ON LOOKING INTO THE ABYSS

Untimely Thoughts on Culture and Society

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IV

Liberty: “One Very Simple Principle”?

The end of the Cold War has liberated us in more ways than we might have thought, liberated us from the tyranny of communism and the shackles of Marxism, (and liberated us as well to reexamine the liberalism that is now triumphant.) For more than half a century, confronted with the double threat of Nazism and communism, the urgent problem facing us was: How can liberalism defend itself against totalitarianism? How can a society that is individualistic, pluralistic, pacific, devoted to private pleasures and domestic tranquility, prevail against an enemy that is collectivist, authoritarian, militaristic, mobilized for power and conquest? The defeat of Nazism and the collapse of the Soviet empire have conclusively proved that totalitarianism is not only oppressive and murderous; it is inefficient and fatally vulnerable.

Now we must confront another problem: not how liberal-

ism can defend itself against totalitarianism, but how it can defend itself against itself—against its own weaknesses and excesses. In the Marxist jargon that has survived the death of the Marxist regimes, this is the new “problematic” of liberalism (How can a society that celebrates the virtues of liberty, individuality, variety, and tolerance sustain itself when those virtues, carried to extremes, threaten to subvert that liberal society and, with it, those very virtues?)

(The problem is not political but social, cultural, and moral; it is the ethos of liberalism that is at issue.) Nor is it a new problem, for it goes back at least to the “classical liberalism,” as we now call it, of the nineteenth century. The question of its genealogy is of more than academic interest. If the problem is inherent in classical liberalism, then it is not, as we might otherwise think, an aberration, peculiar to American democracy (American “exceptionalism”), or to “consumerist” capitalism, or to “post-industrial” society. These circumstances may exacerbate it, but they did not create it. And if this is so, then it is a matter of concern for all countries, the newly liberated as well as those with long-established liberal traditions.

(The classic text of classical liberalism is, of course, John Stuart Mill’s On Liberty.) It is also, by now, the classic text of a libertarian conservatism that regards itself as the true heir of classical liberalism. It is also the classic text of radicalism, at least of the particular school of radicalism that sees itself as carrying out the failed agenda of liberalism, the goal of true liberation. It is, in short, something of an icon of modernity, giving intellectual authority and legitimacy to ideas and attitudes that dominate our society.

It also has the virtue of posing the issue in terms that are even more relevant today than they were in Mill’s time. The first page of On Liberty informs us that the problem of liberty is no longer the problem of political liberty, of the struggle against a tyrannical regime imposing its arbitrary will on an
oppressed populace. That problem, Mill assures us, has been
solved by the establishment of popular government—at least
in the more advanced countries, and potentially in all others
as they reach the level of a mature civilization. The problem
now facing liberty is a new form of tyranny, a “social tyr-
nanny” exercised by the populace itself over the individual.

(The opening sentence of On Liberty announces its subject,
“Civil, or Social Liberty,” and defines its province: “the na-
ture and limits of the power which can be legitimately ex-
ercised by society over the individual.” The magnitude of
the subject makes even more dramatic the “one very simple
principle” that is at the heart of it. The passage describing
this principle must be read in its entirety to appreciate how
simple and also how absolute it is:

The object of this Essay is to assert one very simple
principle, as entitled to govern absolutely the dealings
of society with the individual in the way of compulsion
and control, whether the means used be physical force
in the form of legal penalties, or the moral coercion of
public opinion. That principle is, that the sole end for
which mankind are warranted, individually or collec-
tively, in interfering with the liberty of action of any of
their number, is self-protection. That the only purpose
for which power can be rightfully exercised over any
member of a civilised community, against his will, is to
prevent harm to others. His own good, either physical
or moral, is not a sufficient warrant. He cannot right-
fully be compelled to do or forbear because it will be
better for him to do so, because it will make him hap-
pier, because, in the opinions of others, to do so would
be wise, or even right. These are good reasons for re-
monstrating with him, or persuading him, or entreat-
ing him, but not for compelling him, or visiting him with
any evil in case he do otherwise. To justify that, the
conduct from which it is desired to deter him must be
calculated to produce evil to someone else. The only
part of the conduct of any one, for which he is amenable
to society, is that which concerns others. In the part
which merely concerns himself, his independence is, of
right, absolute. Over himself, over his own body and
mind, the individual is sovereign.

