks that external sanctions – the threat of punishment, the disapproval of our neighbours – would be of limited efficacity without the support of this inner one. Conscience is not natural, but acquired; it is a highly complex social and psychological phenomenon, a chemical union or association (*CW*, vol. XV, p. 649). In its finest form it is the result of a 'moral culture' mediated through eloquence rather than logic. In two separate discussions of Plato's *Gorgias*, Mill insists that men and women cannot be persuaded to love virtue by rational argument; it is 'caught by inspiration or sympathy', 'breathe[d] into us through our imagination and our sensations' (*CW*, vol. XI, pp. 149–50, 416).

Mill's determination to be scientific and empirical about morality determines the manner of the 'proof' of the principle of Utility in the next chapter. It is significant that the 'proof' follows the exploration of moral feelings; Mill wants to get the facts of moral phenomena straight first. Given that moral principles cannot strictly be proved, his strategy is to remind the reader of known facts about people's desires which will persuade them that happiness is the ultimate good and which will bring them to agree with him about the essential constituents of happiness. This is a continuation of Mill's argument against intuitionism, which we saw was a central intention of his *Logic* and later *Examination of Sir William Hamilton's Philosophy*. According to intuitionism, we directly intuit that certain things are good, or that certain actions are right and others wrong. Like Bentham, Mill thought that alleged moral intuitions were not objective knowledge: rather they were expressions of personal preference or prejudice, having a conservative tendency.

So Mill appeals to evidence instead: but it is not easy to be convinced that the evidence proves him right. His moral theory is based upon a substantive account of human nature. He does not say that all humans are born longing for higher pleasures, including the pleasures of independence; he knows that these desires are acquired. But he believes that all

human beings, if given the opportunity, *will* acquire these desires and, in an atmosphere of free thought and discussion, will concur in preferring them. But is liberty, for example, an essential part of the happiness of all humans? Or is it vital only from the viewpoint of Western liberal individualism? A different viewpoint might produce a different conception of the good. An American Indian might consider that his primary good lay in the preservation of his nomadic and tribal way of life in harmony with nature, a way of life which Western liberal individualism destroys. Or an Islamic fundamentalist might think that his deepest desire was to live in an Islamic state under Islamic law, and that Western freedom is decadent and immoral. Mill of course would detest this as religious tyranny. But what right has he to privilege *his* conception of the good over that of the American Indian or Islamic fundamentalist? It is not enough to answer that conceptions of the good other than Mill's will, 'when intellectual culture goes on, yield by degrees to the dissolving force of analysis' (*CW*, vol. X, pp. 213, 230–1). This sounds like arguing that those who acquire Western liberal mental habits embrace Western liberal values.

Even within the framework of Western liberalism, Mill's Utilitarianism is contestable. Utilitarianism is the moral philosophy of the impartial observer or disinterested law-giver who, standing outside and above society, judges what will be best for the whole. A major rival to this is the 'social contract' discourse, of Hobbes, Locke and Rousseau and of Rawls in this century. This takes the point of view of the involved subject, who bargains with other subjects with a view, not to maximizing the general good but rather to securing a fair deal for herself. The social contract approach avoids the dangers of aggregate Utilitarianism. Aggregation, as already indicated, opens up the possibility of sacrificing the one or the few for the sake of the many: the social contract, which insists upon fairness to each and every individual, categorically rules that out.

The dangers of aggregation are also avoided by taking indefeasible rights, rights which cannot be defeated or set aside by an appeal to some other moral principle, as the starting point. If for example there is a right to life and it is the primary right, then no appeal to the greatest happiness can justify taking a life. We may kill only to protect life, in self-defence or the defence of others. This could be invoked against capital punishment, as a captured and imprisoned murderer is no longer a threat. It was entirely consistent with Mill's Utilitarianism that he spoke in parliament in favour of the death penalty. To execute a convicted murderer might be in accordance with utility, even if consideration were confined to the murderer himself: the brief terror and

pain of death might be less than the long-drawn out misery of life imprisonment. When questions of deterrence are brought into the equation, the death penalty promises further benefits (*CW*, vol. XVI, p. 987). A Utilitarian insensitivity to rights is also exhibited in his youthful defence of 'resurrection-men' who steal bodies for dissection: if 'no one knows that the body of his friend or relative has been taken', then what harm is done? (*CW*, vol. XXII, p. 50).

Natural, indefeasible or ultimate rights were suspect to Mill just as intuitionism was suspect. The claim that each individual desires happiness is a factual assertion which can be tested by reference to experience: the claim that each individual has an indefeasible right to life does not appear to be a factual statement at all. It could simply be an expression of a widely held prejudice, and to Mill prejudices were reprehensible, conservative and anti-progressive. But it might be argued that tradition and prejudice are central to moral discourse and behaviour, and that in discarding them we risk losing everything. Clearly, we do not have rights in the same way as we have hands and feet, or desires for that matter. But we have rights by custom and tradition, and in this sense they are 'facts'. If they have been valued for generations and are valued now by millions, this may be sufficient to 'prove' them.

In conclusion it can be said that over a century of criticism has failed to demolish Mill's 'scientific' Utilitarianism and defence of liberty. A logical and sophisticated theory can be elicited from his writings, one which is plausible and appealing. On the other hand, Mill has failed in his ambition to drive other competitors from the field; for example, rights-based and contractual ethics remain serious contenders. There is also the possibility that Utilitarianism (and by the same token contractualism and rights) is time- and culture-bound, having no purchase outside modern Western civilization. Perhaps we are compelled to recognize a plurality of moral discourses, which cannot wholly be reconciled: a conclusion at which Mill would have been appalled.

