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# John Stuart Mill's Passage on Pimps and the Limits on Free Speech

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## Abstract

Mill didn't resolve this puzzle: if prostitution must be tolerated according to his principle of liberty as it doesn't non-consensually harm others, why punish the accessory – the pimp? Yet in *On Liberty's* passage on pimps (CW 18:296–7) Mill seriously considers restricting pimps' speech for reasons other than preventing harm: pimps' speech undermines decisional autonomy for purposes the state regards as immoral, and in response the state may use coercion to counteract such immoral influences. In light of this, I argue that we need to rethink the standard view that Mill opposes restrictions on speech that does not harm others.

## I. Introduction

John Stuart Mill was vexed by a puzzle he didn't resolve: “should a person be free to be a pimp” (OL, CW 18:296)?<sup>1</sup> In *On Liberty* Mill defends a ‘principle of liberty’, often referred to as the ‘harm principle’, which in its initial formulation holds 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. His own good, either physical or moral, is not a sufficient warrant” (CW 18:223). Mill later clarifies this ‘harm-to-others’ provision: to regard an action as harming others, and thereby moving it from the sphere of protected self-regarding action to the “province ... of morality or law” (CW 18:282), it should cause “definite damage, or a definite risk of damage” or “perceptible hurt to [an] assignable individual except [one]self”; and injure “the interests” of another “which [ought] to be considered as rights.”<sup>2</sup> Mill supports the principle of liberty because it promotes individuality, the value of which he defends at length in chapter 3 of *On Liberty*. As part of that discussion Mill expresses how greatly he values what we now refer to as ‘decisional autonomy’: the ability of individuals to make

<sup>1</sup>CW refers to J. S. Mill, *Collected Works of John Stuart Mill*, ed. J. M. Robson (Toronto: University of Toronto Press, 1963–91). Cited as volume: page. OL refers to *On Liberty*, PPE to *Principles of Political Economy*, and U to *Utilitarianism*.

<sup>2</sup>OL, CW 18:282, 276; Cf. J. C. Rees, A Re-Reading of Mill on Liberty, *Political Studies* 8.2 (1960), 113–29; D. Brink, Mill's Deliberative Utilitarianism, *Philosophy and Public Affairs* 21.1 (1992), 67–103, at 85. But see P. Turner, ‘Harm’ and Mill's Harm Principle, *Ethics* 124.2 (2014), 299–326.

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decisions for themselves without needing the approval of and unhindered by the coercive interference of others. In one of *On Liberty*'s most memorable passages Mill writes: "if a person possesses any tolerable amount of common sense and experience, his own mode of laying out his existence is the best, not because it is the best in itself, but because it is his own mode" (OL, CW 18:270). The liberty Mill's principle allows us includes the liberty, if we are competent adults, to knowingly and voluntarily choose to do what may be bad for us, so long as we don't harm others. For Mill, the sphere of conduct we should be at liberty to engage in includes not just conduct "which affects only [my]self" – it includes conduct which, if it "also affects others," does so "only with their [c]onsent" (CW 18:225). This 'consent' provision is why Mill says "fornication" – sex outside of marriage, even with a prostitute – "must be tolerated" (OL, CW 18:296). While your having sex with someone else involves another person, it belongs in the self-regarding sphere of protected actions if the act is consensual. In his diary Mill writes: "What any persons may freely do with respect to sexual relations should be deemed to be an unimportant and purely private matter, which concerns no one but themselves."<sup>3</sup> Consensual sex being self-regarding, Mill wonders why we should punish "the accessory" – the pimp who encourages and facilitates the arrangement between prostitute and client – when the "principal" – the prostitute – "is (and must be) allowed to go free" (OL, CW 18:297).

Yet Mill says there are arguments with considerable force for punishing pimps, and he does "not venture to decide" whether these arguments suffice (OL, CW 18:297). What arguments could have force? The ones Mill lays out in *On Liberty* have gaping holes which in section II I attempt to fill by presenting three arguments Mill could have in mind given positions he takes in *On Liberty* and other works. First, Mill conceivably could think pimps harm others after all, if they were to exert power on the client or prostitute to coerce them into engaging in non-consensual unsafe sex that could cause them definite damage, in which case state interference could be warranted by the principle of liberty's 'harm-to-others' provision. Second, Mill could think that even if no harm would result – no definite damage or perceptible hurt – still, by exercising power to manipulate the prostitute or client the pimp would undermine their decisional autonomy for reasons other than to prevent harm to others, which the principle of liberty prohibits. While the principle of liberty is typically seen as a limit on whom the state or society may punish – only those who harm others – it could also *authorize* punishment of individuals whose exercise of power against another's will for reasons other than to prevent harm would violate the principle, regardless of whether the exercise of power could itself harm others. I call this the 'undermine decisional autonomy' argument.

A third argument for punishing pimps that Mill suggests is that even if pimps do not harm others, they exert immoral influence that the state may counteract. It might seem shocking to suggest that Mill would entertain this argument, given that he explicitly rejects 'legal moralism', or the view that the state may punish immoral but harmless self-regarding activity.<sup>4</sup> Mill's 'harm-to-others' provision says that the state may exercise coercive power such as punishment *only* to prevent harm to others. There would be no conflict with that provision if Mill merely defended state-sponsored exhortations against pimping, as opposed to coercive prohibitions. It is well recognized that Mill thinks the

<sup>3</sup>CW 27:664; cited in J. Riley, Is Mill an Illiberal Utilitarian?, *Ethics* 125.3 (2015), 781–96, at 792. One might think the prostitute's sex acts harm innocent third parties, but Mill rejects that view, see section II.

<sup>4</sup>J. Feinberg, *Harm to Others* (New York: Oxford University Press, 1984), 12 (defining legal moralism).

state may non-coercively discourage even harmless conduct in order to promote moral progress by favoring some kinds of conduct and refusing to support others.<sup>5</sup> But if Mill endorsed legal punishment of pimps solely to counteract their immoral influence, even if pimps don't harm others by causing or risking definite damage, his position would be at odds with the 'harm-to-others' provision, a point I return to towards the end of section II.

