THE LIBERALISM OF JOHN STUART MILL

James DeBew
INDIANA UNIVERSITY

Abstract
This essay refutes key aspects of Joseph Hamburger’s book John Stuart Mill: On Liberty and Control, the latest addition to a recent trend of minority interpretations of Mill. In this heterodox view, Mill is an equivocator about his non-belief in Christianity, a secret adherent of Comte’s ‘Positive’ Religion and a less than principled defender of individual freedom. My refutation was conducted via in-depth readings of Hamburger’s aforementioned work, a shortlist of works from Mill’s extensive corpus, and those of a select group of contemporary Mill scholars. My research uncovered Hamburger’s misguided attempt to put forth slim supporting evidence over against a preponderance of contrary evidence regarding Mill. Furthermore, Hamburger misinterprets Mill’s applications of the harm principle, incorrectly characterizing it as a rhetorical device of instrumental value to a Comteian moral regeneration. I conclude Hamburger provides little reason to accept this minority interpretation, leaving intact Mill’s legacy as a courageous liberal thinker and enduring proponent of individual liberty.

In his 1999 book John Stuart Mill: On Liberty and Control, Joseph Hamburger (1922-1997) puts forth a minority interpretation of Mill’s 1859 essay On Liberty arguing that it is not just an ardent defense of individual rights. While orthodox Mill scholarship has long held the liberal nature of the essay to be indisputable, Hamburger states that, beneath its surface, the work advocates staunch societal controls in measures at least equal to broadened individual freedoms. Therefore, Hamburger offers that On Liberty’s message, when understood correctly, presents “a problem…for anyone wishing to portray Mill as a friend to an ample individual liberty.”

Hamburger’s work is the continuation of a string of relatively recent heterodox interpretations of On Liberty as epitomized by Maurice Cowling’s 1963 book entitled Mill and Liberalism. Cowling’s work is even less charitable to Mill’s liberalness than is Hamburger’s. Cowling states that in his philosophy in general and in On Liberty in particular Mill demonstrated “more than a touch of something resembling moral totalitarianism.” Cowling explains that the essay, which is widely understood to be Mill’s strongest defense of the primacy of the individual in society, is “not so much a plea for individual freedom, as a means of ensuring that Christianity would be superseded by that form of…rationalistic utilitarianism which went by the name of the Religion of Humanity,” particularly the brand devised by the French philosopher, and Mill contemporary, Auguste Comte. Hamburger adopts a parallel theme in his own book, stating that Mill, indeed, harbored “a strong belief in the importance of Comte’s religion for the future of mankind.” This, in turn, leads Hamburger to conclude that there are “pervasive indications that the society Mill approved would be a rather censorious place.”

My intent in this paper is threefold. First, by refuting the Hamburger’s claim that Mill “obscured” his negative opinion of Christianity via “deliberate camouflageing” in On Liberty, I intend to show that Mill was not the deceiver and equivocator that Hamburger makes him out to be. Second, I will show that there is little reason to equate Mill’s acceptance of the positive possibilities of some form of religion of

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3 Ibid. il.
4 Hamburger, John Stuart Mill, 131.
5 Ibid., 15.
6 Ibid., 54.
humanity with Comte’s particular brand. Specifically, Mill roundly denied Comte’s central tenant of engendering a unity of societal purpose through a methodology of strict systemization. And third, I will show that Mill’s harm principle - meant to defend the liberty of the individual against unwarranted societal intrusion - is not undermined by its later applications in On Liberty. Thus, I will conclude we have no good reason to think that Mill should be viewed as anything other than a staunch defender of personal freedom.

In his own critique of On Liberty and Control, Mill scholar C.L. Ten states that Hamburger’s work is “systematic and detailed…roaming through the whole range of Mill’s works, his letters, the comments of his friends and his contemporaries, in an extensive search for supporting evidence”\(^7\) that Mill aimed to undermine vestigial Judeo-Christian morality and supplant it with Comte’s Religion of Humanity. I agree with Ten’s assessment of the thorough nature of Hamburger’s work. I add explicitly, though, what I think Ten is implying in the above statement –Hamburger’s search for supporting evidence is conducted so broadly that it opens itself up to the concern of cherry-picking. In other words, one might reasonably have concern that Hamburger thoroughly exhausts his options for confirming his point of view and that, in relation to all that does not confirm it or even tells against it in the broader context of Mill’s oeuvre, his supporting evidence is relatively sparse. And even if I am overstating Ten’s position, I personally see this as a legitimate concern.

That being said, I ultimately agree with Hamburger’s contention that Mill viewed Christianity as lacking any benefit for the individual citizen in 19th-century English society and, thus, as lacking an aggregate benefit for English society as a whole. It is clear Mill saw an urgent need to question what he called “received opinion,” adopted via historical custom without meaningful consideration on the part of the adopting individuals. I hold that Judeo-Christian ethics was a, if not the prime example of received opinion with which Mill was concerned while penning On Liberty, and furthermore that this can be known via a careful reading of the text. I disagree, therefore, with Hamburger’s accusation that Mill was only candid about his anti-religious opinion in a posthumous publication (namely Three Essays on Religion in 1874), and while alive wanted for courage with regard to publicly expressing this anti-religious opinion.\(^8\) Hamburger posits that Mill was so concerned about the potential legal and societal repercussions of stating these sentiments that he only esoterically argued for the right of likeminded individuals to engage in widespread, open discussion on the matter. Thus, Hamburger writes that “[t]here is some irony in considering that On Liberty, a book that pleads for candor and openness, is also a book in which Mill disguises, conceals, equivocates, and seeks to mislead.”\(^9\) It is precisely because Hamburger views Mill’s delivery of the message in On Liberty with such distrust that he feels the need to scour non-doctrinal sources to get at what Mill really meant in the essay. However, I hold that if Mill’s anti-religious message lies beneath the surface of On Liberty, then it lies just barely beneath the surface.