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FREE SPEECH

A Very Short Introduction

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Inequality about how within a developed commercial society humanity is frequently corrupted in various ways, an idea that later inspired Karl Marx. It's not that Rousseau was on the whole correct, Mill thinks, but rather that there was a quantum of truth in his position that had been neglected by the blinkered writers who could only see the fruits of progress. The benefit to society of Rousseau's views was that they were *partly* true, and that, by being aired, even with their generally false or exaggerated conclusions, they stimulated later writers to avoiding naive optimism, and have continued to do so long after Rousseau's death.

It doesn't of course follow from Mill's arguments that absolutely every expressive act in every conceivable circumstance should be tolerated (and even encouraged). But he is clear that if listeners or readers are offended by what is said or written, and particularly by the manner in which it is said, this alone should not be a sufficient ground for censorship. As he recognized, anyone who provides a powerful attack on a cherished idea is likely to be perceived as offensive by those who hold that idea, particularly if there is no easy response to refute the challenge. Yet Mill does recognize that in general a certain calmness in the presentation of ideas is desirable.

Where Mill draws a line marking the limits of acceptable free speech is at the point where it becomes an incitement to harm to another person; not psychological harm or economic harm but physical harm. He is explicit that in most cases we should accord speech and other expression of ideas a far greater tolerance than actions, but this too must have limits. When expressing an idea constitutes an act of incitement to 'some mischievous act', then that act of expression is ruled out by his Harm Principle. His famous example here is of the contrast between a newspaper article in which the writer claims that corn dealers are starvers of the poor and the same view spoken (or communicated via a placard) to an angry mob gathered outside a corn dealer's house. The first is a contentious opinion that should be allowed to enter

the public debate even if the view is false or immoral; the second is in those circumstances an act of incitement and so is ruled out by the general Harm Principle that Mill defends and applies throughout *On Liberty*. The context of expression determines whether or not it can plausibly be thought to be an incitement to violence. A corn dealer listening to the speaker stirring up the angry mob outside his house would have reason to fear for his life; whereas the same man reading an article in the newspaper over breakfast might disagree strongly, without in any way being endangered by the intemperate expression of a point of view.

Real-life cases are rarely so straightforward. The point at which a strongly voiced opinion shades into incitement to harm is rarely obvious. And many writers would today recognize that psychological harms can be as personally damaging as physical ones, so would be less inclined to focus solely on physical harms than was Mill. This is a topic that we will return to in the next chapter where I discuss Hate Speech. It makes the issue of where to draw the line between acceptable and unacceptable speech far more complicated.

How relevant are Mill's arguments today?

A fundamental objection to Mill's arguments is that they are inappropriately fixated on the truth or falsehood of statements. Mill's model of the arena in which discussions take place is, as we have seen, something like an idealized academic seminar with opinions calmly delivered on each side and truth emerging victorious and invigorated from its collision with error. The point of this extended seminar is to get closer to the truth on any matter and where necessary participants will play devil's advocate to test ideas to their limit. But life isn't a seminar. And truth isn't all that is at stake. Words and other expressions have serious consequences and not everyone uses them in the way that academics discussing a contentious point do (or claim they do).

Mill's vision doesn't capture what typically happens in present-day disputes about free speech.

Holocaust denial

Mill's discussion does, however, shed light on the question of Holocaust denial, and specifically on the pivotal libel trial that the now-discredited historian David Irving brought against the historian Deborah Lipstadt. In a book published in 1994, *Denying the Holocaust*, Lipstadt referred to Irving as 'one of the most dangerous spokespersons for Holocaust denial'.

After publication of the book, Irving sued Lipstadt and her British publisher Penguin UK for libel. In libel law in the United Kingdom the burden of proof lies with the defendant and not the plaintiff.

Deborah Lipstadt on David Irving

The passage that Irving objected to:

'Irving is one of the most dangerous spokespersons for Holocaust denial. Familiar with historical evidence, he bends it until it conforms with his ideological leanings and political agenda. A man who is convinced that Britain's great decline was accelerated by its decision to go to war with Germany, he is most facile at taking accurate information and shaping it to confirm his conclusions. A review of his recent book, *Churchill's War*, which appeared in *New York Review of Books*, accurately analysed his practice of applying a double standard to evidence. He demands "absolute documentary proof" when it comes to proving the Germans guilty, but he relies on highly circumstantial evidence to condemn the Allies. This is an accurate description not only of Irving's tactics, but of those of deniers in general.'

This meant that Lipstadt had to prove that her assessment of Irving as a Holocaust denier was accurate. The process of gathering conclusive evidence against Irving's claims was complex and time consuming. It took several years' research including visits to archives and even to Auschwitz. Eventually Lipstadt's lawyers proved her case in court. She won a convincing victory with the judge declaring that it was 'incontrovertible that Irving qualifies as a Holocaust denier'. He also stated that:

> Irving's treatment of the historical evidence is so perverse and egregious that it is difficult to accept that it is inadvertence on his part.

and

> He has deliberately skewed the evidence to bring it in line with his political beliefs.

This case turned on questions of truth. What was at stake was a question about the facts of history. Was it or was it not true that millions of people were murdered in gas chambers during the Second World War? And was it true that David Irving had deliberately skewed evidence about the Holocaust?