Some may resist the idea that Mill would even consider punishing harmless immorality, precisely because doing so would violate Mill's harm-to-others provision. They might explain Mill's apparent willingness to punish pimps by insisting that if pimps violate your decisional autonomy, that counts as harming you even if they would cause you no definite damage or perceptible hurt.<sup>6</sup> I reject that approach for two reasons. First, stretching the concept of harm so wide glosses over an important distinction between harming someone by diminishing their well-being in definite ways, and restricting their liberty to choose for themselves in ways that not only do not harm but may even benefit them. Consider Mill's 'bridge' example (OL, CW 18:294). Mill says that I may forcibly seize you to keep you from crossing a bridge known to be unsafe, but only if there is no time to warn you of the danger you may be unaware of. In doing so I don't really infringe upon your liberty. But if I seize you though I could have warned you, he suggests I do undermine your decisional autonomy. In the latter case, I may wrong you, but apart from unlikely scenarios such as that I keep you from preventing some peril, I haven't harmed you – I may even have saved your life. If we expand the concept of harm to cover cases where no definite damage results, we ignore how the principle of liberty may warrant the coercive exercise of power to prevent us not just from harming others, but from unjustifiably undermining others' decisional autonomy. Arthur Ripstein takes a similar position. He argues that Mill's harm principle fails to account for why we may punish harmless trespasses.<sup>7</sup> The correct explanation, on his view, is that the trespasser who causes no definite damage or perceptible hurt violates what Ripstein calls the sovereignty principle – that “no one else gets to tell you what to do.” Saying the trespasser, or more generally someone who undermines decisional autonomy, harms, in cases where no definite damage or perceptible hurt is risked, “is just a misleading gloss on [the sovereignty] principle.”<sup>8</sup> Ripstein illustrates the uneasiness of stretching harm to cover injury-free violations of autonomy with the example of a dentist who surreptitiously fluoridates your teeth against your manifest preferences. The dentist wrongs you by undermining your decisional autonomy in violation of Mill's principle of liberty (or Ripstein's sovereignty principle) but not by harming you, for you may even benefit from the treatment (234). A second reason I reject the argument that to undermine decisional autonomy is necessarily to 'harm' is that to refer to harmless trespasses as harm is an unnatural use of 'harm'. That Mill would not flout ordinary usage and say the dentist (or the pimp) harms is supported by the passages, cited earlier, in which he says harm involves definite damage, perceptible hurt, and injury to interests which ought to be regarded as rights.<sup>9</sup>

<sup>5</sup>See J. Skorupski, *The Ethical Content of Liberal Law*. In *Ethical Explorations* (New York: Oxford University Press, 1999), 223–24 (Mill rejects “persuasive neutrality” while defending “permissive neutrality”); and the works cited in Section II.

<sup>6</sup>Cf. J. Riley, *Routledge Guidebook to Mill's On Liberty* (New York: Routledge, 2015), 221.

<sup>7</sup>A. Ripstein, *Beyond the Harm Principle, Philosophy and Public Affairs* 34.3 (2006), 215–45.

<sup>8</sup>Ripstein, 231, 220 n. 4; cf. 217, 219, 227 n. 17, 232 n. 26.

<sup>9</sup>John Gray argues that for Mill, autonomy is among man's most vital interests – see *Mill on Liberty: A Defense* (New York: Routledge, 1996), 52 – suggesting that Mill could consider violating autonomy as itself harming. Riley explicitly argues that for Mill, any coercive interference with another person's action “always

In Section II I show that Mill seriously considers restricting pimps' speech for reasons other than preventing harm: their speech may undermine decisional autonomy for purposes the state regards as immoral, and the state may use coercion to counteract such immoral influences. In section III I consider the implications of Mill's passage on pimps for our understanding of Mill's position on freedom of speech. Mill has been understood to oppose bans on speech unless the speech incites harmful, overt acts.<sup>10</sup> Melina Constantine Bell argues that for Mill, social coercion is not justified to restrict harmless speech, no matter how offensive.<sup>11</sup> Even theorists who disagree about whether Mill thinks speech is generally other-regarding agree that Mill would not restrict speech except in exceptional cases where direct harm results. Jonathan Riley argues that speech is other-regarding and in principle could be banned if it directly harms others; but, he continues, just as Mill appeals to a principle of laissez-faire to keep trade unrestricted even though it is a competition where winners harm losers, Mill would keep speech free even though it can harm.<sup>12</sup> Dale Miller, in contrast, argues that Mill seems to regard discussion as self-regarding, and that Mill's defense of free speech, which allows for time, place and manner restrictions but not censorship, is continuous with his principle of liberty.<sup>13</sup> All these theorists agree that Mill would not censor harmless speech, though they get to that conclusion by different paths. I argue that Mill's pimp passage, which expresses his willingness to restrict the speech of and even punish pimps for reasons other than preventing harm, requires us to reevaluate that consensus view.

## II. The arguments Mill considers for and against punishing pimps

### *What Mill says*

Mill discusses pimps early in chapter 5 ('Applications') of *On Liberty*. While he regards consensual sex with a prostitute as a self-regarding act that should be free from coercive interference, he suggests that soliciting might not be. "Trade is a social act" that "affects the interest of other persons" (OL, CW 18:293), as is giving advice or offering inducements (CW 18:296), and therefore the pimp's efforts to facilitate and encourage the sale of sex may be "supposed amenable to social control" (CW 18:296). But Mill then says, "a little reflection corrects the first impression." The issue is of a sort that "lie[s] on the

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causes non-consensual perceptible damage" or harm, and as evidence he cites U, CW 10:255: "wrongful interference with each other's [self-regarding] freedom' is one of the wrongful harms which society properly recognizes and forbids" – Riley, *Routledge Guidebook*, 221 (Gray also cites this passage, at 51). Mill gives no example of what he means here by wrongful interference, and labels it as "hurt," not "harm"; but even if he meant this as "perceptible hurt," which he equates with "harm" in OL, or a "positive hurt" (U, CW 10:256, my emphasis), this passage is thin evidence that Mill would conflate forcibly turning back the person about to cross an unsafe bridge with, say, pushing them over.

<sup>10</sup>R. Cohen-Almagor, J. S. Mill's Boundaries of Freedom of Expression: A Critique, *Philosophy* 92.4 (2017), 565–96, at 568; D. Jacobson, Mill on Liberty, Speech, and the Free Society, *Philosophy and Public Affairs* 29.3 (2000), 276–309.

<sup>11</sup>M. C. Bell, John Stuart Mill's Harm Principle and Free Speech: Expanding the Notion of Harm, *Utilitas* 33.2 (2021), 162–79, at 162, 178.

<sup>12</sup>J. Riley, J. S. Mill's Doctrine of Freedom of Expression, *Utilitas* 17.2 (2005), 148–49.