To phrase it another way, I think that if Mill was implementing a rhetorical tactic in On Liberty intended to obfuscate his unfavorable view of rote Christian belief, he did a poor job. For example, his anti-Christian sentiment is quite clear in this passage:

To what extent doctrines intrinsically fitted to make the deepest impression upon the mind may remain in it as dead beliefs, without ever being realized in the imagination, the feelings, or the understanding, is exemplified by the manner in which the majority of believers hold the doctrines of Christianity…it is scarcely too much to say that not one Christian in a thousand guides or tests his individual conduct by reference to those laws.\(^10\)

\(^8\) Joseph Hamburger, John Stuart Mill, 92.
\(^9\) Ibid., 203.
And in these lines:

Christian morality (so called) has all the characters of reaction; it is, in great part, a protest against Paganism. Its ideal is negative rather than positive; passive rather than active; Innocence rather than Nobleness; Abstinence from Evil rather than the Pursuit of Good; in its precepts…‘thou shalt not’ predominates unduly over ‘thou shalt’. In its horror of sensuality, it made an idol of asceticism, which has gradually been compromised away into one of legality. It holds out the hope of heaven and the threat of hell, as the appointed and appropriate motives of a virtuous life…to give to human morality an essentially selfish character, by disconnecting each man’s feelings of duty from the interests of his fellow creatures…It is essentially a doctrine of passive obedience, it inculcates submission to all authorities found established…[and] even in the morality of private life, whatever exists of magnanimity, high-mindedness, personal dignity, even the sense of honour, is derived from the purely human, not the religious part of our education….\(^{11}\)

In the samples above, Mill calls Christianity ‘reactionary’ and a ‘dead belief’, to which the precepts ‘not one in a thousand Christians’ actively adheres. He compares it unfavorably to paganism, states that it makes a horror of sensuality, imparts an essentially selfish character on its practitioners, lends itself to passive obedience. Then, he denounces the notion that anything which is good about the human character stems from its teachings. I find it very difficult, in light of these plain sentiments, and others like them in On Liberty, to see how Hamburger developed his notion that Mill lacked the courage to express his negative opinion of Christianity. Furthermore, why are excerpts from private letters and comments made by Mill’s contemporaries cobbled together as if to decode what is really being said when the doctrinal message is both transparent and the very same message that Hamburger purportedly uncovers through his extensive research.

Despite the fact that my vehicle for understanding Mill as anti-Christian is doctrinal and Hamburger’s is largely and necessarily non-doctrinal, we reach the same conclusion on this matter. Mill wanted the viability of Judeo-Christian ethics put to the acid test of open-minded debate. He seems certain that it fail to prove its viability as a normative ethical system for the 19th-century English citizen. However, I recognize Mill as having asserted this message with greater courage during his lifetime (and specifically in On Liberty) than does Hamburger.

Hamburger and I disagree strongly again on the matter of Mill’s desire to replace the vestigial Christian ethos with something characteristic of Auguste Comte’s plan for the moral regeneration of society. At one point, Hamburger states that “Mill clearly rejected Comte’s [R]eligion of [H]umanity” but that this does not mean that Mill “did not have one of his own.”\(^{12}\) Despite this recognition of Mill’s repudiation of Comte’s vision, though, Hamburger goes on to state that “[i]n being so critical of Comte while in fact sharing so many of his ideas and goals, Mill sought to mislead.”\(^{13}\) Furthermore, Hamburger asserts that Mill planned “to promote” his own “widely shared, communal, anti-individualistic morality.”\(^{14}\) I take issue with the italicized portion of the immediately preceding quote. This section is crucial to the case that Mill’s plan for moral regeneration would have looked significantly like Comte’s. To show that Mill was an advocate of some form of religion of humanity, even one influenced in some way by Comte, is not enough if it can be shown that Mill rejected Comte’s willingness to sacrifice liberty at the altar of a systematic unity of moral purpose. I will show that Mill rejected, with a great deal of force and clarity, Comte’s central tenet of societal altruism and his repressive means for achieving it. Ten asserts that Hamburger is “blinded by a simple, brilliant thesis which he pursues against all opponents,

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\(^{11}\) Ibid., 617.
\(^{12}\) Hamburger, John Stuart Mill, 124.
\(^{13}\) Hamburger, John Stuart Mill, 211.
\(^{14}\) Ibid. p. 108.
but unfortunately, also against all the evidence.” 15 I think Ten’s assertion find its strongest foothold in reference to this portion of Hamburger’s argument.

