THE 'DO NO HARM' PRINCIPLE

INTRODUCTION

Two perspectives

The maxim 'do no harm' (DNH) is enjoying a surge in popularity. From its early use in the Hippocratic Oath and medical ethics, its deployment has now extended to other areas including bioethics more broadly, education, the environment and internet ethics.[1] It is held to apply to the decision-making of all actors, from individuals and corporations to governments and their regulators.

This paper looks at the sources of the maxim in political economy. The canonical statement on harm occurs in JS Mill's Essay 'On Liberty' where he sets forward '*One very simple principle*'. In summary form this reads, '*The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of their number, is….to prevent harm to others'.*[2] According to some commentators it is the apparent simplicity of the principle that accounts for its lasting popularity.[3]

Mill enunciated his 'do no harm' principle in the context of an analysis of the individual in relation to collective decision-taking by society. As a consequence, much of the subsequent discussion of the principle has been set within the context of Mill's contribution to the liberal tradition.[4] This paper adopts a different perspective. It places the maxim within the framework of Mill's theory of knowledge.

These two different ways of looking at the harm principle share a common point of departure. The harm principle expresses '*the jurisdictional trigger for society to consider interference of any sort'.*[5] However, the focus in the context of the liberal tradition is on the justification of policy interventions in relation to the individual. By contrast, a focus on knowledge places the justification of policy interventions in relation to the application and development of a society's state of knowledge. The perspective centres on the quest for knowledge. Both perspectives play a central role in Mill's writings.

The knowledge perspective

Mill's approach to knowledge is contained mainly in 'A System of Logic' (1843), together with related extensions and applications in his essay 'On the Definition and Methods of Political Economy' (1844), 'Principles of Political Economy' (1848) and 'On Liberty' (1859).

Mill first developed his theory of knowledge in a form suited to the experimental testing of hypotheses in a laboratory setting. He then faced the challenge of applying his approach to the

[1] For a taxonomy of harms see DeMartino 2016. Table 5.1. 74/75.
[2] Mill On Liberty. 18.
[3] Smith 2006. 6.
[4] See for example the collection of essays ed. Gray & Smith (1991) and ed. Ten (2008).
[5] Turner 2014. 306.

real world. He faced a further challenge in applying it in relation to the exercise of public authority.

Each step in Mill's theorising poses its own challenge. In the laboratory, or research context, Mill set out his 'fourfold method of experimental inquiry', as a means of testing hypotheses.

In moving out of the laboratory into the real world, the same rigorous methods to achieve certainty cannot be used. However, according to Mill, individuals and societies can still apply epistemic procedures that lead towards more valid claims, better knowledge and better justifications. The procedures involve being open to disproof (what Mill referred to as 'infallibility') and the correction of errors ('corrigibility').

When it comes to the practical exercise of authority, or what Mill referred to as '*truth in action'*, the key issue, according to Mill, is how to encourage conditions that would support both epistemic principles and assist the discovery and correction processes. He formulated a criterion of 'vitality' as the precondition. The 'do no harm' principle finds its place as the means to foster 'vitality'.

Organisation of the analysis

This paper first describes the principles Mill developed for each of these three different stages and the chain of logic leading to the 'do no harm' principle. It then turns to assess, from a contemporary perspective, the limitations of the assumptions underlying Mill's 'vitality' principle. Finally, it gives illustrative applications of the 'Do no harm' principle to some current areas of social concern from the perspective of Mill's remaining two epistemic principles, openness to disproof and corrigibility.

MILL'S THEORY OF KNOWLEDGE: HYPOTHESES, TESTING AND VERIFICATION

The external judge

Adam Smith had pioneered the turn to empiricism in the study of social systems with what he termed his 'didactic method'. In his didactic method he claimed to follow the methodology of Isaac Newton in the natural sciences by looking for general principles from which other claims follow.[6] The general principles in the case of social processes, according to Smith, were those that flowed from human nature. Behind the market lay the motive force of personal desire, behind the law lay the motive force of sympathy, and behind morality lay conscience.

Jeremy Bentham had simplified Smith's motives to two, opening his 'Principles of Morals and Legislation' with the declaration that we are governed by '*two sovereign masters, pain and pleasure'*. However, beyond this simplification was a more radical departure. According to Bentham, internal sentiments, such as sympathy, needed an external yardstick.[7] We need to distinguish between internal motives and the reasons which warrant an external observer to approve an act.[8] Bentham also wanted to find an external guide that could be measured.

[6] Smith (1762-3/1983) Lectures on Rhetoric and Belles Lettres: 145
[7] Bentham (1789/1982) Principles of Morals and Legislation: 21-33.
[8] Principles of Morals and Legislation 32.

According to Bentham, the principle of utility provided the external guide and measure. Utility provides *'The principle which furnishes us with that reason, which alone depends not upon any higher reason, but which is itself the sole and all-sufficient reason for every point of practice whatsoever*'.[9] In addition, he suggested that pleasure and pain could be measured along seven different dimensions.[10]

Mill shared Adam Smith's desire for a unified approach to the natural and social sciences.[11] His aim was '*to attempt a correct analysis of the intellectual process called Reasoning or Inference*'.[12] According to Mill, '*Nearly the whole, not only of science, but of human conduct, is amenable to the authority of logic'*. However, Mill also shared Bentham's desire for reasoning that was based on an external logic and valid to an external judge. He asserted that our conceptions '*do not develop themselves from within, but are impressed upon the mind from without; they are never obtained otherwise than by way of comparison and abstraction*'.[13] He declared, '*Logic is not the science of Belief, but the science of proof, or Evidence*'.[14] He focussed his attention, in particular, on causal reasoning – what causes lead to what effects and what effects can be attributed to what causes.

