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John Stuart Mill and the Liberty of Inebriation

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RICHARD GLEN BOIRE

As an important nineteenth or twentieth century work on political and social theory, John Stuart Mill's essay *On Liberty* ([1859] 1975) is considered to be second only to the *Communist Manifesto*. Written in the midst of the growing political power of Christian temperance groups pushing for alcohol prohibition and speaking directly to the issue of the rights of individuals and the limits of authoritarian control, *On Liberty* is a seminal antiprohibition text, which assumes ever greater importance and relevance when considered in the context of today's \$19 billion "war on drugs."

Drafted in the tumult of the first societal debates over alcohol prohibition, Mill's essay examines "the nature and limits of the power which can be legitimately exercised by society over the individual" (3) and is one of the earliest political statements against drug prohibition as well as a vindication of cognitive liberty. *On Liberty* was published in 1859 but was penned in 1855, only four years after the state of Maine enacted the first law in the United States prohibiting the sale of alcohol, an action that kicked off a wave of prohibition laws in the country. By 1855, thirteen states had passed alcohol prohibition laws, and the American Temperance Society had long since shifted from a call for "temperance" to a demand for wholesale prohibition. In England, where Mill wrote, the United Kingdom Alliance of Legislative Suppression of the Sale of Intoxicating Liquors sprang up in 1853, and it used the Maine law as a model in pushing for alcohol prohibition in England. Thus, it is not surprising that Mill's consideration of

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the rights of individuals vis-à-vis society and the government, forged in the midst of such heated social controversy, would confront directly the important question of cognitive liberty.

“The object of this Essay,” wrote Mill, “is to assert one very simple principle . . . 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 is] to prevent harm to others” (10–11). Government interference, wrote Mill, is appropriate only when a person engages in conduct that threatens the interests of others. What happens *inside* a person’s body or mind is that person’s private business, not the business of society and certainly not the business of the government. He expressed this point unambiguously: “Over himself, over his own body and mind, the individual is sovereign” (11).

So long as a person’s decision and subsequent conduct did not threaten others with harm, Mill considered the person’s action to lie within a protected “region of human liberty” (13). Encompassed within this domain of liberty is:

the inward domain of consciousness; demanding liberty of thought and feeling, absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological . . . liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow-creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong. (13)

For Mill, a society that refuses to recognize and respect this sphere of liberty is not a free society, and laws that invade this province are unjustifiable; freedom demands this protected domain. “The only freedom which deserves the name,” writes Mill, “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” (14).

Mill was quick to emphasize that these principles apply only to adults. Children, while they are still under the care of an adult, “must be protected against their own actions as well as against external injury” (12), and it is therefore appropriate for society or the government to act paternalistically toward them. Mill also acknowledges and repeatedly underscores that when a person’s behavior *does* directly affect other people, it is, by its very nature, social conduct and thus becomes an appropriate object for social and government control.

The roots of alcohol prohibition grew out of Protestant Christianity. In 1832, James Teare, founder of the Preston General Temperance Society in England, was speaking for many temperance advocates of the time when he took the floor at a temperance meeting in Manchester and declared all intoxicating liquor anathema to religious people: “the sooner it is put out of this world, the better” (qtd. in Inglis 1975,

137). Not surprisingly, therefore, woven throughout *On Liberty* are subtle and not so subtle jabs at both the timidity (“essentially a doctrine of passive obedience” [48]) and the coerciveness of Christianity. Religion, says Mill, is an “engine of moral repression” (14), seeking “control over every department of human conduct” (14). In some of his harshest words, Mill admonishes:

Christian morality (so called) has all the characters of a 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 energetic Pursuit of Good: in its precepts (as has been well said) “thou shalt not” predominates unduly over “thou shalt.” In its horror of sensuality, it made an idol of asceticism, which has been gradually compromised away into one of legality. (47–48)

Mill’s objection to the Christianity of the mid-nineteenth century fundamentally was to its complete capitulation to authority, coupled with its all-encompassing dogmatism and a singular way of conceiving of the world. These latter traits, Mill believed, often led its followers to suppress eccentricity, individuality, original thought, and simple pleasures.

On Liberty champions responsible alcohol inebriation as a private pleasure, which the government has no authority to interfere with as long as the drinker is not harming another person. Provided that a person’s conduct does not affect the interests of other people, writes Mill, that person should have “perfect freedom, legal and social, to do the action and stand the consequences” (70).

Mill rejects challenges that assert that a person’s actions inherently have some effect on society or that an act that harms the individual also harms society. Mill responds to these challenges on two levels. First, he acknowledges that if a person’s “self-regarding” conduct disables him from performing some public duty or produces identifiable harm to another person, then that conduct properly cannot be considered “self-regarding,” and society may control or punish the person. Using alcohol intoxication as an example, Mill explains: “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” (76). To the extent that the “harm” to others from drinking alcohol is amorphous or that the drinker violates no specific duty, Mill views the ancillary “harm” from the drinker’s action as an “inconvenience . . . which society can afford to bear, for the sake of the greater good of human freedom” (76).