Again, Hamburger relies on many non-doctrinal sources to make his case, but he also focuses a great deal on Mill’s 1831 serial publication entitled “The Spirit of the Age,” which was published twenty-eight years prior to On Liberty. In one installment Mill writes that the majority “must place the degree of reliance warranted by reason, in the authority of those who have made moral and social philosophy their peculiar study.” 16 Hamburger interprets these sentiments in “Spirit” to be Mill’s assertion that moral reform ought not be questioned if that reform is driven by some certain group of enlightened thinkers possessing “individuality,” 17 such as those Comte thought best suited to make up the priesthood of his socio-religion. But Hamburger fails to give enough weight to Mill’s advocacy for each individual’s necessary appeal to their own reason before acquiescing to any external opinion whatsoever. If an opinion is carefully considered and then actively accepted in light of one’s own forethought and is continually open to challenge via free and serious debate then it is not, and will not be, in jeopardy of becoming a received opinion. Received opinion is described by Mill as a “universal illusion” grounded purely in custom so that “no reasons should be given, either by one person to others, or by each to himself.” 18 For Mill, then, consensus itself is not inherently problematic. It is the means of achieving and subsequently maintaining consensus that determines its desirability. Or as Ten puts it, “Mill believed that individual freedom and the consensus of opinion are compatible.” If they proved to be incompatible, “Mill would…reject the consensus simply because it is imposed and as such undesirable.” 19

And it is exactly on the matter of legitimate means of achieving and maintaining consensus where Mill and Comte parted ways most starkly. Regarding Mill’s relationship to Comte and his work, Mill scholar Alan Ryan writes:

On Liberty was conceived at a time when Mill was…contemplating a long essay on Comte, his intent in part being to counter the excessively favourable impression that his use of Comte’s work in A System of Logic [1843] had created. Mill abandoned the Comte essay for the rest of the 1850’s (it eventually appeared in 1865), but On Liberty has the marks of Mill’s ambivalence about Comte all over it…On the one hand, Mill thought highly of Comte’s appreciation of the need for a scientific reorganisation of social and economic life; on the other, Mill condemned Comte’s version of that project as ‘liberticide’…. 20

By the time Mill penned On Liberty, then, he had come to repudiate the notion that societal disapprobation, religious morality, or any set of laws could be truly useful if they threatened the ‘death’ of individual liberty as delimited by the harm principle. And Mill clearly saw Comte’s Religion of Humanity as just such a threat.

In Auguste Comte and Positivism (the 1865 work to which Ryan makes reference above) Mill spends the first half of the essay asserting Comte’s vital contributions to ‘Positive Philosophy’. Mill writes that “[Comte] undertook that wonderful systemization of all the antecedent sciences” which were understood to be the culmination of the natural progression from theological, to metaphysical, to positive (read scientific) modes of philosophical thought. Mill also states that if Comte “had done nothing else, [this] would have stamped him…as one of the principle thinkers of the age.” 21 But Mill then writes that “when

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17 Hamburger, John Stuart Mill, 149.
we extend our examination to [Comte’s] later productions” – those which fully describe the proposed structure of his Religion of Humanity – “we shall have, in the main, to reverse our judgment” because “it is in their general character that we deem the subsequent speculations false and misleading.”

Let us review Mill’s specific criticisms of the general character of Comte’s “second career”, in which the latter “came forth transfigured as the High Priest of the Religion of Humanity.”

Mill begins his criticism by questioning Comte’s practice of hygiène cérébrale, which was the “abstin[ing] systematically, not only from [reading] newspapers or periodical publications, even scientific, but from all reading whatever” save some poetry. As might be expected from one who touts the value of continual, open discourse in any legitimate attempt at progress toward definitive knowledge, Mill states that Comte’s extreme mental isolationism necessarily meant foregoing the “pretense of arriving at the whole truth on the subject…of his meditations…[because] without aid or correction from his contemporaries, [it was]…simply impossible.”

Mill goes on to write that Comte’s mental isolation turned, unsurprisingly and decidedly, toward mental arrogance:

…such a practice…[is not] free from the gravest dangers to a philosopher’s own mind. When once he has persuaded himself that he can work out the final truth on any subject, exclusively from his own sources, he is apt to lose all…standard by which to be apprized when he is departing from common sense. Living only with his own thoughts, he gradually forgets the aspect they present to minds of a different mould from his own; he looks at his conclusions only from the point of view which suggested them, and from which they naturally appear perfect; and every consideration which from other points of view might present itself, either as an objection or as a necessary modification, is to him as if it did not exist.…The natural result of the position is a gigantic self-confidence, not to say self-conceit. That of M. Comte is colossal.…The height it ultimately attained must be seen, in his writings, to be believed.

