Harm to What Others? J. S. Mill’s Ambivalence Regarding Third-Party Harm

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Abstract:

John Stuart Mill’s harm principle holds that an individual’s freedom can only be restricted to prevent harm to others. However, there is an important ambiguity between a strong version, which limits legitimate interference to self-defense and therefore prohibits society from protecting third parties (those who are not its members), and a narrow version, which grants any society universal jurisdiction to prevent non-consensual harms, no matter who is harmed. Mill sometimes appeals to the strong harm principle to preclude interference, but elsewhere endorses measures (including humanitarian foreign intervention and animal cruelty laws) to protect third parties, suggesting that he subscribes only to the weak harm principle. This ambiguity regarding who it is that society has standing to protect has important implications for the scope of individual freedom.

Keywords: Harm principle, interference, J. S. Mill, jurisdiction, liberty.

The central claim of John Stuart Mill’s *On Liberty* is:

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 the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others (*Liberty*, XVIII.223).[[1]](#endnote-1)

These two sentences are seemingly intended to be equivalent.[[2]](#endnote-2) And, in many cases of the kind that occupied Mill, they coincide. However, they can diverge in their implications where the others”’ harmed are not members of the society in question, so intervention to protect them is not *self*-protection, even in a collective sense.[[3]](#endnote-3) It is unclear whether a given society is permitted to protect such third parties or only its own members.[[4]](#endnote-4) While previous commentators have highlighted many ambiguities and tensions in *On Liberty*, this issue has received surprisingly little attention.[[5]](#endnote-5) Moreover, when we look at what Mill says—both in *On Liberty* and elsewhere—about third-party harm, he sometimes seems to employ one version of the harm principle and sometimes the other.

I begin, in section 1, by highlighting some well-known ambiguities in the harm principle before elaborating on the difference between what I refer to as the strong and weak versions of the harm principle in section 2. Section 3 provides evidence that Mill does, at least sometimes, invoke the stronger version of the harm principle, in order to rule out some instances of interference. However, I then show that he sometimes advocated interference to protect third parties, illustrating this with examples of humanitarian foreign intervention (section 4) and laws against animal cruelty (section 5). Both cases appear to involve societal interference that goes beyond the self-protection permitted by the strong harm principle, although the former cases might be justified by Mill’s cosmopolitanism.[[6]](#endnote-6)

In section 6, I consider some possible ways in which this apparent tension might be resolved, in particular the suggestion that the harm principle plays a less important role in Mill’s defense of freedom than generally supposed. If this is right, then Mill might subscribe to the weak harm principle, which permits more intervention, while nonetheless maintaining that society ought not to interfere in many cases where it would have the jurisdiction to do so. However, this interpretation is difficult to reconcile with other remarks where Mill suggests that certain interferences are not merely imprudent but illegitimate.

Since there is considerable textual support for the strong harm principle, we cannot simply dismiss this as a momentary lapse or overstatement on Mill’s part. Rather, I conclude that his various positions on third-party harm, in *On Liberty* and elsewhere, reflect a deep and lasting ambivalence on the matter. Whichever way this tension is resolved, there are real costs. The strong harm principle would rule out some interventions that Mill approved of, whereas the weak harm principle would permit other interventions that he disapproved of. Thus, consideration of third-party harms brings to light an important ambiguity in the harm principle.

1. Mill’s Ambiguities

The stated aim of *On Liberty* is to “assert one very simple principle” (*Liberty*, XVIII.223). The voluminous commentary that this has inspired suggests that it is anything but simple, and perhaps not even one principle.[[7]](#endnote-7) Indeed, interpreters cannot even agree on a label for this principle. Some refer to it as Mill’s “harm principle.”[[8]](#endnote-8) Others call it his “liberty principle.”[[9]](#endnote-9) I will employ the former term here, though I attach no great significance to this.

Some ambiguities in the principle can be highlighted by formalizing it as follows:

*Society* S *may employ Interference* I *against Agent* A *only in order to prevent Harm* H *to some Other* O*.*

Each of the terms *S*, *I*, *A*, *H*, and *O* needs further elucidation, some of which is supplied by Mill. For instance, the interference which he seeks to limit includes not only “physical force in the form of legal penalties” but also “the moral coercion of public opinion” (*Liberty*, XVIII.223), although not remonstration or persuasion (*Liberty*, XVIII.224).[[10]](#endnote-10) The agents concerned must be “human beings in the maturity of their faculties” (*Liberty*, XVIII.224), not children, so-called “barbarians,” or even those “in some state of excitement or absorption incompatible with the full use of the reflecting faculty” (*Liberty*, XVIII.294).

Infamously, Mill gives no formal definition of what he means by harm. Rees suggests that it refers specifically to setback of socially-recognized interests.[[11]](#endnote-11) Feinberg and Williams go further, arguing that only wrongful or rights-violating setbacks constitute relevant harms.[[12]](#endnote-12) Mulnix rejects both these limitations, arguing that harm should not depend on social recognition or moral standards, though he takes Mill’s reference to directly-caused harm (*Liberty*, XVIII.225) to exclude harms that others suffer only as a result of their beliefs.[[13]](#endnote-13) In this respect, his interpretation is similar to those of others who also exclude certain feelings of distress or offense.[[14]](#endnote-14) More recently though, Turner has argued for an expansive reading, according to which harm is “a general term for bad consequences, requiring no further specification.”[[15]](#endnote-15) This broad reading has subsequently been endorsed by others.[[16]](#endnote-16) Expanding what counts as harm potentially permits more interference, although there are often reasons not to interfere, even when others are harmed (*Liberty*, XVIII.292).

Some of these interpretations have relevance for my present concern, since they have implications for *who* can be harmed. For instance, if the relevant notion of harm must involve violation of socially recognized rights, then only those who hold such rights can be harmed. Similarly, if harm must be to a particular individual, this precludes interference to prevent harm to abstract entities such as cultures.[[17]](#endnote-17) Thus, various terms, such as *H* and *O*, in the above formula may not be entirely independent. Nonetheless, I wish to remain as neutral as possible regarding the nature of harm. My focus is on other parts of the formula—particularly the *O* term (specifying the “others” who are harmed) and the relevant society (*S*) that is entitled to intervene in a given case of harm.[[18]](#endnote-18) I will assume throughout that the harm, and for that matter the agent and the interference, is of the relevant kind, whatever that is.

2. Two Versions of the Harm Principle

The problem of third-party harm arises when *A1* engages in some activity that threatens to harm *O1*, without *O1*’s consent. Is coercive interference justified in such cases? The answer may depend on *who* it is that interferes.[[19]](#endnote-19) Recall the two sentences in which Mill introduces the harm principle. The first refers specifically to *self*-protection. Thus, *S1* may restrict *A1* only in order to protect the members of *S1* from (non-consensual) harm. The second refers to preventing harm to others. Thus, *S1* may restrict *A1* in order to protect *anyone*, other than *A1*, from (non-consensual) harm.

Suppose that *O1* is a member of *S1*. Then *S1*’s interference may be justified as collective self-protection.[[20]](#endnote-20) But what of some other society, *S2*, of which *O1* is not a member? If only *self*-protection can justify interference, then *S2* is not justified in interfering with *A1*’s action, even though it harms another. On the other hand, if any society is justified in preventing “other-regarding” harm,[[21]](#endnote-21) irrespective of whether those harmed are members of that society, then *S2* could be justified in interfering with *A1*’s actions. It might be that one society is better placed than another to interfere, and this might even mean that one is all things considered justified in interfering when another would not be. This is a matter of expediency. Nonetheless, in principle, any society can be justified in protecting third parties, as well as its own members. This grants each society universal jurisdiction to prevent other-regarding harm.

The difference between self-protection and protection of others has important implications for the boundary between what society may and may not intervene in and hence also for the sphere of individual liberty.

Table 1: The scope of *S1*’s jurisdiction.

|  |  |  |  |
| --- | --- | --- | --- |
| Region: | *X* | *Y* | *Z* |
| Actions that harm... | ...no one other than the agent (and consenting others). | ...non-consenting others who are *not* members of society *S1* (that is, third parties). | ...other members of society *S1*, without their consent. |
| Jurisdiction: | No society has jurisdiction to interfere with this conduct, which is either self-regarding or consensual. | Though *other* societies (such as *S2*) may have standing to intervene here, it is unclear whether *S1* has jurisdiction, since this would not be self-defense. | *S1* has jurisdiction to interfere, if necessary, in collective self-defense of its members. |

The left-hand region, *X*, is the inviolable sphere of individual liberty; this is an area that no society has any right to interfere with. The right-hand area, *Z*, covers actions that *S1* may interfere with, in order to protect its members. My concern is with the intermediate region, *Y*, which represents actions that harm third parties (those who are not members of *S1*) without their consent. These actions are not self-regarding or consensual, and hence not immune from interference, yet it is unclear whether *S1* has standing to interfere.

