

# *Studies in the History of Ethics*

## **When Experiments in Living Go Awry**

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### **1. Introduction**

What reactions are legitimate when someone is pursuing an experiment in living that has, in your considered view, gone awry? Most people believe that not every opinion or mode of living is as good or valuable as any other. This includes J.S. Mill:

There is a degree of folly, and a degree of what may be called (though the phrase is not unobjectionable) lowness or deprivation of taste, which, though it cannot justify doing harm to the person who manifests it, renders him necessarily and properly a subject of distaste, or, in extreme cases, even of contempt: a person could not have the opposite qualities in due strength without entertaining these feelings.<sup>1</sup>

Mill thought that such judgments can be legitimate, even in cases where the action is purely self-regarding, but he nonetheless demanded toleration in these instances. He opposed interfering except when necessary to prevent harm to others. This is very familiar. But a generally less remarked feature of *On Liberty* is its thoroughgoing

opposition to socially-imposed conformism of all sorts. Mill never mentioned “autonomy” in the book, but his paeans to individuality foreshadow much of the current concern with individual autonomy.<sup>2</sup> The liberty Mill recommended certainly includes the noninterference of classical liberalism, but also at least hints at what lies beyond it. It seems to implicate a good deal of what becomes known later in nineteenth century philosophy as “positive liberty” or “self- realization.”<sup>3</sup>

This essay discusses how the way Mill expressed his concern over the cultivation of individuality places some stress on the harm principle and on the permissibility of making the sort of judgments about another person that seem fairly natural to make when someone is pursuing an experiment in living that has gone considerably awry. It is surprisingly difficult to provide a representation of Mill’s view about such cases in a way that accommodates everything that Mill seems to commit himself to: the harm principle; antipathy towards conformism; and the permissibility of making some very negative appraisals of certain modes of living.

## **2. Toleration and control in a liberal society**

One reason to defend toleration for people who deviate from customary practice or traditional morality highlights skeptical doubts about claims of certainty regarding the goodness or reason-giving force of customary practice and traditional morality. For example, those touting the benefits of traditional morality only know how following those rules has benefited them in their experiences, which does not justify their claims of certainty. As Mill noted, “their experiences may be too narrow; or they may not have interpreted it rightly” (p. 69). Moreover, their experiences are just that – *their*

experiences. The benefits of traditional morality are evident in many people, and in many circumstances, but nowhere close to all. According to Mill, such things depend far too much on individual differences in personality, taste, and people's conceptions of the good, at least many of which are reasonable. Moreover, even granting that there may be ways to be closer to or farther away from the truth about what modes of living people have reasons to pursue independent of their desires, skeptical doubts are relevant here, too. One reason is that moral truth is often difficult to discern and there is a lot of room for moral error. Proponents of traditional morality might just have it wrong about what should be pursued. Mill thought that so long as we are on this side of perfection, "there should be different experiments of living; that free scope should be given to varieties of character, short of injury to others; and that the worth of different modes of life should be proved practically, when any one thinks fit to try them" (p. 67).

His encouragement here to tolerate different experiments in living can be seen as a straightforward application of his harm principle:

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, 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 (p. 11).

The self-regarding actions of social mavericks should be tolerated. Mill's view is that their novel, unusual, or unsanctioned modes of living may bring to light information conducive to general flourishing. Their pursuits might prove worthy and others will soon follow. New conventions may replace older conventions with the result that more people are made better off.

But Mill did not intend this to be the only measure of individual or social success, or, indeed, the only basis for toleration:

It is desirable, in short, that in things which do not primarily concern others, individuality should assert itself. Where, not the person's own character, but the traditions or customs of other people are the rule of conduct, there is wanting one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress (p. 67).

In fact, Mill's view is that the mere fact that some mode of living was voluntarily chosen by the person can make it the best mode for him:

If a person possesses any tolerable amount of common sense and experience, his own mode of laying out his existence is the best, not because it is the best in itself,

but because it is his own mode. Human beings are not like sheep.... If it were only that people have diversities of taste, that is reason enough for not attempting to shape them all into one model (p. 81).

In addition to the defense of the harm principle, then, *On Liberty* is characterized by Mill's concern for the development of individuality. Mill wrote that the cultivation of individuality "within the limits imposed by the rights and interests of others" is that through which "human beings become a noble and beautiful object of contemplation" and makes the human race "infinitely better worth belonging to" (p. 75). Mill prosecuted this line of argument in opposition to socially-imposed conformism and connected individual character development to the practice of toleration.

This raises a number of questions about Mill's view, especially in those situations where someone is pursuing an experiment in living that has gone awry. Presumably, the harm principle governs in these situations, but what is the appropriate way to apply it? Certainly, if Mill thought it is legitimate to make negative judgments concerning the worth of another's mode of living, then he must have thought it is legitimate to act on these judgments in certain ways (p. 66). But which ways are legitimate? Certain ways, even ways that do not violate the harm principle, would be rather oppressive and have the effect of curbing the development of someone's individuality. Furthermore, what is the status of the good in the development of individuality? Mill claimed that its value is intrinsic rather than merely instrumental (p. 68), but how weighty a value is it? Is it absolute? Also, what counts as interfering? What precisely is required for toleration? What sorts of interference are permitted to right the path of this person, and what must

you avoid doing?