In light of the above passage, it is reasonable to see Mill’s 1859 attack on the ‘assumption of infallibility’, in which he states that “he who knows only his own side of the case, knows little of that,” as supporting Ryan’s claim that On Liberty rings with Mill’s ambivalence toward the later Comte. On Liberty’s broad assertion that free discussion is necessary in order to progress toward greater truth seems as critical of Comte’s practice of hygiène cérébrale in devising the supposedly forward-thinking Religion of Humanity as it does of the inert, historical opinion which clings to the truth of Judeo-Christian ethics. Furthermore, it bolsters Ten’s claim that Mill saw consensus as potentially compatible with liberty because the latter’s repudiation of Comte’s progressive religion stems from the very state of mental isolation in which it was devised. In other words, in addition to being critical of any consensus which devolves into a state “in which people feel sure, not so much that their opinions are true, as that they should not know what to do without them” and in which “the claims of an opinion to be protected from public attack are rested not so much on its truth, as on its importance to society”, Mill’s criticism of Comte indicates he would eschew any progressive ideology critical of open and free debate that would lead to a vital consensus. For Mill, then, consensus can be a means either to advance or suppress individual liberty; and it is only by committing individual reason to a process of constant reevaluation centered on protracted discussion that a society can hope to ascertain the sufficiency of a particular prevailing opinion or custom. However, as Ten states, if liberty and consensus conflict, Mill readily jettisons consensus. Mill makes this clear in On Liberty when he writes:

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22 Ibid., 9.
23 Ibid., 92.
24 Ibid., 94.
25 Ibid., 95.
27 Ibid., 603.

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I have said that it is important to give the freest scope possible to uncustomary things, in order that it may in time appear which of these are fit to be converted into customs. But independence of action, and disregard of custom, are not solely deserving of encouragement for the chance they afford that better modes of action, and customs more worthy of general adoption, may be struck out; nor is it only persons of decided mental superiority who have a just claim to carry on their lives in their own way. There is no reason that all human existence should be constructed on some one or some small number of patterns. 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 and even sheep are not undistinguishably alike.\textsuperscript{28}

In the above passage, Mill’s advocacy for the prevalence of liberty over custom (which is reasonably understood as an enduring consensus of opinion and/or action) presupposes Mill’s later condemnation of Comte’s Religion of Humanity. I have shown, however, that Mill was critical of the mental isolation which he thought, in turn, produced mental arrogance in Comte. I will now attempt to capture the tone of the former’s criticism of the resulting Religion of Humanity itself. It will be clear that these criticisms focus on Comte’s demand for conformity of thought to support an overly burdensome and pervasive societal altruism.

Mill writes, rather scathingly, that Comte’s later philosophy would have benefited if “he could have been contented with something less ambitious than being the supreme moral legislator and religious pontiff of the human race.”\textsuperscript{29} He explains that, as an atheist, Comte substituted a belief in God for a belief in the “Infinite Nature of Duty” in the form of “a concrete object, at once ideal and real; the Human Race, conceived as a continuous whole, including the past, the present, and the future.”\textsuperscript{30} He states that Comte believed “[w]e should endeavour not to love ourselves at all…[and that] all education and moral discipline should have but one object, to make altruism…predominant over egoism.”\textsuperscript{31} Mill calls this “inordinate demand for unity and systemization” in slavish devotion to altruism, the source of error -in Comte’s later philosophy.\textsuperscript{32} He goes on to write that

The strangest part of the matter is, that this doctrine seems to M. Comte to be axiomatic. That all perfection consists in unity, he apparently considers to be a maxim which no sane man thinks of questioning. It never seems to enter into his conceptions that any one could object \textit{ab initio}, and ask, why this universal systematizing, systematizing, systematizing? Why is it necessary that all human life should point but to one object, and be cultivated into a system of means to a single end? May it not be the fact that mankind, who after all are made up of single human beings, obtain a greater sum of happiness when each pursues his own, under the rules and conditions required by the good of the rest, than when each makes the good of the rest his only subject, and allows himself no personal pleasures not indispensable to the preservation of his faculties?\textsuperscript{33}

Furthermore, Mill says that, for Comte, “it would never do to suppose that there could be more than one road to human happiness, or more than one ingredient in it.”\textsuperscript{34} He writes that

\textsuperscript{28} Ibid., 626.
\textsuperscript{29} Mill, \textit{Auguste Comte}, p. 97.
\textsuperscript{30} Ibid., 98.
\textsuperscript{31} Ibid., 101.
\textsuperscript{32} Ibid., 103.
\textsuperscript{33} Ibid., 103. The similarity between this argument for the right of the individual in the face of consensus and the preceding one from \textit{On Liberty} is rather obvious
\textsuperscript{34} Ibid., 104.
Our conception of human life is different [than Comte’s]. We do not conceive life to be so rich in enjoyments, that it can afford to forego the cultivation of all those which address themselves to what M. Comte terms the egoistic propensities. On the contrary, we believe that a sufficient gratification of these, short of excess, but up to the measure which renders the enjoyment greatest, is almost always favourable to the benevolent affections. The moralization of the personal enjoyments we deem to consist, not in reducing them to the smallest possible amount, but in cultivating the habitual wish to share them with others, and with all others, and scorning to desire anything for oneself which is incapable of being so shared. There is only one passion or inclination which is permanently incompatible with this condition—the love of domination, or superiority, for its own sake; which implies, and is grounded on, the equivalent depression of other people. As a rule of conduct, to be enforced by moral sanctions, we think no more should be attempted than to prevent people from doing harm to others, or omitting to do such good as they have undertaken. Demanding no more than this, society, in any tolerable circumstances, obtains much more….35