According to what I will call the *strong* harm principle, a society may only intervene in self-defense. Thus, *S1* may only interfere in region *Z*; both *X* and *Y* are off-limits to *S1*. To be sure, some other society (*S2*) may be entitled to interfere with actions in *Y*. Thus, only region *X* is free from any possibility of legitimate interference. Nonetheless, *S1* may not interfere in region *Y*.

Conversely, what I call the *weak* harm principle grants *S1* (or any other society) universal jurisdiction to protect anyone from harm that they do not consent to. This effectively denies any significant distinction between *Y* and *Z*; only region *X* is off-limits. Region *X* is inviolable because actions here harm no one (without their consent), so no society has jurisdiction to intervene. However, any society may interfere in region *Y*, not only in region *Z*. This principle therefore imposes fewer restrictions on societal interference. As soon as *A1*’s action harms others, *any* society has standing to interfere.

The strong harm principle focuses on the limits of social intervention from the perspective of the society in question. A society is only justified, on this view, in using coercion to protect its own members. Assuming that society has no standing to protect competent agents from things that they do not want protecting from (consensual harms), then *no* society has justification for interfering with actions that harm no one besides the agent and other consenting parties. Thus, that individuals should be free from interference in self-regarding matters emerges as a consequence of society’s limited jurisdiction. This is the sphere of individual freedom because it is the area where no one else has standing to interfere.

However, we could look at things from the other perspective. That is, we might start from the assumption that individuals ought to have certain freedoms over their own personal lives, as the weak harm principle would have it (*Liberty*, XVIII.225–26). On this view, it is the individual’s sovereignty over these areas that implies limits to society’s jurisdiction (not necessarily to self-defense, but at least not to interfere with self-regarding actions).

The inviolable sphere of individual liberty, which is protected from anyone’s interference, is the same in either case (*X*). Further, both versions of the harm principle permit some interference in region *Y* (and *Z*). However, the weak harm principle permits more instances of interference, since it allows anyone to interfere in region *Y*. In contrast, the strong harm principle limits who has standing to interfere there; *S1* may not interfere in region *Y* because this would not be self-protection, even if some other society, *S2*, whose members are harmed does have standing.

This ambiguity, between these two versions of the harm principle, passes largely unnoticed because many of the cases that Mill is concerned with are intra-society cases, not involving third parties. If everyone is a member of *S1*, then any “other” that *A1* harms will be a member of *S1*. In these cases, *S1*’s interference qualifies as self-protection because anything that goes beyond region *X*, by imposing non-consensual harm on others, falls into region *Z*. Since there are no third parties here, there is no region *Y*. The question of society’s jurisdiction to prevent third-party harms only arises once we move beyond considering an individual within a single society and consider cases where there are multiple distinct societies. In these cases, *A1*’s actions may harm others, meaning that some society is entitled to interfere, but without harming members of *S1*. This is region *Y*, where *S1*’s standing to intervene is ambiguous. The weak harm principle permits *S1* to interfere, though this is not self-protection, but the strong harm principle forbids this.

Mill frequently appeals to the strong harm principle in order to rule out certain interventions that he disapproves of. However, he also advocates certain interventions – such as humanitarian foreign intervention and laws against animal cruelty – that are compatible only with a weak version of the harm principle. So, there is a tension between these various remarks which, I suggest, reflects an equivocation or ambivalence running throughout Mill’s discussion of the harm principle. This is important because, if Mill were consistently to adhere to either version of the harm principle, it would have significant costs for his wider project. The strong harm principle would preclude some instances of interference that Mill approved of, whereas the weak harm principle would permit interference that he would want to reject.

3. The Strong Harm Principle

The bulk of *On Liberty* is devoted to arguing that society has no basis for interfering in the self-regarding sphere. Mill’s chief purpose is to distinguish between the self-regarding sphere, which is immune from interference, and those actions that are not self-regarding. In terms of Table 1, the boundary emphasized is that between *X* and *Y*. Thus, these remarks are at least *compatible* with the weak harm principle. Indeed, Mill sometimes suggests that society has jurisdiction over whatever is not self-regarding.[[22]](#endnote-22) However, this is because his primary concern is to show that society has no justification for interfering in region *X*. For this purpose, he did not need to address the difference between regions *Y* and *Z*.

Nonetheless, many other passages suggest that society’s legitimate scope for interference is more limited and does not include region *Y*. “In all things which regard the external relations of the individual, he is *de jure* amenable to those whose interests are concerned” (*Liberty*, XVIII.225).[[23]](#endnote-23) Note that the accountability here is not to *all* others, but specifically to those who are affected. Similarly, Mill goes on to draw a contrast between those actions for which “the individual is not accountable *to society* for his actions,” and actions for which “the individual is accountable, and may be subjected either to social or to legal punishment, if society is of opinion that the one or the other is requisite *for its protection*” (*Liberty*, XVIII.292, emphasis added). Here, the crucial boundary is not that between regions *X* and *Y*, but between *Y* and *Z*. Society’s jurisdiction is limited to protecting its own members.

Further, Mill consistently connects what society can prevent or punish to self-protection, both in *On Liberty* and elsewhere.[[24]](#endnote-24) Society may be justified in inflicting pain “for the express purpose of punishment” but only because it is “the protector of all its members” (*Liberty*, XVIII.280). Coercive interference is permitted, where it is, because of “the right inherent in society, to ward off crimes against itself” (*Liberty*, XVIII.295). If interference is only justified for self-protection, then society does not have standing to protect third parties.

Of course, *self*-protection should not be taken too literally here. Mill allows that self-protection may be collective in nature, which means in practice that some members of society can intervene to protect other members of that society. However, this is because “a human being is capable of apprehending a community of interest between himself and the human society of which he forms a part, such that any conduct which threatens the security of the society generally, is threatening to his own, and calls forth his instinct (if instinct it be) of self-defence” (*Utilitarianism*, X.248). While this extends the notion of “self” invoked in self-protection, it does not empower every individual or society with the right to prevent harm to anyone. There comes a point at which interference can no longer plausibly be considered *self*-protection, even in an extended sense.[[25]](#endnote-25) Beyond this point, the strong version of the harm principle prohibits interference (though the weak version still permits it).

While Mill focuses mostly on single society cases, he does occasionally mention third-party cases. And, at least in *On Liberty*, he appeals to a strong version of the harm principle. For instance, in a footnote in Chapter 2, concerning instigations to tyrannicide, Mill says “it is not a foreign government, but the very government assailed, which alone, in the exercise of self-defence, can legitimately punish attacks directed against its own existence” (*Liberty*, XVIII.228n).[[26]](#endnote-26) Here, he explicitly limits government interference to self-defense, again invoking the strong harm principle. The implication is that other states have no standing to interfere, even though they would be preventing harm.

Similarly, in Chapter 4, Mill criticizes religiously-motivated calls to prohibit Sunday amusements, questioning whether “society or any of its officers holds a commission from on high to avenge any supposed offence to Omnipotence, which is not also a wrong to our fellow creatures” (*Liberty*, XVIII.289). Note that the argument here is *not* that mere offense does not constitute a relevant harm, though some interpreters have attributed such a view to Mill.[[27]](#endnote-27) Rather, the reason Mill gives against interference here again appeals to the general principle that society has no jurisdiction over what does not concern its members.

Thus, there is good textual evidence that Mill at least sometimes invoked the strong harm principle, restricting interference to self-protection. However, there is an apparent tension between these remarks other passages where he allows interference to prevent third-party harms. The next two sections illustrate this with the examples of humanitarian foreign interventions and animal cruelty laws. Mill frequently expresses approval of both, though it is not clear that either (particularly the latter) can plausibly be justified as self-defense. Unless these comments can somehow be reconciled with the strong harm principle, then Mill may be committed to rejecting that and endorsing only the weak version. However, if his harm principle is the weak version, then it cannot support some of the claims we have already seen, such as the view that *S1* lacks standing to punish instigations to tyrannicide directed at some foreign government.

4. Foreign Intervention

The harm principle concerns relations between one state/society and private individuals, rather than between states/societies. Nonetheless, Mill “viewed the autonomy of individuals and states through the same prism.”[[28]](#endnote-28) Therefore, his views on foreign intervention might illuminate his position on who has standing to interfere with an individual’s conduct.

Mill wrote on international affairs at various points, from at least 1830-31 (“French News [7],” XXII.214–15; “The Prospects of France,” XXII.295–301) to 1870 (“Treaty Obligations,” XXI.341–48). Though his concerns changed with circumstances, he consistently defended a non-absolute presumption against interference in the internal affairs of other “civilized” countries.[[29]](#endnote-29) My interest is in the cases where that presumption is overcome. I focus primarily on “A Few Words on Non-Intervention” (XXI.109–24), which has now become part of the established canon of international political theory.[[30]](#endnote-30) However, my emphasis on this particular work is not simply because it has received more scholarly attention than Mill’s earlier and later writings on the topic. Rather, “A Few Words” is particularly relevant here because it was published in 1859, the same year as *On Liberty*.[[31]](#endnote-31) Since my aim is to illuminate the harm principle, rather than to give a definitive account of Mill’s views on international affairs, this makes it most appropriate for my purposes.[[32]](#endnote-32)

First, Mill argues that outside interference can sometimes be necessary to uphold national self-determination, for instance when it counterbalances other external interference. Thus, Britain and France might legitimately have intervened in Austria-Hungary, on the side of Hungarian independence, to counteract Russian interference on the side of Austria (“A Few Words,” XXI.124). Since this intervention would merely restore the balance of power, it would not violate national self-determination, but rather ensure that matters are determined by the people of Austria-Hungary, instead of an outside power. The legitimacy of such counter-interventions is something that Mill had advocated at least since the 1830s (e.g. “French News [19],” XXII.284; “The Spanish Question,” XXXI.374).

