The Limits of Government Authority
(Mill’s *On Liberty*)

Let’s suppose that SOME government authority could in principle be justified. The question remains: What sorts of things could a government justly demand? Which liberties can it permissibly restrict? In short, HOW MUCH authority could it legitimately have? John Stuart Mill addresses this question in his *On Liberty*.

Mill notes that monarchies and dictatorships obviously raise this question. But, so do democracies. Even in a true democracy, where the people decide everything by majority vote, each citizen is beholden to the authority of that majority (Nozick’s “many-headed master”). This idea is captured by the following saying, which is often mis-attributed to Thomas Jefferson: “Democracy is nothing more than mob rule, where 51% of the people may take away the rights of the other 49%”. (but note that he did NOT actually say this)¹

Mill also points out that we typically do not question government authority, but tend to accept the situation into which we are born. We resist new restrictions being imposed upon us, but do not question pre-existing ones, due to the “magical influence of custom.” But, we must appeal to principles which dictate the limits of government authority, and then argue for those principles with good REASONS.

1. **The Harm Principle**: Mill believes that we have an absolute right to govern ourselves, and that this right should not be interfered with or restricted. But, our actions often affect others. I may have absolute liberty to do what I want with MYSELF, but what should we do when doing what I want with myself affects YOU in some way? Mill proposes the following principle (video [here](#)):

   **The Harm Principle**: The only instance when the restriction of another’s liberties is permissible is when doing so prevents harm to others.

Sometimes this principle is summarized by the following slogan:

   “Your right to swing your fist ends where my nose begins.”

Since it is MY arm, and MY fist, and I have a right to absolute autonomy over myself (i.e., I get to have absolute say over what happens to, and what I do with, my fist), I should be able to swing my fist wherever I want, without interference. HOWEVER, you have a right to protect yourself, and YOU get to say what happens to YOUR body. So, it WOULD be permissible to interfere with my actions if my actions are about to hurt you.

¹ The Monticello Foundation’s site [here](#) is a great resource for weeding out spurious Jefferson quotations.
In short, Mill believes that you should be able to do whatever you want, so long as you are not hurting anyone. To that end, the government’s authority should be directed toward protecting its citizen’s liberties, while also preventing people from harming each other (though obviously this will require the government to RESTRICT our liberties to some extent; e.g., by passing and enforcing laws against murder, theft, etc.). He writes:

“The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, or mental and spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.”

The Incompetent: Note that many citizens are not capable of being fully autonomous, but require care and supervision—e.g., children. Mill thinks it is acceptable to restrict the liberties of children “as a means to their own good” (i.e., for their own good). So, the Harm Principle is intended only to apply to those citizens who are capable of living autonomously.

2. Defining ‘Harm’: Mill says that the government has the legitimate authority to prevent you from harming others. But, what does “harm” even MEAN? The following plausible definition is commonly given:

Harm: To make someone worse off than they otherwise would have been.

But, this definition might be problematic. Consider:

- **Broken Nose:** I punch you in the nose. Your nose is broken and bleeding and you are rushed to the hospital. As it turns out, at the hospital, they discover that you have a form of nose cancer. Because it was discovered early, it is treatable and your life is saved. But, had you gone another month without discovering it, you would have died of the cancer.

In this case, by punching you in the nose, have I made you WORSE OFF than you would have otherwise been? No. Rather, it seems that I have made you much BETTER OFF, because ultimately my punch saved your life. You’re welcome.

Most people will want to say that I HAVE harmed you by punching you, even if it did NOT ultimately make you worse off than you would have been. Consider another case:
**New Restaurant:** You are the owner of a local taco joint. You are earning enough from the profits of your restaurant to make ends meet. But, now, I open another taco restaurant in another part of town. As it turns out, I start to get a lot of business, and some of these customers are ones that would have frequented YOUR restaurant, had I not opened mine. You earn less profit after my restaurant opens, and your life becomes more difficult as it is harder to make ends meet.

Clearly, I have made you worse off than you would have otherwise been in this case. But, have I HARMED you? Perhaps not. What we have just seen are some reasons to think:

- Perhaps you CAN harm someone without making them worse off. (Broken Nose)
- Perhaps making someone worse off does NOT always count as a harm (New Restaurant)

Mill has the following to say about this sort of problem:

"Whoever succeeds in an overcrowded profession, or in a competitive examination; whoever is preferred to another in any contest for an object which both desire, reaps benefit from the loss of others, from their wasted exertion and their disappointment. But it is, by common admission, better for the general interest of mankind, that persons should pursue their objects undeterred by this sort of consequences. In other words, society admits no rights, either legal or moral, in the disappointed competitors, to immunity from this kind of suffering; and feels called on to interfere, only when means of success have been employed which it is contrary to the general interest to permit—namely, fraud or treachery, and force."