It is too easy just to conclude that the person lacks a “tolerable amount of common sense and experience” in these situations where it is legitimate to make and act on the judgment that another’s chosen pursuit is low, distasteful, or contemptible. Again, Mill thought it is fitting that individuals help others distinguish good from bad and better from worse. Everyone “should be for ever stimulating each other to increased exercise of their higher faculties, and increased direction of their feelings and aims towards wise instead of foolish, elevating instead of degrading, objects and contemplations” (pp. 91-92). But if two parties disagree about the appropriateness of the pursuit, then they will also very likely disagree about who lacks sufficient common sense and experience.

Other easy attempts to resolve the tension are just as problematic. First, Mill is sometimes thought to have intended that the harm principle only apply as a constraint to be observed in coercive legislation. If this were true, then there would be nothing wrong with utilizing more informal methods of social coercion to interfere with unsanctioned avenues of self-expression. Doing this might even be beneficial in relaying important guidance from society’s collective wisdom.

This cannot be Mill’s view, however. Resolving the tension this way mistakenly turns his argument about the “tyranny of the majority” and the limits of the criminal law against his argument about how often “society itself is the tyrant” (p. 5). Mill very clearly intended the harm principle to apply to both situations. Mill sought a “limit to the legitimate interference of collective opinion with individual independence” (p. 11). The harm principle was proposed to mark out that limit. The principle is “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” (p. 11). The aim was to erect a “barrier of moral conviction” against the tendency people have “to impose their own opinions and inclinations as a rule of conduct on others” (p. 16).

His concern here had to do with the rather strict social practices in Victorian England and his observation of the ways in which various pressures were used to motivate social orthodoxy. Mill devoted, if anything, more of his argumentative resources to addressing this concern with blind conformity to tradition, the use of “moral coercion,” and the detrimental effects of this on the cultivation of individuality than to the effects of legal interference. For example:

Society can and does execute its own mandates: and if it issues wrong mandates instead of right, or any mandates at all in things with which it ought not to meddle, it practises a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself. Protection, therefore, against the tyranny of the magistrate is not enough; there needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development, and, if possible, prevent the formation, of any individuality not in harmony with its ways, and compel all characters to fashion themselves upon the model of its own (p. 5).

Friedrich Hayek noted Mill's sensitivity to this kind of enforced conformism and wrote, "In this he probably overstated the case for liberty. At any rate, it probably makes for greater clarity not to represent as coercion the pressure that public approval and disapproval exerts to secure obedience to moral rules and conventions."<sup>4</sup>

Hayek is wrong about this. That is, if concern for liberty includes the concern for social progress, human happiness, and especially the cultivation of individuality, then it probably makes for greater clarity to represent as coercion more than just legal interference. Mill argued that people should be free to explore deviations from traditional morality "without hindrance, either physical or moral, from their fellow men, so long as it is at their own risk and peril" (p. 66). According to Mill, political and legal, but no less informal, social interference can undermine or curb the development of individuality. Either kind of obstacle can be used to induce conformity to a particular conception of morality or the good for no other reason than that it is the acknowledged and recognized morality or good of the overwhelming majority of those in the society. Mill denied, however, that in either case such impediments have the effect of making anyone a happier or better person. To be sure, he conceded, "It is possible that he might be guided to some good path" without deciding for himself what rules he will voluntarily adopt. "But," Mill asked, "what will be his comparative worth as a human being?" (p. 70). For Mill, a person's comparative worth is not something that can be determined just by observing his outward behavior. This is because a person's worth is, at least partly, a function of why he does what he does. Mill reached the conclusion that, unless the impediments inducing conformity to positive morality are justified by some sort of harm

being prevented, they deliver nothing good and serve no purpose.

However, perhaps Mill overstated his case about what is necessary for the development of individuality. Is it really true that encouraging forbearance from the use of social interference as inducements really better encourages the development of individuality? Mill argued that when a person responds with simple, unthinking acceptance to the moral rules of society, “there is wanting one of the principle ingredients of human happiness, and quite the chief ingredient of individual and social progress” (p. 67). There is no real development of individuality. But it seems that the same problems with encouraging tradition to reign unquestioned that Mill cited apply to encouraging, or even just allowing, novel experiments in living to advance unquestioned. It might be difficult for some experimenter to assert himself in the face of various impediments imposed by traditional society, but that should not be a reason for Mill to discourage them. Indeed, why would Mill discourage them when it seems that asserting oneself in the face of such obstacles has all the marks of a higher form of pleasure?<sup>5</sup>

Mill introduced his qualitative dimension to pleasure in order to take account of the sort of pleasure people receive from such things as the perceived complexity or challenge of some activity. For example, it is not exactly fun to make life’s hard choices, but we are nonetheless jealous of them. We would not want to give them up. Mill’s concern about the social inducements towards conformity he observed was based on the fact that, in his day and age, and “in what concerns only themselves, the individual or the family do not ask themselves – what do I prefer? They ask themselves what is suitable to my position” (p. 73). But perhaps Mill wrongly ascertained their motives. Perhaps they were asking themselves hard questions: whether the perceived benefit of any

unsanctioned modes of living they might take up is worth the social capital they would lose as a result, or worth opening themselves up to the inevitable criticism, contempt, glances, or snickers of others. Removing social interference, which Mill advocated for the sake of encouraging the development of individuality and character, would have the effect of removing such worries. Is that necessarily good? Mill at least did not always think so. In an earlier essay he wrote,

The heroic essentially consists in being ready, for a worthy object, to do and to suffer, but especially to do, what is painful and disagreeable; and whoever does not early learn to be capable of this will never be a great character. There has crept over the refined classes, over the whole class of gentlemen in England, a moral effeminacy, an inaptitude for every kind of struggle. They...cannot brook ridicule, they cannot brave evil tongues: they have not hardihood to say an unpleasant thing to anyone whom they are in the habit of seeing, or to face, even with a nation at their back, the coldness of some little coterie which surrounds them.<sup>6</sup>

Mill bemoaned the timidity of those who fail to criticize others, but also that of those who are unable to bear up under criticism. Insulating people from criticism could have the effect of stunting individual character development.