The method

The first step in Mill's account of reasoning in the natural and social sciences (what he referred to as an 'a priori' method, applicable to both) is the formulation of a hypothesis. The function of hypotheses '*is one which must be reckoned absolutely indispensable…….We begin by making a supposition, even a false one, to see what consequences will flow from it*'.[15] According to Mill, the 'a priori' method was ' *The only method by which truth can possibly be attained in any department of the social sciences*'.[16]

The second step (what Mill referred to as 'induction') involved '*the operation of discovery and proving general propositions*'.[17] The great difficulty in developing proofs relating to causation, according to Mill, arises because we are usually dealing with multiple causes. The sequence '*Is seldom, if ever, between a consequent and a single antecedent…..It is usually between a consequent and the sum of several antecedents*'.[18] For Mill certainty about causation involved bringing together the sum, or assemblage, of all the antecedents of the effect and a method '*which considers the causes separately and infers the effect from the balance of the different tendencies which produce it*'.[19] In order to introduce a rigorous method for testing causal hypotheses and for trying to distinguish between multiple possible causes, Mill developed in his 'System of Logic' a 'fourfold method of experimental inquiry'. The fourfold method assumes

[9] Bentham (1776/1891) A Fragment on Government. 163.
[10] Bentham. Principles of Morals and Legislation. 38-49.
[11] Ryan (1970) Introduction. xv.
[12] Mill, A System of Logic. Introduction. 12.
[13] A System of Logic. Book IV. 653.
[14] A System of Logic. Introduction. 9
[15] A System of Logic. Book III. 496.
[16] Essay on the Definition and Method of Political Economy. 1844/2012. 46.
[17] A System of Logic. Book III. 284.
[18] A System of Logic. Book III. 327. See also Essay: '*Effects are commonly determined by a concurrence of causes'*. 55.
[19] A System of Logic. Book III. 453.

that different conditions require different methods of inference in order to arrive at valid conclusions.[20]

What is important in Mill's second step is the insistence on the experimental testing of hypotheses. '*Observation …….without experiment …can ascertain sequences and coexistence, but cannot prove causation'*.[21] His insistence on testing and experiment can be seen as representing a revolution in social studies.[22]

The third step in Mill's methodology involved verification. '*To warrant reliance on the general conclusions arrived at by deduction, these conclusions must be found, on careful comparison, to accord with the results of direct observation wherever it can be had*'. [23]

From the laboratory to 'approximation'

Mill's set of methods were those suited to experimentation, testing and observation in research or laboratory conditions.[24] He ascribed two great advantages to the laboratory setting. First, it allows us to bring together a much greater number of variations than '*nature spontaneously provides'*. Secondly, we can control the experiment. '*We can produce a phenomenon artificially, we can take it, as it were, home with us, and observe it in the midst of circumstances with which in all other respects we are accurately acquainted*'. [25]

Mill emphasised that the proof of hypotheses in the social sciences started from a point of '*great disadvantage*' because the circumstances are '*never perfectly known to us*' and '*the greater part of the processes concealed from our observation*'.[26] Moreover, *'It is seldom in our power to make experiments in them*'. [27] Nevertheless, Mill thought that we could still subject hypotheses to experiment and arrive at an 'abstract' truth. '*When completed by adding or subtracting the effect of the non-calculated circumstances, they are true in the concrete, and may be applied in practice'*.[28]

Mill published the first edition of his Logic in 1843 and revised it in his lifetime through eight subsequent editions until 1872. It has been argued that the later Mill no longer saw his methods, even in research conditions, as leading to complete certainty about cause and effect and that he realised that the goal of absolute certainty was not attainable. Instead, his approach provided a method of justification, a method for revising a provisional judgement about cause and effect and a path to revisable conclusions.[29]

Mill seems to have carried over this view on the provisional nature of our judgements, and the need to be able to revise them, into his understanding of reasoning and claims about

[20] See the discussion in White 2000.
[21] A System of Logic. Book III. 386.
[22] See Ducheyne 2008.
[23] A System of Logic. Book III. 460.
[24] White 2000. 443.
[25] A System of Logic. Book III. 384.
[26] Essay. 47.
[27] Essay. 42. See also. A System of Logic. '*The first difficulty which meets us in the attempt to apply experimental methods for ascertaining the laws of social phenomena, is that we are without the means of making artificial experiments'*. Book VI. 881.
[28] Essay.49.
[29] Ducheyne 2008.

knowledge, in the real world.[30] The quest is for '*the best that the existing state of human reason admits of*'.[31] In his search for 'the best' in the social sciences, he turned to the role of '*Approximate propositions'*: '*There is a case in which approximate propositions…are yet, for the purposes of science, universal ones; namely in the inquiries which relate to the properties not of individuals, but of multitudes. The principal of these is the science of politics, or of human society*'.[32]