These remarks are in keeping with passages in *On Liberty*, in which Mill similarly suggests that the government may seek to counteract certain, non-disinterested influences on individual choice, so that “persons shall make their election, as free as possible from the arts of persons who stimulate their inclinations for interested purposes of their own” (*Liberty*, XVIII.297).[[33]](#endnote-33) In both cases, Mill recognizes that the ideal of self-determination, free from outside interference, may be better served by two opposing instances of interference, rather than by an absolute prohibition on interference.

More generally, some interventions may promote, rather than frustrate, individual self-government. There are cases where “the interference of law is required, not to overrule the judgment of individuals respecting their own interest, but to give effect to that judgment” (*Principles*, III.956). Mill suggests restrictions on working hours as an example. It may be that no worker wants to work more than nine hours a day but, without assurance that others will observe such limits, each may be forced to accept longer hours for fear that they will otherwise lose their jobs. Hence, although the law seems to restrict freedom of contract, it really serves to protect workers from being forced into accepting contracts that they do not want.

These remarks all focus on showing that society may sometimes interfere in order to protect self-governing agents (be they nations or individuals) from interference by others. Nonetheless, it appears that other agents (Russia or capitalist employers) who would interfere can be prevented from doing so. This is arguably a restriction of *their* liberty, so needs justification. In the domestic case, these restrictions are simply instances of society protecting its weaker members from being exploited by the capitalist class, and therefore legitimate even under the strong harm principle. But, in the international case, we have *S1* (Britain) limiting the freedom of *S3* (Russia) in order to protect the self-government of *S2* (Austria-Hungary). This seems to be an instance of British intervention to protect third parties, rather than for self-defense.

Furthermore, Mill notes another case where interference is commonly accepted; during “a protracted civil war, in which the contending parties are so equally balanced that there is no probability of a speedy issue; or if there is, the victorious side cannot hope to keep down the vanquished but by severities repugnant to humanity, and injurious to the permanent welfare of the country” (“A Few Words,” XVIII.121).[[34]](#endnote-34) Here, he says that neighboring nations are permitted to enforce equitable reconciliation. Again, this is not self-defense.[[35]](#endnote-35) It seems that the justification of such intervention must be to prevent the “severities” that would otherwise occur.

To be sure, Mill does not explicitly defend such international interventions, merely noting that their legitimacy “seems now to be an admitted doctrine” (“A Few Words,” XIX.121). Nonetheless, he does not condemn them either. Moreover, in 1862 Mill suggested that, should the Confederacy triumph in America, then the English – or, indeed, “a general crusade of civilized Europe” – might be required in order “to protect Africa against the man-stealer” (“Contest in America,” XXI.141). Though he was generally wary of war, he held that it could be justified “to protect other human beings against tyrannical injustice” (“Contest in America,” XXI.142). Again, this is a case of European societies acting to protect African third parties, rather than in self-defense.

Significantly, when intervention is warranted, Mill assumes that any state, or at least any liberal or civilized one, has the standing to interfere. In 1849, he asserted that “every liberal government or people has a right to assist struggling liberalism” (“Vindication,” XX.346). Since this right is not explicitly limited to counter-intervention, it suggests a more permissive attitude towards intervention than “A Few Words.”[[36]](#endnote-36) Of particular interest here though is not Mill’s greater openness to intervention, but that he held this right to extend to *every* liberal government. Moreover, while his later writings adopted a more conservative stance on *when* intervention was permissible, restricting it to countering foreign interference, he was – if anything – even more radical about *who* had the right to intervene. In an 1865 letter to James Beal, Mill writes that when the “indefeasible liberty of an independent country has already been interfered with... I hold that *any nation whatever* may rightfully interfere to protect the country against this wrongful interference” (“Letter 799,” XVI.1033, emphasis added). Here, the standing to interfere is not even limited to states that are themselves liberal.

One might respond that these cases are not what Mill is concerned with in *On Liberty*. Certainly, they are not paradigmatic instances of the kind that he is chiefly concerned with in that essay. Nonetheless, they are cases in which a society coercively interferes with the freedom of other agents. Therefore, they seem to be cases of a sort that the harm principle ought to address, whether they are forbidden (as the strong version would have it) or permitted (as the weak version would have it). Moreover, as we have seen, Mill does—at least in passing—apply the harm principle to such cases (*Liberty*, XVIII.228n).

It might however be objected that these cases are not genuine instances of third-party protection, since we are all members of a wider human society. Mill’s references to “society” often seem to refer to a single political community, as evident from his mention of “fellow citizens” (e.g. *Liberty*, XVIII.227), but he sometimes uses broader terms, such as “mankind” (e.g. *Liberty*, XVIII.223, 285, 288). Indeed, the original statement of the harm principle that refers to self-protection also refers to mankind generally. Thus, one might hold that it is legitimate for a particular state, such as Britain, to protect people who are not its citizens, because it is acting as a member of a wider human society, to protect fellow human beings.

Mill clearly did have all mankind in mind at some points. He suggests that “the power of sympathizing with human beings generally, enables [one] to attach himself to the collective idea of his tribe, his country, *or mankind*, in such a manner that any act hurtful to them rouses his instinct of sympathy, and urges him to resistance” (*Utilitarianism*, X.248, emphasis added). Further, he expressed hope that people could come to feel attachment and a sense of duty not only to their co-nationals but to “that larger country, the world” (“Religion of Humanity,” X.421).[[37]](#endnote-37) Thus, we might read “self-protection” to apply not to a particular society, such as Britain, but to all mankind.[[38]](#endnote-38)

If all humans, whatever their more particular community memberships, are also members of some larger human society, then any action to protect fellow human beings from harm can still be construed as collective self-protection in a broader sense. However, even if this notion of a universal human society makes sense, there are a number of problems with invoking this to defend the strong harm principle. First, while this allows us to justify some instances of international intervention, it is in tension with some of Mill’s explicit applications of the harm principle. If all humans are one society, and thus all entitled to protect each other, why should the right to punish instigations to tyrannicide be limited to “the very government assailed” (*Liberty*, XVIII.228n)? Here, Mill seems to limit the right to intervene to a particular political society, rather than to all humankind.

Second, even this “universal” concern and solidarity seems to be limited to fellow humans. For instance, Mill says only that people “are capable of identifying their feelings with the entire life of the human race” (“Religion of Humanity,” X.420). This leaves the status of non-human animals unclear. However, human actions can harm other animals. This is also an instance of third-party harm and one that seems harder to dismiss by expanding the notions of society and self-protection. The next section considers Mill’s views on animal welfare laws, again to see whether these can be reconciled with the strong version of the harm principle.

5. Animal Cruelty

Perhaps Mill might argue that all international interventions that he would approve of could be reconciled with the strong harm principle, by appealing to a wider human community, such that no human being is merely a third party. However, even if this strategy succeeds in these cases, its prospects seem limited, as will be shown if we consider another case of third parties: non-human animals.

There is considerable disagreement, even today, over the moral status of animals and whether they may permissibly be used for food, sport, laboratory experiments, and so on. However, many societies have laws prohibiting some forms of animal cruelty or abuse.[[39]](#endnote-39) These are by no means a recent phenomenon. Laws against animal cruelty were a controversial topic in 19th century England, following legislation introduced in 1822 and 1835.[[40]](#endnote-40) Moreover, cases of animal abuse often arouse public outcry.[[41]](#endnote-41) Perpetrators of cruelty are thus subject to social, as well as legal, sanctions. Are these instances of interference with mistreatment of animals consistent with the harm principle?

According to the strong harm principle, it appears not. To be sure, there might be certain cases where offenses against animals could also be considered offenses against society. These might include animals working for emergency services (sniffer dogs and the like), guide dogs, and perhaps even pets and livestock more generally. Mill comments approvingly on the fact that Comte’s Grand Etre includes “not our own species exclusively, but, in a subordinate degree, our humble auxiliaries, those animal races which enter into real society with man, who attach themselves to him, and voluntarily co-operate with him, like the noble dog” (“Comte,” X.334). Attacks on these animals might therefore be seen as harming society more generally and thus licensing defensive intervention. Admittedly, this line of thought treats such cases as akin to destruction of property, rather than recognizing animals as important in their own right. Nonetheless, the important thing here is that interference may be legitimate in these cases, even on the strong version of the harm principle.