In *On Liberty*, Mill wrote that “to be restrained in things not affecting their good, by their mere displeasure, develops nothing valuable, except such force of character as may unfold itself in resisting the restraint” (pp. 75-76). But, even if this is all, it is no

small thing. Without it, there is no real development of individuality. It would be allowed just to shoot up arbitrarily. Mill compared human individuality to a tree “which requires to grow and develop itself on all sides, according to the tendency of the inward forces which make it a living thing” (p. 71). However, many people, and, perhaps more typically, conservative people, tend to think that a tree needs to be pruned in order to develop on all sides and to bear good fruit. It is true that, usually, the larger problem in social life is people tolerating too little, but do people ever tolerate too much?

In addition, one might well ask why more conservative and traditional members of the society should have to observe more restraint than the mavericks. They have just as much right to give expression to their individuality. Mill said as much:

We have a right, also, in various ways, to act upon our unfavourable opinion of any one, not to the oppression of his individuality, but in the exercise of ours. We are not bound, for example, to seek his society; we have a right to avoid it (though not to parade the avoidance), for we have a right to choose the society most acceptable to us. We have a right, and it may be our duty, to caution others against him, if we think his example or conversation likely to have a pernicious effect on those with whom he associates (p. 93).

Of course, there are ways of giving expression to our negative opinions of others that are strictly impermissible. For example, many old-fashioned public shaming rituals that have been practiced are straight-forwardly violations of rights. The isolation of being systematically ostracized by a community can be terribly oppressive and perhaps should

also be considered out of bounds.<sup>7</sup> Yet if conservative people are not just free to have their opinions, but to express them as well, and if the relevant test is the harm principle, then they may, and perhaps should, impose various social interferences when dealing with people whose experiments in living have gone awry. The point is that there is another side to Mill's harm principle, and his support for the expression of individuality, which, to some extent, cuts against his opposition to using social interference to motivate some measure of conformity. The problem in *On Liberty* is a problem of social life: when has someone gone too far?

It might be denied that more conservative and traditional members of the society have just as much right to give expression to their individuality, because when they do it, they violate the harm principle, properly understood as a barrier to "the engines of moral repression" (p. 15). This would be a second way to address the tension. Anything more conservative elements of society do to check self-regarding expressions of individuality is to be condemned as intolerant. This reading comes from an interpretation of Mill's view that people are not legitimately punished for their self-regarding conduct. Mill's view, in fact, is that people are not in any way answerable to society for their self-regarding conduct. According to this interpretation, the reason is that Mill's distinction between other- and self-regarding actions marks out the distinction between moral and non-moral spheres of conduct. The distinction will dictate whether a moral or non-moral evaluation is appropriate, the non-moral evaluation being commonly either a prudential or an aesthetic evaluation.<sup>8</sup> Sometimes, however, people understand the idea that people are not answerable to society for their self-regarding conduct in a way that makes it intolerant and impermissible to be in any way disapproving or critical of anyone's self-

regarding conduct.<sup>9</sup>

This is a conceptual mistake. Toleration usually involves some kind of noninterference, but not every kind of interference counts as a breach of toleration. This is because even doing something like discouraging some activity, or attempting to persuade, counts as a kind of interference. To interfere is just to attempt to prevent something. If you attempt to persuade a friend, say, to avoid drug use, if you condemn his drug use or press him to give it up, you have done something aimed at preventing it. Have you failed to tolerate it? Have you undermined the development of your friend's individuality? Typically, no, so long as the interference is not coercive. Rational persuasion is not coercive. Mill only opposed coercive interference, and considered non-coercive forms of interference with even self-regarding conduct to be permissible, including fairly strong forms of disapproval and criticism.

In other words, noninterference is not necessary for toleration.<sup>10</sup> But if it is not, then Mill could not have thought that it is impermissible to be disapproving or critical of anyone's self-regarding conduct. Mill thought it was permissible, sometimes perhaps even required, to judge of certain self-regarding actions that they are foolish, degrading, distasteful, and even contemptible.<sup>11</sup> Judging this way, and even expressing such judgments with an eye towards inducing conformity, is not necessarily to interfere coercively. But when is interference coercive? When is it illegitimate?

### **3. Legitimate and illegitimate interference in a liberal society**

According to Mill, "the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct towards the rest," but different situations

call for different principles of conduct for governing the way we react towards others. He distinguished among three such principles of conduct. “This conduct consists, first, in not injuring the interests of one another; or rather certain interests, which...ought to be considered as rights.” These rights, according to Mill, are legitimately enforced “at all costs” with various formal legal instruments. He continued: “Nor is this all that society may do.” Second, then, “the acts of an individual may be hurtful to others, or wanting in due consideration for their welfare, without going to the length of violating any of their constituted rights. The offender may then be justly punished by opinion, though not by law.” Because the conduct does not involve any rights violations, legal coercion is illegitimate, but the more informal, extra-legal instruments of coercion are legitimate because the behavior is not purely self-regarding. Third, however, “when a person’s conduct affects the interests of no persons besides himself, or needs not affect them unless they like (all the persons concerned being of full age, and the ordinary amount of understanding)” (p. 91), then Mill thinks any form of coercion, legal or social, is illegitimate.