THE TRANSITION TO THE REAL WORLD

Progress

Mill shared the belief of the Victorian age in social 'progress', and individual and social 'betterment'. He declared, '*It is my belief indeed that the general tendency is, and will continue to be…one of improvement; a tendency towards a better and happier state'*.[33] He also acknowledged his utilitarian heritage. However, he did not equate progress either with the higher material standards of living achieved in the Victorian age, or, with the single 'pleasure versus pain' calculus used by Bentham as the external measure of progress. Mill wrote, '*I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being'.*[34]

Mill did not define exactly what he meant by '*utility in the largest sense'* or '*the permanent interests of man as a progressive being*'. However, it has been suggested that what Mill took from the utilitarian tradition was above all a commitment to rationality in human affairs.[35] From this perspective, Mill's notion of 'Progress' can be understood as more securely grounded knowledge and more securely grounded justifications for claims to know. He stated, '*We are justified in concluding, that the order of human progression in all respects will mainly depend on the order of progression in the intellectual convictions of mankind*'. [36]

In moving from research conditions to the real world, Mill accepted that he was moving away from the world of controlled experiments for testing hypotheses and into the world of 'n*on calculated circumstances' and 'approximate propositions*'. However, he still wanted to find some real-world epistemic principles that would promote 'progression' in our intellectual convictions. He put forward two: an 'infallibility' principle and a 'corrigibility' principle.

The infallibility principle

The first principle in the search for the best of human reason, according to Mill, is what he calls the 'infallibility' principle. The infallibility principle is about recognising the provisional nature of our reasons to accept a hypothesis and our claims to 'know'. It is about how all our claims to know should be viewed as open to the possibility of disproof. He stated in his System of Logic, '*It is not, I conceive, a valid reason for accepting any given hypothesis, that we are unable to*

[30] See Philips 2019 for a view of the importance of uncertainty in Mill's response to the real world.
[31] On Liberty. 34
[32] A System of Logic. Book III. 603. See also A System of Logic. Book VI. 847.' *An approximate generalization is, in social inquiries, for most practical purposes equivalent to an exact one*'.
[33] Mill a System of Logic. Book VI. 914.
[34] On Liberty 20
[35] Ryan (2012) 259.
[36] Mill. A System of Logic. Book VI. 927.

imagine any other that will account for the facts. There is no necessity for supposing that the true explanation must be one, which, with only our present experience, we could imagine'.[37] He placed a similar importance on being open to disproof in 'On Liberty': '*On no other terms can a being with human faculties have any rational assurance for being right*'.[38]

In order to be open to disproof, we must first acknowledge the imperfect state of our knowledge and the insecure basis of our claims to know. Truths in the real world, according to Mill '*for the most part'* are only half truths.[39] Secondly, we must be open to rival claims about the inferences we draw from our perception of the facts. *'Even in natural philosophy, there is always some other explanation of the same facts; ….and it has to be shown why that other theory cannot be true…. But when we turn to subjects infinitely more complicated, to morals, religion, politics, social relations, and the business of life, three fourths of the arguments for every disputed opinion consist in dispelling the appearances which favour some opinion different from it'.*[40]

If we do not acknowledge both the imperfect state of knowledge and the possibility of the disproof of our claims to know, then we make an unjustified claim to certainty or a claim to 'infallibility'. '*The beliefs which we have most warrant for, have no safeguard to rest on, but a standing invitation to the whole world to prove them unfounded.'* [41]

Corrigibility principle

Mill had to reconcile his view that all our claims to know in the real world should be seen as provisional, subject to verification and open to disproof, with the possibility of progress in our understandings. He attributed this possibility to our ability to learn from a process of trial and error. '*We find the right conception by a tentative process, trying first one and then another until we hit the mark*'.[42] The ability to correct our errors depended in large part on the verification that comes from observation. By observing how our hypotheses '*differ from the real phenomenon, we learn what corrections to make in our assumptions*'.[43] He believed that the preponderance of conduct and opinion in the world was rational because of our ability to correct errors. Corrigibility is '*the source of everything respectable in man, either as an intellectual or as a moral being'.*[44]

Corrigibility involved the possibility of exchanging error for truth or '*what is almost as great a benefit*' a clearer perception of truth.[45] He thus asserted, '*The whole strength and value, then, of human judgement, depending on the one property, that it can be set right when it is wrong, reliance can be placed on it only when the means of setting it right are kept constantly at hand'.*[46]

[37] A System of Logic. Book III. 503.
[38] On Liberty 31.
[39] On Liberty 80
[40] On Liberty 54.
[41] On Liberty 34.
[42] A System of Logic. Book IV. 655.
[43] A System of Logic Book III. 496.
[44] On Liberty. 32.
[45] On Liberty. 28
[46] On Liberty. 32.

THE EXERCISE OF PUBLIC AUTHORITY

Truth for the purposes of action

When Mill turned to the exercise of public authority, or what he referred to as '*a correct judgement of great practical affairs'*, and '*truth for the purposes of action'*, he accepted that we often act without proof. '*The causes which present themselves in life are too complicated, and our decisions require to be taken too rapidly, to admit of waiting till the existence of a phenomenon can be proved'*.[47] Nevertheless, governments still had to act according to the 'truest opinions' they could. '*It is the duty of governments, and of individuals, to form the truest opinions they can, to form them carefully, and never to impose them upon others unless they are quite sure of being right'*.[48]

Even if we could not wait for proof, Mill maintained that we could approach 'the truest' and 'the right' by encouraging the conditions that would help verify or disprove the provisional truths on which governments act.