<sup>13</sup>D. Miller, The Place of 'The Liberty of Thought and Discussion' in *On Liberty*, *Utilitas* 33.2 (2021), 133–49, at 137–38. Miller notes that Mill may greatly overstate his case that discussion is self-regarding (148).

exact boundary line between two principles, and it is not at once apparent to which of the two it properly belongs” (CW 18:296).

One might think Mill refers here to the two corollaries of the principle of liberty that he had just laid out in the opening paragraphs of chapter 5: self-regarding acts should not be interfered with, while other-regarding acts that could harm others may be restricted to protect society (CW 18:292). But had he clearly meant them, why would Mill refer to “two principles” and not “*the* two principles” he had just identified? What he proceeds to say in the pimp passage suggests that he may have something else in mind. One of the principles he seems to mean, and describes as “on the side of toleration,” is the principle of liberty. If, as the harm principle declares, people should be free to engage in activity that does not harm others, they must be “free to consult with one another about what is fit to be done: to exchange opinions, and give and receive suggestions. Whatever it is permitted to do, it must be permitted to advise to do.” Prostitution being legal, a pimp should be allowed to “persuade” (CW 18:296) people to trade in sex.

Mill does not name the competing principle that supports the opposite position, but based on what he proceeds to say in the pimp passage, one candidate is a principle that the state may properly counteract immoral influences. Here is what Mill writes:

The question is doubtful [as to whether pimps should be free to give advice to prostitutes and customers, instigating them to trade in sex], only when the instigator derives a personal benefit from his advice; when he makes it his occupation, for subsistence or pecuniary gain, to promote what society and the State consider to be an evil. Then, indeed, a new element of complication is introduced: namely, the existence of classes of persons with an interest opposed to what is considered as the public weal, and whose mode of living is grounded on the counteraction of it. (CW 18:296)

As Mill continues, he also appeals to the value of decisional autonomy and suggests it works together with the principle that the state may counteract immoral influences. Mill writes:

[Supposing it is at least a disputable question that the conduct being encouraged is bad, the public or the State] cannot be acting wrongly in endeavoring *to exclude the influence of solicitations* which are not disinterested, of instigators who cannot possibly be impartial – who have a direct personal interest on one side, and that side the one *which the state believes to be wrong*, and who confessedly promote it for personal objects only. There can surely, it may be urged, be nothing lost, no sacrifice of good, by so ordering matters that persons shall make their election [of what to do] either wisely or foolishly, on their own prompting, *as free as possible from the arts of persons who stimulate their inclinations for interested purposes of their own*. (CW 18:297, my emphasis)

Mill is concerned here with those who “stimulate” the inclinations – which could involve not merely fanning the flames of an existing desire but generating it in the first place, a point I return to later. The argument Mill feels the force of is that where the state believes an activity is immoral and contrary to the common good, while the persuasive arts of one or a few individuals might pose no threat to achieving that good, those of a class of people could. If they are motivated by their own

self-interest, their “influences” can be “excluded”: doing so would both protect decisional autonomy and promote moral progress.

The passage raises several questions. Why might it matter whether the person giving advice has an economic interest in doing so? If Mill relies on his harm principle, why should it matter whether the pimp manipulates other people’s choices if those choices are self-regarding and would not harm others? Nor does Mill explain why, according to the principle that the state may counteract immoral influences, the state should disallow promptings to immoral conduct only by a class of economically motivated profiteers, and not, say, by advocates of free love who selflessly, and acting alone, simply want to encourage fornication. I now consider how we might fill the holes in the case Mill presents in favor of punishing pimps.

### *Pimps and the principle of liberty*

Before turning to the two arguments for punishing pimps that Mill most likely has in mind in his pimp passage, I first consider what may seem like a more intuitive argument – that pimps harm others. In light of what Mill says elsewhere, however, it is actually the least promising account of what Mill has in mind. Recall that for Mill, to harm is to cause or risk definite damage or perceptible hurt, and to injure interests that ought to be regarded as rights. In addition, if you voluntarily consent to my acting in ways that may injure you, then I cannot be said to harm you (OL, CW 18:225). When a prostitute has sex with customers, she can transmit a sexual disease to them, but she does not harm them insofar as they voluntarily consent to the sex – they assume the risk. We might think that the pimp or the prostitute harms innocent third parties who later receive a disease from the prostitute’s customer. In his testimony against the Contagious Diseases Acts (1871), which would require suspected prostitutes to be examined and detained if found to have a sexually transmitted disease so that the disease would not spread to the soldiers who were their customers, or to the soldiers’ wives, Mill contrasts the innocent wives who do not knowingly undertake the risk of acquiring a disease, and can be said to be harmed, with the soldiers, who did consent and cannot be said to be harmed. But Mill says that any harm to the innocent third party is caused not by the prostitute (or the pimp) but by the soldier (CW 21:362).<sup>14</sup>

If decisions to have sex on the part of either prostitutes or their customers were non-consensual due to pressure exerted by pimps, and as a result they were exposed to a sexually transmitted disease, pimps might be said to create a risk of definite damage that constitutes harm to others, which could warrant their punishment.<sup>15</sup> While the harm principle permits me to injure myself, it could warrant punishment of those who coerced me to do so. Perhaps Mill could think that there are background

<sup>14</sup>On David Lyons’ interpretation, the harm principle could warrant punishment of the prostitute to ‘prevent harm’ to a third party – see Liberty and Harm to Others. In *Mill’s on Liberty: Critical Essays*, ed. Gerald Dworkin (Lanham, MD: Rowman and Littlefield, 1997); cf. W. Donner, *The Liberal Self: J. S. Mill’s Moral and Political Philosophy* (Ithaca: Cornell University Press, 1991), 197. But on an interpretation which I find more convincing, and which Mill’s testimony on the Contagious Diseases Acts supports, it would not, as it warrants punishment only of someone whose actions proximately cause harm: see D. G. Brown, Mill on Liberty and Morality, *The Philosophical Review* 81.2 (1972), 133–58; cf. Miller, Place of Liberty, 135; and author’s work in progress.