With all of this being said, Mill admits the positive possibilities of some version of a religion of humanity; however, considering the particulars of Mill’s version is largely beyond the scope of this paper. My purpose is only to show that it is unfair of Hamburger to assert that Mill would condone the central tenet of unity of moral purpose which threatens individual liberty in Comte’s Religion of Humanity. It is clear that Mill did not approve of altruism as the axiomatic goal of progressive society nor of Comte’s overly-systematized methodology for achieving “the state of complete harmony peculiar to human life…when all parts of Life are ordered in their natural relation to each other.”36 Nor does Mill concur with the extreme societal regulation and discipline necessary to affect Comte’s positive system. He writes that Comte, in developing his notion of cultus, displays “the extraordinary height to which he carries the mania for regulation.”37 Mill concludes that it is Comte’s obsessive desire to regulate human behavior and channel it toward one ultimate principle (altruism) that “throws an irresistible air of ridicule over the whole subject.”38 It is worth noting that because Mill is so critical of Comte’s willingness to abandon individual liberty, Cowling’s stronger accusation that Mill is inclined toward moral totalitarianism is not credible. In fact, it is, the totalitarian aspects of Comte’s socio-religious vision that Mill most adamantly opposed. Ryan puts it well when he states that

On the one hand, Comte understood that as society became increasingly complex, the bonds of duty must tie us ever more tightly to one another; [while] on the other he failed to see that unless we lived for ourselves as well as for others, nothing would be worth living for, nothing would exist for which it was worth doing our duty.39

It must be admitted, however, that Hamburger’s assessment of Mill’s favorable disposition to a Comtean ideology in “Spirit of the Age” is largely on the mark. If one were to read “Spirit” and then Auguste Comte and Positivism back-to-back, one might still reasonably question how Mill’s earlier and later opinions of the man’s philosophy became, in such large part, incongruous. The answer lies, unsurprisingly, in interposing events. Mill’s “Spirit” and A System of Logic (which also favorably featured Comte’s early ideas) were published in 1831 and 1843 respectively. Comte’s System of Positive Polity – which for the first time fully laid out his plan for society’s moral regeneration – was not

35 Ibid., 106.
38 Ibid.
published until 1851. Mill’s *On Liberty* and *Auguste Comte and Positivism* were published in 1859 and 1865, respectively. As I have shown, Mill clearly distinguishes between the commendable efforts of the ‘earlier Comte’ and the misguided proclamations of the ‘later Comte’ which fall on either side of a ‘dividing line’ – one drawn at some point in the late-1840’s to early-1850’s. In other words, in Mill’s assessment, ‘Comte pre-Religion of Humanity’ and ‘Comte post-Religion of Humanity’ were essentially two different Comtes. Mill attributes this dramatic change to Comte’s platonic romance with Clotilde de Vaux which lasted for about one year, until she died in 1846. Mill writes that Comte himself underwent a “moral regeneration” from what Comte termed “‘une angélique influence’” that “gave him an insight into the true sources of human happiness” and “which changed his whole conception of life.” 40 Even placing Mill’s clear and concise repudiation of Comte aside, then, it seems any attempt to link the pro-Comteian tone of “Spirit” to *On Liberty* would be a specious one based on chronological considerations alone.

As I stated earlier, for Hamburger’s argument to obtain he must show that Mill’s version of a morally regenerated society would promote “anti-individualistic morality.” I have shown, instead, that Mill would not have accepted consensus garnered via the sacrifice of individual liberty. In fact, Mill drew his hard line of opposition precisely in response to the systematic and ‘anti-individual’ aspects of Comte’s moral regeneration. Nevertheless, Hamburger claims that Mill would “deter violations” of this purported “anti-individualistic morality” by means of “applying social pressures” in much the same censorial way advocated by Comte. 41 This claim feeds Hamburger’s argument that Mill’s broad application of the harm principle chapter five of *On Liberty* causes it to loses much of its efficacy as a liberal principle. Hamburger states that Mill “suggests that harm [is] narrowly defined and that the individual...at least would not be subject to [society’s] harsh judgments] very often.” 42 He goes on to say, however, that “Mill’s examples of how the harm principle would be applied...point to a rather different conclusion, for they show that he was prepared to locate harm and punish those responsible for it in situations he thought would occur frequently.” 43

Hamburger’s first example of this broad construal of harm’s meaning focuses on Mill’s thoughts on education. He offers that Mill’s proposed mandate that parents educate their children or suffer state-sanctioned punishment undermines the liberal claim “that conduct which only causes offense or moral distress (morality dependent harm, so-called) is not the kind of harm Mill had in mind.” 44 Hamburger turns Mill’s own words against him by pointing out the claim in *On Liberty* that to deny a child an education was “a moral crime, both against the unfortunate offspring and against society.” 45 It seems that Hamburger is keying in here on Mill’s use of the words ‘moral crime’ to claim that not educating one’s children is, to Mill’s way of thinking, solely a morality dependent harm. Clearly, however, Mill does not see the matter this way because he writes:

> The fact itself, of causing the existence of a human being, is one of the most responsible actions in the range of human life. To undertake this responsibility—to bestow a life which may be either a curse or a blessing—unless the being on whom it is to be bestowed will have at least the ordinary chances of a desirable existence, is a crime against that being. 46

The necessary requirement for excluding morality dependent harm from that which Mill intended the harm principle to cover is that it be only a matter of offense or moral distress. In the passage above, Mill tells us that failing to educate one’s child is not only a moral crime but also a harm to the child. He also intimates that harm to be one of denying the child “at least the ordinary chance of a desirable existence.”