Lipstadt met Irving's Holocaust denial with counter-speech and counter-evidence. Irving in contrast rather than choosing to argue the details with Lipstadt in an academic manner, used the force of law to attempt to silence her. Fortunately Lipstadt and her publisher Penguin were in a position to gather the relevant evidence to contest the libel suit. Many writers and their publishers in that position would have been more or less forced into an out-of-court settlement. There is also the suggestion that

some publishers had before the trial been reluctant to publish books critical of Irving for fear that he would also threaten to sue them. Then, in the court of law, the counter-arguments and counter-evidence undermined Irving's claims.

One side-effect of this trial was that historians of the Holocaust went into far greater detail in their evidence against Holocaust deniers than they had done previously. The existence of an enemy in the field was sufficient to focus and reinvigorate their search for more conclusive evidence about precisely how the Nazis set about systematic killing in the Holocaust. Another was to make far better known some of the extreme 'interpretations' Irving has put on the evidence. For example, in her book *History on Trial*, Lipstadt quotes from a 1991 speech Irving gave in Calgary, a speech that was read out in court:

> 'I don't see any reason to be tasteful about Auschwitz. It's baloney. It's a legend. Once we admit the fact that it was a brutal slave labour camp and large numbers of people did die, as large numbers of innocent people died elsewhere in the war, why believe the rest of the baloney? I say quite tastelessly in fact that more women died on the back seat of Edward Kennedy's car at Chappaquiddick than ever died in a gas chamber in Auschwitz. Oh, you think that is tasteless. How about this. There are so many Auschwitz survivors going around, in fact the number increases as the years go past, which is biologically very odd to say the least, because I am going to form an Association of Auschwitz survivors, survivors of the Holocaust and other liars . . . A-S-S-H-O-L-S.'

After the trial Alan Dershowitz wrote:

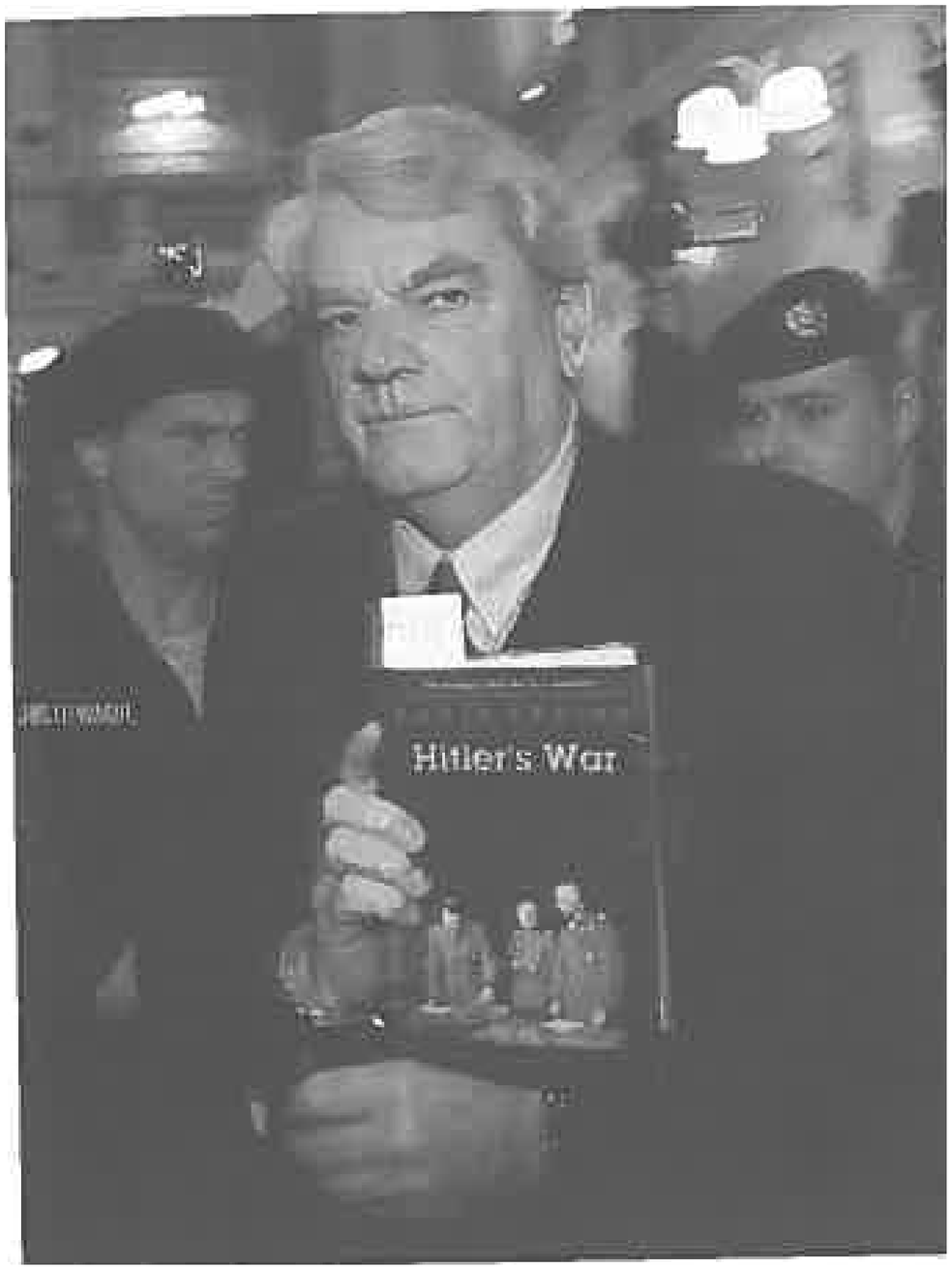
> One reason why false and offensive speech is permitted in most liberal democracies is precisely because the best answer to bad speech is good speech, rather than censorship.