Verification, according to Mill, meant comparing the predicted results from our hypotheses with actual results. '*The discrepancy between our anticipations and the actual fact is often the only circumstance which would have drawn out attention to some disturbing cause which we had overlooked'*.[49] Discrepancy would tell governments that the assumptions on which they had made their laws might be wrong and that both their assumptions and practice might need to be changed.

'Art'

Mill also referred to the exercise of public authority as 'art'. The distinction he makes in this designation is between the role of moral rules and precepts in the exercise of authority, compared to reasoning about public policy based on the natural and social sciences such as economics. Mill regarded moral precepts as categorically different from scientific laws. He followed Hume in distinguishing between 'ought' statements and 'is' statements.[50]

The distinction between the 'ought' and the 'is' raises the question of how Mill viewed the relationship between the two. The distinction can be formulated in terms of a hard border. Separation in hard form maintains that we cannot infer statements about values from statements about facts and that there are no matters of fact about values.[51] However, in the context of 'truth for the purposes of action', Mill is clear that our moral precepts are open to study and correction, not only because we may revise our ethical thinking, but also in the light of our scientific reasoning.

According to Mill we must constantly refer back our ethical maxims to our analyses of causes and effects.[52] The reasoning of the natural and social sciences can inform the means we use to pursue our moral ends and can also show the consequences and effects of our ethical

[47] A System of Logic. Book III. 592.
[48] On Liberty 31.
[49] Essay 51.
[50] A System of Logic. Book VI. 949.
[51] Davis 2016 .203.
[52] A System of logic. Book VI. 946.

precepts.[53] For example, Mill noted in relation to the various policies governments might adopt, for normative reasons, in respect of the distribution of wealth, that, *'The conditions on which the power they possess over the distribution of wealth is dependent, and the manner in which the distribution is effected by the various modes of conduct which society may think fit to adopt, are as much a subject of scientific enquiry as any of the physical laws of nature'*.[54] Thus, according to Mill, the reasoning of the natural and social sciences helps to inform our moral precepts and to correct them if necessary. '*In the complicated affairs of life, and still more in those of states and societies, rules cannot be relied on, without constantly referring back to the scientific laws on which they are founded*'.[55]

Majoritarian government

In Mill's time the conditions for encouraging discovery, verification and correction in the exercise of authority had to be fostered under majoritarian forms of government. He lived at a time when the franchise, albeit still limited, was being extended so that majoritarian forms of political decision-taking were becoming the norm. Bentham had broadly welcomed the arrival of majoritarian forms of government because he saw it as consistent with the goal of the 'greatest happiness of the greatest number' and consistent with eroding the power of special interests. Like Madison, Bentham saw 'faction' as the main obstacle to representative government. For Mill, however, special interests and faction were not the principal problem for more representative government – it was lack of knowledge. '*Those whose opinions go by the name of public opinion, are not always the same sort of public:….But they are always a mass, that is to say, collective mediocrity*'.[56] He saw a need for the institutions of government to provide a defence against ill-informed majoritarianism.

Two types of 'tyranny'

In considering where public opinion could go wrong, Mill distinguished between two types of mistaken collective imposition. The first type he termed the tyranny of the magistrate – the misuse of the power of governments to enforce laws. The second type, he referred to in terms of the tyranny of issuing wrong 'mandates' rather than right or, in other words, making laws based on flawed assumptions.[57] According to Mill, the second class of 'tyranny' flowed from following prevailing opinion on any subject when opinion is not supported by reasons. We can thus interpret what he termed 'wrong mandates' as constituting errors in imposing mistaken policies resulting from the 'mediocre' understandings of voters and their representatives in majoritarian forms of government.

The conditions for betterment

In discussing how societies could avoid the imposition of mistaken policies and legislation, Mill explicitly rejects three avenues that might provide guidance in the absence of proof: custom, reliance on 'the wise', and precautionary or preventative measures.

[53] A System of logic. Book VI. 950.
[54] Principles of Political Economy. 21.
[55] A System of Logic. Book VI 945.
[56] On Liberty 94.
[57] On Liberty.12.

Custom

Mill shared Bentham's scepticism of traditional sources of authority. He wrote, *'the despotism of custom is everywhere the standing hindrance to human advancement'.*[58] However, his views were more nuanced than this would suggest. Mill followed Hume in recognising the benefits of expectations about behaviour that were aligned, '*In the conduct of human beings towards one another, it is necessary that general rules should for the most part be observed, in order that people may know what they have to expect*'.[59] He also acknowledged the importance of reciprocity in society and stated that '*Everybody who benefits from protection owes a return for the benefit and is bound to observe a certain line of conduct towards the rest'.*[60] In addition, he saw the principle and practice of cooperation as '*no more certain incident of …progressive change'*.[61]

Mill's crucial point of departure from the following of customary norms was that he still required our habits of cooperation to be subject to external judgement and justification. Adam Smith had identified 'conscience' (the ability to judge the before-and-after-effects of our actions) together with our desire to emulate others and our desire for social 'esteem' as providing a filter on our social interactions and a positive social dynamic.[62] Mill again wanted reasoning to be open to the external judge rather than to the workings of our internal conscience.