(The rhetoric is as simple and absolute as the principle itself.
“One very simple principle” governs “absolutely” the rela-
tions of the individual and society; the “sole” end for which
society may interfere with the liberty of an individual is
self-protection; the “only” purpose for which power can be
exercised over an individual is to prevent harm to others; the
“only” part of the individual’s conduct amenable to society is
that which concerns others; in the part that concerns himself
his independence is “absolute”; over his “own” body and
mind he is “sovereign.”

(The rhetoric also points to a radical disjunction between
the individual and society—indeed, an adversarial relation-

*The paragraph following this seems to introduce further qualifi-
cations, but they are so minimal as to be of little practical effect.
The principle is said to apply “only to human beings in the maturity
of their faculties,” and not to “those backward states of society in
which the race itself may be considered as in its nonage.” But
Mill defines maturity literally to exclude only “children, or young
persons below the age which the law may fix as that of manhood
or womanhood”; and the requisite stage of civilization, he says, has
“long since [been] reached in all nations with whom we need here
concern ourselves.” There is nothing in these qualifications to
warrant the view of some commentators that Mill meant to limit
the principle of liberty to those individuals of superior intellectual
or moral competence, or to an exalted level of civilization—still
less that it was meant to apply only to “a mature public carrying
on its discussion in a restrained and civilized way.”
ship, with the individual assigned all the positive, honorific attributes, and society the negative, pejorative ones. Thus the individual is endowed with "liberty" and "will"; his own "good" is entirely his own concern; his "independence" is absolute; he is "sovereign." Society, on the other hand, acts by way of "compulsion," "control," "force," "coercion," "interference," "tyranny." These negative qualities apply to society whether it is acting by means of "physical force in the form of legal penalties" or by the "moral coercion of public opinion." Even in the one circumstance where society can rightfully "interfere," its purpose is negative, to prevent "harm" or "evil" to others. It is explicitly enjoined from doing anything positive or desirable, from trying to further the individual's "good," or to make him "better" or "happier," or to do what it might think "wise" or "right."

This "one very simple principle," Mill goes on to say, governs the realms of thought and speech, of action ("individuality"), and of combination (unions of individuals). And it is this principle, not the political system, that determines whether a country is free. "No society in which these liberties are not, on the whole, respected, is free, whatever may be its form of government; and none is completely free in which they do not exist absolute and unqualified." [8]

As liberty of thought is absolute, so is liberty of speech, which is "inseparable" from the liberty of thought. Liberty of speech, moreover, is essential not only for its own sake but for the sake of truth, which requires absolute liberty for the utterance of unpopular and even demonstrably false opinions. (Indeed, false or unpopular opinions are so important to truth that they should be encouraged and disseminated by "devil's advocates" if necessary, for only by the "collision of adverse opinions" can the most certain of truths survive as live truth rather than "dead dogma." [8])

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Liberty of action—"individuality," as it is called in On Liberty—is only one degree less absolute than that of thought and speech, for it is subject to the qualification of harm to others. Apart from that, it is inviolable because individuality is an absolute good in itself. Again, the rhetoric is revealing, individuality being associated with such positive words as "independence," "originality," "spontaneity," "genius," "variety," "diversity," "experiment," "choice," "vigor," "development," "desire," "feeling"; and the threat to individuality with such negative words as "conformity," "mediocrity," "restraint," the "yoke" of opinion, the "tyranny" of society, the "despotism" of custom. Some words that in normal usage are at best equivocal—"impulse," "peculiarity," "eccentricity"—have entirely favorable connotations as attributes of individuality; while others—"law," "tradition," "custom," "opinion," "discipline," "obedience"—are unmistakably negative because they appear to restrict individuality.*

*One obvious negative term, "license," appears nowhere in the book, perhaps because it suggests that there can be an excess of liberty. Some commentators assume that Mill meant to distinguish between liberty and license. Yet if he meant to do so, it is difficult to see why he did not do so explicitly. "License" was a common word in his time, as it had been for centuries. Milton makes play with the word: "But lest I should be condemned of introducing licence, while I oppose licencing . . . " Locke describes the state of nature: "Though this be a state of liberty, yet it is not a state of licence." And Montesquieu says that when a "spirit of extreme equality" exists among the citizenry, "virtue can no longer subsist in the republic . . . Licence will soon become general." [9]
tage in individuals acting differently from the mass, "unless they acted not only differently but better." Today, however, the "mere example of non-conformity" or "eccentricity" is itself a virtue. And it is a virtue not only for "persons of genius" but for the "average man," who should be encouraged to defy custom and cultivate his individual mode of life, "not because it is the best in itself, but because it is his own mode."11