However, even if some animals can be treated as extended members or property of society, it seems implausible to extend this reasoning to all animals. Laws protecting wild animals from harm, for their own sake, go beyond what is permitted by the strong harm principle. At this point, the interference is no longer *self*-protection, even in an extended form. Thus, either we stick to the strong harm principle, and accept that such laws are unjustifiable, or we must embrace the weak harm principle, which gives every society universal jurisdiction to prevent agents from harming anyone, or thing, besides themselves and other consenting parties.

It might be responded that harm to animals is also a harm to animal lovers, so society can intervene to protect their feelings, if not for the sake of the animals themselves. However, if animal “rights” depend on what others think of them, then it is likely that the cute and cuddly will be better protected than those that are widely considered food or even vermin.[[42]](#endnote-42) Moreover, there is a further problem with any such attempt to justify animal cruelty laws on human feelings. If this was accepted as sufficient justification for restricting liberty, then it opens the door to many other instances of restriction. For instance, it might also be justifiable to restrict someone’s “impious” behavior, to protect the feelings of religious believers.

Mill is clear that widespread antipathy or revulsion to some practice, such as that felt by Muslims for eating pork (*Liberty*, XVIII.284–85), cannot justify coercive interference with individual liberty. Society cannot prohibit conduct that is otherwise harmless simply because many in society dislike it, for this would be to make the mere “likings and dislikings of society” a law for all (*Liberty*, XVIII.222). Therefore, one cannot use the hurt feelings of animal lovers to bring animals under the purview of the strong harm principle. If animals (besides those that might qualify as members or resources of society) are to be protected, then the harm principle must be interpreted in its weak form.

Mill does not explicitly address harm to non-human animals in *On Liberty*.[[43]](#endnote-43) Nonetheless, this matter has received passing comment from others. Nils Holtug asks “which potential victims of harm the Harm Principle applies to” specifically mentioning both animals and unborn fetuses.[[44]](#endnote-44) While he suggests that most people probably would include harm to animals, he does not address whether this would be Mill’s position. On the other hand, Thom Brooks explicitly asserts that Mill’s concerns are “anthropocentric as they focus exclusively on the ways in which human beings relate to one another.”[[45]](#endnote-45) Though he notes that the principle could be reinterpreted to include harms to non-human animals, Brooks takes this to be a departure from Mill’s own understanding of the harm principle. Similarly, Jacobson glosses self-protection as protection *of mankind*, without even mentioning other animals.[[46]](#endnote-46)

Despite *On Liberty*’s silence regarding animal cruelty, Mill clearly took animal suffering seriously (“Whewell,” X.185–87). Though his qualitative hedonism attaches more importance to distinctively human pleasures and pains than to animal ones, his utilitarianism is nonetheless concerned with the happiness of “the whole sentient creation” (*Utilitarianism*, X.214). And, in an 1846 *Morning Chronicle* article, he compared the treatment of the poor to that of “dumb animals whose treatment reflects such disgrace on humanity” (“Poulett Scrope on the Poor Laws,” XXIV.925).[[47]](#endnote-47)

One might try to explain away such remarks, arguing that they express mere distaste, or perhaps even moral disapproval, but not grounds for coercion. Mill allows that we have a right “to act upon our unfavourable opinion of any one, not to the oppression of his individuality, but in the exercise of ours” (*Liberty*, XVIII.278). Thus, it may be suggested, a committed vegan may refuse to associate with meat-eaters, but this does not qualify as a form of punishment or interference of the sort that the harm principle restricts.[[48]](#endnote-48) However, Mill takes great pains to distinguish between “self-regarding faults”—such as rashness or obstinacy, which do not license interference because they “are not properly immoralities”—and those vices that “are fit objects of moral reprobation, and, in grave cases, of moral retribution and punishment” (*Liberty*, XVIII.279).

To be sure, Mill gives the duty “of abstaining from cruelty to the lower animals” as an example of an obligation that does not imply a correlative right (“Austin on Jurisprudence,” XXI.179). This would imply that these duties could not be coercively enforced if, as some interpreters have thought, only rights-violations can justify interference.[[49]](#endnote-49) This would be a mistake though. Mill allows that society can punish actions that harm others “without going the length of violating any of their constituted rights” (*Liberty*, XVIII.276).[[50]](#endnote-50) Thus, his denial of animal rights does not imply that animals cannot be subjected to the sort of harms that justify interference.

In fact, this proposed separation of morality and law is not something that Mill would accept. He regards punishment as intimately connected with moral wrongness.[[51]](#endnote-51) His notion of punishment includes not only penal sanctions but also “the opinion of his fellow creatures” and even “the reproaches of his own conscience” (*Utilitarianism*, X.246), so he is certainly not saying that all wrongs should be punished by law. However, the appropriate form of punishment is a matter of expediency, rather than one of principle (*On Liberty*, XVIII.225). Expediency may dictate that an offender be “punished by opinion, though not by law” (*Liberty*, XVIII.276), or even not punished at all. Nonetheless, anything that is wrong is something that society *may* punish, if it sees fit.[[52]](#endnote-52) Thus, if mistreatment of animals is genuinely wrong, it ought to be punishable.[[53]](#endnote-53)

The harm principle is intended to protect individual freedom not only “against the tyranny of the magistrate... [but] also against the tyranny of the prevailing opinion and feeling” (*Liberty*, XVIII.220), so it *is* concerned with expressions of moral disapprobation. The distinction Mill seeks to make is between “the province of liberty, and... that of morality or law” (*Liberty*, XVIII.282). The former is identified with a self-regarding sphere that does not involve others (or does so only with their consent), while the latter concerns anything that affects others, at least negatively and without their consent. (Again, it is unclear as to whether “others” includes only members of society or also third parties.) Thus, we cannot simply dismiss Mill’s remarks on animals as merely expressions of his own moral attitudes, without implications for interference of the sort that the harm principle concerns. If he held mistreatment of animals to be wrong, then he is committed to thinking it, in principle, punishable by someone.

Where Mill seems to oppose ‘moralistic’ interference, what he is really opposed to is the enforcement of *false* moral standards, based on superstition or prejudice (*Liberty*, XVIII.221–22, 283–84). Though some later commentators have been much exercised by the possibility of ‘harmless wrongs,’ Mill never even addresses whether the law should prohibit harmless immorality because, in his view, there is no such thing.[[54]](#endnote-54) According to Mill’s utilitarianism, everything that is genuinely immoral is harmful or, at least, of a general kind that tends to be harmful. Thus, for Mill, the harm principle permits interference with everything that is genuinely immoral.

In any case, even if Mill were to separate private morality from questions of what society may properly punish, he explicitly endorses animal cruelty laws in a number of places. Most notably, in the *Principles of Political Economy*, he anticipates the harm principle, arguing that no government should interfere in what “concerns only the life, whether inward or outward, of the individual, and does not affect the interests of others, or affects them only through the moral influence of example” (*Principles*, III.938). He goes on to add that individuals’ rights to make decisions over their own lives does not extend to absolute authority over their children (*Principles*, III.951), a concern that is repeated in *On Liberty* (XVIII.301). But, in the *Principles*, he also adds that:

The reasons for legal intervention in favour of children, apply not less strongly to the case of those unfortunate slaves and victims of the most brutal part of mankind, the lower animals. It is by the grossest misunderstanding of the principles of liberty, that the infliction of exemplary punishment on ruffianism practised towards these defenceless creatures, has been treated as a meddling by government with things beyond its province; an interference with domestic life.... It is to be regretted that metaphysical scruples respecting the nature and source of the authority of government, should induce many warm supporters of laws against cruelty to animals, to seek for a justification of such laws in the incidental consequences of the indulgence of ferocious habits to the interests of human beings, rather than in the intrinsic merits of the case itself. (*Principles*, III.952)

While it is possible that the omission of any similar passage from *On Liberty* is because Mill changed his mind on this matter, this seems unlikely, since he continued to express similar views after its publication.[[55]](#endnote-55) For instance, in an 1862 essay, Mill remarks, with seeming approval, that “laws against cruelty to animals bring an entire province of human conduct for the first time within the pale of law” (“Centralisation,” XIX.593–94), while he expressed his opposition to pigeon shooting in an 1868 letter to John Colam (“Letter 1271,” XVI.1424). Though he omitted such references from *On Liberty*, it is unlikely that Mill changed his position on animal cruelty.

Perhaps the best explanation for the omission of reference to animals in *On Liberty* is that Mill wanted to avoid being drawn into contemporary controversies over animal rights. In 1869, he wrote to John Morley, editor of the *Fortnightly Review*, to congratulate him on publishing E. A. Freeman’s criticism of field sports (hunting), adding that he had been tempted to express similar thoughts himself “but having so many unpopular causes already on my hands, thought it wiser not to provoke fresh hostility” (“Letter 1506,” XVII.1673–74).[[56]](#endnote-56) Thus, we might assume that Mill’s opposition to animal cruelty was unwavering and his omission of explicit reference to the matter in *On Liberty* perhaps because he did not want it to overshadow his general argument for liberty.