This is essentially one of John Stuart Mill's points about the value of free speech over restriction of speech. In this case Irving, by suing Lipstadt, provided a public forum in which some of his most offensive and misguided speech could be responded to point by point with detailed evidence to back it up and an arbiter in the person of the judge.

The Irving trial has an epilogue that also further illuminates issues of free speech. Austria has laws against the minimization of crimes committed by the Third Reich. In 2006, while visiting Vienna, David Irving was arrested and imprisoned under these laws. From the perspective of the arguments of Mill's *On Liberty*, such rules are damaging to the pursuit of truth. To Mill it was obvious that even false views have a part to play in the free market of ideas. If we silence those who utter falsehoods, we run the risk of becoming dogmatic, of believing without understanding, or feeling passionate about the evidence supporting our beliefs. We also run the risk that such false beliefs will be given greater credence by the very fact that they are suppressed rather than openly refuted. Austria's laws turned Irving into something of a free speech martyr. The London trial where his views were challenged and conclusively refuted in public had far better consequences. Laws preventing specific interpretations of history are clearly antithetical to free speech. But they may also inadvertently glorify those who are silenced by them—hardly the desired effect.

Respect rather than truth

The case of Holocaust denial differs from many contemporary free-speech issues. With Holocaust denial the focus is on fact, on whether specific statements about the past are true or not. Today, though, many conflicts centre on questions of respect and disrespect rather than opinions, truth, and falsehood. So, for example, in 2004 in Birmingham in England, the first production of the play *Behzti* (which means 'dishonour') by the playwright



4. From discredited historian to free speech martyr: David Irving shortly before being imprisoned in Austria

Gurpreet Kaur Bhatti was disrupted by Sikh rioters, who found offensive. The plot centres on acts of sexual abuse and murder th take place in a *gurdwara*, a Sikh temple. The truth or falsehood of what was portrayed was not the issue. What disturbed the opponents of the play was that it disrespected the sacred nature of

the *gurdwara*. This is a common response of religious groups to what they consider blasphemous depictions of their holy figures and places in novels, plays, and cinema. It is not a question of truth, but of whether there should be topics and places that are out of bounds for writers on the grounds that religious (and other) groups will find inappropriate treatment of such topics deeply offensive.

Mill would presumably have defended the performance of the play on the grounds that it expresses views that might be for the benefit of humanity and that it would be wrong to prejudge this. Furthermore, the indirect censorship of the play significantly restricts the playwright's ability to follow her chosen path in life, despite not directly harming others. But Mill's general stance on free speech is insensitive to the precise point at issue here, which is the alleged sanctity of certain symbols, a recurrent theme in religiously motivated attempts to prevent expression that disrespects this.

A further ground for censorship in some regimes may be that the viewpoint censored is actually true. This is not something that Mill considers in *On Liberty*. False views might be relatively harmless to a powerful government, but if, for example, knowledge of how the anti-corruption (and pro-democracy) protestors in Tiananmen Square in 1989 were slaughtered or incarcerated became widespread throughout China, this might be a trigger for political uprising. This might well be the justification for Chinese authorities censoring, with the aid of some Western Internet Service Providers (ISPs), what appears on Internet search engines in China. In other words, Mill's argument that censors assume infallibility may be beside the point here. What the censors in this case are presumably doing is preventing large numbers of people from learning the truth of the matter, not censoring a view which they sincerely believe to be false. It is the truth (or even an approximation of the truth) that is considered dangerous in this context.

5. Tiananmen Square, 1989: a brave student protests against government corruption shortly before the Chinese army open fire on protestors, killing many of them. Through censorship of the Internet and other media many Chinese today are still unaware of what took place and how their government responded

More generally, once we move away from Mill's implicit assumption that all forms of expression assert facts that may be true or false, then the limitations of his approach become even clearer. Debates about censoring pornographic images, for example, the subject of a later chapter, are not typically debates about the truth or falsehood of what is depicted. Hardcore video pornography aspires to accurate representation of the acts performed in front of the camera. The 'cumshot', where a man visibly ejaculates, is a mark of authentic arousal here. It dispels the suspicion that the actors are engaged in a series of choreograph movements while remaining unaffected by the actions they are performing. It exploits photography's documentary potential to connote truth, to denote facts. It is hard to see how Mill's arguments could be transposed here, unless we take pornography to be asserting a general position about, for example, the availability of women (or men) for sex or, as some feminists have

argued, that it wrongly gives the message that all women desire sexual subjugation and directly encourages crimes such as rape. In such a case the general assertion is delivered via a specific instance, the part standing for the whole.

'No Platform' Arguments

It might seem to follow from Mill's views about free speech and the value of falsehoods sincerely expressed that we should actively strive to provide a platform for those with whom we strongly disagree. This is a public way of subjecting our views to the toughest test, the collision with sincerely held error. Whether or not inspired by Mill, some people have argued along these lines. For instance, in a debate in 2007 on the topic of free speech at the Oxford Union Society, the President of the Union, Luke Tryl, justified his invitations to Nick Griffin (of the British National Party) and David Irving by claiming that for a proper debate it was important to hear all views, even if they were obnoxious.