Bentham's objection to custom as a guide to the right mandate was that custom was likely to be invoked to protect privileged interests rather than to serve the general interest. Mill shared this objection. However, his main objection was that custom and habit represented '*magical influence*' or opinion unsupported by reasons. As a result, custom reflected only 'liking' something rather than giving reasons to prefer one mandate to another. '*An opinion on a point of conduct, not supported by reasons, can only count as one person's preference; and if the reasons, when given, are a mere appeal to a similar preference felt by other people, it is still only many people's liking instead of one'.*[63]

Bentham had accepted that a desire for a good reputation or esteem was often consistent with his utility principle.[64] From the perspective of the advancement of knowledge, Mill acknowledged one main benefit from the associative qualities of social interactions – the benefit of better understanding arising from contact and discussion with those who think differently. In order to 'know' people need to have '*thrown themselves into the mental position of those who think differently from them, and considered what such persons have to say'.*[65] Only in this aspect of Mill's account of rationality do we find an echo of the wider importance Adam Smith attributed to sympathy.

The knowledgeable or the wise

In addition to his rejection of custom as guidance, Mill was also opposed to a government trying to bring together the most knowledgeable in society into its own administrative machinery. In

[58] On Liberty 99.
[59] On Liberty 109.
[60] On liberty 106
[61] Principle of Political Economy. Book IV. 708.
[62] Smith. (1759/1948) The Theory of Moral Sentiments (Part II, Section III: 140).
[63] On Liberty 13.
[64] Bentham(1789/1982) Principles of Morals and Legislation.118.
[65] On Liberty 56.

his view it would contribute to the '*great evil*' of adding unnecessarily to government power and deprive society of learning through the '*varied experiments and endless diversity of experience*' that accrues from individuals and voluntary associations.[66] '*The evil would be greater, the more efficiently and scientifically the administrative machinery was constructed – the more skilful the arrangements for obtaining the best qualified hands and heads with which to work it'.*

Mill's concern was to head off the growth of the bureaucratic state which he saw as a recipe for decline. '*The absorption of all the principal ability of the country into the governing body is fatal, sooner or later, to the mental activity and progressiveness of the body itself*'.[67] According to Mill, the role of central government lay in diffusing information and knowledge developed elsewhere.

Prevention

Bentham had pointed out that preventative action by governments could go wrong on two grounds: because the imagined circumstances did not exist or because the action was based on erroneous suppositions.[68] However, he emphasised the deterrent effect of the law as the way in which the law was preventative and future oriented. He also seems to have envisaged a role for preventative measures in the form of 'indirect' legislation.[69]

Mill was familiar with Bentham's views on indirect legislation.[70] However, his insistence on the imperfect state of our knowledge in addressing 'great practical affairs' led him to oppose policy actions designed to prevent future harms in much stronger terms than Bentham's cautionary remarks. Mill wrote, *'The preventative function of government,…… is far more liable to be abused, to the prejudice of liberty, than the punitive function'.*[71]

Mill seems to have based his opposition on three grounds. First, the science of human nature is not an exact science. *'Even if our science of human nature were theoretically perfect…..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'*.[72] Secondly, there was the danger of misinterpreting trends. If our knowledge of our present state is at best approximate, and if often we have to act without proof, our ability to make knowledgeable advance judgements about future states is even more uncertain. We run the danger of confusing what might simply be a tendency with a predictive certainty.[73] Thirdly, we also run the risk of misapplying abstract truths as if they '*were true absolutely, and no modifying circumstances could ever by possibility exist*'.[74] Mill had asserted in relation to his famous support for reforming divorce laws that in our individual behaviour we should not enter into irrevocable long term future commitments without experience.[75] Analogously, in the world of public policy, commitments also should be revocable and corrigible.

[66] On Liberty 156.
[67] Mill. On Liberty 160.
[68] Bentham. Principles of Morals and Legislation.90-91.
[69] See Quinn (2017).
[70] Brunon-Ernst. (2017).
[71] Mill. On Liberty 136.
[72] Mill. A System of logic. Book VI. 847.
[73] Mill. Essay. 56. See also A System of Logic. Book VI. 898-900.
[74] Mill. A System of Logic. Book V. 808.
[75] Mill. Principles of Political Economy. Book V. 953.

Having discarded preventative measures as a pathway to betterment, as well as the guidance of custom, or of the wise, Mill had to look elsewhere to find a source of social betterment. He found it in a notion of 'vitality'.

Vitality/ energy

Mill's 'vitality' principle asserted that the conditions for betterment through discovery, verification, and corrigibility were best met through an 'energetic' and 'intellectually active people' outside of and independent of government.[76] It is an energetic and intellectually active people that can provide society with a path to better understandings in all areas of 'art' and 'the business of life'. According to Mill, two sources of lesson learning are crucial for betterment: lessons from experience and lessons from discussion. They apply both to the scientific reasoning on which policy might rest, such as economics, and also to moral reasoning.

Experience

In writing about how societies learn from experience Mill referred to '*experiments of living*'. Experiments of living provide us with a means of verifying the assumptions of governments because they give us an additional means of making generalisations. '*A principle ascertained by experience, is more than a summing up of what has been specifically observed in the individual cases which have been examined, it is a generalization grounded on those cases'*.[77] Inferences based on personal experience enable us to go from particulars to particulars and arrive at '*a very considerable power of accurate judgement*' without intermediate general propositions.[78] Moreover, 'experiments in living' conducted by many individuals provide us with many examples from their experiences and can improve our general propositions. '*A general proposition collected from particulars is often more certainly true than any one of the particular propositions from which …it was inferred*'. [79]

Discussion.