In any case, even in *On Liberty*, he allows that there are “things which whenever it is obviously a man’s duty to do, he may rightfully be made responsible to society for not doing” including “interposing to protect the defenceless against ill-usage” (*Liberty*, XVIII.225).[[57]](#endnote-57) Whether or not this remark was intended to extend to non-human animals, it again suggests that Mill was prepared to countenance societal interventions that go beyond self-protection by seeking to prevent third-party harms. To be sure, this remark only concerns protecting the defenseless, so the standing to interfere is not universal when it comes to who may be protected (the *O* term in my earlier formula). There may be no standing to protect those who can protect themselves, or who already have other protectors. Nonetheless, it does not place any limits on who may intervene where intervention is required (the *S* term). Hence, this passage implicitly rejects the strong harm principle.

6. Unresolved Tensions

I am by no means the first to point out the difficulty of reconciling all the various things that Mill says, in *On Liberty* and elsewhere. The question now facing us is how best to make sense of his various remarks, even if the resulting interpretation may not entirely cohere with everything that he says. If there is an inconsistency between (some of) Mill’s general statements of his principle and his particular applications of it, then it may be reasonable to prioritize the applications, rather than the general statement.[[58]](#endnote-58) However, this interpretive strategy does not entirely resolve our present problem, since the ambiguity here highlighted appears both in general statements—including the two sentences quoted at the outset of this article—and in certain applications discussed above, where Mill sometimes suggests that society has no right to protect third parties and other times allows it.

Mill’s arguments for individual liberty are mostly directed against paternalistic interference. However, even if these are successful, they would not establish the harm principle, even in its weaker version, since this not only forbids paternalistic interference but goes further in saying that only (relevant) harms to others can justify interference. This therefore precludes various other putative justifications for interference, such as upholding moral, aesthetic, or religious ideals.[[59]](#endnote-59)

Mill seemingly took for granted that only some kind of harm could justify interference and therefore occupied himself only with the question of whose harm might provide such justification. Even to that, he only gave an incomplete answer: the agent’s own self-harm (and harm to consenting others) cannot do so. However, it is left ambiguous whether harm to third parties can justify intervention. Perhaps Mill *should* have argued only that self-harm (or consensual harm) is no justification for interference. This results in a much weaker principle, such as that *S1* may not restrict *A1* in order to prevent harm to *A1*.[[60]](#endnote-60) This would have allowed the possibility of interference for other grounds not referencing harm at all, as well as the prevention of third-party harm.

However, while paternalism certainly dominates the debate over the proper limits of social interference, it is not Mill’s only concern. Individuality can also be stifled by social pressure to conform to what is proper or customary.[[61]](#endnote-61) Moreover, while Mill’s utilitarianism may explain his failure to address harmless wrongs, he clearly recognizes the problem of the “moral police” who imbue their “own preferences with the character of moral laws” (*Liberty*, XVIII.284). Mill gives various examples, including Puritans seeking to suppress public amusements and the Temperance Alliance seeking to suppress the use of alcohol (*Liberty*, XVIII.286–88). The grounds for interference here are not paternalistic, or at least not simply so. The argument that Mill attributes to the Temperance Alliance is not that alcohol should be prohibited for the benefit of those who drink, but rather because one person’s drunkenness threatens the ‘social rights’ of others. This argument may not succeed in justifying restriction, but it is not paternalistic.

We might take these considerations to support the view that the harm principle itself plays only a relatively limited part in Mill’s broader defense of freedom, as has been suggested by various interpreters.[[62]](#endnote-62) Though any case for interference must be consistent with the harm principle, this may exclude very little, especially on an expansive reading of harm. On such interpretations, the scope of individual liberty ends up depending not on excluding much conduct from society’s jurisdiction, but rather on persuading society not to interfere even in cases where it has the authority to do so.[[63]](#endnote-63) While this makes freedom depend on some form of cost-benefit analysis, rather than being guaranteed as a matter of principle, this might be expected, given Mill’s utilitarian commitments. Nor is this necessarily any embarrassment for, so long as society does not actually interfere with people’s conduct, the mere possibility of its interference does not actually reduce their negative freedom.[[64]](#endnote-64)

However, while it is surely correct that the harm principle is only one part of Mill’s broader defense of freedom, we should also be wary of giving it too little importance. Mill describes the assertion of this principle as the “object of this Essay” (*Liberty*, XVIII.223) and later refers to two maxims, which seem to express the same general principle, as “the entire doctrine of this Essay” (*Liberty*, XVIII.292). These remarks suggest that he saw the harm principle as central to his case.[[65]](#endnote-65) Further, he distinguishes the principled reasons for self-regarding liberty from the different, more pragmatic, grounds for free trade (*Liberty*, XVIII.293). On the argument under consideration though, rather more cases turn out to be like free trade – that is, things that the state can regulate, but that it is usually better not to – than to be protected by the harm principle.

Moreover, this expansive interpretation of harm requires us to hold that “mere offense” is a genuine harm—of the sort that could in principle justify interference—but never sufficiently weighty to justify interference in practice. There are certainly passages consistent with this, as when Mill says that there is “no parity between the feeling of a person for his own opinion, and the feeling of another who is offended at his holding it” (*Liberty*, XVIII.283). This suggests not that offense is irrelevant, but merely that it is outweighed.[[66]](#endnote-66) However, once offense is admitted to be relevant, it is hard to see how we can be sure that it will always be outweighed. If others are offended at something that is deeply important to me, then my right to live as I see fit may be more important than protecting them from offense. But what if others are deeply offended by something that is a matter of near-indifference to me? On such occasions, those who would be offended may have more at stake than I do.[[67]](#endnote-67)

Even if this could be defended, it is not obviously an accurate depiction of Mill’s concerns. His remarks on the desire of Muslims to prohibit the consumption of pork, for instance, are not based on any comparison between the harms of religious offense and restriction of freedom, but on the principle that “with the personal tastes and self-regarding concerns of individuals the public has no business to interfere” (*Liberty*, XVIII.285). Of course, this example raises thorny questions, such as whether this case is really any different from the more common (in Western societies) desire to forbid consumption of cats or dogs?[[68]](#endnote-68) Or, for that matter, a vegetarian majority seeking to ban consumption of any animals, out of concern for animal welfare.[[69]](#endnote-69) This is obviously far more restrictive than banning consumption of pork alone. However, if animal welfare laws are potentially justifiable—as Mill allows—then legally-imposed vegetarianism cannot be excluded on principle. One might think that it would be wrong for society to prohibit the consumption of meat, but it would be something over which society has rightful jurisdiction to interfere. Again, this hinges on whether society has the right to prevent any harms (as the weak harm principle would have it) or only to protect its own members (as the strong harm principle would have it).

One possible difference between these cases is that the Muslims are motivated by their religion, whereas the vegetarians need not be. However, while Mill does suggest that it is improper for the law to enforce religious standards (“Austin on Jurisprudence,” XXI.179), he gives no reason to think that religion makes any difference here.[[70]](#endnote-70) I find it hard to see how Mill might consistently explain why a prohibition on eating pork is unjustifiable interference in a self-regarding matter, but restrictions on the treatment of animals—which might ban their consumption entirely or, at least, limit how they are raised and slaughtered—are the legitimate business of society. Both cases involve a majority group imposing their moral views on a dissenting minority.

To be sure, Mill holds that a majority are sometimes justified in requiring a dissenting minority to act morally. He notes that, in many cases, “the law ends by enforcing against recalcitrant minorities, obligations which... from a sense of their utility, a large majority have voluntarily consented to take upon themselves” (*Principles*, II.372). However, this remark concerns the “obligation against bringing children into the world who are a burthen to the community” (*Principles*, II.372). This, in Mill’s view, is a genuine harm to other members of the society. He expresses similar thoughts in the final chapter of *On Liberty*, asserting that “to bring a child into existence without a fair prospect of being able, not only to provide food for its body, but instruction and training for its mind, is a moral crime, both against the unfortunate offspring and against society” (*Liberty*, XVIII.302) and goes on to add that it would be legitimate for the state to “forbid marriage unless the parties can show that they have the means of supporting a family” (*Liberty*, XVIII.304). While these remarks may also reflect Mill’s personal distaste for sex[[71]](#endnote-71), they are not pure cases of moralism – understood as upholding morality independent of harm – for Mill holds that excessive reproduction *is* injurious to others (*Liberty*, XVIII.304) and therefore that these restrictions are consistent with the harm principle, even in its strong formulation.

However, it is unclear whether society has jurisdiction to punish wrongs that do not concern its members. Mill allows enforcement of “social morality, [that is] of duty to others” because public opinion is likely to be right when the public “are only required to judge of *their own interests*” (*Liberty*, XVIII.283, emphasis added). But, when it comes to third-party harms, those who would interfere are no longer judging their own interests. In these cases, as in paternalistic cases, they must rely on “general presumptions: which may be altogether wrong” (*Liberty*, XVIII.277).