Many people believe there are strong arguments for *not* giving such speakers a platform. This might literally be a platform, as in the invitation to the Oxford Union Society, or it might be a metaphorical platform, such as being given space in a reputable newspaper or interviewed about their views for a radio or television programme. Those who take the 'No Platform' stance (e.g. in the form 'no platform for racists' or 'no platform for Holocaust deniers') argue that it is morally wrong for anyone to give such people credibility by allowing them access to these channels of communication, channels that often come with an implied stamp of respectability. For instance, by inviting Irving to speak at the Union Society this might be seen to be endorsing his credentials as an academic historian, and so might lead him to be taken more seriously than he should be.

On the other hand, those who invited Irving stressed that the Oxford Union has a long history of inviting controversial speakers,

including, in the past, Malcolm X, and that an invitation to that particular platform carried with it no endorsement of the views of the speaker whatsoever. Speakers are often selected on grounds of notoriety rather than on the likelihood of an intellectual contribution to an important debate.

Similarly, at a zoology conference, the organizing committee might well decide that it would be inappropriate to allow a Young Earth Creationist, someone who takes the Bible as a literal account of the origin of life, to speak from a platform alongside reputable scientists, because this would seem to imply that the Young Earth Creationist's views were scientifically respectable, which they clearly are not. Richard Dawkins cites a wry comment from a scientific colleague on this topic. Whenever a creationist invites him to a formal debate about the evidence for evolution, this scientist replies, 'That would look great on your CV; not so good on mine.'

A variant of the 'No Platform' view is adopted by Deborah Lipstadt, who despite being one of very few people adequately equipped to refute Irving's views on the Holocaust point by point and in great detail, has declined to appear in debate with Irving on the grounds that even to appear with him in public gives him a credibility that he does not deserve. In this case, Lipstadt's appearance as an academic of sound integrity alongside Irving would be tantamount to an indirect endorsement of his respectability as a historian. The point is that as he has been shown to be systematically deceptive about some of his primary sources, he has entirely discredited himself. Any engagement with him could be read as part of his rehabilitation as a researcher.

It is important to distinguish No Platform Arguments from oth related phenomena. First, No Platform Arguments are not complete censorship. I can believe in your legal right to air your views without having any obligation to provide you with the means to air them. Particularly in the age of the Internet, most of us can find ways to express our views to a wide audience. Complete censorship is an attempt to prevent all expression of particular views. No Platform Arguments are about avoiding indirectly endorsing a speaker by providing them with a podium from which to deliver their views.

No Platform Arguments should also be distinguished from the view that only the tolerant merit tolerance, that we have no obligation to preserve the freedom of speech of those who would restrict others' speech. This sort of reasoning, tempting as it is, does not merit the label 'free speech'. It may lead to a kind of censorship. Certainly Mill's arguments for free speech will not single out the intolerant as unworthy of being heard. Intolerant people may very well speak the truth on many issues, or their views may contain elements of truth. No Platform Arguments are arguments about what we are doing indirectly by giving certain people a platform, not an absolute refusal to give a platform anywhere as a punishment for the speaker's intolerance.

Mill's pronouncements on free speech might seem to justify inviting extremists to take part in public debates even if you find their views disgusting. Yet Mill as a consequentialist would also have been sensitive to the side effects of such invitations, which in some cases can be very far reaching. He would also very clearly draw a line where speakers' expression amounted to incitement to violence.

Yet where someone is repeatedly prevented from using the press and television to present a message to a wider audience, it might start to seem like informal censorship. If the consequence is that that person's ideas don't get expressed openly and are not subjected to critical scrutiny, then this would be an unfortunate result.

Are we to treat Ali's assertion that she had no intention to provoke anyone as merely disingenuous? It is not clear how it would be possible to adjudicate this sort of case. It bears many similarities to the Islamic reaction to Salman Rushdie's novel *The Satanic Verses*, a reaction that symbolizes an impasse between those who believe in individuals' freedom of expression on matters of religion and many other issues as a non-negotiable aspect of civilized democratic society, and those who insist that their religion should be held sacrosanct, that no one should be permitted to express anything that is in their view blasphemous.

Christianity and Islam are not the only religions capable of intolerance towards criticism or what their adherents perceive as sacrilege. As I mentioned in Chapter 2, in 2004 Sikh protests against Gurpreet Kaur Bhatti's play *Behzti* culminated in a crowd of over a thousand people storming the Birmingham Repertory theatre and three police officers being injured. The playwright had to go into hiding for her own safety. Like Aayan Hirsi Ali, Bhatti was explicit that she was not deliberately offensive in her work:

> I did not write *Behtzi* to offend. It is a sincere piece of work in which I wanted to explore how human frailties can lead people into a prison of hypocrisy.

Nevertheless, the simple outline of the plot was sufficient to offend many of the protestors, few of whom had seen the play. The effects of the storming of the theatre are far wider than the particular case: the danger of such episodes is that they cause writers to self-censor for fear of violence.

The suggestion that creative artists and others should tiptoe around the wide-ranging religious sensitivities of Christians, Muslims, Sikhs, and others, and that religious beliefs should be held as sacrosanct and immune from criticism is unacceptable in

an open democracy. A spirit of toleration should not include a prohibition on causing offence. The intolerance shown by some religious believers is deeply offensive to many non-religious people (as well as to some religious believers), but that is not a reason for the non-religious and anti-religious to threaten violence against the intolerant. It is an opportunity to meet speech with counter-

Hate speech

The question of deliberate provocation is important too in justifying laws against what has come to be known as hate speech. Hate speech is expression that aims to cause extreme offence and to vilify its target audience. This is speech or writing, or other expression that is so insulting that it is tantamount to a form of harm (though stopping short of direct incitement to violence), and so, many people believe, should not be immune from censorship in the way that other less offensive expressions should be. In other words, hate speech is often presented as a special category which does not merit free speech protection in the way that other speech does. Some blasphemy might easily be re-described as hate speech directed at the religious, though some is simply a matter of failing to recognize or give special treatment to symbols that others hold dear or sacred.