So, what definition of “harm” is Mill working with? He doesn’t say explicitly. But, he seems to think that making someone worse off by, e.g., winning a competition against them fair and square is permissible, while winning against them by cheating is not. But, then, how should we define “harm” so that Mill’s Harm Principle captures this idea?

Some further considerations:

**Doing vs. Allowing Harm:** As stated, the harm principle says that I should not be allowed to HARM others. But, what if I am just passing by a pond and see a drowning child, but do not jump in to save him? I might say, “Hey, I was free to walk away. I didn’t hurt anyone by doing so!” Mill is sympathetic to the idea that the government can also permissibly enforce laws against ALLOWING harm in this way.
He writes, “A person may cause evil to others not only by his actions but by his inaction, and in either case he is justly accountable to them for the injury.”

So, Mill would include certain omissions under his definition of harm, since sometimes NOT doing something can be harmful. (As one uncontroversial example, imagine a technician in charge of performing a safety check on a plane. They don’t perform the safety check. The plane crashes. Is it reasonable to say that this person has in some sense HARMED the passengers of this plane?)

**Risk of Harm:** Note that, in addition to forbidding actions that HARM others, Mill is in favor of forbidding actions that MIGHT result in harm to others. For example, he writes,

“No person ought to be punished simply for being drunk; but a soldier or a policeman should be punished for being drunk on duty. **Whenever, in short, there is a definite damage, or a definite risk of damage, either to an individual or to the public, the case is taken out of the province of liberty, and placed in that of morality or law.**

So, for instance, Mill would probably be in favor of laws against drunk driving, since such actions increase the RISK of harm.

*But, this generates some vagueness. ALL actions are risky to some extent. For instance, even **DRIVING SOBER** increases the chance that someone will be harmed. About 30,000 people die in traffic accidents every year in the U.S. alone. So, this raises the question, HOW risky does an activity have to be before it ought to be regulated or outlawed?*

**3. Freedom of Speech and Press:** Your fists can harm others. But so can your words, whether written or spoken. So, it stands to reason that Mill would be in favor of restrictions on speech, right? As it turns out… No. He writes,

“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.”

Mill is in favor of absolute freedom of speech and press, even when this might result in harm to others. Why? Understanding the answer requires a look into his underlying moral theory.

**4. Utilitarianism:** John Stuart Mill famously championed the moral view called Utilitarianism. Utilitarianism is the combination of the following three views:
"(1) Hedonism: The view that happiness, or pleasure, is the only thing that is “intrinsically good.” All other good things are only “instrumentally good.”

But what is meant by “intrinsically good” and “instrumentally good”?

a) Intrinsic goods: These are things that are desirable for their own sake. As Mill says, they are “desirable as ends.” They are good, in and of themselves.

b) Instrumental goods: These are things that are often called “good”, but they are only good insofar as they make it easier for us to obtain intrinsic goods. They are desirable only because they are a means to some truly good end. They are not desirable for their own sake.

For example, happiness is said to be “intrinsically good.” It is desirable for its own sake. It is just plain good to have some happiness—not because of what happiness leads to, but because happiness itself is good to have. On the other hand, money is only “instrumentally good.” It is not just plain good to have money and nothing more. No: It is only good because it is a means to obtaining other good stuff. Money is not desirable for it’s own sake. If you had a pile of money but could not obtain anything with it, the money would not be of any value.

(2) Consequentialism: This view states that, when determining the rightness or wrongness of an action, the consequences are all that matter. In other words, we do not need to look at anything but the results of an action in order to know if that action was right or wrong.

(3) Impartiality: This is the view that everyone’s happiness counts equally. No one’s happiness is more important or more valuable than anyone else’s happiness. On this view, one truly should “Love thy neighbor as thyself.”

Putting this all together, we get the following view:

Utilitarianism: The morally right action is the one that maximizes utility—i.e., brings about the greatest amount of net happiness—where the interests of all individuals affected by one’s action are given equal consideration.