This passage, I think, represents a large part of Mill’s attempt to address many of the questions I have been raising. What is legitimate when experiments in living go awry? When should we say negative reactions to them go too far? Mill’s way of responding, and addressing the tension I have identified, is to mark a line of demarcation between coercive and non-coercive forms of interference. This is because the use of social interference, even with purely self-regarding conduct, the third case above, is legitimate so long as it does not amount to coercion. Mill’s view allows, and even sometimes encourages, non-coercive interference, understood, again, just as an attempt to

prevent certain behavior. The question is, when it comes to cases of interfering with self-regarding behavior, what counts as coercion? How does Mill demarcate between coercive and non-coercive forms of interference?

C.L. Ten has argued that this distinction is pervasive in *On Liberty*.<sup>12</sup> Mill's initial presentation of the harm principle already attempts to distinguish among different ways of interfering: the fact that a different mode of conduct would be better for someone in all sorts of ways provides "good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him" (p. 11), which are non-coercive even if done in ways "telling and powerful" (p. 63), "but not for compelling him, or visiting him with any evil, in case he do otherwise" (p. 11). Ten says, "The 'evil' here which is ruled out is the intentional infliction of evil in order to make a person change his or her conduct."<sup>13</sup> According to Mill, "one person should be as free to persuade as another to dissuade," but the interference may not be a crusade of organized public opinion "for purposes of repression or punishment" (p. 121). Mill allowed that "considerations to aid his judgment, exhortations to strengthen his will, may be offered to him, even obtruded on him, by others; but he himself is the final judge" (p. 92).

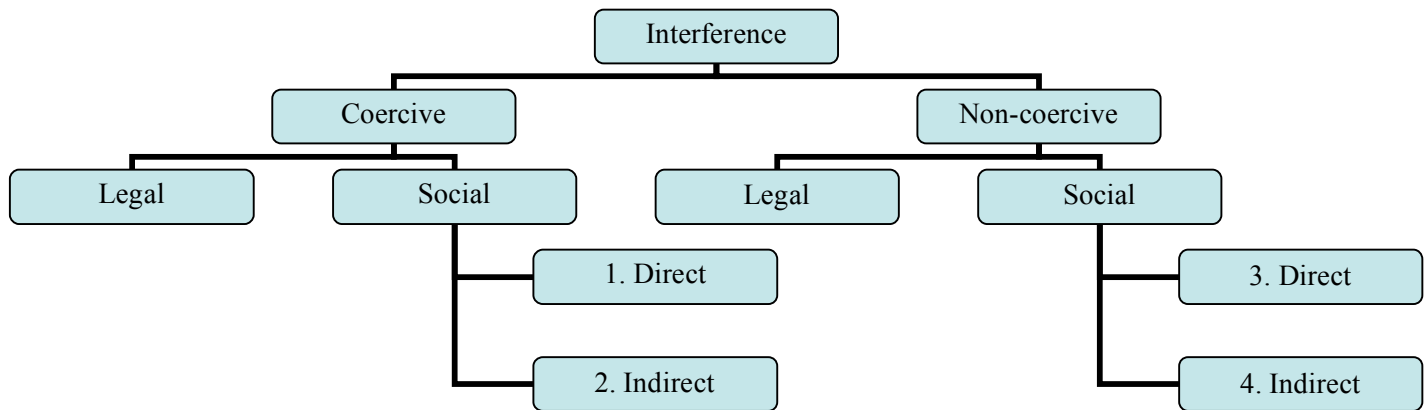
This is a beginning. Addressing self-regarding conduct gone awry, on the one hand, we have a right "to act upon our unfavourable opinion of any one" and "to choose the society most acceptable to us" (p. 93). On the other hand, it is oppressive to pursue an overt policy of interference specifically with an eye towards punishing and changing another's disreputable, but self-regarding, behavior. It may be legitimate to place restrictions on our dealings with someone or to avoid the person's company, but not to "parade the avoidance" (p. 93) or such as would represent an organized and intentional

attempt to change conduct through punishment. When an experiment in living goes awry Mill allowed that the experimenter “may suffer very severe penalties at the hands of others for faults which directly concern only himself; but he suffers these penalties only in so far as they are the natural and, as it were, the spontaneous consequences of the faults themselves, not because they are purposely inflicted on him for the sake of punishment” (pp. 93-94). Continuing this line of thought, Mill wrote:

It is far otherwise if he has infringed the rules necessary for the protection of his fellow-creatures, individually or collectively. The evil consequences of his acts do not then fall on himself, but on others; and society, as the protector of all its members, must retaliate on him; must inflict pain on him for the express purpose of punishment, and must take care that it be sufficiently severe. In the one case, he is an offender at our bar, and we are called on not only to sit in judgment on him, but, in one shape or another, to execute our own sentence: in the other case, it is not our part to inflict any suffering on him, except what may incidentally follow from our using the same liberty in the regulation of our own affairs, which we allow to him in his (p. 96).