Hate speech typically degrades people on the basis of their race, religion, or sexual orientation. The choice of language or other form of expression and the context in which it is uttered or written are all organized to achieve insult and humiliation of a group or individual. It is an expression of contempt that gets its effect from hitting the mark: the target group needs to hear, read, or otherwise be aware of the message for it to fulfil the speaker's or writer's intentions. This is not a matter of private expression of loathsome views, but rather of acts of extreme insult provocatively delivered.

Often the hate speech is intended to be contagious—part of the desired effect is to encourage others to express similarly venomous views. Here anyone who wants to defend extensive freedom of expression is faced with a stark choice between the values of freedom and the costs of allowing extreme expressions of racism and homophobia that may threaten individuals' dignity and be so offensive as to interfere with their lives on a daily basis and at a significant level. The targets of hate speech are often particularly vulnerable and in a minority. The cost for them of freedom of speech would be potentially high in that their dignity and self-respect may be threatened.

The extreme liberal position is to defend hate speech as an unfortunate possibility once you have adopted a free speech policy. A full range of sorts of speech merits preservation from prosecution. In the United States, the First Amendment free speech protection has in some renowned cases led to judgments that, disgusting as such hate speech may be, it should still in many cases be permitted. It is protected from prosecution because it is potentially part of a political debate.

Skokie and toleration

Perhaps the most famous such case in the USA, and one that has become synonymous with the idea that free speech involves protection of the speech you hate, occurred in 1977 when a First Amendment defence was used to protect a planned neo-Nazi march through a village, Skokie in Illinois. This village was occupied by many Jewish refugees from Nazism—approximately one in six inhabitants were either Holocaust survivors or related to Holocaust survivors. The marchers were to wear their uniforms and carry swastikas in a parade that would undoubtedly cause great anguish to those whose friends and relatives had been murdered in Nazi concentration camps. The local village board, anticipating the march, had banned parades in military uniforms and required that a $350,000 indemnity bond be paid in

advance of any march. Controversially, the American Civil Liberties Union took up the case as a free speech issue (losing many members in the process); as a result the Court of Appeals declared the Skokie council measures unconstitutional because they contravened the First Amendment. The march, however, didn't take place in Skokie, but was moved to a park in nearby Chicago. Since then, despite the distasteful nature of the march, many free speech activists have taken Skokie to be a symbol of what a commitment to free speech should mean in practice, namely extreme toleration.

The rationale for such toleration is at least twofold: first, many believe that the best way to combat hate speech is with further speech: counter-speech as it is often called. Preventing others expressing extreme opinions has long-term consequences for society, and their frustrations may find expression in other even less desirable ways. In the tradition of John Stuart Mill, the line at which hate speech should be illegal is when it becomes an incitement to violence or a clear case of libel. Secondly, the danger of a legal prohibition on some forms of speech is that it makes further prohibitions that much easier, and that, gradually, individuals will be likely to have their freedom of expression limited to a greater and greater degree. Outlawing hate speech may be the thin end of the wedge.

In the United Kingdom, the legal stance is that there are justifiable limits to freedom of speech in relation to hate speech, particularly when others' lives may be blighted by some kinds of expression, and that it is for the courts to draw the line between acceptable and unacceptable forms of expression, taking account of a wide range of factors, difficult as this may be. Laws against racial discrimination, for example, can be used to prosecute those who use racist hate speech. In many other countries too, including Austria, Germany, France, Canada, and New Zealand, there are laws protecting racial groups from certain sorts of targeted expressions of hatred.

But there is a good argument that the act of censorship is wha was wrong, not the fact that it was art that was censored. In a civilized society freedom to offend should be protected, but there are not good grounds for making art a special case and protecting it from censorship simply because it is art.

Chapter 5
Free speech in the age of the Internet

Has the Internet changed everything?

John Stuart Mill was writing in the 1850s, yet his writing on free speech is still the starting point for most discussions of the topic today. Immense technological changes in communication have occurred since then. The Internet has transformed our world. It has democratized comment, massively expanded the reach of any message, and opened people up to new ideas and new ways of interacting with each other, whether by email, weblog, podcast, vodcast, chat room, or in the persona of an avatar in *Second Life*.

Where once publishers and newspaper editors policed the gates of access to a wider public, today the rise of citizen journalism has demonstrated that almost anyone with an Internet connection and very basic knowledge of computing can reach a very large audience without any intermediaries controlling what they say. The future of free speech must be tied to the ways in which individuals are permitted by governments to use the Internet (and to the practical limits governments have in exercising control over how their citizens do this). Whether governments or others are practically capable of restricting free expression in the age of the Internet is an important question. But even if they can't make a significant difference in this respect, the moral question remains

of whether or not such a proliferation of expressed ideas is good for humanity. Are there particular dangers associated with the Internet?

Some dangers of the Internet

Richard Posner has identified four features of this new means of dissemination that may be thought to magnify the dangers of irresponsible speech and so should have an influence on how we think about free expression.

Anonymity. The Internet permits users and creators of communications to remain hidden. This makes it far easier to produce, create and consume false, illegal, and dangerous material such as child pornography or hate speech.