<sup>15</sup>The harm principle warrants but does not require the use of coercion, and Mill might use the principle of utility to decide whether coercion should be used (OL, CW 18:225; cf. Turner, 2014). I make a similar point at the end of section III.

inequalities between the sexes that force women to become prostitutes.<sup>16</sup> Some historians have pointed to evidence that women in eighteenth- and nineteenth-century London became prostitutes largely for economic reasons that may amount to coercion.<sup>17</sup> David Dyzenhaus, relying on Mill's discussion of these inequalities in *Subjection of Women*, argues that Mill would be open to bans on pornography on the ground that women do not genuinely choose to contribute to its production.<sup>18</sup>

But in his testimony on the Contagious Diseases Acts Mill dismisses the coercive force of background inequalities when he says that women "voluntarily" choose the "degrading" life of prostitution (CW 21:368). (In section III I consider whether pimps still could hold power over prostitutes so that their speech would be a coercive exercise of that power.) Even if Mill did recognize these background inequalities as a source of coercion, for him to take the 'harm-to-others' argument seriously here he would have to think that the pimp coerced the prostitute or their customer into performing a specific sexual act that could transmit disease – into having unsafe, unprotected sex – and it seems implausible that Mill has this in mind. Moreover, according to the logic of the 'harm-to-others' argument one wonders why it would matter that the pimp acts for self-interested pecuniary motives: all that should matter is whether the pimp caused or risked causing non-consensual harm to others.

Another version of the argument Mill considers for punishing pimps is the 'undermine decisional autonomy' argument laid out in section I. Regardless of whether the pimp's actions caused harm, Mill would be concerned about pimps wielding undue influence that undermines the decisional autonomy of those they advise or instigate. Mill says this in the pimp passage, without using the term 'decisional autonomy'. Appealing to the "reasons on which the principle of individual liberty is grounded," he writes, "people must be allowed, in whatever concerns only themselves, to act as seems best to themselves" as well as "be free to consult with another," "exchange opinions," and "give and receive suggestions" (CW 18:296). According to the 'undermine decisional autonomy' argument, Mill's concern would be not with the substance of the decision, but with the process: whether the decision to have paid-for sex reflects the person's own desires, interests, and consideration of reasons for and against, or instead resulted from manipulation by other interested parties. Mill might see coercive state interference as justified to counteract manipulative devices used by pimps that frustrate decisional autonomy. As I will argue in section III, Mill recognizes how some means of influence may amount to coercion and be illegitimate, though he struggles to draw a line between those that are and aren't legitimate. Assuming the pimp's influence amounts to a coercive exercise of power, then in restraining the pimp the state would be enforcing the principle of liberty, which warrants restrictions not only on conduct that harms others, but on the exercise of power over others against their will for reasons other than preventing harm.

<sup>16</sup>Mill tended to assume prostitutes were female and ignored or was unaware of the market for males who sold sex: see R. Norton, *Mother Clap's Molly House: The Gay Subculture in England 1700–1830* (London: GMP, 1992); P. Griffiths, *The Structure of Prostitution in Elizabethan London, Continuity and Change* 8.1 (1993), 39–63, at 43–44.

<sup>17</sup>J. Laite, *A Global History of Prostitution: London, in Selling Sex in the City: A Global History of Prostitution, 1600s–2000s*, ed. Magaly Rodriguez Garcia et al., 117–37 (Leiden: Brill, 2017), 116; J. Laite, *Common Prostitutes and Ordinary Citizens: Commercial Sex in London 1885–1960* (New York: Palgrave Macmillan, 2012), 97; but see D. A. Logan, *Fallenness in Victorian Women's Writing* (Columbia: University of Missouri Press, 1998), 37.

<sup>18</sup>D. Dyzenhaus, *John Stuart Mill and the Harm of Pornography*, *Ethics* 102.3 (1992), 534–51.

### Pimping as promoting immorality

The other argument Mill suggests for restricting the liberty of pimps is to ‘counteract immoral influence’. Mill thinks prostitution is immoral, or “blamable”: he refers to it as a “vicious indulgence” and says that legislation that legitimizes it tends to do “moral injury.”<sup>19</sup> While Mill defends decisional autonomy rights for adults that permit them to engage in immoral activity that does not harm others, in the pimp passage he suggests that the state may use coercion to “exclude the influence” of those steering us to morally bad choices, and that this may even involve “fining or imprisoning the procurer” (CW 18:297).

Mill defends an individual’s liberty to pursue “experiments in living” that defy the “despotism of custom” and “public opinion” (OL, CW 18:281, 272–4). By enforcing his principle of liberty we ensure that people who make choices regarding their own affairs aren’t forced to conform to the prevailing social morality. Even so, Mill envisions the state as promoting moral behavior. In his biography of Mill, Timothy Larsen argues that “Mill was a moralist at heart,” particularly in his personal life. Larsen notes how Mill regarded sex as an “indulgence” and favored abstinence, to the point of resenting his father’s “merely carnal” marriage that resulted in nine children but little intellectual stimulation.<sup>20</sup> Mill’s moralism is also a key component of his political theory. In his testimony against the Contagious Diseases Acts Mill opposed any measures that would license prostitution and thereby legitimize an immoral practice.<sup>21</sup> More generally, Mill thinks it appropriate to use the law to improve people’s character and uplift their preferences.<sup>22</sup> As one example, Mill defends state subsidies to support literature on the ground that government has a grand purpose of “advancing the progress of civilization” (Newspaper Writings, CW 22:321–3; cf. CW 25:1156–7). Mill also thinks individuals may impose non-coercive “natural penalties” such as expressing contempt for indecent or immoral behavior.<sup>23</sup>

It is important to understand the utilitarian grounding of Mill’s moralism. The young Mill was influenced by his utilitarian mentor and godfather Jeremy Bentham, but came to develop his own interpretation of the principle of utility that differs starkly from Bentham’s. In *Utilitarianism* Mill agrees that we should seek, as for Bentham, the “greatest amount of happiness altogether” (CW 10:213) but, unlike for Bentham, for

<sup>19</sup>The Contagious Diseases Acts, CW 21:356 (“vicious indulgence”), 371 (the Acts’ legitimation of prostitution does a “moral injury”); OL, CW 18:296 (implying it is “blamable”); and Mill’s letter to Lord Amberley of Feb. 2, 1870 in CW 17:1693.

<sup>20</sup>T. Larsen, *J. S. Mill: A Secular Life* (Oxford: Oxford University Press, 2018), 105–6, 4–5.

<sup>21</sup>CW 21:358–9, 354; S. Collini, Introduction. In CW 21:xxxviii.