Even in respect of observations and testing in laboratory conditions, Mill recognised there was always room for more than one interpretation of findings. In the case of his turn to 'experiments of living' as a verification procedure outside the controlled setting of the laboratory he had to allow for even greater possibility of different interpretations and mistaken inferences. The experience might be too narrow or not suited to different circumstances. He therefore saw discussion as the essential means for us to correct the inferences we draw. '*There must be discussion to show how experience is to be interpreted*'.[80] Moreover, this discussion had to be of a certain type. It had to be fully open. It also had to be conducive to reasoned discussion about differences. '*We are justified in assuming truth for purposes of action when there is complete liberty of contradiction and disproof*'.[81]

[76] On Liberty 160
[77] A System of Logic. Book II .163.
[78] A System of Logic. Book II. 188.
[79] A System of Logic. Book IV. 643.
[80] On Liberty 32.
[81] On Liberty 31.

According to Mill's theory of knowledge the 'do no harm' principle can thus be seen as the means for cultivating energetic individuals whose personal experience of what he referred to as '*the business of life*' could be generalised for society as a whole and whose discussions help provide the verification, or disproof and corrections needed to improve the knowledge base for public policy. The vitality principle does not in itself achieve certainty for truth in action. But the diversity of experiments of living and the clash of contrary opinions opens the path to betterment. '*We are far enough from certainty still, but we have done the best that the existing state of human reason admits of*'.[82]

ASSESSING THE FRAMEWORK FOR EXERCISING AUTHORITY

In the contemporary world, Mill's approach to 'vitality' as the precondition for more knowledgeable government is subject to three major qualifications: first, in his treatment of the rationality of the social whole, secondly, in relation to the tasks of government including the preventative role of public rulemaking, and thirdly in relation to the institutional arrangements for the mobilisation of knowledge in public policymaking.

Treatment of the social whole

Bentham had famously written '*The community is a fictitious body, composed of the individual persons who are considered as constituting as it were its members. The interest of the community then is, what? – the sum of the interests of the several members who compose it'.* [83] Mill also pursued a consistent methodological individualism in his Principles of Political Economy and in relating his vitality principle to the social benefits from generalisations based on individual experience and discussion.

The most important drawback to Mill's approach is that contemporary studies of cognition suggest individual rationality is influenced in a significant way by our group associations and social identities. Thus, the jump from individual rationality to social rationality as a whole has to take into account our other intermediate affiliations. Mill had readily acknowledged the importance of personal bias in the formation of our beliefs. He also strongly urged the importance of voluntary associations as an alternative to government. However, the impact of social association on rationality places an even greater distance between a laboratory setting and a social setting than Mill allowed.

The tasks of government

Mill regarded many of the functions of government as 'optional'.[84] According to Mill, much of what the government does can be attributed to simple 'convenience'.[85] He simplified his analysis of the tasks of government by distinguishing between only two main tasks, the enforcement role and the policy making role. This simplified approach has been overtaken by what was termed (unhappily) in the early 20th century a 'social control' perspective, including later, what is sometimes referred to as a 'tools of government' approach.[86] According to this

[82] On Liberty 34.
[83] Bentham (1789/1982) Principles of Morals and Legislation.12.
[84] Mill. Principles of Political Economy. Book V. 799/800.
[85] Principles of Political Economy. Book V. 803.
[86] Ross (1901) provides the pioneering 'social control' approach & Hood (1983) the more recent 'tools of government' perspective.

approach, governments have a range of instruments to accomplish collective ends, from spending money, to making and enforcing laws and regulations, and to informal means of persuasion. Modern governance practice has largely followed the wider menu and more flexible policy choices derived from the 'social control' approach.

The development of a regulatory space, poised between public spending, the law and informal social norms, equipped with a flexible range of instruments, has also opened up the ways in which governments can act pre-emptively and preventively against future harms. The choice has moved away from relying on the deterrence effect of the law to one where, for regulators, recourse to the law is a last resort. Mill's warning against preventative actions by governments thus is weakened, at least in part. Nevertheless, it remains a misapplication of Mill's conception of the 'do no harm' principle to view it as a precautionary principle. It is not a precaution based on projections of developments into the future but a caution against relying on such projections.

Harnessing knowledge in the tasks of government.
Mill rejected the idea of bringing the wise or the knowledgeable into central government. However, in practice, modern government has become dependent on specialised agencies with their own epistemic authority. They seem to offer an advantage in mobilising knowledge and information for 'evidence based' policy making and are able to harness practitioner experience of rulemaking together with theoretical knowledge. Mill's desire for knowledge to develop outside government, is partly met in the way that expert agencies are usually set at arm's length from central government departments. Nevertheless, they remain beholden to government for their creation, terms of reference, and can be abolished by governments. Mill's caution is observed insofar as unelected expert bodies can be viewed as their own branch of government offering a check on the claims of elected governments that they know what to do.[87]

*****

In the light of these reservations, Mill's vitality principle provides an insecure foundation for his 'do no harm' principle. The conditions for rational discussion are even more elusive in democratic societies than Mill assumed. In addition, preventative actions seem to have a place among the tools of governments, and expert bodies play a much greater role in the development of 'truth in action'. We thus approach the discovery, verification and correction of the hypotheses on which governments act in additional ways. Nevertheless, even if we treat Mill's vitality principle with caution, his two other epistemic principles remain: first that the assumptions behind government policies must be approached as open to disproof (the infallibility principle) and secondly, that their policies must be open to correction (the corrigibility principle).