So, strictly speaking, Mill doesn’t believe there is a “right” to autonomy or liberty. Rather, he believes that a society that protects liberty as much as possible will maximize utility. This is his underlying motive for his views on liberty.
Objection: Utilitarians believe that there really is no “right” to liberty, and no “right” not to be harmed. But, then,

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5. Back to Freedom of Speech: Regarding freedom of speech and press, Mill believes that we ought to let every person voice his or her opinions—even if they are unpopular, or we find them offensive. He gives the following reasons for this:

• For all we know, they might be right. After all, truths that we now believe to be self-evident were once radical and deemed unpopular or offensive (consider how, e.g., Socrates or Jesus were executed for their claims; Abraham Lincoln and Martin Luther King, Jr. were assassinated; or how we once believed the Earth to be flat, or that the Sun orbited the Earth, or that slavery was permissible). At the very least, we ought to admit that our present beliefs might not be the WHOLE truth—but may be incomplete. Competing views might ALSO be partial truths, and might even contain the part that we are presently missing.

• Both progress and being justified in one’s beliefs are impossible without the presence and exploration of competing opinions. Only by exploring every perspective on some issue can we gain confidence in our beliefs. Basically, the truth must be “stress-tested” or undergo “trial by fire”. If a belief is true, it should be able to withstand criticism or testing. If it DOES withstand these, then our confidence in it is only that much more justified.

Ultimately, if the people are free to voice their opinions—even when those opinions are controversial and unpopular—we will be better off overall, because the existence of such voices is an opportunity for progress, or for learning, and strengthening our beliefs. He writes, “Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.”

Individuality and Conformity: Just as Mill believes that diversity of opinion serves to strengthen and improve us, he believes that ACTING on that diversity of belief also does so (provided that one’s actions are not harming anyone).

So, Mill is in favor of “experiments of living”, where anyone and everyone should be permitted to live out whatever lifestyle they want, so long as they don’t hurt others by doing so. Ultimately, Mill posits “two things as necessary conditions of human development, because necessary to render people unlike one another; namely, freedom, and variety of situations.”
What Are the Limits?: But, surely SOME sorts of speech merely promote harm and have little or no chance of advancing knowledge or society, right? Mill has little to say about this, but consider this passage:

“[E]ven 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 ... 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 ... Acts, of whatever kind, which, without justifiable cause, do harm to others, may be, and in the more important cases absolutely require to be, controlled by the unfavourable sentiments, and, when needful, by the active interference of mankind. The liberty of the individual must be thus far limited; he must not make himself a nuisance to other people.”

So, the sort of speech that incites violence, or spreads lies that hurt others, and so on, probably ought to be forbidden by the government.

Offensive People: What of people whose words do not promote violence, or spread harmful lies, but are merely offensive? For, “There are many who consider as an injury to themselves any conduct which they have a distaste for, and resent it as an outrage to their feelings.” Mill has this to say:

“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. We may give others a preference over him in optional good offices, except those which tend to his improvement.”

So, we may permissibly SHUN such people, but Mill is not in favor of FORBIDDING such people from saying or doing offensive things. Of this offensive person, he writes, “If [someone] displeases us, we may express our distaste, and we may stand aloof from a person as well as from a thing that displeases us; but we shall not therefore feel called on to make his life uncomfortable.”

Mill cautions us against going any further than this. For, “to extend the bounds of what may be called moral police, until it encroaches on the most unquestionably legitimate liberty of the individual, is one of the most universal of all human propensities.”
On Mill’s view, to think that we have some RIGHT to enforce others to speak or live how we think they ought to live is to endorse:

“A theory of "social rights" ...—being nothing short of this—that it is the absolute social right of every individual, that every other individual shall act in every respect exactly as he ought; that whosoever fails thereof in the smallest particular, violates my social right, and entitles me to demand from the legislature the removal of the grievance."

Mill finds such a proposal absurd, for it would justify absolute interference into every detail of each person’s life. This would be completely contrary to his project of maximizing and protecting our liberty. He writes,

“So monstrous a principle is far more dangerous than any single interference with liberty; there is no violation of liberty which it would not justify; it acknowledges no right to any freedom whatever, except perhaps to that of holding opinions in secret, without ever disclosing them: for the moment an opinion which I consider noxious, passes any one’s lips, it invades all the "social rights" attributed to me [in the passage above].”

In short, there is no “right” to legislate how others ought to live. The liberty of someone to live however they want, saying and doing whatever they want, ought not to be interfered with—that is, unless it harms others (or risks harm to others).

[But, then, now we need to refine our definition of harm AGAIN, since Mill seems to not want to include the sort of mental hurt or outrage that we feel when someone says or does something offensive under his definition of harm. What do you think?]