<sup>22</sup>M. S. McPherson, Mill’s Moral Theory and the Problem of Preference Change, *Ethics* 92.2 (1982), 252–273; cf. J. Hamburger, *John Stuart Mill on Liberty and Control* (Princeton: Princeton University Press, 1999); L. Raeder, *John Stuart Mill and the Religion of Humanity* (Columbia: University of Missouri Press, 2002); B. Semmel, *J. S. Mill and the Pursuit of Virtue* (New Haven: Yale University Press, 1984); R. Vernon, Beyond the Harm Principle: Mill and Censorship. In *Mill and the Moral Character of Liberalism*, ed. E. Eisenach, 115–29 (University Park, PA: Pennsylvania State University Press, 1998), 128; J. Robson, Civilization and Culture as Moral Concepts. In *The Cambridge Companion to Mill*, ed. John Skorupski, 338–71 (Cambridge: Cambridge University Press, 1998); H. S. Jones, John Stuart Mill as Moralist, *Journal of the History of Ideas* 53.2 (1992), 287–308.

<sup>23</sup>OL, CW 18:278, 282; cf. G. Claeys, Mill, Moral Suasion, and Coercion. In *Ethical Citizenship*, ed. T. Brooks (London: Palgrave, 2014); D. Threet, Mill’s Social Pressure Puzzle, *Social Theory and Practice* 44.4 (2018), 539–65; T. Schramme, Properly a Subject of Contempt: The Role of Natural Penalties in Mill’s Liberal Thought, *Journal of Social Philosophy* 51.3 (2020), 391–409; C. L. Ten, Was Mill a Liberal? *Politics, Philosophy and Economics* 1.3 (2002), 355–70.



Mill happiness involves a pursuit of “higher pleasures” in which a “cultivated mind” will take great interest.<sup>24</sup> It involves pursuing not one’s own self-interest, but the interests of “mankind collectively” – of equally considering “the interests of every individual” disinterestedly (CW 10:218, 249). The pursuit of social utility so understood is a pursuit of moral progress.

The ‘counteract immoral influence’ argument that Mill relates in the pimp passage is not a call for the state to limit liberty to promote moral progress whenever it wants. Rather, it works in tandem with the principle of liberty – not that principle’s ‘harm-to-others’ provision, with which it is in tension, but its defense of decisional autonomy. Mill thinks that every person “rightly brought up” in a “civilized country” can have a sincere interest in the public good and in pursuing higher pleasures. He lists two obstacles: “bad laws” and “subjection to the will of others” (U, CW 10:216). It is the latter obstacle that he focuses on in the pimp passage. Mill says there may be no “sacrifice of good” when the state, believing that persons such as pimps instigate bad conduct, ensures that when people choose, no matter how wisely or foolishly, they are free from “the arts of [such] persons,” who, with personal interests on the side the state believes to be wrong, “stimulate their inclinations for interested purposes of their own” (OL, CW 18:297). Potential prostitutes and their clients may be properly raised and educated; but even educated adults can be manipulated by powerful forces. The ‘counteract immoral influence’ argument may be triggered when the pimp violates their decisional autonomy in steering them to what the state regards as bad choices. It appeals, though, not to the intrinsic value of decisional autonomy but to the social utility of preventing those bad choices. The ‘undermine decisional autonomy’ argument could support restrictions on coercive influence even if the coercion promoted the public good, whereas the ‘counteract immoral influence’ argument might not.

One might wonder why good is advanced when we let adults make foolish choices so long as they do so voluntarily, and so we must remember that Mill’s commitment to moral progress contends with his commitment to individuality which, assuming that we have “any tolerable amount of common sense and experience” (OL, CW 18:270), and are adults (CW 18:224), requires that we be free to exercise decisional autonomy and challenge conventional morality. One might also wonder why we should trust the state’s judgment of what constitutes bad choices. While I can’t provide a detailed account of how Mill might respond, I expect he would note how the state governs with accountable representatives who are less likely to be driven by self-interest.<sup>25</sup>

It is because pimps as a class pose a special threat to decisional autonomy and moral progress that in the pimp passage Mill targets them rather than the lone advocate of free love who also encourages fornication. Decisional autonomy faces a greater threat from coordinated efforts of a class with an interest in devoting their resources to immoral ends.<sup>26</sup> Mill addresses the threats of coordinated influence in his lengthy book review *Thornton on Labour and its Claims*, published in 1869 in the *Fortnightly Review*. In criticizing England’s use of the law of conspiracy against trade unions, Thornton argued that anything that is not illegal for an individual should not be illegal if done in concert

<sup>24</sup>CW 10:212, 216; J. Gray, Introduction. In J. S. Mill: *On Liberty and other Essays*, ed. J. Gray, vii–xxx (New York: Oxford University Press, 1991), xii–xiii.

<sup>25</sup>The issue is complicated: Mill is aware that representatives can be self-interested, see e.g. Note on the Newspapers, CW 6:213, 233–34.

<sup>26</sup>Referring to London in 1907, Laite says pimps formed a “network of men” who could act collectively (Laite, *Common Prostitutes*, 95; cf. Griffiths, *Structure of Prostitution*, 54).

by more than one person. While Mill generally agrees with Thornton's criticism of conspiracy law, he disagrees on one particular point: the number of agents may well alter the character of an act (CW 5:658). As an example, Mill says a state may permit dueling for an individual redressing a personal injury but refuse to allow "a band of assailants" to set upon a single person (CW 5:659).

To summarize: Mill is indecisive about whether pimping should be legal. On the one hand, how can we punish someone for encouraging activity that itself is and should be permitted? But I have laid out three arguments for the contrary position Mill feels the force of: (1) by exerting pressure so as to coerce the prostitute or client to engage in unsafe sex, the pimp may violate the 'harm-to-others' provision of the principle of liberty; (2) by exerting undue pressure the pimp undermines their decisional autonomy for reasons other than to prevent harm to others, also in violation of the principle of liberty; and (3) the 'counteract immoral influence' argument – the pimp, in pressuring people to make substantively bad choices, encourages immorality, contrary to the state's efforts to promote moral progress. The pressure exerted by pimps might therefore be legitimately counteracted by legal or social measures, including coercive state power. While the first argument is a stretch, Mill's passage on pimps indicates that he takes seriously the latter two arguments, and that they work in tandem.