This is the barest skeleton of Mill's extraordinary essay, but it is enough to suggest just how extraordinary it is. No discussion of On Liberty is complete without a tribute to its noble precursor, John Milton's Areopagitica. Yet Mill does not mention that work in his essay, perhaps for the good reason that Milton's idea of liberty is not at all his own. Milton passionately defended freedom of the press; his tract was provoked by a parliamentary law requiring the licensing of printed works. But his argument did not extend to freedom of action. And even freedom of the press was restricted to a degree that Mill would have found intolerable, for it did not tolerate "popery, and open superstition," nor that which is "impious or evil absolutely either against faith or manners."12

Nor does Mill cite as predecessors any of the other thinkers who might be expected to appear in a discussion of liberty: Spinoza, Locke, Montesquieu, Kant, Paine, Jefferson, Macaulay, Tocqueville—again, for good reason.* No one of them went so far as to propose anything like an absolute, or near-absolute, principle of liberty. Each limited or qualified liberty in a significant respect: liberty of speech, "but not out of anger, hatred, or a desire to introduce any change in the state on his own authority" (Spinoza)14; liberty, but only within the law and not for "opinions contrary to human society, or to those moral rules which are necessary to the preservation of civil society" (Locke)15; liberty, but not "unlimited," consisting "only in the power of doing what we ought to will, and in not being constrained to do what we ought not to will" (Montesquieu)16; liberty of speech, but not of action (Kant's "argue, but obey")17; the liberty of the individual as against government, but not against "public opinion" or "society" (Jefferson and Paine)18; freedom, but under conditions of "order and moderation" (Macaulay)19; liberty, but not "without morality, nor morality without faith" (Tocqueville).20

Yet it is On Liberty, in defiance of all precedent, that has set the terms of the debate for our time—for people who have not read the essay, who may not have heard of it, but who have absorbed its message by cultural osmosis. In his autobiography, Mill describes it as "a kind of philosophic textbook of a single truth," and gives it a provenance worthy of such a work. Perhaps unconsciously echoing Edward Gibbon, who was inspired to write his classic in the most classical of settings, as he sat "musing amidst the ruins of the Capitol while the barefooted friars were singing vespers in the Temple of Jupiter,"21 so Mill has the idea of On Liberty coming to him while he was "mounting the steps of the Capitol."22 This, he told his wife, is the most important subject that can occupy their few remaining years, and they must "cram into it as much as possible of what we wish not to leave unsaid." It was to be their legacy to humanity, and he was confident that "it will be read and make a sensation."23 His prediction was borne out. When the book was published four years

*Locke, Kant, and Tocqueville are mentioned in passing but not in connection with liberty. The omission of Tocqueville is most conspicuous, since Mill was clearly indebted to him for the idea of "social tyranny" and the "tyranny of the majority." (The quotation marks around the latter expression in On Liberty are an implicit tribute to Tocqueville.)19
later, after the death of his wife and as a memorial to her, it became an instant classic. With the benefit of hindsight, we might also say that it has proved to be even more influential than its author expected.

"Ideas," Lord Acton once wrote, "have a radiation and development, an ancestry and posterity of their own, in which men play the part of godfathers and godmothers more than that of legitimate parents."24 This has been the fate of _On Liberty_. Like all classics, it has taken on a life of its own, even while it retains the unmistakable features of its paternity. _On Liberty_ was radical enough in its own time, but it is, in a sense, still more radical in ours, because it seems to validate contemporary ideas about liberty which go well beyond those that Mill intended.

One of Mill's arguments, for example, for the absolute liberty of discussion is that such liberty is required for the sake of truth, for its emergence and continued vitality. About truth itself—that there is such a thing as truth, that it is finally knowable, and that it is of primary value to humanity—Mill had no doubt. He was not, in this respect, a relativist. But his doctrine lends itself to relativism, even of an extreme kind. By making truth so dependent upon liberty—and upon the liberty of error as much as truth—it suggests that in the free marketplace of ideas, all opinions, true and false, are equal, equally valuable to society and equally worthy of promulgation. Mill himself meant only to say that society cannot presume to decide between truth and falsity, or even to lend its support to truth once that has been determined. But a later generation, deprived of the authority of society and impressed by the latitude given to error, can so relativize and "problematize" truth as to be skeptical of the very idea of truth.