Lack of quality control. Almost anyone can post almost anything on the Internet. This is very different from conventional publishing where much inaccurate and misleading information is filtered out by the publishing system or removed at the request of lawyers before a book, magazine, or newspaper goes to press. On the Internet unsubstantiated assertions are as easily published as well-researched articles. Indeed, a whole genre of so-called Gripe Sites has grown up with the sole purpose of expressing grudges, often in libellous form. Rumours about celebrities, frequently unsubstantiated or completely false, are spread virally via weblogs; had such views been expressed in published newspapers, then many of them would have been quashed by legal pressure.

Huge potential audience. The Internet provides access to millions of potential readers and viewers across the world. This can magnify any harm caused by speech.

Antisocial people find their soul mates. People with odd, eccentric, subversive, and dangerous views can find each other very easily on

the Internet. Where in the past someone with such views would have been socially isolated, today, linked by chat rooms and websites, such people 'become emboldened not only to express their ideas, but also to act upon them, their self-confidence bolstered by membership in a community of believers'.

Anonymity, as Posner notes, need not be a permanent aspect of the medium. It may be a transitory feature. Nevertheless, it is a present-day feature. This has a practical implication: it is extremely difficult to restrict some kinds of expression on the Internet and even harder to track down the creators and users of material. For those willing to use unscrupulous methods, the Internet has greatly increased freedom to communicate across the world because the risks of being traced are lower than with conventional modes of publishing ideas. Even if we believe that some views are so hateful or likely to incite violence that they should, ideally, be censored, there are severe practical difficulties in carrying out this censorship. From a moral point of view we will want to condemn incitements to violence, but pragmatically we may not be able to prevent their expression on the Internet. If censorship is practically impossible, we will need to develop other methods of minimizing the damage caused by this kind of expression.

On the second point, the lack of quality control, this is rapidly changing. Many websites control quality. That is the basis of their reputation and readership. Also, the quality control often comes after publication in the form of certification by sites with a high reputation usually due to affiliation to a university, a trusted organization such as the BBC or *The New York Times*, or a public body. Some websites, such as *Arts and Letters Daily* (www.aldaily.com) aggregate links to high-quality material and so sift what is available to the reader, thus producing the equivalent of a literary magazine. Again, as Posner notes, lack of quality control, to the extent that it now exists, is probably a transitory aspect of the Internet. The consequence, though, is that there are

already many potentially damaging assertions being circulated widely that would not have been circulated by conventional published media. For those who have faith in the free market of ideas, the diversity and range of expression is a good consequence of the medium; for others, though, this is a worrying product of new technology. The same medium that can allow the swift dissemination of information about humanitarian issues can be used to promote suicide bombing, or to spread false and damaging rumours about film stars' private lives with little chance of redress.

The huge potential audience for ideas and images certainly magnifies the possible effects of publication. I can post a message at almost no cost on my weblog from my home and it can be found, read, and responded to within seconds by people on the other side of the world. This is certainly a worrying aspect of the Internet as well as one of its chief benefits. The cost of such immediacy and range may be great as Posner points out: 'A nut who couldn't get a newspaper to publish any of his letters to it can reach thousands or even millions of people over the Internet at virtually zero cost'.

What this means is that any damaging speech can be much more dangerous than at any point in history. This is undeniable. Yet, the possibility of publishing responses swiftly and with just as large a readership to some degree counters this. Speech can be met with counter-speech and far fewer possible contributors to any debate are excluded. Also, a wider range of views can be expressed than would be possible in mainstream conventional media.

Posner's fourth point, that dangerous antisocial people can link up with those who share their views and bolster each other's ideas, is surely correct. This again has great potential to bring about real harm. Paedophiles have teamed up in this way, as have terrorists. Usually the activity of such people is clearly illegal. But the ease of communication and the networks that allow similar people to find each other have facilitated connections that have led directly to violence. Less dramatically, but still with very serious, often fatal, consequences, teenage anorexics have been very active in exchanging ideas for weight loss and for overcoming the pangs of hunger and have reinforced dangerous ideals of thinness and of the evils of eating. The risk in this last sort of case is to the vulnerable people drawn to the pro-anorexic websites. It is true that the same technology that permits antisocial people to combine forces also permits those whose aims are good to discuss and collaborate to oppose evil. Nevertheless, whoever champions completely unfettered communication needs to be clear about how serious the consequences of that approach may now be. In view of these sort of risks, some have argued that Internet Service Providers (ISPs) should be held legally responsible for the content they make accessible. Yet if this approach were taken many of the benefits of immediacy and openness of communication would be lost. Ultimately the right decision in this situation must be based on a very complex and ever-changing cost-benefit analysis that takes into account how the Internet is actually being used, what is possible given the developing technology, and what the actual consequences of different courses of action are likely to be.

The 'Daily Me'?

Cass Sunstein has raised a different concern about the impact of the Internet and associated technologies on free speech. The benefits to democracy of free speech in part derive from the public having access to a wide range of speakers and opinions. The underlying assumption is that through encountering views with which they disagree, members of the public will focus their own beliefs, and develop their critical engagement with the issues that concern them. Without exposure to a range of positions,

individuals may become complacent in their views; they may not even realize that their views are controversial or widely despised.

Sunstein makes the point that for a heterogeneous society to function well people should be exposed to materials that they would not have chosen to read or listen to:

> Unanticipated encounters, involving topics and points of view that people have not sought out and perhaps find quite irritating, are central to democracy and even to freedom itself.