The 'undermine decisional autonomy' argument poses no challenge to standard readings of Mill as a defender of liberty, though I argued it does warrant restrictions on harmless conduct, a position some may resist for reasons I responded to in section I. The 'counteract immoral influence' argument, though working in tandem with the principle of liberty insofar as it is triggered by threats to decisional autonomy, is in tension with that principle's harm-to-others provision. If Mill *were* to settle on the view that pimps may be punished to promote moral progress though they do not harm others, his position would be the very 'legal moralism' that his 'harm-to-others' provision requires us to reject. The 'counteract immoral influence' argument, however, differs from a version of legal moralism that permits the state to limit liberty whenever it thought that doing so would achieve moral progress; it provides a positive reason for exercising power only when the principle of liberty is violated, as when pimps, without harming others, undermine their decisional autonomy.

All three arguments focus on the destructive tendency of the pimp's persuasive powers, and the conclusion they support, that we prohibit pimping, seems at odds with Mill's defense of free speech, a tension to which I now turn.

### III. Legitimate and improper means of persuasion

There are many ways to persuade someone to do something: provide relevant information or reasons, either as a neutral advisor or advocate; or use more forceful measures, such as threats, deceit, or incitement. Not all means are legitimate exercises of the right to free speech. Raphael Cohen-Almagor sees Mill as permitting all speech except speech that in fact (and not merely potentially) incites harmful or criminal action.<sup>27</sup> He identifies two cases in which Mill is willing to limit speech. One involves encouraging tyrannicide, which Mill discusses in a footnote to the opening paragraph of chapter 2 of *On Liberty*. Here Mill refers to the Government Press Prosecutions of 1858, which targeted a publisher who circulated an allegedly immoral doctrine that tyrannicide is lawful. Mill defends the press, saying there should be the "fullest liberty of professing and discussing [any] doctrine, however immoral it may be considered." However,

<sup>27</sup>Cohen-Almagor, *Mill's Boundaries*, 568.

Mill adds, “the instigation to [an immoral act], in a specific case, may be a proper subject of punishment, but only if an overt act has followed, and at least a probable connexion can be established between the act and the instigation” (CW 18:228).

Mill makes a similar point in the other case Cohen-Almagor focuses on, also from *On Liberty* – of inciting a mob’s fury against a corn-dealer:

Even opinions lose their immunity [from regulation], when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act. An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard. Acts [which unjustifiably] do harm to others, may be [controlled, when needful,] by the active interference of mankind. (CW 18:260)

Again, Mill’s position appears to be that advocacy to a general audience (“circulated through the press”) must be permitted, but not inciting to crime specific individuals (“delivered [to] an excited mob”). This conclusion is similar to the one reached by Daniel Jacobson who, focusing on these same two examples, argues that Mill draws the line between legitimate and illegitimate means of persuasion by permitting any speech, even harmful opinions, and prohibiting only conduct.<sup>28</sup>

One problem with Jacobson’s approach is that it may be difficult to distinguish speech and conduct. Thomas Scanlon considers any attempt to be a “serious mistake.”<sup>29</sup> But apart from this concern, Jacobson’s claim that Mill permits speech but not conduct doesn’t account for why Mill is open to punishing pimps: pimps are eligible to be punished because of their speech.

It is difficult to know the role pimps played in nineteenth-century England, or what Mill knew about their role.<sup>30</sup> A clear distinction was drawn between pimps and those who ran brothels or rented rooms to prostitutes.<sup>31</sup> In Elizabethan England, well before Mill’s time, pimps, or ‘he bawds’ or panders, were chiefly employed to bring in customers.<sup>32</sup> A pimp might also refer to an individual who lived off prostitutes; or who provided protection, transportation, or when prostitution was illegal, paid their fines or served as a lookout.<sup>33</sup> Pimps did more than merely persuade through speech. But they did use speech. Griffiths musters literary sources and court records in Elizabethan England to suggest that pimps would entice and allure using a “rhetoric of deceit, manipulation and cunning.” In one case a woman testified in court records to having been “persuaded” by a pimp with “fayre words and great promises,” and there are references to women being “tricked by a false promise of marriage.”<sup>34</sup> One

<sup>28</sup>Jacobson, Mill on Liberty.

<sup>29</sup>T. Scanlon, A Theory of Freedom of Expression, *Philosophy and Public Affairs* 1.2 (1972), 204–26, at 207.

<sup>30</sup>Griffiths admits that two sources he draws on aren’t completely reliable: literature, which might trick us into conflating fiction and real life; and court records, which can be spotty, and those testifying might give self-serving accounts (Griffiths, Structure of Prostitution, 51–3, 42–3; cf. Laite, *Common Prostitutes*, 94).

<sup>31</sup>Griffiths, Structure of Prostitution, 46; Laite, Global History, 113–14.

<sup>32</sup>Griffiths, Structure of Prostitution, 45.

<sup>33</sup>Laite, *Common Prostitutes*, 94–6; Griffiths, Structure of Prostitution, 43, 53.

<sup>34</sup>Griffiths, Structure of Prostitution, 46, 50.

pimp is said to have told a prostitute “it is better to do so then to steal.”<sup>35</sup> This suggests pimping involved persuasive speech.

What is most important, though, is that Mill *regarded* pimps as employing speech. In his passage on pimps he says they employ the “arts of stimulating and promoting”; they “give advice or offer inducements”; and the issue of whether they should be restricted concerns the right to “exchange opinions, and give and receive suggestions” (OL, CW 18:296). While pimps facilitate prostitution through acts such as serving as lookouts or paying fines, they solicit, advise, and persuade, and Mill is concerned with their use of speech to manipulate or control others. As noted earlier, Mill suggests that pimps “stimulate” the inclinations of the prostitute and client, which might involve not only inflaming preexisting desires – as does the inciter of an already excited mob – but generating them in the first place.

Mill seems open to prohibiting certain means of persuasion, such as incitement, not because it is ‘conduct not speech’, but because it undermines decisional autonomy, in some cases, as with incitement, resulting in harm or imminent lawless conduct, but in the case of pimps, because it sabotages positive moral influences even though it does not cause or risk causing the definite damage, injury, or perceptible hurt to others that counts as harming.