In essence, Mill views the temperance challenge as embodying a Puritanical perspective that considers innumerable self-regarding actions to be morally wrong and thus inherently injurious to the society. He rejects this position as religious moralizing cloaked in claims for social policy. As an example, he quotes the secretary of the

United Kingdom Alliance for the Legislative Suppression of the Sale of Intoxicating Liquors, who wrote:

If anything invades my social rights, certainly the traffic in strong drink does. It destroys my primary right of security, by constantly creating and stimulating social disorder. It invades my right of equality, by deriving a profit from the creation of a misery I am taxed to support. It impedes my right to free moral and intellectual development, by surrounding my path with dangers, and by weakening and demoralizing society, from which I have a right to claim mutual aid and intercourse. (83)

Mill calls the secretary's definition of *social rights* a "monstrous principle" (83) that, if accepted, would vitiate the meaning of liberty entirely: "there is no violation of liberty which it would not justify; it acknowledges no right to any freedom whatever. . . . The doctrine ascribes to all mankind a vested interest in each other's moral, intellectual, and even physical perfection, to be defined by each claimant according to his own standard" (84).

Although Mill is perfectly capable of presenting his argument in theoretical terms, he turns his attention to what he calls "gross usurpations upon the liberty of private life actually practiced" (82) and without equivocation responds to efforts under way at that time to prohibit the drinking of alcohol:

Under the name of preventing intemperance, the people of one English colony, and of nearly half the United States, have been interdicted by law from making any use whatever of fermented drinks, except for medical purposes: for prohibition of their sale is in fact, as it is intended to be, prohibition of their use. And though the impracticability of executing the law has caused its repeal in several of the States which had adopted it . . . an attempt has notwithstanding been commenced, and is prosecuted with considerable zeal by many of the professed philanthropists, to agitate for a similar law in this country. (82–83)

Mill acknowledges that selling alcohol is a social act because it inherently involves a buyer and a seller, but, as he notes, the underlying aim of the laws that prohibit sales of alcohol is to squelch the *use* of alcohol. "[T]he infringement complained of is not on the liberty of the seller," notes Mill, "but on that of the buyer and consumer; since the state might just as well forbid him to drink wine as purposely make it impossible for him to obtain it" (83). Mill remarks that when a "trade law" has the effect of prohibiting a commodity, it is really a prohibition law in disguise.

Similarly, Mill is skeptical of so-called sin taxes, which artificially inflate the price of a product in order to discourage its use. Such a tax, he explains, "is a prohibition, to those whose means do not come up to the augmented price; and to those who do, it is a penalty laid on them for gratifying a particular taste" (93). A person's "choice

of pleasures,” writes Mill, ought to be each person’s “own concern, and must rest with [his] own judgment” (93). Ultimately, however, Mill would permit a special tax on products such as alcohol, but only to the extent that the tax increased revenue for the government. A “sin tax” would be inappropriate if set so high that it actually dissuaded a sufficient number of buyers so as to result in a *decrease* in total tax revenues from sales of the product.

With respect to items that can be abused, such as “poisons,” Mill notes that “there is hardly any part of the legitimate form of action of a human being which would not admit of being represented, and fairly too, as increasing the facilities for some form or other of delinquency” (89). Thus, if a person desires to purchase a poison, it is inappropriate for the government to enjoin the purchase merely because the person *might* abuse the poison or use it to commit a crime. Instead, the laws should stop after requiring that drugs and poisons be labeled with cautionary statements. Mill does not believe that doctors should be the gatekeepers to drugs, noting that “[t]o require in all cases the certificate of a medical practitioner would make it sometimes impossible, always expensive, to obtain the article for legitimate uses” (90). At most, any adults who wish to purchase such an item may be required to register their name, address, and an explanation of why they are purchasing a particular item.

Although Mill firmly believes it would be an illegitimate use of power for the government to prohibit inebriation based on an inchoate concern that an inebriated person *might* cause harm to others, he reasonably concedes that if an inebriated person does harm another person, then the government rightfully may prohibit that person from becoming inebriated in the future. “Drunkenness,” Mill explains, “in ordinary cases, is not a fit subject for legislative interference; but I should deem it perfectly legitimate that a person, who had once been convicted of any act of violence to others under the influence of drink, should be placed under a special legal restriction, personal to himself; that if he were afterwards found drunk, he should be liable to a penalty. . . . The making himself drunk, in a person whom drunkenness excites to do harm to others, is a crime against others” (90).

On Liberty even considers whether the government properly may regulate pubs where alcohol is served. In this regard, Mill concludes that because such places are necessarily social and because public harms associated with drunkenness are more likely to occur in or near such establishments (at least relative to other public places), the government may regulate them, setting closing times and restricting operating licenses to “persons of known or vouched-for respectability” (94). Any other restrictions, however, including setting a limit on how many pubs may exist in any given area, would be overreaching. Such a limit “for the express purpose of rendering them more difficult of access, and diminishing the occasions of temptation, not only exposes all to an inconvenience . . . but is suited only to a state of society in which the labouring classes are avowedly treated as children or savages” (94).

On Liberty stands as a classic document in defense of individual freedom, as relevant and persuasive today as it was in 1859. All elected officials, jurists, and public-

policy makers should read *On Liberty*, along with the Bill of Rights. Whereas modern-day politicians, entranced by the “war on drugs,” rapaciously violate “the inward domain of consciousness” (13) by imposing ever more drug prohibitions and placing hundreds of thousands of citizens behind bars for drug offenses, *On Liberty* powerfully avows that a government grossly exceeds its legitimate power when it interferes with matters of the mind and the interior condition of its citizenry.

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