[87] See Vibert 2007.

CONTEMPORARY REGULATORY APPLICATIONS

In the contemporary world, the key test for the Mill's 'do no harm' principle is how far it remains useful as a guide to legislative and regulatory interventions from a knowledge perspective as measured against the infallibility and corrigibility principles. The examples given below suggest that from this perspective the principle remains a relevant and sometimes decisive consideration in a variety of illustrative areas of concern.

Specific illustrative areas of application.

Sport & drug use

One straightforward use of the 'do no harm' principle is in relation to drug use in sport. The principle justifies drug prohibition. Individual athletes may accept the risk of damage to their own health from drug use. However, from a knowledge perspective, drug use undermines our knowledge of the unaided physical potential of the human body and damages sport as a whole.

Health & bioethics

In the field of epidemiology, the 'do no harm' principle justifies the imposition of lockdowns and the compulsory wearing of masks in the response to COVID19, even if individuals are prepared to take the risks of infection for themselves. In this case, the knowledge base for epidemiology demonstrates with sufficient certainty that there will be risk to others if people mix without restrictions.[88] Restrictions are justified unless, and until, testing or experience with a particular virus, or variants, shows corrections in policy are possible due to reduced risk. The same knowledge-based logic would support compulsory vaccinations. However, in the case of vaccinations in COVID19 there seems to be sufficient incentive for individuals to get vaccinated voluntarily to make compulsion unnecessary.

Competitive entry to jobs and higher education.

A different area of current social concern centres on the need for businesses to be socially aware in their hiring and promotion policies and for institutions for higher education to be socially aware in their entry requirements.

Mill himself believed that the only grounds for interference with competitive entry were those involving fraud, treachery, or force.[89] However, it is not only social attitudes that have changed since Mill's time, but also our knowledge base of the long-lasting effects and the deep-seated nature of discrimination. In the light of this knowledge, the 'do no harm' principle could be used to justify measures involving positive discrimination so as to encourage diversity, even if it comes at the expense of, or harm to, other groups who are excluded as a result.

Environment

In Mill's time, thinking about the environment centred on the effect of the environment on the evolution of species, including humans, rather than on the effects of humans on their

[88] For a discussion of public health justifications in pre-COVID times see Bayer & Fairchild 2004.
[89] On Liberty 154.

environment. The current consensus among climate scientists that there is a human contribution to global warming would justify policy interventions according to the 'do no harm' principle. Policies to correct our overdependence on fossil fuels meet Mill's corrigibility principle. However, his principle of infallibility still applies. We need to remain open to revisions in our understandings of the causation of global warming. Measures to encourage carbon pricing, the development of science-based environmental matrices, and developing transparency around carbon footprints are to be preferred to 'command and control' measures because they are more consistent with discovery processes. In addition, Mill's stipulation about the need for reasoned discussion is not consistent with the language of 'emergency' and 'extinction' that can be misused to shut down debate about the scientific uncertainties and the need for corrigible policies.

Internet

The internet raises many regulatory concerns. There are three areas that illustrate the possible relevance of the 'do no harm' principle. The first concerns the dominance of some platform providers and gatekeepers. In this case the principle would await evidence of harm rather than target dominance as such.

A second area concerns privacy. The net can be used for the purposes of individual authentication, diagnosis (about, for example, the riskiness of loans or insurance) and prediction of future behaviour. The current approach, embodied in the EU's GDPR, is to manage the risk that information will be used to harm individuals by insistence on the principle of 'informed consent'. The 'do no harm' principle gives only limited support to this approach. The issue centres on the uncertain evidence about how 'informed consent' works in practice. The principle of informed consent has been transferred from the world of medical practice without an accompanying evidence base that would justify its use in the different setting of the internet where motivation is different. In this different context, GDPR seems to have led to 'box-ticking'.

A third area concerns the dissemination of 'fake' news and false information and intimidatory or abusive language or images. The 'do no harm' principle would encourage the development of laws extending the liability of platforms, gatekeepers and providers as well those who are the source of misuse. Mill's concern was to protect reasoned discussion and to encourage a sympathetic consideration of the reasoned views of others.[90]

*****

This eclectic mix of illustrations from different areas of social concern suggests that the 'do no harm' principle has continued applicability as a guide to public policy interventions. Its use centres on the way it calls attention to our knowledge base in public policy making, to the uncertainties surrounding it, and to the ways of improving the evidence base.

CONCLUSIONS

When viewed according to the liberal tradition as a demarcating principle between choices that belong to the private sphere and choices that belong to the public sphere the application of Mill's apparently '*one very simple*' do no harm principle has long been criticised as not simple at

[90] See the discussion in Cohen-Almagor (2017).

all.[91] Similarly, from the perspective of Mill's theory of knowledge, his 'one very simple principle' is also not simple at all. It is a derivative of three underlying epistemic principles: A 'fallibility' principle that states that our claims to certainty in the real world must be open to disproof; a 'corrigibility' principle that in order to reflect progress in our understanding of the world we must have procedures that allow us to correct received understandings and practices, and a 'vitality' principle that we need our authority structures to advance our understandings by encouraging open discussion and 'experiments of living'.