Thus, postmodernists deny not only absolute truth but contingent, partial, incremental truths. For them absolute liberty is not, as it was for Mill, the precondition of truth; rather it is the precondition for the liberation from truth itself, even from the "will to truth." In the jargon of the school, truth is "totalizing," "hegemonic," "logocentric," "phallocentric," "autocratic," "tyrannical." Mill would assuredly have been distressed by this development. But his principle of absolute liberty, which "privileges" error together with truth, cannot be absolved entirely from responsibility for it.

As truth has been relativized—absolutely relativized, so to speak—so has morality. Again, Mill himself was not a relativist in moral affairs. He firmly believed that chastity is inherently superior to promiscuity, sobriety to drunkenness, decency to indecency, altruism to self-interest. (But he also firmly believed that as truth is dependent upon the absolute liberty of discussion, so morality is dependent upon a maximum amount of individuality.) (And as society (still less the government) should not try to promote truth or suppress error, so there should be no legal or social sanctions to promote morality or discourage immorality.)

(It is not always appreciated how far _On Liberty_ goes in denying not only to the law but to the informal mechanisms of society any control over the individual in respect to behavior that is properly regarded as immoral but that does not harm others.) Social and moral sanctions, Mill insists, are as much encroachments on liberty as legal and physical ones. So long as they do not harm others, individuals must be free to act as they like, "without hindrance, either physical or moral."25 Acts are subject to "moral reprobation" only when they involve a "breach of duty to others," but not if they are merely evidence of "folly, or want of personal dignity and self-respect."26 Social sanctions are called for when an indi-
individual's acts are harmful to others but do not legally violate the “constituted rights” of others; in this case the offender may be “justly punished by opinion, though not by law.” But when a person's conduct affects only himself, the individual has “perfect freedom, legal and social,” to do as he likes. 27

Even the qualification regarding harm reinforces the moral neutrality of society; for it is only in the case of harm to others, not for the “good” of others, that society can properly interfere with the freedom of the individual. And harm itself is further qualified by being limited to “direct,” “definite,” “perceptible” harm—not such indirect harm as might come from the example of misconduct or the temptation to vice, for that example “needs not affect them unless they like.” 28

Mill's paean to individuality reflects an extraordinary optimism about human nature.

To say that one person's desires and feelings are stronger and more various than those of another, is merely to say that he has more of the raw material of human nature, and is therefore capable, perhaps of more evil, but certainly of more good. Strong impulses are but another name for energy. Energy may be turned to bad uses; but more good may always be made of an energetic nature, than of an indolent and impulsive one. Those who have most natural feeling are always those whose cultivated feelings may be made the strongest. The same strong susceptibilities which make the personal impulses vivid and powerful, are also the source from whence are generated the most passionate love of virtue, and the sternest self-control. . . . The danger which threatens human nature is not the ex-

cess, but the deficiency, of personal impulses and preferences. 29

The argument rests on the transmutation of quantity into quality: the assumption that the larger the stock of “energy” or the “raw material of human nature,” the greater the potentiality for good; that those who have “most natural feeling” also have the strongest “cultivated feelings”; that “strong susceptibilities” make for the “most passionate love of virtue”; that the danger comes not from an excess but from a deficiency of “personal impulses and preferences.” This, as much as the principle of liberty, is the great novelty of Mill's argument. Most philosophers and theologians before him (and not only Calvinists, as he suggests) were wary of the raw material of human nature, finding in it at least as much potentiality for evil as for good, and therefore sought ways of refining and controlling it. They located the source of virtue not in the individual's passions, desires, impulses, feelings, or susceptibilities, but in his conscience, will, reason, forethought, and self-restraint. As a further precaution, they placed the individual within the protective custody, as it were, of family, law, religion, society, and civilization.