No doubt making such assumptions about third parties is different from making them about the agent’s own good. In the paternalistic case, agents are better placed than the wider public to know their own interests (*Liberty*, XVIII.277), their choices are evidence that what they choose is at least tolerable for them (*Liberty*, XVIII.299), and – should they be wrong – they will be the ones to bear the consequences (*Liberty*, XVIII.279). Thus, public interference to prevent (supposed) self-harm is rarely justifiable, assuming the agents in question are competent. But these reasons against interference do not apply when it comes to protecting third parties. Here, we cannot be certain that agents will have considered the effects of their actions on third parties, or given them proper weight if they have.[[72]](#endnote-72) But, on the other hand, we cannot be sure either that the public are any better judges of the interests of third parties, or that they give due weight to the interests of the agent interfered with (cf. *Liberty*, XVIII.284). If the public are permitted to interfere in such cases, then there is a danger that they will do so according to their own likes and dislikes which, of course, is what the harm principle seeks to avoid.

We may not find this troubling, if we agree with the morality being enforced, but the problem is that there is no way to restrict society to enforcing only correct moral standards. Once it is admitted that society may intervene in matters that do not directly affect its members, it is hard to rule out widespread interference based on supposed harms to others. For instance, if it is permissible for society to punish cruelty towards non-members or animals, as suggested above, then it might also be permissible to punish cruelty towards plants, gods, or even inanimate objects such as furniture.[[73]](#endnote-73) It is difficult to see where the boundary on society’s jurisdiction can be drawn, if it is not based on self-protection.

Further, Mill frequently warns against judging institutions according to their idealized operations.[[74]](#endnote-74) He feared that “power, which is not accountable to those interested in its being properly employed, is likely to be abused” (“Spirit of the Age,” XXII.256).[[75]](#endnote-75) If society is given the universal jurisdiction to uphold (supposed) moral requirements, beyond acting in self-protection, this is likely to be exercised in ways detrimental to individual liberty. This wariness of excessive interference may have led Mill to advocate the strong harm principle, even though it would preclude interference in some cases that he thought justifiable. The problem is that he cannot consistently limit societal interference to self-defense and permit society to protect third parties.

7. Conclusion

In the very passage introducing the harm principle, Mill gives two different formulations, one of which restricts interference to society’s self-protection (the strong harm principle) and the other allowing the possibility of interference to prevent harm to anyone other than the agent herself (the weak harm principle). This indicates a fundamental ambiguity regarding whether, in Mill’s view, society has jurisdiction to protect third parties. Moreover, this is no momentary slip of the pen, but can be seen running throughout various passages in *On Liberty* and Mill’s other works. Sometimes he appeals to the strong harm principle, to preclude interference that he disapproves of, but elsewhere he endorses interference compatible only with the weak harm principle.

One possibility is that the ambivalence reflects a change in Mill’s thought, with *On Liberty* containing traces of both earlier and later doctrines.[[76]](#endnote-76) However, having compared *On Liberty* with both earlier and later writings, I see little evidence of such a change, either from the strong harm principle to a weak one or vice versa. Though some details of Mill’s views no doubt altered, we can observe the tension that I have described in works both before and after the 1850s. For instance, Mill was prepared to countenance humanitarian interventions both in 1837 (“The Spanish Question,” XXXI.374–75) and 1862 (“Contest in America,” XXI.141–42). Similarly, his support for animal cruelty laws can be seen in earlier writings (*Principles*, III.952[[77]](#endnote-77)) and later ones (“Centralisation,” XIX.593–94). Since these cases involve intervention to protect third parties from harm, they are incompatible with the strong harm principle. However, we also find Mill consistently linking punishment and self-defense both in earlier writings (“On Punishment,” XXI.97, from 1834) and later ones (*Hamilton’s Philosophy*, IX.458–61, from 1865). While these remarks do not explicitly commit Mill to the strong harm principle, they show that he consistently maintained this underlying view.

For these reasons, I do not think that the tension between the weak and strong versions of the harm principle can be resolved simply by ascribing one to an “early Mill” and the other to a “later Mill.” We see signs of both views throughout his work, both before and after *On Liberty*, suggesting that Mill’s ambivalence in that work was not merely because his views were in transition.

Another possible explanation is that Mill overstated his case in *On Liberty*, where he was chiefly concerned to defend individual freedom. Maybe this focus led him there to propose a strong harm principle, perhaps without fully realizing that it would conflict with his views (expressed more fully elsewhere) about the justifiability of certain interventions. It is fair to say that the strong harm principle is more prominent in *On Liberty*, whereas Mill’s endorsement of third-party protections is clearest in other works, such as the *Principles* (on animal cruelty laws) and “A Few Words” (on humanitarian intervention). However, it would be an exaggeration to say that *On Liberty* is simply an anomaly that is inconsistent with views that Mill expressed elsewhere. As we have seen, there are tensions internal to *On Liberty*. Moreover, Mill consistently connects society’s right to punish to self-defense in various places. This supports something like the strong version of the harm principle, even if Mill does not explicitly formulate it elsewhere. So, we cannot simply dismiss *On Liberty* as an isolated overstatement of the limits on what society may interfere with.

It seems that Mill was persistently torn between two views on third party harm. Perhaps he was not even fully aware of this tension. As a result, I see little point in declaring either the strong or weak harm principle Mill’s “real” view, since either would conflict with many of his remarks in various places. However, whichever way this tension is resolved, there is a significant cost for Mill and contemporary adherents of his harm principle. The strong harm principle better protects individual liberty, but may preclude some desired interference, such as animal welfare laws. Conversely, the weak harm principle permits desired interference, but perhaps also undesired cases, such as religiously inspired moralism, too.[[78]](#endnote-78)

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1. All references to Mill are from *The Collected Works of John Stuart Mill*, ed. J. M. Robson (Toronto: University of Toronto Press; London: Routledge, 1963–91) and given parenthetically by (short title, volume: page). Thus, *Liberty*, XVIII.232 refers to p. 232 from volume 18. I follow the usual convention of referring to Mill as if he were the sole author of *On Liberty*, but this is not intended to downplay Harriet’s contribution. For a recent discussion on the authorship of this text, see Schmidt-Petri *et al* “Who Authored *On Liberty*?” [↑](#endnote-ref-1)
2. As Jacobson (“Liberty, Speech, and the Free Society,” 288) points out, interferences with liberty and exercises of power are not obviously the same. Thus, it might be suggested that these two sentences actually specify two distinct principles, regulating different kinds of intervention. However, Mill does not explain the difference between the two. Further, these statements follow his reference to “one simple principle” (*Liberty*, XVIII.223). So, I take it that they are at least *intended* to be alternative phrasings of the same idea, rather than two distinct principles. [↑](#endnote-ref-2)
3. I use ‘self-protection’ and ‘self-defense’ synonymously. Likewise, ‘interference’ and ‘intervention’ though these are sometimes distinguished, e.g. Prager, “Intervention and Empire,” 622. Both are assumed throughout to be of the kind that the harm principle limits. Characteristically, Mill uses many other terms. [↑](#endnote-ref-3)
4. Since the harm principle is concerned with both legal and moral punishment, this permission can be thought of in terms either of legal jurisdiction or moral standing; see Radzik, “On Minding Your Own Business.” References to jurisdiction or standing are intended to cover both, *mutatis mutandis*. Note also that ‘third parties’ here refers to those who are not members of the society in question, rather than to those who are not involved in some joint action or consenting to it (they are simply “others” here). [↑](#endnote-ref-4)
5. One well-known ambiguity is that Mill sometimes takes the harm principle to limit the *reasons* for interference and sometimes what *conduct* may be interfered with (Arneson, “The Enforcement of Morals Revisited,” 439n8; Brown, “Liberty and Morality,” 135). A second is whether only conduct that is itself harmful can be interfered with or whether society can interfere with harmless conduct provided that doing so prevents harm (Lyons, “Liberty and Harm to Others”). A third is whether society may interfere with any actions that *affect* others or only those that *harm*, i.e. negatively affect, others (Saunders, “Reformulating,” 1027–28; Turner, “‘Harm’ and Mill’s Harm Principle,” 310n11 and 324–26). Holtug (“The Harm Principle,” 359–62) surveys other necessary clarifications. He includes the need to specify the relevant victims of harm, though he focuses on whether the harm principle only concerns harm to human beings and to current people. He does not connect this to Mill’s comments about self-protection.