The position Mill seriously entertains in his pimp passage, that a line between legitimate and improper means of persuasion should be drawn based on whether speech undermines decisional autonomy, is essentially the position Thomas Scanlon lays out in articulating his ‘Millian Principle’ of freedom of expression. According to that principle, if I get you to believe an act is worth committing by pointing out reasons for acting, I am not responsible for what you proceed to do, because what I did is “superseded by the agent’s own judgment.”<sup>36</sup> Scanlon’s Millian principle fairly captures Mill’s position in the tyrannicide passage. There Mill says that newspapers must be permitted to publish all varieties of opinions to a general audience. Such opinion pieces might persuade some people to commit a crime if, reflecting on what they read, they choose to of their own accord; but they cannot coerce anyone in particular, and so Mill would not restrict such speech. A restriction on speech could be warranted, Mill may think, only if the speech manipulates or coerces someone to commit the act so that it is not “superseded by the agent’s own judgment.” For that to happen, Mill says there must be some “connection” between “act” and “instigation,” which plausibly entails a connection between speaker and listener, and that connection does not exist between an author of a newspaper opinion piece and their general readership. Mill’s concern with decisional autonomy also is evident in his discussion of the corn-dealer. In stipulating that the mob is “excited,” Mill suggests its members have a reduced capacity for rational deliberation and that the speaker may have interfered with their decisional autonomy by manipulating them. If the inciter induced the mob to become excited and then manipulated them – as Mill may think a pimp does – decisional autonomy would be undermined even more.

Cohen-Almagor, Jacobson, and others argue that Mill would prohibit conduct or speech only that overtly causes harm to others.<sup>37</sup> But Mill recognizes the threat

<sup>35</sup>P. Griffiths, *Lost Londons: Change, Crime, and Control in the Capital City, 1550–1660* (Cambridge: Cambridge University Press, 2008), 150.

<sup>36</sup>Scanlon, *Freedom of Expression*, 212; cf. 215–17; cf. Riley, *Mill’s Doctrine*, 150.

<sup>37</sup>Riley, *Mill’s Doctrine*; Bell, *Mill’s Harm Principle*; Miller, *Place of Liberty*; P. N. Turner, Introduction: Updating Mill on Free Speech, *Utilitas* 33.1 (2021), 125–32.

posed not only by harmful speech, but by speech that undermines decisional autonomy. Mill is of course reluctant to limit speech: he defends even false speech and invective on the ground that to suppress speech would be to risk silencing truth and deny us the opportunity to confront errors so that the truths we do adopt become heartfelt convictions rather than mere formal professions (OL, CW 18:228–29, 257–59). He recognizes speech as a positive force for moral progress in noting the importance of non-punitive “natural penalties” such as expressing contempt for those who act immorally.<sup>38</sup> But in his passage on pimps Mill says he may be open to restrictions on speech by self-interested parties that undermines decisional autonomy and sabotages positive moral influences even if it does not harm.

Mill’s concern with threats to decisional autonomy, even when no harm is caused, surfaces in other works. While Mill never provides an extended discussion of the distinction between legitimate and illegitimate means of persuasion or of what constitutes coercion or manipulation that undermines decisional autonomy, among his works we find discussion of examples in addition to the tyrannicide and corn-dealer cases.<sup>39</sup> Sometimes he says he hasn’t time to go deeper into the issue. Sometimes he provides helpful guidance. My point in turning to what Mill says is to show not that he settles on a convincing account, but that he does not. He refuses to adopt a simple rule such as ‘all speech is permitted except speech causing overt harm’.

One neglected category of speech that Mill addresses is advertising.<sup>40</sup> Mill recognizes advertisements’ importance for exercising decisional autonomy, which requires that our choices are not only voluntary but informed. In his published letters Mill indicates how he benefitted from advertisements to learn about new books to read, and advertised his own publications. But he also recognizes that because of the self-interested motivation for their speech we can’t trust that advertisers will voluntarily provide us with accurate and reliable information that will let us make choices that serve our own best interest rather than theirs. Decisional autonomy is valuable if our choices are informed;<sup>41</sup> it loses its value if we are manipulated by false information.

While recognizing the value of advertising as a source of information, Mill expresses concerns. In the two earliest editions of *Principles of Political Economy* Mill notes that an abolition of an advertising tax is less urgent given that the “abuse of advertising [is] quite as conspicuous as the use” (CW 3:861). In his essay *Endowments* (1869) Mill criticizes private schoolmasters who, in advertising their curriculum to parents, seek to maximize their own profits by selecting material not for its intrinsic merit but because it is what is “cared for by the general public” (CW 5:624–25). In *Chapters on Socialism* (1879) he suggests that advertising allows businesses to attract new, casual customers rather than maintain a reputation of honesty so they keep permanent customers, and may facilitate fraud (CW 5:731). Echoing Tocqueville, Mill notes in his review of *Democracy in America* that advertising can have a pernicious influence on our ability to appreciate the higher pleasures of life: when literature becomes a trade, the concern

<sup>38</sup>CW 18:278, 282; cf. Ten, Was Mill a Liberal?, 358–9; Schramme, Subject of Contempt, 394.

<sup>39</sup>I omit Mill’s discussions of the free will-determinism debate in Book VI, ch. 2 of *System of Logic* (CW 8:836–43), and ch. 26 of *An Examination of Sir William Hamilton’s Philosophy* (CW 9:441–67), as they don’t address the practical question of when persuasion becomes coercion.

<sup>40</sup>Riley mentions Mill’s concern about commercial advertising by the sex industries (Riley, Mill’s Doctrine, 158), but maintains that Mill would censor speech only where others may be harmed (165, 167, 173).

<sup>41</sup>Gray, *Mill on Liberty*, 105.

is with quantity and not quality, leading to a mass of “third and fourth-rate productions” (CW 18:180–1). And in *Spirit of the Age*, Mill notes that both lower and higher classes are just as susceptible as in the past to “imposture and charlatanerie”; despite our progress we are still liable “to be misled by sophisms and prejudices” (CW 22:232).

Mill explores the line between legitimate and improper means of persuasion in a few other places. In his essay *Centralisation* (1862), written for the *Edinburgh Review*, Mill distinguishes the “power of coercion and compulsion,” which he says is a “curse” and a “snare,” from the power to exert “moral and intellectual influence” (CW 19:610). What he means by the former becomes clearer when we see some of the examples which he provides in other works. He notes that by giving the husband the property of his wife, and compelling her to live with him, the law forces her to submit to whatever moral and physical tyranny the husband may choose to inflict, and so there is “some ground for regarding every act done by her as done under coercion” (PPE, CW 3:953). In *Thoughts on Parliamentary Reform* Mill gives the example of landlords and employers who could coerce their tenants or employees to vote a certain way (CW 19:332; cf. CW 19:491). In these cases, the power that undercuts decisional autonomy comes from one’s place in a social or economic relation. Mill doesn’t specify what counts as holding power over another in these ways, giving only examples; but if pimps met the criteria, one could argue that speech by pimps may sometimes constitute an exercise of coercive power for reasons other than preventing harm to others, and be ruled out by the principle of liberty.