That On Liberty takes so optimistic a view of human nature is all the more remarkable in the light of Mill's other writings at that very time. In the essay "Nature," written only months before he started On Liberty, Mill argued that the spontaneous "impulses," "inclinations," and "instincts" of man are more likely to be bad than good, and that they can be "tamed" only by an "eminently artificial discipline." As if in direct refutation of On Liberty, virtue is described as not natural but unnatural:

The acquisition of virtue has in all ages been accounted a work of labour and difficulty, while the descensus Au-
erni on the contrary is of proverbial facility; and it assuredly requires in most persons a greater conquest over a greater number of natural inclinations to become eminently virtuous than transcendentally vicious.\footnote{90}

“Transcendentally vicious”—the words were tragically prophetic. For we have witnessed, in our own lifetimes, a descensus Avern i that the Mill of On Liberty never dreamed of, and that even the “other Mill,” as I have called him elsewhere— the author of “Nature” and the many other writings at variance with On Liberty—could not have foreseen. Neither of them anticipated how “transcendentally vicious” individuals could be, how energetic and ingenious in exploring the lowest depravities of human nature. They could not have anticipated it because both Mills lived in a world that took much for granted. Above all, what they took for granted was a civilization that would continue to impose upon individuals the “eminently artificial discipline” that was the moral corrective to human nature. They also took for granted that those virtues that had already been acquired, by means of religion, tradition, law, and all the other resources of civilization—would continue to be valued and exercised.

Nietzsche, who took nothing for granted, least of all the virtues of self-control, self-restraint, and self-discipline, had contempt for those English moralists—that “flathead” Mill, as he called him, and that “little moralistic female” George Eliot—who thought they could secularize morality by divorcing it from Christianity. Beneath their “insipid and cowardly concept ‘man’” lingers the old “cult of Christian morality.” What these “moral fanatics” do not realize is how conditional their morality is on the religion they profess to discard. And it is only because of the persistence of that religion that, for the English, “morality is not yet a problem.”\footnote{91}

The implication of Nietzsche’s remarks was ominous. When the English would have used up the religious capital that was the source of their morality, when the divorce between religion and morality was complete, morality would indeed become a “problem.”\footnote{Here, too, On Liberty is a portent of what was to come, for it prepared the way for that divorce by placing the individual in an adversarial relationship to religion, at least in its public role. As a matter of private belief and practice, religion and the morality derived from religion are fully protected by the principle of liberty. But as soon as they impinge upon the individual from the outside, in the form of legal sanctions or social pressures, they jeopardize liberty and contribute to the evil of “social tyranny.”}

Mill concedes that religious and moral beliefs, once the source of bloody persecution, now produce only the “rags and remnants of persecution.” But so long as such beliefs are supported by either legal or social sanctions, there is a real possibility of the revival of persecution—and if not actual persecution, then economic penalties that are as bad, for “men might as well be imprisoned, as excluded from the means of earning their bread.” This is a danger so long as people have strong opinions and feelings about the beliefs of others. And it is because such opinions and feelings still abide among the “middle classes of this country” that England is “not a place of mental freedom.”\footnote{The distrust of strong opinions and feelings about religion and morality, the suspicion that they will promote intolerance, bigotry, even persecution, seems inconsistent with the celebration of individuality that pervades On Liberty. If individuality is commendable because it promotes strong opinions, feelings, desires, impulses, preferences, susceptibilities, it must also promote strong opinions, feelings, and beliefs about religion and morality. Mill cannot mean to suggest that individuality is well and good only so long as it avoids the sub-}
jects of religion and morality. In fact, he clearly has no objection to strong feelings, opinions, and beliefs directed against conventional religious and moral views. Indeed, it is one of the purposes of individuality, he insists, to permit, even encourage, the expression of heterodoxy and nonconformity, to challenge religious dogmas and defy moral conventions.

(This apparent inconsistency reflects a barely concealed animus in On Liberty against religion, against a morality sanctioned by religion, and against a people still respectful of orthodox religion.)

What is boasted of at the present time as the revival of religion, is always, in narrow and uncultivated minds, at least as much the revival of bigotry; and where there is the strong permanent leaven of intolerance in the feelings of a people, which at all times abides in the middle classes of this country, it needs but little to provoke them into actively persecuting those whom they have never ceased to think proper objects of persecution.35

This animus is all the more marked because so far from there being a “revival of bigotry,” let alone persecution, in England at this time, there was a significant expansion of toleration, evident in the elimination of religious tests for officeholding, membership in Parliament, and admission to the universities.* And so far from boasts of a “revival of