Moreover, as the argument goes, since the “suffering” or “penalties” or “inconveniences” are not purposely inflicted for the sake of punishment, rather, they are “strictly inseparable from the unfavourable judgment of others” (p. 94) and only “incidentally follow” from the legitimate use of their liberty, Mill would judge that no one’s freedom or individuality is undermined. There is no coercion and the affected person is not

treated unjustly. This is true whether the negative appraisal leads someone directly to confront those they disagree with, or to pursue some indirect strategy of avoiding them. Such reactions are permissible, according to Mill, regardless of how unpleasant or harsh and mean they might be. Presumably, then, Mill saw things as follows.<sup>14</sup>



The success of Mill's argument depends on the claim that, when it comes to self-regarding conduct, the use of social coercion is impermissible, but any non-coercive social interference is permissible. More importantly, it depends on the way Mill distinguishes between coercive and non-coercive interference. Consider the following case:

*Small Town:* John has begun openly practicing  $\Psi$ . Where he lives, however,  $\Psi$  is very unpopular and most regard it as immoral. Concerned townspeople start thinking about what is to be done. There are two very outspoken factions. One of these proposes that **(1)** everyone shows up at John's house the following evening

where they will shout slogans of ridicule amid the clanging of pots and pans. The other **(2)** recommends systematically ostracizing John until he can offer reasonable assurance that he has given up  $\Psi$ . Those remaining argue that nothing should be done *collectively*. However, some of them **(3)** plan on having a few words with John on their own. They are up on all the current research about  $\Psi$  and even know people who are perfectly happy having given it up. Others, distrustful of people caught up in  $\Psi$ , **(4)** will just do their best to stay clear of John and will advise others to do likewise.

Mill should judge that the first two strategies are morally impermissible, and the other two strategies are morally permissible. People who pursue 3 and 4 do not do anything unjust, even if they are misguided about other things. 3 is a direct strategy of confronting John with considerations that purport to count against  $\Psi$ . It is an attempt at rational persuasion and Mill accepted that an interference that comes in the form of rational persuasion does not undermine a person's individuality. As I argued in section 2 above, it can even promote its development, and Mill should agree. Mill's view was that if someone abandons a mode of living as a result of rational persuasion, the person has changed his or her beliefs about the conduct. The change in conduct is a result of a change in belief about, say, the moral permissibility of it. The change in belief is a result of whatever "considerations to aid his judgment, exhortations to strengthen his will" were on offer. Again, even if they were "obtruded on him" it is still the case that "he himself is the final judge" (p. 92). Therefore, there is no coercion.

He should reach the same conclusion about 4, the indirect strategy. People

pursuing it have a right to avoid John and also to recommend that others do likewise in order to maintain the integrity of their own values and commitments. Certainly Mill could not countenance the use of coercive social measures to pressure these people not to do this if those values and commitments were unpopular. He should not think it is ok just because they are popular. He should not advocate restricting the individuality of people pursuing strategy 4 in order to protect the individuality of John.

Jeremy Waldron makes much the same point: “[Their] ability to choose the people with whom [they] associate is not just something [they want] to be free to do; it is itself one of the bases on which [they establish their] own distinctive moral identit[ies].”<sup>15</sup> They have a right not to associate with whomever they wish. People pursuing strategy 4 are not aiming to punish John. Pursuing 4 is their “natural and spontaneous” way of responding to John’s perceived immorality, and however this affects John only “incidentally follows” from the legitimate use of their liberty. Again there is no coercion. Mill only opposed coercive interference, and considered non-coercive forms of interference with even self-regarding conduct to be permissible. Mill’s view was that non-coercive interference is legitimate and coercive interference is illegitimate. Mill thought coercive interference is illegitimate because it prevents a person from acting on his or her beliefs about some conduct. The person changes his or her conduct only to avoid the interference; the relevant beliefs stay the same. This is what is wrong in strategies 1 and 2. According to Mill, such coercive interference undermines a person’s individuality, but the legitimate use of people’s liberty in giving expression to their own distinctive individual identities – as in strategies 3 and 4 – never does.

The problem for construing Mill’s argument this way is that this last claim is

false. Strategies like 3 and 4 could very easily work to undermine John's individuality. First, a number of people each taking individual measures so as to avoid John could easily approximate the very coercion that Mill would worry about in 2. Waldron writes, "Coercion by society consists, presumably, of a mass of actions,  $a_1, a_2, \dots a_n$  (where  $n$  is quite large), directed, say at ostracizing some small circle of ethical or religious deviants. But any one of these actions,  $a_i$ , may be something which a person has a right to perform."<sup>16</sup> The strategy could be coercive in effect simply because there could be so many people involved, even if there is no intent or attempt to orchestrate this. Similarly, Mill would think it is permissible to warn others about John. But it is difficult to characterize these warnings so they do not count as an orchestration of a policy to ostracize John until he gives up  $\Psi$ . Since the context is one in which  $\Psi$  is so unpopular, this would almost assuredly be the effect of these warnings to others, even if it is not what is intended. So, although Mill's view implies that strategies like 3 and 4 are permissible, the effects of pursuing them would likely be bad from the point of view of John's individuality.

According to Ten, the problem for Mill is that he "seems to attach too much weight to the intention behind the interference as opposed to the effect."<sup>17</sup> Imagine a situation like *Small Town* where John abandons a mode of living and conforms to society just to avoid its penalties. This could occur regardless of whether or not this result was intended, and regardless of whether or not people organized themselves into a campaign to modify the conduct. Since it could, it seems that Mill's proposed line of demarcation between legitimate, non-coercive interference and illegitimate, coercive interference is in tension with his concern with the development and expression of individuality. If Mill

was genuinely concerned about the cultivation of individuality and opposed to socially induced conformism, then the proposed line of demarcation does not advance the aim of the book. Given that concern, and given the likely effect in situations like *Small Town*, it seems like he should view an indirect strategy like 4 as quite oppressive and illegitimate. If Mill would not place restrictions on people pursuing strategies like 4, then he would lose his basis for wanting to restrict strategies like 2.