This is connected with the idea that for a deliberative democracy to function citizens must be capable of reflection and debate about the issues that concern them as well as be able to call their elected representatives to account. Also if the tradition of meeting speech with counter-speech is to function, then the counter-speech must be heard, particularly by the people speakers are responding to.

The Internet facilitates a highly selective approach to the information that we receive. We can filter out whatever we don't wish to know about. Furthermore we can do this automatically with software that recognizes our interests, likes, and dislikes. In principle each person could tailor news, entertainment, and every other kind of material they receive from the Internet to their particular tastes, not just in terms of subject matter, but also in the stance taken by the writer or presenter. A liberal could only hear news with a liberal spin, a racist need never have his or her views challenged by anything that comes via the Internet. The Internet user would every day receive the 'Daily Me'—a personally adapted selection. If large numbers of people were to have such personally selected access to other people's ideas, Sunstein suggests, the conditions for a healthy democracy would not be met. This is not an argument for forcing individuals to use the Internet in a prescribed way—that would be an unacceptable instance of

paternalism. But the Internet exacerbates the risks of only hearing what you want to hear.

In response to Sunstein, it could be argued that we all filter our exposure to ideas now. I don't subscribe to racist magazines, nor do I read books about homoeopathy. I read newspapers that I find sympathetic in their editorial stance, and mix with people who broadly share many of my views. In my reading on the Internet, partly because much of the content is free, partly because it is so easy to access, and partly because of the neutrality of search engines when listing items on a topic, I have in fact read a wider range of opinions than I probably would if it didn't exist. And because the Internet encourages dialogue rather than simply passive reception of ideas, through comment functions on weblogs and discussion in chat rooms and so on, whenever I have posted anything controversial on a weblog I have had comments which fall into the category of counter-speech: responses from those who hold a very different set of beliefs. This is an anecdotal response, but it suggests that Sunstein's concerns about how the Internet might narrow minds need empirical investigation to establish whether this is in fact how people tend to use the Internet.

Paternalism towards children

A further worrying aspect of the Internet is that it makes it very difficult to control children's access to, for example, pornographic material, and to ways of interacting with strangers, with all the attendant risks. This may again be a transitory aspect of the medium. Perhaps more sophisticated child controls will reduce these risks in the near future. But at present there could be grounds for outlawing some kinds of website as a matter of child protection even if this limits free speech for some adults. For example, as already mentioned, there are many pro-anorexia and pro-self-harm websites and chat rooms that allow young people to exchange ideas about how to lose weight and reaffirm these people's false views about their bodies in ways which could

ultimately contribute to their deaths. Many pornographic websites are easy for children to access. While there may be arguments for tolerating this sort of website if its use were restricted to adults, paternalism towards children is entirely appropriate. If there were a simple way to bar children and adolescents from having access to such sites, this would be a good solution. But in the absence of such a reliable means of exclusion, the least worst option would presumably be to outlaw such sites and to take strong action to make sure that they are not available on the grounds that they carry with them a very significant risk to children.

Using other people's words and images

The existence of the Internet has also brought to the fore concerns about the limits on free speech that copyright law imposes. There have been prohibitions on using other people's words without permission (or in many cases payment) for hundreds of years. Copyright is a compromise between the needs of writers to receive financial reward for their writing and the needs of users of their works. The result of copyright law, which differs from country to country, is that there are many words that it would be illegal to publish, speak, or perform. This is potentially a restriction on freedom of speech, particularly if you are a writer who wishes to collage other people's writing, or you desire to perform a speech from a contemporary playwright's work in a public place without permission.

In recent years, the ease with which digital technology permits reuse and re-versioning of other people's writing has raised new issues about freedom and led to campaigns for reform in copyright laws to allow freer use of other people's words.

T. S. Eliot's poem 'The Wasteland' famously combines original lines with 'stolen' ones. A new context gives them new meanings and links place and poem to the past, often with irony. For Eliot it was obvious that great literature builds on and uses the literature

of the past. The meaning of any piece of writing in part derives from its relation to other writing, and particularly to the writing of those now dead, who constitute a particular tradition. In his poetic practice he went further and actually embedded fragments of this tradition within his own poetry, adding footnotes to show sources.

William Shakespeare used plots from historical sources or built on the ideas of his contemporaries. Musicians frequently quote from other composers. Visual collage is often a reuse of other people's creative work, but the result is typically a new work. In almost every art form the great creators build on and reuse the work of their predecessors—sometimes in a disguised way, but often blatantly. Indeed, selective quotation is a major trope of postmodernism. That, many people believe, is how art evolves. Creativity comes from a relationship with the art of the past. Furthermore, art is an area that demands freedom—it is where individuals push at boundaries of conformity. Every restriction cuts off a possible branch of artistic development. Much of this reusing of the past is appropriate; but some is morally culpable in that the creators deliberately give the impression that they have produced the words and not their predecessors.

Postmodern art practice is at least as magpie-like and eclectic as T. S. Eliot was in 'The Wasteland'. In one extreme case the artist Sherrie Levine re-photographed well-known photographs by Walker Evans from an exhibition catalogue of his work. Levine exhibited her prints, which were basically photographic reproductions of Evans's. It could be argued that her use of these images was very different from Evans's, contributing a range of ideas to the work. Indeed, most commentators have argued that this kind of open appropriation should be seen as a postmodern comment on notions of originality, authorship, and authenticity in photography. To this extent she is principally a conceptual artist. But, visibly, her work, which, ironically, is now collected by major