* A long footnote on the Sepoy insurrection decries the public response to it as exhibiting the “passions of a persecutor” and “the worst parts of our national character.” As evidence, Mill cites the “ravings of fanatics or charlatans from the pulpit,” the proposal of some Evangelicals that publicly funded schools in India be obliged to teach the Bible and that none but Christians be given public

religion,” what was more often heard were complaints, even boasts, of the decline of religion. The census of 1851 proved what many had suspected, that there was a significant decrease in church attendance among both the working classes and the middle classes. There was also a conspicuous weakening of religious convictions and a growing sense of doubt and unbelief—this even before Darwin’s Origin of Species (published shortly after On Liberty) made “the crisis of faith” a staple of discourse. One would not suspect, from Mill’s essay, that religion was then on the defensive, that there was a flourishing secularist and anti-religious movement, and that religious institutions, doctrines, and practices displayed all the variety and eccentricity that he so much valued in other aspects of social and intellectual life.

Implicit in Mill’s discussion of religion is an idea that is central to his conception of liberalism as well as to our own: the distinction between public and private. Religious beliefs and activities are respected and protected by his principle of liberty so long as they are held and practiced privately.

employment, and a speech by an under-secretary of state suggesting that religious toleration be limited to the toleration of Christian sects. “Who, after this imbecile display,” Mill concludes, “can indulge the illusion that religious persecution has passed away, never to return?”34 What he neglects to say is that these were untypical and unpopular sentiments. In fact, the public and Parliament were so aroused by the news of the brutal treatment of the rebels (who themselves had committed atrocities upon English soldiers) that laws were passed abolishing the East India Company, prohibiting the expropriation of land, admitting Indians to the civil service, and decreeing religious toleration in India—this at the very time that Mill was predicting the return of “religious persecution.”
found it difficult to establish in theory is now impossible to sustain in practice. The idea that a "violation of good manners" constitutes an "offence against others" or an "offence against decency" is itself archaic. Who is to say, it is now commonly asked, what is mannerly or unmannerly, decent or indecent, offensive or inoffensive? And what is the justification, in the absence of positive harm, for punishing offensive behavior, whether by legal or social sanctions? Mill himself, in discussing conduct that may be held to be personally "blamable" but not legally punishable because it affects only the agent, goes on to say, "Whatever it is permitted to do, it must be permitted to advise to do"—thus further blurring the distinction between self-regarding and other-regarding acts. (In the United States today, that dictum has been amended to read: Whatever it is permitted to do, it must be permitted not only to advise others to do, but to do in public, and, moreover, to be paid by the public to do so advising and so do. (This last argument is used to justify grants by the National Endowment for the Arts for performances on the stage that Mill would surely have prohibited as indecent and offensive, to say nothing of unmannerly.)

And if something is legal, is it not also moral? This is another distinction that we find difficult to sustain. Logically, of course, it is simple to distinguish between legality and morality. But in public affairs, this distinction becomes as tenuous as that between private and public. If the law deems something to be legal, who is to say that it is immoral, except the individual who is free to speak and act for himself, and only himself? In a culture that has learned the lesson of On Liberty all too well—that resents the "tyranny" of society, custom, and public opinion, that is profoundly suspicious of any authority suggestive of a "moral police," that has erected the highest barriers between church and state so as to pre-
vent any intimation of intolerance or coercion—what remains to give conviction and authority to a moral code that is distinct from, and perhaps in contradiction to, the legal code? It takes a great effort of will and intellect for the individual to decide for himself that something is immoral, and to act on that belief, when the law and the institutions of the state deem it to be permissible and legal. It takes an even greater effort for parents to inculcate that belief in their children, and persuade them to act on it, when public schools and official authorities contravene that belief and authorize behavior in violation of it.

You cannot legislate morality, it is often said—and Mill would have agreed. In fact, we have done just that, and liberals are properly proud of it. The considerable body of civil rights legislation in America, prohibiting racial, sexual, and other forms of discrimination, is thoroughly moral in intention and effect. It is inspired by moral principles; it prescribes and proscribes specific forms of moral behavior; and it has changed, to a significant degree, the moral beliefs, attitudes, and practices of the public. But if morality can be legislated, so can immorality. If liberals can take satisfaction in civil rights legislation, conservatives can be distressed by laws that condone sexual promiscuity, undermine “family values,” and sanction “alternative life-styles” that they find immoral.