The same point could be made about 3 and the arguments that could be advanced by people attempting to persuade John to give up  $\Psi$ . Even if he is persuaded, it could be more by the fact that all these people keep making these arguments to him than by the reasons marshaled in the arguments themselves. He just might not be able to bear confrontation, or the type of “well-meaning” confrontation that is typically employed against unpopular modes of living. After a while, he just might want them to leave him alone and get some peace. He could be motivated to modify his conduct in the face of argument for any of these reasons, none of which have anything to do with his beliefs about  $\Psi$ . This result is made more likely by the fact that Mill said it is permissible for others to say what they think in “telling and powerful” ways (p. 63), and even to “obtrude” their opinion (p. 92) when it has never been sought. Another possibility is that John is persuaded to give up  $\Psi$ , but only because his opponents argue deceptively, presenting false, misleading, or irrelevant information about  $\Psi$ . Such confrontations and arguments could be very bad from the point of view of John’s individuality.

Once again, unless Mill wanted to claim that it is impermissible to argue against people with whom we disagree, it seems that his only recourse is to focus on the intentions of John’s interlocutors. Public discourse cannot be subject to the same

expectations as a colloquium in political philosophy, and this fact does not make public discourse coercive. However, there should be some expectations concerning the bounds of fair discussion. Not surprisingly, Mill had a view about this. He denied that we go beyond those bounds whenever there is “offence to those whose opinions are attacked” or whenever anyone “shows any strong feeling on the subject” (p. 63). Still, Mill did have misgivings about “intemperate discussion, namely, invective, sarcasm, personality, and the like.” But the principal sin in public discourse is “to argue sophistically, to suppress facts or arguments, to misstate the elements of the case, or misrepresent the opposite opinion” (p. 63). Such lack of candor, and the lesser sins of “malignity, bigotry, or intolerance of feeling” should not be restrained by “law and authority”; but “opinion ought, in every instance, to determine its verdict” by the extent to which the relevant attitudes and intent can be reasonably inferred from “the circumstances of the individual case” (p. 64).

This can be difficult to judge. It is particularly problematic in cases where we might suspect sophistry, which Mill said is “most impossible, unless by accidental self-betrayal, to bring home to conviction” (p. 63). The reason for this is that it is so plausible that people could misstate or misrepresent key issues relevant to the debate “in perfect good faith” (p. 63) without intending to deceive. They might really think that the information they present is all and only what matters in arriving at the appropriate conclusion. Without a clear reading of the intent, Mill claimed that it would not be possible to make any judgments of culpability. In *Small Town*, we would either risk restricting legitimate (though not necessarily good) arguments in order to safeguard John’s individuality, or, since doing that would undermine the individuality of people

who are restricted in that way, we discourage such restrictions. However, this would risk John's individuality being undermined.

The problem can be put more generally. In *Small Town*, the strategies that Mill would have regarded as permissible could very easily undermine John's individuality. If Millian liberals are really concerned about this, then they should be more concerned to discourage strategies like 3 and 4. The measures they would employ to discourage those strategies would either be coercive or non-coercive. Since coercive social pressure is clearly impermissible, Millian liberals should opt for non-coercive strategies. But, if the use of non-coercive strategies by *Small Town*-ers against John could have the effect of undermining his individuality, then the use of them by Millian liberals against *Small Town*-ers could have the effect of undermining their individuality. The tension remains.

#### **4. Respect for individuality in liberal society**

Perhaps there is a way out of this difficulty, but if there is, I think it will require us to abandon the interpretation of Mill that has him always concerned with the effect of various social practices on people's individuality. Mill did not believe that the test of whether a social practice is permissible is whether or not it undermines people's individuality. He believed that a social practice having the effect, even the likely effect, that it will undermine people's individuality can nonetheless be legitimate. This is compatible with the importance Mill attached to individuality (and liberty), only if, rather than always being concerned about whether people's individuality is undermined, Mill was primarily concerned about whether people's individuality is respected in social life. To illustrate this, I will focus on the example where a *Small Town*-er named Prudence

confronts John about  $\Psi$  in an attempt to convince him to give it up, but I think the argument works in examples where the other strategies might be utilized, too.

First, consider these two *Respect* cases:

R1. In good faith, Prudence offers a series of considerations which she regards as true and relevant to the inappropriateness of  $\Psi$ . She does not misstate any elements of the case or suppress anything that she thinks is relevant. She is even pretty candid about the limitations of her case. John begins to think that Prudence's argument has some probative value. Eventually he changes his mind about  $\Psi$  and gives it up.

R2. Same as above, except John does not think there is anything to Prudence's argument. He continues to practice  $\Psi$ .

Here, there is no question of sophistry. Prudence conscientiously stays well within the bounds of fair discussion and argument. She does better than most participants in philosophy colloquia. She respects John's individuality in both cases, and in neither case is his individuality undermined. Her behavior is legitimate.

Here are two *Disrespect* cases:

D1. Prudence knows enough about John's motivational structure to know the sorts of considerations that would lead him to give up  $\Psi$ . Giving careful thought to the consequence, Prudence pursues an argument against it of pure sophistry.

She knowingly presents false, misleading, and irrelevant information about  $\Psi$  and what happens to people who practice it. This causes John to begin to rethink  $\Psi$ , and eventually he gives it up.

D2. Same as above, but John, after pushing Prudence a bit on a few key points, recognizes her argument for what it is – pure sophistry. Concluding that there is nothing to Prudence's argument, he continues to practice  $\Psi$ .