6. Applications: Let’s look at some specific applications of Mills’ proposal.

Polygamy: This is the marriage of three or more people, practiced by Mormons in Mill’s time, and by some sects still today (but now condemned by mainstream Mormonism).

Mill admits that he is offended by this practice, but advises that those who disagree with the practice respond merely by speaking out against it, and oppose the practice in their own communities.

Sale of Alcohol: Though drunkenness can lead to disorderly or even violent conduct, Mill favors little regulation of alcohol. Ultimately, he DOES favor something like liquor licenses, and limitations on which hours alcohol may be sold:
“It is ... fit to confine the power of selling these commodities (at least for consumption on the spot) to persons of known or vouched-for respectability of conduct; to make such regulations respecting hours of opening and closing as may be requisite for public surveillance, and to withdraw the licence if breaches of the peace repeatedly take place through the connivance or incapacity of the keeper of the house, or if it becomes a rendezvous for concocting and preparing offences against the law. Any further restriction I do not conceive to be, in principle, justifiable.”

For instance, limiting the number of drinks that someone may buy, Mill thinks, is to treat the people like “children or savages”.

Sale of Poisons: If people have access to poisons, then society is placed at increased risk. This is a difficult topic, since banning poisons would have a double-effect: It would make it more difficult for people to obtain poisons for BAD reasons (e.g., murder), but it would ALSO make it more difficult for people obtain poisons for INNOCENT reasons (e.g., killing vermin). He writes,

“If poisons were never bought or used for any purpose except the commission of murder, it would be right to prohibit their manufacture and sale. They may, however, be wanted not only for innocent but for useful purposes, and restrictions cannot be imposed in the one case without operating in the other.”

In such a case, rather than complete prohibition, Mill seems in favor of:

• Warning labels

“when there is not a certainty, but only a danger of mischief ... he ought, I conceive, to be only warned of the danger; not forcibly prevented from exposing himself to it. ... [Regarding] the sale of poisons ... Such a precaution, for example, as that of labelling the drug with some word expressive of its dangerous character, may be enforced without violation of liberty: the buyer cannot wish not to know that the thing he possesses has poisonous qualities.”

• Paperwork, 3rd party witness, (background checks?)

“It is usual and right that the law, when a contract is entered into, should require ... that certain formalities should be observed, such as signatures, attestation of witnesses, and the like, in order ... to throw great obstacles in the way of fictitious contracts, or contracts made in circumstances which, if known, would destroy their validity. Precautions of a similar nature might be enforced in the sale of articles adapted to be instruments of crime. The seller, for example, might be
required to enter into a register the exact time of the transaction, the name and address of the buyer, the precise quality and quantity sold; to ask the purpose for which it was wanted, and record the answer he received. When there was no medical prescription, the presence of some third person might be required, to bring home the fact to the purchaser, in case there should afterwards be reason to believe that the article had been applied to criminal purposes. Such regulations would in general be no material impediment to obtaining the article, but a very considerable one to making an improper use of it without detection.”

Selling One’s Self Into Slavery: Though Mill believes that the Harm Principle does not, in general, justify interfering with individual liberty when a person wants to do something that will only harm HERSELF, he does make an exception here. His reasoning is this:

“In this and most other civilised countries, for example, an engagement by which a person should sell himself, or allow himself to be sold, as a slave, would be null and void; neither enforced by law nor by opinion. The ground for thus limiting his power of voluntarily disposing of his own lot in life, is apparent, and is very clearly seen in this extreme case. The reason for not interfering, unless for the sake of others, with a person’s voluntary acts, is consideration for his liberty. ... But by selling himself for a slave, he abdicates his liberty; he foregoes 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. He is no longer free. ... It is not freedom, to be allowed to alienate his freedom.”

In short, by permitting one to freely selling herself into slavery, we would be allowing ONE free action—but at the expense of ALL FUTURE FREE ACTIONS.

[Does this get Mill into trouble? For, lots of other single free actions run the risk of preventing all future free actions—namely, ones that are very dangerous and might result in our deaths, e.g., using heroin, riding a motorcycle without a helmet, hang-gliding, etc.]

Brainstorm exercise: In light of everything we’ve learned about Mill, what do you think he would have said about:

(i) Drug legalization
(ii) Same-sex marriage
(iii) Hate speech (speech that offends, threatens, or insults groups, based on race, color, religion, national origin, sexual orientation, disability, or other traits)
(iv) Laws requiring motorcycle helmets, seatbelts, etc.
(v) Military drafts
(vi) Gun regulation
(vii) Prostitution
(viii) Restraining the suicidal
(ix) Abortion