Legislation, to be sure, for conservatives as for liberals, is a last resort. And legislation itself relies, as Machiavelli reminds us, upon morals. “For as good manners cannot subsist without good laws, so those laws cannot be put into execution without good manners” (“manners,” in this context, meaning “morals”).

A corollary of this principle holds that if laws are not to be too intrusive, then society must assume some responsibility for shaping public morality. Just as legal sanctions obviate (to a large extent, although not entirely) the use of force, so social sanctions obviate (again, largely, but not entirely) the use of legal sanctions.

Mill, however, and most liberals after him have called into question any relationship between morality and legality. They do not believe that law must be grounded in or even be congruent with morality. Nor do they think it proper for morality, as expressed in social sanctions, to take the place of law, to do what it may be imprudent or impractical for the law to try to do. Instead, they proscribe social sanctions together with legal sanctions, stigmatizing both as the instruments of “social tyranny.” In doing so, they unwittingly invite a worse tyranny, for legislation may then be called upon to do what society would otherwise have done less obtrusively and more benignly.

(One of the paradoxes of contemporary liberalism is that it has become increasingly libertarian in moral affairs and at the same time increasingly dirigiste in economic affairs.)

In the moral realm, the individual is as close to being “sovereign”—or, we would now say, “autonomous”—as Mill could have desired. In the economic realm, however, the state exercises a degree of control at least the equal of the “social tyranny” that he so feared.

It is common to remark upon the great difference between nineteenth-century laissez-faire liberalism and twentieth-century social-welfare liberalism. The difference can be exaggerated: laissez-faireism was never as rigorous or sys-
tematic as was once thought; and the social-welfare state, with the demise of communism and the discrediting of socialism, is now on the defensive if not in retreat. (But with all due qualifications, the distinction between the two modes of liberalism is real and significant. No less real and significant is the disjunction within contemporary liberalism between the moral and the economic realms.)

Here, too, the problem may be seen in embryo in On Liberty, although Mill made a determined, if not entirely persuasive, effort to minimize it. "Trade is a social act," he pronounced, therefore in principle falling within the province of society. Restraints on trade are "evil" insofar as they are restraints, but they are "wrong" only if they do not produce the desired results. Thus the government, Mill finds, can properly intervene to prevent the adulteration of products or assure the health and safety of workers in dangerous industries. But other restraints, such as temperance laws or restrictions on the sale of poisons, are a violation of liberty because they infringe on the liberty of the buyer rather than the producer.

The logical difficulties here are obvious. Why is it a violation of the principle of liberty to restrain the buyer but not the producer? Why should the sale of adulterated food be prohibited but not the sale of poison? If poisons require only proper labeling and a registry of sale but not medical prescription, why are these conditions not sufficient for adulterated products? Whatever the inconsistencies in Mill's argument, however, his purpose is clear: to limit the role of government, on grounds of expediency as well as liberty. His guiding rules for such limitations are equally clear. The government should not intervene "when the thing to be done is likely to be better done by individuals than by the government"; when individuals may not do it as well but "it is nevertheless desirable that it be done by them, rather than by the government, as a means to their own mental education"; and when government intervention would contribute to "the great evil of adding unnecessarily to its power." These conditions, Mill specifies, militate against government control of roads, railways, banks, large companies, universities, and the like, even if that would make for greater efficiency. Indeed, the evil would be all the greater the more efficient the government might be, for if the government were to exercise such control, no amount of freedom of the press or popular government would make England or any other country "free otherwise than in name."43

Contemporary liberalism has taken Mill's dictum "Trade is a social act" and carried it to an extreme. Where Mill severely restricts the role of government in trade, thus minimizing the disparity between the moral and economic spheres, liberals today have conspicuously enlarged the gap by giving the government ever increasing powers in economic affairs while endowing the individual with ever greater autonomy in moral affairs. More than a quarter of a century ago, the English jurist Lord Devlin characterized this as a combination of "physical paternalism and moral individualism."45 Today, a more accurate formula would be "social paternalism and moral individualism," for the scope of government intervention has been extended from physical to social is-

*In spite of this unambiguous statement, Mill is sometimes described as a socialist. This claim is based on some extremely equivocal passages in his Political Economy (most of them inserted on the insistence of his wife and against his own judgment, as he himself said), and on a misreading of his last uncompleted essays published posthumously under the title Chapters on Socialism. It is often assumed, perhaps on the basis of the title alone, that these essays were an argument in favor of socialism; in fact they are a sustained critique of it.44