What makes Prudence disrespectful of John's individuality in these cases is her intention in interfering with him. She is attempting to usurp John's control over his decisions, his self-direction, and direct him towards the decision that she wants him to make. This is disrespectful of his individuality. As these two cases show, whether or not Prudence's behavior is legitimate does not depend on whether or not it successfully undermines John's individuality. She fails in D2. She may have been able to prevent John from receiving all the information that was relevant to his decision, but she was not able to prevent him from engaging in critical thought and judgment, and subjecting her argument about  $\Psi$  to thoughtful scrutiny. However, her manner of interfering is no less illegitimate in D2. In both cases she is disrespectful of John's individuality.

Consider the following variations:

R3. As in R1, Prudence displays all the virtues of public social debate, but, although, as in R2, John is not very impressed with her argument, he is not the sort of person who can bear confrontation. In order to avoid such attention from

Prudence or others like her in the future, John modifies his conduct in public with respect to  $\Psi$ .

D3. Knowing what she does about John's motivational structure, Prudence knows that he is the sort of person who cannot bear confrontation. She directs an argument to John about  $\Psi$  which is peppered with an unmeasured level of invective and vituperative speech. As she expected, John crumples in the face of this and decides to modify his conduct in public with respect to  $\Psi$ .

In both these cases, John does poorly in terms of individuality, and this has a lot to do with how Prudence interfered. The difference is that in D3, since Prudence knows something about John's motivational structure, she is able successfully to usurp his self-direction, which is precisely what she intended. What is illegitimate about her interference in D3 is the disrespect that this manifests for John's individuality, not primarily the effect it has on it. In these kinds of cases, the "morality of public discussion" (p. 64) sets the boundaries of legitimate modes of interference. In R3, Prudence stays well within them. She should not be restrained just because John is the sort of anti-heroic person who manifests the "moral effeminacy [and] inaptitude for every kind of struggle" that Mill lamented.<sup>18</sup> Perhaps others might like to discourage her making any sort of argument directed towards John, but the manner in which they would do that should respect her own distinctive individuality.

Finally, consider the following:

R4. As above, Prudence knows enough about John's motivational structure to know the sorts of considerations that would lead him to give up  $\Psi$ . She presents all the same faulty, irrelevant information about  $\Psi$  as in D1. However, unlike that case, Prudence is free of guile and craft. Rather, she presents the information about  $\Psi$  in good faith, as she sees it.

Surely, it would be bad from the point of view of John's individuality were he to respond to this by giving up  $\Psi$ . Mill would claim, however, that Prudence would not be culpable if he did (p. 63). The best explanation for this is that, because she is not intentionally presenting faulty and irrelevant information in order to usurp his self-direction, she is not disrespecting his individuality. This is because, when she interferes with another, in order to respect his individuality, all she must do is avoid deceit and manipulation, and intend that he makes a decision that reflects his own beliefs. He is the final judge.

## 5. Conclusion

This interpretation of Mill is not without problems. For example, how is expressing contempt towards someone for his mode of living consistent with respecting individuality? I concede that it may not be. But, as I have argued, it depends on how the contempt gets expressed. Mill argued that it is not permissible if this contempt is expressed towards the person with intemperate speech and invective. However, it is permissible if it is expressed by avoiding him or confronting him in ways that do not amount to attempts to usurp his self-direction. Also, it might be claimed that this interpretation fails to do justice to the main argument of Chapter III of *On Liberty* where

Mill focused on the intrinsic worth of people expressing their distinctive individuality. This is one of the elements of well-being. But Mill's view can be admitted even when it is denied that the actual effects on individuality determine whether or not some interference is illegitimate. Mill's view about the intrinsic worth of individuality is consistent with his view that, in social life, when experiments in living go awry, only interference that is consistent with respect for individuality is permissible.<sup>19</sup> People go too far when they disrespect the person's individuality.

The strength of the interpretation is that it delivers the right judgments about the legitimacy and illegitimacy of Prudence's different ways of interfering with John in the *Respect* and *Disrespect* cases. It delivers the result that strategies 1 and 2 in *Small Town* are impermissible, and strategies 3 and 4 are permissible, so long as the way people pursue them is consistent with respect for John's individuality. There are ways of utilizing strategies like 3 and 4 that manifest disrespect for individuality, some of which I described in D1-D3. In those cases, it is the attempt to usurp John's self-direction, also evident in strategies like 1 and 2, which betrays disrespect for John's individuality, which renders these strategies illegitimate and impermissible. It could happen that pursuing strategies like 3 and 4 that respect John's individuality have the same effect on John's individuality as strategies like 1 and 2, as I described in R3 and R4. But that is not the relevant test. Having the same effect does not necessarily render them impermissible if the primary concern in social life is respect for individuality. It would only if the primary concern is the actual effect of social practices on individuality.

Mill acknowledged that the adverse effects on a person's individuality flowing from society's penalties can be very severe. But even in admittedly severe cases he treats

them as “the natural and, as it were, the spontaneous consequences of the faults themselves, not because they are purposely inflicted on him for the sake of punishment” (p. 94). This means they are legitimate. The interpretation I have endorsed allows us simply to take Mill at his word about this. There is no tension. But there is a catch: Millian liberals must be prepared to make broader allowances for the legitimacy of social interference in motivating conformity than they typically do when the interference is consistent with respecting a person’s individuality. Because, unless they do, Millian liberals must argue that the harm principle rules out more behavior than Mill thought it did.

## NOTES

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<sup>1</sup> J.S. Mill, *On Liberty* (Chicago: Great Books, [1859] 1955), p. 93. The remaining references to this edition of *On Liberty* will be within the text.