42 Ibid., 10.
43 Ibid.
44 Ibid.
46 Ibid., 647.
This application of the harm principle in no way undermines Mill’s own explication of said principle; moreover, it seems that a reasonable person need not take issue with the assertion that a failure to provide at least a basic education for one’s children does some measure of harm. Mill goes on to suggest that a rash of uneducated children will ultimately end up competing for low-wage jobs which will effectively reduce “the reward of labour by their competition”⁴⁷ thus harming societal interests in general.

If the harm principle remains un-violated by a refusal to educate one’s offspring because it should not only be considered a morally dependent harm, then what about the argument that defining harm as such is tantamount to defining harm too broadly, and thus punishing people in situations that would occur too frequently? Hamburger seems to be saying here that in order to apply the harm principle liberally, Mill ought to impose some quantitative limits on it. In other words, he ought not to apply the harm principle to situations in which it would affect too many people too regularly because this is simply applying it too illiberally. However, this seems an irrelevant consideration on Mill’s account. Again, a reasonable person need not take issue with applying the harm principle based solely on the implications of a particular action, regardless of quantitative impact. To use a rather crass example, but one that illustrates the point clearly, if too many people suddenly engaged in cold-blooded murder would one want to say that consideration should be given to not applying the harm principle to cold-blooded murder because the situation is occurring too frequently? It is easy to see that this sort of argument is counterintuitive and an exceedingly difficult, if not impossible, one to successfully make.

In response, however, one might assert that murder is the greater harm, or more clearly, a harm than is not educating one’s children and, therefore, murder is less susceptible to any quantitative considerations. But this sort of subjective argument gets to the larger problem with Hamburger’s theme of attacking Mill’s applications of the harm principle. Regarding Hamburger’s accusation that Mill is judgmental about what constitutes self-regarding conduct, Ten says that in viewing this “as a discrepancy between his general principle of liberty and his application of that principle, [Hamburger] has simply failed to understand the nature of Mill’s conception of toleration.”⁴⁸ And maybe Ten is right. Maybe Hamburger has failed to understand the nature of the true liberal grounding for many of Mill’s applications, thus making them appear to Hamburger as intolerant.

However, even if Hamburger understands Mill’s liberal groundings perfectly, much of what the former criticizes about Mill’s applications comes down to exactly a matter of judgment. In other words, unless Mill was being blatantly duplicious in his applications (e.g. if one were to apply the simple humanitarian principle that ‘no person should suffer discrimination based on race, sex or religion’ only to ‘white, male Christians’) then no difference in judgment about how the harm principle ought be applied devalues its inherent liberal nature. And Hamburger comes close at times, but ultimately refrain from accusing Mill of blatant duplicity. Thus, it seems to me Ten is right that “for better or for worse, Mill was a great liberal⁴⁹ simply for putting forth the harm principle and attempting its reasonable application.

As his criticisms of Comte and his case for the value of open discussion in On Liberty demonstrate, Mill would have been the first to admit that even the most cultivated mind was severely limited in its ability to determine absolute truth-values. After all, Mill made the hard choice to depart ideologically from both Jeremy Bentham’s fixed, geometric (a priori) philosophy and his own father James Mill’s philosophy which saw human interaction as a mechanistic constant to pursue a more fluid, scientific (a posteriori) methodology. Mill scholar Frederick Rosen tells us that

Mill hoped to develop scientific laws concerned with the development of human societies…yet such a process, even as Mill outlined it, seemed a difficult, if not impossible task, because of the

⁴⁷ Ibid.
⁴⁹ Ibid. 356.
complexity of the data to which such a science must be related and from which it was ultimately derived.\(^{50}\)

Mill viewed human motivation as dictated by a set of extremely complex natural laws only partially discernible via the study of human action. He put his view this way:

But the impressions and actions of human beings are not solely the result of their present circumstances, but the joint result of those circumstances and of the characters of the individuals; and the agencies which determine human character are so numerous and diversified (nothing which has happened to the person throughout life being without its portion of influence), that in the aggregate they are never in any two cases exactly similar. Hence, even if our science of human nature were theoretically perfect, that is, if we could calculate any character as we can calculate the orbit of any planet, \textit{from given data}; still, as the data are never all given, nor ever precisely alike in different cases, we could neither make positive predictions, nor lay down universal propositions.\(^{51}\)

Mill, then, would have welcomed Hamburger’s critical input on the particulars of his applications of the harm principle to the nearly limitless array of societal interactions to which it was germane. But I think Mill would have asked the Hamburger to refrain from labeling him illiberal because of any difference in judgment. Mill himself makes a similar case for a tolerance of application on behalf of the principles of his fellow utilitarians when he writes:

we may affirm that among utilitarians as among adherents of other systems, there is every imaginable degree of rigidity and of laxity in the application of their standard: some are even puritanically rigorous, while others are as indulgent as can possibly be desired by sinner or by sentimentalist. But on the whole, a doctrine which brings prominently forward the interest that mankind have in the repression and prevention of conduct which violates the moral law, is likely to be inferior to no other in turning the sanctions of opinion against such violations. It is true, the question, What does violate the moral law? is one on which those who recognise different standards of morality are likely now and then to differ. But difference of opinion on moral questions was not first introduced into the world by utilitarianism, while that doctrine does supply, if not always an easy, at all events a tangible and intelligible mode of deciding such differences.\(^{52}\)

It seems a parallel argument could be made that the inherent value of the harm principle as a principle of individual liberty is, likewise, undiminished by any differing, good faith judgments about proper application.