   The difference between self-protection and harm prevention is noted by Jacobson (“Liberty, Speech, and the Free Society,” 288) and Threet (“Social Pressure Puzzle,” 543n11), though neither discuss it at length. Beaumont and Li (“Anti-Imperialist Defence of Empire,” 249) also distinguish self-defense and (other) protection, as two distinct justifications for interference, but do not comment on the fact that these are referred to respectively as the “sole end” and “only purpose” for interference. [↑](#endnote-ref-5)
6. I follow Varouxakis, *Mill on Nationality*, in using the term “cosmopolitan” to refer to Mill’s belief in universal human society. This is a moral, rather than political, view. It does not imply, for instance, that he advocated a single world state. Indeed, as Bell (*Re-ordering the World*, 214) argues, Mill never thought even that Britain and her colonies could form a single integrated polity. Thus, this “cosmopolitanism” is compatible with the continued existence of more particular national identities. [↑](#endnote-ref-6)
7. Certainly, there are many different “harm principles” (Edwards, “Harm Principles”). I am only concerned here with Mill’s principle. Mill himself restates this as “two maxims” (*Liberty*, XVIII.292). [↑](#endnote-ref-7)
8. E.g. Brink, “Hate Speech;” Cowen, “Extreme Pornography;” Holtug, “The Harm Principle;” Ripstein, “Beyond the Harm Principle;” Threet, “Social Pressure Puzzle;” and Waldron, “Moral Distress.” Turner, “‘Harm’ and Mill’s Harm Principle,” also uses ‘harm principle’ but notes that it is a misnomer (325n97), while Turner, “The Liberal Rejection of Legal Moralism,” uses ‘liberty principle.’ [↑](#endnote-ref-8)
9. Besides Turner, others who prefer ‘liberty principle’ include Cohen-Almagor, “Freedom of Expression;” Mulnix, “Harms, Rights, and Liberty;” Riley, “‘One Very Simple Principle’;” Westmoreland, “The Liberty of the Liberty Principle;” and Wilkinson, “Social Pressure.” [↑](#endnote-ref-9)
10. Mill also excludes certain “natural penalties” that follow inseparably from the disapproval of others. On this notion, see Miller, “‘We May Stand Aloof;’” Schramme, “Properly a Subject of Contempt;” Threet, “Social Pressure Puzzle;” Wilkinson, “Social Pressure;” and [↑](#endnote-ref-10)
11. Rees, “A Re-reading.” [↑](#endnote-ref-11)
12. E.g. Feinberg, *Harm to Others*, 34–36; Williams, “Mill’s Principle of Liberty.” [↑](#endnote-ref-12)
13. Mulnix, “Harms, Rights, and Liberty,” 210–11. [↑](#endnote-ref-13)
14. E.g.Brink, “Hate Speech,” 120–21; Riley, “Purely Private Matters. Part I,” 123 and “‘One Very Simple Principle’,” 23; Waldron, “Moral Distress,” 418. [↑](#endnote-ref-14)
15. Turner, “‘Harm’ and Mill’s Harm Principle,” 301. [↑](#endnote-ref-15)
16. E.g. Cowen, “Extreme Pornography,” 512; Hansson, “Circle(s) of Liberty,” 738. [↑](#endnote-ref-16)
17. Cowen, “Extreme Pornography,” 510–13. [↑](#endnote-ref-17)
18. As Threet (“Social Pressure Puzzle,” 560–61) observes, it may make a difference whether interference is coordinated or not. Cf. Miller, “‘We May Stand Aloof,’” 467–68. Again, I do not explore this here, assuming that whoever interferes has standing to do so on behalf of some society. [↑](#endnote-ref-18)
19. More precisely, it may depend not only on who interferes but on whose behalf they interfere. Suppose *A1* harms *O1*, who is a British citizen but not a trade union member. In that case, British society may interfere, but the trade union may not. But this means that another agent, who is both a British citizen and a trade union member, may interfere if they are acting on behalf of British society, but not on behalf of the trade union. [↑](#endnote-ref-19)
20. It need not matter whether *A1*, the harm-causing agent, is also a member of *S1* or not. I assume *S1* is entitled to protect its members from both internal and external threats. [↑](#endnote-ref-20)
21. This term is commonly used by interpreters of Mill, though it is not one he uses himself (Wollheim, “Limits of State Action,” 2). Mill terms the acts that may be interfered with ‘social’ though this term is also misleading (Jacobson, “Liberty, Speech, and the Free Society,” 280n11). It might be clearer to speak of harms or actions as ‘non-self-regarding’ (Saunders, “Reformulating,” 1009–10). [↑](#endnote-ref-21)
22. For instance, “As soon as anypart of a person's conduct affects prejudicially the interests of others, societyhas jurisdiction over it” (*Liberty*, XVIII.276). [↑](#endnote-ref-22)
23. This passage continues, referring to “society as their protector” but this is only applicable if they are members of that society. If they are merely third parties, then it is not clear whether a society of which they are not members has any right to protect them. [↑](#endnote-ref-23)
24. Elsewhere Mill writes that “The only right by which society is warranted in inflicting any pain upon any human creature, is the right of self-defence” (“On Punishment,” XXI.79) and “punishment is a precaution taken by society in self-defence” (*Hamilton’s Philosophy*, IX.459). While it might be argued that there is a distinction between what can be prevented and what can be punished, Mill treats these together, for instance in his comments on increasing the price of alcohol (*Liberty*, XVIII.298). [↑](#endnote-ref-24)
25. Admittedly, Mill might extend this point rather far, perhaps including all humankind. I discuss his cosmopolitanism at the end of section 4. [↑](#endnote-ref-25)
26. Perhaps the significance of this passage has been underestimated because it is a mere footnote, though it is discussed by Cohen-Almagor, “Boundaries of Freedom of Expression” and Jacobson, “Mill on Liberty, Speech, and the Free Society.” [↑](#endnote-ref-26)
27. E.g. Bell, “Free Speech,” 166 and Brink, “Hate Speech,” 120-21. [↑](#endnote-ref-27)
28. Prager, “Intervention and Empire,” 626. Parallels between *On Liberty* and ‘A Few Words’ are also explored by Beaumont and Li, “Anti-Imperialist Defence of Empire” and Turner, “The Absolutism Problem.” [↑](#endnote-ref-28)
29. I use ‘countries,’ as employed in Mill’s letter to James Beal of 17 April 1865 (XVI.1033). As Varouxakis (*Liberty Abroad*, 97) points out, this statement obscures the important distinction between nations and states. Mill’s support for *national* self-determination could allow intervention in other states (Varouxakis, *Mill on Nationality*, 91). [↑](#endnote-ref-29)
30. Varouxakis refers to this piece as the “closest he [Mill] came to formulating a general theory” on non-intervention (*Mill on Nationality*, 77). However, the prominence of this piece in later discussions is due in part to Michael Walzer’s attentions (Varouxakis, “The International Political Thought,” 124; *Liberty Abroad*, 90). For example, see Doyle, “A Few Words.” [↑](#endnote-ref-30)
31. Admittedly, Mill’s “A Few Words” was seemingly written late in 1859 (“Letter 414,” XV.638), whereas *On Liberty* was written slightly earlier. The latter was first planned in 1854 (*Autobiography*, I.249) and completed – to the extent that it was – by November 1858 (*Autobiography*, I.261). However, Mill presumably still endorsed these views at the time of publication. Moreover, he noted that the ideas in “A Few Words” had also long been in his mind (*Autobiography*, I.263). Hence, I take these two works to reflect Mill’s thinking in the mid-to-late 1850s. [↑](#endnote-ref-31)
32. For an overview of the development of Mill’s thoughts on international intervention, see Varouxakis, “The International Political Thought.” Varouxakis (*Mill on Nationality*, 90) also addresses the more interventionist position that Mill adopted in 1849 (“Vindication,” XX.346). I comment on this later in the main text. It might be suggested that this radicalism remained Mill’s true position, though he was not bold enough to defend it later. However, Varouxakis (“The International Political Thought,” 126) concludes that the change from 1849 to 1859 reflected Mill’s increasing worries about encouraging nationalist sentiments. For Mill’s views on nationalism, see also Varouxakis, *Mill on Nationality*, 111–27. [↑](#endnote-ref-32)
33. For a recent discussion of solicitation, see Tunick, “Passage on Pimps.” [↑](#endnote-ref-33)
34. See also similar remarks in “The Spanish Question” (XXXI.374–75). [↑](#endnote-ref-34)
35. Some cases might be, for instance if a state’s reason for interference is fear that disturbances will spread to its own borders. But not all cases are like this and Mill does not limit interference to those that are. [↑](#endnote-ref-35)
36. Varouxakis, *Liberty Abroad*, 96. [↑](#endnote-ref-36)
37. On Mill’s cosmopolitanism, see Varouxakis, *Mill on Nationality*, 111–27. [↑](#endnote-ref-37)
38. Cf. Jacobson, “Liberty, Speech, and the Free Society,” 288. This contradicts Aiken, who considers it “evident upon analysis” that “society” refers to something like a nation-state and not nonpolitical associations, such as trade unions or “humanity as a whole” (“Social Freedom,” 126–27). I find this less evident than he supposes. [↑](#endnote-ref-38)
39. Although some forms of abuse remain widespread; see Newberry, “Associations.” [↑](#endnote-ref-39)
40. Boddice, “Manliness,” 11. [↑](#endnote-ref-40)