<sup>2</sup> See, for example, Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon, 1986).

<sup>3</sup> See F.H. Bradley, *Ethical Studies* (Oxford: Clarendon, [1876] 1988). The view is further developed by Bradley's younger contemporaries, Bosanquet, Green, and Hobhouse.

<sup>4</sup> Friedrich Hayek, *The Constitution of Liberty* (Chicago: University of Chicago, 1960), p. 146.

<sup>5</sup> Cf. Mill, *Utilitarianism* (Indianapolis: Hackett, 1979), pp. 8 ff.

<sup>6</sup> Mill, "Civilization" at Classical Utilitarianism Web Site ([CUWS](#)).

<sup>7</sup> So, although Mill argued that we can legitimately express our contempt of a person by avoiding him, "we shall not therefore feel called on to make his life uncomfortable" (p. 95). And later, "we shall not treat him like an enemy of society" (p. 96).

<sup>8</sup> See Alan Ryan, *The Philosophy of John Stuart Mill* (London: Macmillan, 1970), pp. 236 ff.

<sup>9</sup> See David Lewis, "Mill and Milquetoast," *Australasian Journal of Philosophy* 67:2 (1989), pp. 152-171. Ryan, for his part, denies that this is an implication (*op. cit.*, p. 240).

<sup>10</sup> It is not sufficient, either. The inaction might be the result of ignorance, indifference, endorsement, indulgence, endurance, or just resignation. If it is the result of any of these,

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the noninterference does not amount to toleration. You cannot be congratulated (or blamed) for tolerating something that you are unaware of or something that you have no interest in. You must rather disagree or have some negative evaluation of an object of toleration. This requirement obviously rules out attitudes of endorsement towards an object of toleration, as well. It might therefore be better to express what is involved in toleration as forbearance, as opposed to simple noninterference, since forbearance implies that the restraint is intentional, or the result of an act of will. But mere forbearance will not do either. Mere forbearance is consistent with willing restraint as a result of indulgence, endurance, or resignation. If you are very lenient or relatively indiscriminate about the sorts of things you permit (“well, kids will be kids!”), or have developed the Stoic ability to brace yourself against your negative evaluations because you do not think you have a choice, or because you do not think it would be worth your effort getting involved, then, again, this forbearance does not amount to toleration. Andrew J. Cohen has made similar points and argued that “we must value our noninterference for it to count as toleration; the noninterference must be properly principled” (“What Toleration Is,” *Ethics* 115 [2004], p. 73). It must be justified in terms of a value like respect for persons or the development of individuality.

<sup>11</sup> I do not want to pursue the argument here too far, but this seems to cast doubt on Ryan’s claim that the distinction between other- and self-regarding actions marks out the distinction between moral and other non-moral types of evaluations. Ryan argues that relevant non-moral evaluations of self-regarding conduct are either prudential or aesthetic. There is a problem with this. It makes sense to evaluate someone’s conduct as prudentially foolish, but not prudentially degrading, distasteful, or contemptible. He

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must, then, think that Mill means the conduct is aesthetically degrading, distasteful, or contemptible. This seems forced to me. Perhaps it is fine to say about conduct that it is aesthetically degrading or distasteful, but a judgment that conduct is contemptible seems to be a moral judgment. The other alternative is for Ryan to deny that such judgments are legitimate, despite what Mill thought.

<sup>12</sup> C.L. Ten, “Was Mill a Liberal?” *Politics, Philosophy and Economics* 1:3 (2002), pp. 355-370.

<sup>13</sup> Ten, p. 359.

<sup>14</sup> The division of non-coercive interference into legal and social may raise a red flag. It is urged in most of contemporary political philosophy that all legal interference is coercive because the state is necessarily and by its nature coercive. Mill did not agree: “Government may interdict all persons from doing certain things; or from doing them without its authorization; or may prescribe to them certain things to be done, or a certain manner of doing things which is left optional with them to do or to abstain from. This is the authoritative interference of government. There is another kind of intervention which is not authoritative: when a government, instead of issuing a command and enforcing it by penalties, adopts the course so seldom resorted to by governments, and of which such important use might be made, that of giving advice and promulgating information; or when, leaving individuals free to use their own means of pursuing any object of general interest, the government, not meddling with them, but not trusting the object solely to their care, establishes, side by side with their arrangements, an agency of its own for a like purpose...” (Mill, *Principles of Political Economy*, J. Riley ed. [Oxford & New

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York: Oxford University, 1994 (1848/1871)], Bk. V, ch. 11, p. 325). Also, see

Christopher Morris, “Are States Necessarily Coercive?” draft.

<sup>15</sup> Jeremy Waldron, “Mill as a Critic of Culture and Society,” D. Bromwich and G. Kateb eds., *On Liberty* (New Haven, CT: Yale University, 2003), p. 231.

<sup>16</sup> *Ibid.*

<sup>17</sup> Ten, p. 361.

<sup>18</sup> Mill, *op cit.*

<sup>19</sup> Is this view consistent with Mill’s utilitarianism? Waldron writes, “if one’s argument is consequentialist, as Mill’s undoubtedly is, then one is not free to simply adopt an intentionalist conception. One must follow one’s values where they lead, and in Mill’s case, they lead us in direction of concern about the effect of social pressure on [people’s] individuality, whether that effect is intended by anyone or not.” I actually doubt that Mill’s argument is consequentialist in the sense that Waldron seems to be using the term. See Daniel Jacobson, “J.S. Mill and the Diversity of Utilitarianism,” *Philosopher’s Imprint*, vol. 3, no. 2.