If we take the 'do no harm' principle as the starting point for Mill's logic, the first proposition is that the principle is a necessary condition for the 'vitality' required for more knowledgeable and more informed justifications for public policies under majoritarian forms of government. The second step is that vitality is a necessary underpinning for the openness to disproof and correction needed to achieve social progress - defined by Mill in terms of better knowledge of the real world and human society. Finally, we still need to recognise that justifications and claims made in the real world are often approximations and will not usually approach the levels of assuredness that we can reach in a laboratory setting, where we can apply more formal and rigorous methods of reasoning.

The analysis of these different stages and components in Mill's reasoning has suggested that Mill's criterion of 'vitality' no longer provides a sufficient account of the ways in which knowledge is mobilised in public policy making in the context of 'truth in action'. Nevertheless, the 'do no harm' principle still remains a relevant trigger to activate Mill's other two key epistemic principles – openness to disproof and corrigibility. His insistence on the imperfect knowledge base on which governments act and the need to allow for continual correction remain valid cautions. His principles apply both to the evidence base drawn from the natural and social sciences in policy making and to the normative grounding of policies. Authority structures have to be consistent with both epistemic principles. The voices of energetic peoples remain vital. The two principles provide the reason for the continuing applicability of the 'do no harm' maxim in modern government.

[91] See for example Turner (2014) on the controversies over the definition of 'harm' and Weinstein (2010) for a discussion of different views as to how far Mill's utilitarianism is consistent.

REFERENCES

Bayer R and Fairchild A (2004) The Genesis of Public Health Ethics. *Bioethics.* 18 (6) 473-492.

Bentham J (1776/1891) *A Fragment on Government.* Ed. FC Montague. Clarendon Press. Oxford.

Bentham J (1789/1982) *An Introduction to the Principles of Morals and Legislation*. Ed. J.H. Burns & HLA Hart. Methuen. London.

Brunon-Ernst A (2017) Nudges and the Limits of Appropriate Interference. *History of European Ideas.* 43 (1) 53-69.

Cohen-Almagor R (2017) J.S. Mill's Boundaries of Freedom of Expression; A Critique. *Philosophy.* 92(4) 565-596.

Davis J (2016) Economists' Odd Stand on the Positive -Normative, Ought/Is distinction. In (eds DeMartino George and McCloskey Deidre N) *The Oxford Handbook of Professional Economic Ethics*. Oxford University Press.200-218.

De Martino G (2016) Econogenic Harm. In (eds DeMartino George and McCloskey Deidre N) *The Oxford Handbook of Professional Economic Ethics*. Oxford University Press. 71-97.

Ducheyne S (2008) J.S. Mill's Canons of Induction: From true causes to provisional ones. *History and Philosophy of Logic*. 29 (4) 361-376.

Gray J and Smith G (eds) (1991) *JS Mill On Liberty in Focus*. Routledge.

Hood C (1983) *The Tools of Government*. Macmillan. Basingstoke.

Mill J (1843/1872/1973) A System of Logic, Ratiocinative and Inductive. (8th ed). In *Collected Works of John Stuart Mill* vols. VII & VIII (Ed. J. M. Robson). University of Toronto Press.

Mill J (1844/2012) On the Definition and Method of Political Economy. In David M Hausman (ed) *The Philosophy of Economics*. Cambridge University Press. 41-58.

Mill J (1848/1871/1965) Principles of Political Economy. (7th ed) In *Collected Works of John Stuart Mill* vols II & III. (Ed. J. M. Robson) University of Toronto Press.

Mill J (1859/2001) *On Liberty*. The Electric Book co. London.

Philips M (2019) Troubling Appropriations: J.S. Mill, liberalism, and the virtue of uncertainty. *European Journal of Political Theory.* 18 (1) 68-88.

Quinn M (2017) Jeremy Bentham Choice Architect: law, indirect legislation and the context of choice. *History of European Ideas.* 43 (1)11-33.

Ross E (1901/1969) *Social Control: A Survey of the Foundations of Social Order*. The Press of Case Western Reserve University. Cleveland. Ohio.

Ryan A (1970) *John Stuart Mill*. Pantheon Books. New York.

Ryan A (2012) *The Making of Modern Liberalism*: Mill's Essay On Liberty. Princeton University Press. 257-278.

Smith A (1762-63/1983) *Lectures on Rhetoric and Belles Lettres.* (ed. J C Bryce) Clarendon Press. Oxford.

Smith A (1759/1948) *The Theory of Moral Sentiments*. (ed. H.W Schneider). Harper & Row. New York.

Smith S (2006) Is the Harm Principle Illiberal? *American Journal of Jurisprudence*. 51. 1-42.

Ten C (2008) (ed) *Mill's On Liberty. A critical guide*. Cambridge University Press.

Turner P (2014) "Harm" and Mill's Harm Principle. *Ethics.* 124 (2) 299-326.

Vibert F (2007) *The Rise of the Unelected*. Cambridge University Press.

Weinstein D (2010) Interpreting Mill. In, *John Stuart Mill and the Art of Life*. (Eds Ben Eggleston, Dale Miller & David Weinstein) pp 44-73.

White P (2000) Causal Attribution and Mill's Methods of Experimental Inquiry. *British Journal of Social Psychology.* 39 (3) 429-447.