This being said, Hamburger makes much of Mill’s ‘illiberal’ applications. Therefore, let us look at yet another example offered in support of this method to see if it stands up under scrutiny. Hamburger states that:

Obligations within a family – to spouse or children – Mill also considered in his few \textit{discussions of divorce}. Here too he was concerned with preventing harm, and consequently he did not approve of liberty to dissolve the marriage contract, in spite of his wish to consider the happiness of both husband and wife. In \textit{On Liberty} he equivocates and resists endorsing divorce on two


grounds: if children are called into existence during the marriage, their claims supersede the wishes of either spouse; and even if a marriage is childless, each spouse has obligations to the other, which arise from the long-term expectations that are formed when marriage is promised or initiated.  

It must be admitted that this seems, initially, a rather illiberal position for Mill to adopt. Surely an adult in a dysfunctional marriage should be at liberty to terminate the marriage arrangement if doing so is perceived to be in their best interest. But Hamburger admits that, in this case, Mill sees himself as attempting to prevent harm to other members of the family unit. Although he does not say so specifically, Hamburger’s use of this as an example of an illiberal application of the harm principle indicates a view that the harm being prevented (the dissolution of a nuclear family) does not warrant this level of infringement upon individual liberty. That, or possibly that the definition of harm being proffered is an altogether specious one. If Mill is simply trying to preserve the nuclear family for its own sake then this criticism may, indeed, show he defines harm too broadly. After all, a reasonable person could offer that some married couples simply are better off apart and that the harm done to children forced to remain in dysfunctional households is greater than that experienced by those impacted by divorce. It is illegitimate to hold the blanket opinion that it is always best to maintain the nuclear family structure when it is impossible to take into account the particular situation of any one nuclear family, much less the situations of the individual members of that family.

Hamburger produces a quote from On Liberty in which Mill states that he not only intends to defend certain liberties but to show that “liberty is often granted where it should be withheld.” The implication being that, in the case of divorce, Mill knew exactly what he was doing with his broad application of the harm principle, namely, curtailing individual liberty by advocating the state’s right to put strict sanctions on the practice of divorce. Devoid of context this is true enough. However, the larger passage from which this quote was drawn lends a more nuanced character to Mill’s intent:

I have already observed that, owing to the absence of any recognised general principles, liberty is often granted where it should be withheld, as well as withheld where it should be granted; and one of the cases in which… the sentiment of liberty is the strongest, is a case where, in my view, it is altogether misplaced. A person should be free to do as he likes in his own concerns; but he ought not to be free to do as he likes in acting for another, under the pretext that the affairs of ‘the other’ are his own affairs. The State, while it respects the liberty of each in what specially regards himself, is bound to maintain a vigilant control over his exercise of any power which it allows him to possess over others. This obligation is almost entirely disregarded in the case of the family relations, a case, in its direct influence on human happiness, more important than all others taken together. The almost despotic power of husbands over wives needs not be enlarged upon here, because nothing more is needed for the complete removal of the evil, than that wives should have the same rights, and should receive the protection of law in the same manner, as all other persons; and because, on this subject, the defenders of established injustice do not avail themselves of the plea of liberty, but stand forth openly as the champions of power.

While Mill does not specifically address divorce in the above passage, he does state his disapproval of the “despotic power of husbands over wives” and gives his prescription for the “complete removal” of that “evil.” Very simply, a wife should have the same rights and the same protection under the law as her husband. This argument presupposes his much lengthier argument for equal rights and opportunities for women as offered in The Subjection of Women (1869).

53 Hamburger, John Stuart Mill, 11-12.
54 Mill, On Liberty, quoted in Hamburger, John Stuart Mill, 12.
Before looking at what Mill has to say on the matter of divorce, however, it should be made clear that he saw an arc of immorality between the roles of Victorian women and those of plantation slaves in the southern United States of America. Mill held that women were coerced into the institution of marriage via the deprivation of all other opportunity by a patriarchal society in which all men shared a host of selfish reasons for maintaining the status quo – not the least of which was the desire to procreate and have their children raised for them while leaving men free to pursue their own individual life-interests. Mill writes

If this is the real opinion of men in general, it would be well that it should be spoken out. I should like to hear somebody openly enunciating the doctrine (it is already implied in much that is written on the subject)—“It is necessary to society that women should marry and produce children. They will not do so unless they are compelled. Therefore it is necessary to compel them.” The merits of the case would then be clearly defined. It would be exactly that of the slaveholders of South Carolina and Louisiana. “It is necessary that cotton and sugar should be grown. White men cannot produce them. Negroes will not, for any wages which we choose to give. Ergo they must be compelled.”