41. E.g. BBC “Mary Bale Fined for Cruelty” and “Kurt Zouma Given 180 Hours of Community Service.” [↑](#endnote-ref-41)
42. Shrage (“Should Feminists Oppose Prostitution?” 351) notes that eating dogs or cats is taboo in American society. The House of Representatives recently approved the Dog and Cat Meat Trade Prohibition Act of 2018 (<https://www.congress.gov/bill/115th-congress/house-bill/6720/text>). In the UK, it is currently illegal to buy or sell—but not to consume—dog meat, though there have also been calls for changes to the law (Rahman-Jones, “Call for a Ban”). [↑](#endnote-ref-42)
43. The word “animal” occurs only as a metaphor or comparison, government being likened to “an animal of prey stronger than the rest” (*Liberty*, XVIII.217), and in references to trees “clipped into pollards, or cut out into figures of animals” (*Liberty*, XVIII.265) and people indulging “animal pleasures” (*Liberty*, XVIII.278). [↑](#endnote-ref-43)
44. Holtug, “The Harm Principle,” 361. [↑](#endnote-ref-44)
45. Brooks, “Climate Change and Negative Duties,” 2. [↑](#endnote-ref-45)
46. Jacobson, “Liberty, Speech, and the Free Society,” 288. [↑](#endnote-ref-46)
47. This reference to disgrace could be a non-moral judgement. Donner, “Morality, Virtue, and Aesthetics,” illustrates that environmental concerns might be part of the aesthetic branch of Mill’s Art of Life, which concerns beauty or nobility. See also Winch, “Wild Natural Beauty.” However, even if *some* of Mill’s remarks can be dismissed as merely aesthetic judgements, this is not true of all of them. [↑](#endnote-ref-47)
48. Wilkinson, “Social Pressure,” 233. [↑](#endnote-ref-48)
49. Those who identify relevant harms with rights violations include Feinberg, *Harm to Others*, 34–36; Rawls, *Lectures on the History of Political Philosophy*, 291; and Williams, “Principle of Liberty,” 134. [↑](#endnote-ref-49)
50. With this in mind, Jacobson (“Liberty, Speech, and the Free Society,” 302) argues that society has jurisdiction to interfere with conduct that violates either another’s rights (corresponding to a perfect obligation) *or* an imperfect obligation. This also would allow society jurisdiction to interfere with animal cruelty, since that violates an imperfect obligation. [↑](#endnote-ref-50)
51. For instance, “We do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it” (*Utilitarianism*, X.246) and “With the idea of wrong, that of sanction is inseparably bound up” (“Austin on Jurisprudence,” XXI.181). [↑](#endnote-ref-51)
52. Threet, “Mill’s Social Pressure Puzzle,” 545. [↑](#endnote-ref-52)
53. Punishable by whom? It may be that the puzzle that occupies me reoccurs at the level of Mill’s moral theory, since it has been argued that he conceives of morality itself as “the art of collective self-defence against harmful conduct” (Brown, “Moral Theory,” 17). However, I will not pursue this wider question here. [↑](#endnote-ref-53)
54. Those concerned with harmless immorality include Feinberg, *Harmless Wrongdoing*, and Ripstein, “Beyond the Harm Principle.” For further explanation of why Mill was not, see Turner “The Liberal Rejection of Legal Moralism.” [↑](#endnote-ref-54)
55. Another possibility is that one of these passages was more influenced by Harriet. This is difficult to rule out though, since she was closely involved with both the *Principles* and *On Liberty* (*Autobiography*, I.254–59), I see no reason to attribute the difference to her. On Harriet’s contribution, see Schmidt-Petri *et al*, “Who Authored *On Liberty*?” [↑](#endnote-ref-55)
56. Freeman’s paper generated some controversy, including a reply by Anthony Trollope (“The Morality of Hunting”) to which Mill’s stepdaughter Helen Taylor responded, criticizing fox hunting as “demonstrably cruel in its own nature, and degrading in its effect on human character” (“Mr. Trollope’s Defence of Fox-Hunting,” 67). For an overview of the national debate, see Boddice, “Manliness.” While Mill may not have agreed with Helen on all details, he was clearly on the Freeman-Taylor side of the debate. He refers to her piece, though without stating his own views, in correspondence with John Elliot Cairnes (“Letter 1532,” XVII.1701). [↑](#endnote-ref-56)
57. McCloskey (“Mill’s Liberalism,” 154) considers this “Mill’s most convincing account of the state’s right to punish cruelty to animals” but also an “illiberal suggestion.” [↑](#endnote-ref-57)
58. At least, so I suggested in Saunders, “Reformulating,” 1019. [↑](#endnote-ref-58)
59. Brown, “Liberty and Morality,” 136; Rawls, *Lectures on the History of Political Philosophy*, 290-91. [↑](#endnote-ref-59)
60. Turner suggests “the harm principle is merely an antipaternalism principle” (“‘Harm’ and Mill’s Harm Principle,” 301). Similarly, Jacobson takes it that Mill’s main aim is to exclude paternalism (and moralism) and therefore concludes that the harm principle is “better stated in terms of harm rather than self-protection” (“Liberty, Speech, and the Free Society,” 289). However, these interpretations require us to dismiss many things that Mill wrote as careless overstatements. [↑](#endnote-ref-60)
61. Mill generally opposes such restrictions, though he does allow for certain prohibitions on indecency (*Liberty*, XVIII.295-96). See Waldron, “Moral Distress,” 421. As Miller observes, we cannot eradicate social pressure without eradicating society (“‘We May Stand Aloof’,” 472). [↑](#endnote-ref-61)
62. Hansson, “Circle(s) of Liberty,” 737–39; Jacobson, “Liberty, Speech, and the Free Society;” Turner, “‘Harm’ and Mill’s Harm Principle;” Wilkinson, “Social Pressure,” 220. [↑](#endnote-ref-62)
63. Turner, “‘Harm’ and Mill’s Harm Principle,” 320. [↑](#endnote-ref-63)
64. Although, as various commentators have noted, Mill’s understanding of freedom is not straightforwardly negative. See Hansson, “Circle(s) of Liberty,” 741–44; Riley, “Purely Private Matters. Part II,” 29; Westmoreland, “The Liberty of the Liberty Principle.” [↑](#endnote-ref-64)
65. Hansson, “Circle(s) of Liberty,” 748. [↑](#endnote-ref-65)
66. Honderich, “Morality-Dependent Harms,” 510. [↑](#endnote-ref-66)
67. This need not depend on interpersonal aggregation, of the sort discussed by Norcross (“Great Harms”) but rejected by many non-consequentialists. If something is a matter of near indifference to me, then there may even be *one* other person whose offense outweighs my interest. [↑](#endnote-ref-67)
68. See note 42, above. [↑](#endnote-ref-68)
69. I have been unable to find any indication of Mill’s views on vegetarianism, though his household bills include beef (“Letter 118,” XIV.134 and “Letter 119,” XIV.135). Nonetheless, his arguments against Whewell were noted approvingly in *The Dietetic Reformer and Vegetarian Messenger* (J.B., “The Rights of Animals”). I am grateful to James Gregory for correspondence on this issue. [↑](#endnote-ref-69)
70. If it does make any difference, it might count *against* interference with the religious. Mark Tunick, “Unassimilated Subjects,” argues that Mill might have exempted cultural practices from punishment. However, this is a matter of whether society should actually interfere, not whether it has the jurisdiction to do so, which is the concern here. [↑](#endnote-ref-70)
71. Mill’s views on sex were influenced by both his Malthusianism and concern for women’s equality, but he was often critical of sexual indulgence or intemperance, even without reproduction. For instance, in an 1854 diary entry, Mill suggested that “the animal instinct of sex” occupied an “absurdly disproportionate place” in human life (“March 26,” XXVII.664). For further discussion, see Larsen, *A Secular Life*, 4–5 and 105–106. [↑](#endnote-ref-71)
72. Mill was well aware that the interests of the voiceless are prone to being neglected; see his arguments for extending the franchise to workers (*Considerations*, XIX.405) and women (*Considerations*, XIX.479ff). [↑](#endnote-ref-72)
73. Cf. Robinson, “On Being Cruel.” [↑](#endnote-ref-73)
74. For instance, “Governments must be made for human beings as they are, or as they are capable of speedily becoming” (*Considerations*, XIX.445) and “laws and institutions require to be adapted, not to good men, but to bad” (*Subjection*, XXI.287). [↑](#endnote-ref-74)
75. See also his remarks that “there are few exceptions, or rather none at all, to the principle that all men who have power will infallibly abuse it” (“Securities for Good Government,” XXII.63) and “When power is given which may be easily abused, we ought always to presume that it will be abused” (“Contagious Diseases,” XXI.352). For interpretations of *On Liberty* that emphasize this pessimism, see Messina, “Liberalism of Fear” and Parmet, “Quarantine.” [↑](#endnote-ref-75)
76. I thank an anonymous referee for prompting me to address this hypothesis more explicitly. [↑](#endnote-ref-76)
77. The *Collected Works* reprints the 7th edition of 1871 (“Textual Introduction,” II.lxxx), but the first edition was published in 1848. [↑](#endnote-ref-77)
78. Acknowledgments: I have discussed related issues with too many people to recall, but I am particularly grateful to Piers Norris Turner, to James Gregory for correspondence regarding Victorian vegetarianism, and to Eloise Harding and the anonymous reviewers for written comments. [↑](#endnote-ref-78)