It seems clear, then, that Mill’s defense of divorce law was tied to his concerns about the absence of liberty which afflicted women within the institution of marriage in 19th-century England. In considering the liberality of Mill’s position on divorce, Hamburger misses Mill’s big-picture concern - i.e., roughly half of the English population was (based solely on sex) not at liberty to pursue their own lives in their own way. Instead, a woman’s options were most often dictated to her by a systemic patriarchy that relegated her to the fulfillment of certain historical roles (i.e., wife, mother, home-maker), any personal inclinations of her own to the contrary notwithstanding. Mill, then, saw the nearly dictatorial sway the husband enjoyed over his wife as making available to him certain liberties which too often produced the type of acts over which the harm principle held no jurisdiction (i.e., other-regarding acts). Therefore, Mill was adamantly opposed to the legal conflation of the husband’s personal liberty with that of his wife; because such a conflation created a dynamic in which any exercise of the husband’s liberty was ipso facto an exercise of liberty on behalf of his wife (notably the basis for denying women the vote). Mill, it seems, saw this as granting liberties to the husband where they were unwarranted and withholding liberty from the wife where it was sorely needed. Mill’s enunciation of the harm principle, after all, was meant precisely to keep one’s exercise of personal liberty from adversely affecting another’s in an unjust way. And since it cannot be legitimately assumed that whatever is best for one individual is necessarily best for another, the assumption of a husband’s liberty to be coextensive with the liberty of his wife imparted to him society’s sanction to violate the harm principle nearly at will within the domestic setting.

The context in which Mill gives consideration to the matter of divorce, then, informs the answer to the question which apparently vexes Hamburger: why specifically advocate against the liberty of the individual to terminate a dysfunctional marriage if doing so is reasonably deemed to be in one’s best interest? Or, in framing the question specifically to Mill’s concern for restoring a wife’s personal liberty, one might ask instead - if the foremost concern is to restore the collective liberty of ‘all wives’, how does advocating against a wife’s right to divorce a despotic husband further such a cause? Clearly, the simple answer to this question is it does not. However, due to the patriarchal nature of the marriage laws in 19th-century England, it is reasonable to think Mill hesitated to endorse the liberty to dissolve a marriage because a husband could, with great ease, utilize divorce to his unjust advantage, leaving his former wife destitute and largely without recourse for providing for her own basic needs. After describing a wife’s disadvantageous legal status at the time – the great difficulty of holding property in her own name (because she was “one person in law” with her husband) and her husband’s ‘lawful’ predominance in matters concerning their children - Mill writes: “and from this state she has no means of

57 Ibid. 667.
withdrawing herself. If she leaves her husband, she can take nothing with her, neither her children nor anything which is rightfully her own." He goes on to contrast the marriage contract to a business partnership; in the latter case a partner forced into a position of inferiority “is free to cancel the power [of the partner in the superior position] by withdrawing from the connexion” but in the case of wife and husband the former “has no such power, and even if she had, it [would be] almost always desirable that she should try all measures before resorting to it.”

In an unpublished essay written much earlier than Subjection, entitled On Marriage (1832-33?), Mill offers that it is an absurd and immoral state of society “in which a woman is at all dependent for her social position upon the fact of her being married or not being married.” However, he states the fact of the matter is such that

Women are so brought up, as not to be able to subsist in the mere physical sense, without a man to keep them: they are so brought up as not to be able to protect themselves against injury or insult, without some man on whom they have a special claim, to protect them, they are so brought up, as to have no vocation or useful office to fulfil [sic] in the world, remaining single…A single woman therefore is felt both by herself and others as a kind of excrescence on the surface of society, having no use or function or office there…a married woman is presumed to be a useful member of society unless there is evidence to the contrary; a single woman must establish, what very few either women or men ever do establish, an individual claim.

Thus, both the laws and culture of his time led Mill to conclude that “the indissolubility of marriage is the keystone of woman’s present lot, and the whole comes down and must be reconstructed if that is removed.” Mill makes it clear that his resistance to legitimizing divorce is based in a practical concern about the inequality of the two participating parties:

It is not denied by anyone, that there are numerous cases in which the happiness of both parties would be greatly promoted by a dissolution of marriage. We will add, that when the social position of the two sexes shall be perfectly equal, a divorce if it be for the happiness of either party, will be for the happiness of both.

For a man in 19th century England, Mill’s stance in favor of women’s equality was nothing if not progressive; and it is reasonable to assert that his disapproval of divorce was about asserting control precisely in defense of the harm principle and not some surreptitious undermining of its liberal efficacy.

In the end, then, Hamburger’s assertions regarding Mill’s illiberal applications of the harm principle miss the mark, as do his claims that – particularly concerning his critical view of Christianity - Mill was a deceptive equivocator who valued Comte’s Religion of Humanity more than he was willing to confess. However, there is value in the recent heterodox tradition of interpretation - of which Hamburger’s book is the latest installment. On Liberty and Control is truly an ambitious and thoughtful book, as well as a thought provoking one. It gives those of us who hold the opinion that John Stuart Mill to be a champion for liberty in his own time - and thus a champion of liberty for all time – an opportunity, and moreover a need, to reassess and reestablish the foundations of that long held opinion to make certain that it does not become (as Hamburger himself claims) an opinion that is no longer vital, but merely received.

58 Ibid. 668.
59 Ibid. 672.
61 Ibid.
62 Ibid., 6-7.
63 Ibid., 10.
REFERENCES