Mill considers two other cases where the power to “exert moral and intellectual influence” might become coercive and undermine decisional autonomy. First is the persuasive power that priests exercise when they appeal to the fear of eternal damnation; second is picketing by trade unions.

In his early essay *Ireland* (1825), Mill addresses the charge that some priests extorted subscriptions “by refusing the sacraments to those who did not subscribe.” The mere “possibility” that priests “could do so” led to a call for legislation. In replying, Mill gives one of his clearest articulations of the issue of when persuasion becomes illegitimate coercion, though the 19-year-old Mill’s response to this issue is disappointing. Mill writes:

Since after all no *physical* coercion was used, what definition is it possible to give of *moral* coercion? Or how are we to distinguish that legitimate influence, by which the Rev. Mr. Wilson persuades his parishioner to give, through the fear of God, his guinea to the Bible Society, from that improper influence, that coercion (since that is the word) by which the Catholic priest persuades his parishioners to give, through a similar fear, their several pennies to the Catholic rent? (CW 6:74)

But all Mill says after this is: “But we have not space to follow out this question as we could wish” (CW 6:74). Mill then casts doubt on the charge that priests exercised coercion in entering in a ‘black book’ names of those who refused to subscribe: how can a “pretence ever be wanting to the strong man, if such a proceeding as this is to be called coercion?” But instead of pursuing this further, Mill just doubts whether any names were actually entered (CW 6:74). In *Utility of Religion* Mill also addresses potentially coercive means of persuasion by priests in asking whether their drawing on the “fear of hell” and eternal damnation to get people to be good constitutes coercion.<sup>42</sup> He

<sup>42</sup>This was published posthumously but was probably written between 1850 and 1858, see CW 10:cxxvi.

again seems skeptical, suggesting this may have been truer for the ancients, whereas in his day “moral truths” can be strong enough on their own evidence (CW 10:416). Still, he is concerned about grounding maxims of morality on a supernatural origin, because that “protects [those maxims] from being discussed or criticized” (CW 10: 417). While it may not be coercive, Mill worries that speech appealing to such fears may replace speech that better promotes decisional autonomy.

The second case Mill discusses concerns picketing by trade unions. In his 1869 essay *Thornton on Labour and its Claims*, mentioned earlier, Mill rejects the claims of union critics who say unions wrongly violate liberty by using “a kind of social compulsion” to pressure workers to strike. Mill says, somewhat confusingly, that if workers are “induced, by dread of other people’s reproaches, to do anything which they are not legally bound to do,” their liberty is “infringed”; but he doesn’t seem to take such reproaches to violate the principle of liberty and merit punishment: “I do not suppose it will be maintained that disapprobation never ought to be expressed except of things which are offences by law” (CW 5:659). Having just reminded us to keep in mind the “paramount principle – the good of the human race,” Mill now points to how the pressures exerted by the unions may advance that good. We can’t suppose that people will join the union from a mere sense of common interest, given the inclination to free ride, and

to say that these [free riders] are not to have brought before them, in an impressive manner, what their fellow-workmen think of their conduct, is equivalent to saying that social pressure ought not to be put upon any one to consider the interests of others as well as his own. (CW 5:660)

Effective methods of persuasion are crucial tools for moral progress, which requires considering not one’s self-interest but the interest of mankind collectively.

But Mill recognizes the need for legal limits that keep legitimate pressure from becoming improper compulsion. Legislation might be justified to ensure

that the pressure shall stop at the expression of feeling, and the withholding of such good offices as may properly depend upon feeling, and shall not extend to an infringement, or a threat of infringement, of any of the rights which the law guarantees to all – security of persons and property against violation, and of reputation against calumny. (CW 5:660)

Neither unions nor employers should be free to use physical violence, defame, damage property, or threaten any of these evils (CW 5:659). Mill then says that picketing is a borderline case. Whether it should be restricted can be resolved only by looking at

fact and evidence – to ascertain whether the language or gestures used implied a threat of any such treatment as, between individual and individual, would be contrary to law. Hooting, and offensive language, are points on which a question may be raised; but these should be dealt with according to the general law of the country.<sup>43</sup>

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<sup>43</sup>Decades earlier, in *Notes on the Newspapers* (1834), Mill wrote that trade unions may use “overbearing” language and should be free to utter “disapprobation,” but neither unions nor employers may use compulsion. As examples of compulsion he lists “violence, threats, or personal annoyance” and “personal insult

Mill's saying that we should defer to the law is unhelpful since we want to know what the law should permit. Perhaps realizing this, he continues:

No good reason can be given for subjecting [the picketers' language and gestures] to special restriction on account of the occasion which gives rise to them, or to any legal restraint at all beyond that which public decency, or the safety of the public peace, may prescribe as a matter of police regulation.<sup>44</sup>

Read in light of the passage on pimps, Mill could think "no good reason" can be given for restricting "hooting" or "offensive language," other than those he lists, because such speech, aimed to get others to think of the well-being of society as a whole, does not exert an immoral influence in need of counteracting.

Return now to pimps. If pimps merely advertise the availability of a prostitute's services, they provide information about activity that must be permitted, and Mill would have no objection. At the other extreme, if the pimp held over the prostitute or client a relational power of the sort Mill refers to as enabling coercion, or could otherwise overbear their will, the pimp could undermine their decisional autonomy so that their decision cannot be said to be their own. If pimps, like some landlords, employers, husbands, or (though Mill was reluctant to say so) even priests by virtue of their position of spiritual authority, exert relational power, their speech could be a coercive exercise of that power that undermines decisional autonomy and therefore violates the principle of liberty even if it presents no risk of harm to others. We saw earlier that Mill thinks the fact they belong to a "class of persons" with similar economic interests means pimps could exert coordinated influence that can be more threatening. In his testimony on the Contagious Diseases Acts Mill does say that women voluntarily choose to be prostitutes; but he could still think that once they do, they are in a relation where the pimp wields power. While the pimp would not be inciting illegal conduct, since prostitution for Mill should not be illegal, they could undermine the prostitute's decisional autonomy. In contrast, a pimp who publishes a tract promoting prostitution as a valid career choice, targeting no one in particular, would profess doctrines or convey opinions and not coerce anyone. Short of it being libelous, Mill generally thinks such speech should be protected.

Mill's passage on pimps expresses concern not just with decisional autonomy, but with immoral influences. In his discussion of picketing Mill recognizes the important positive function of speech in persuading others to go against their present instincts and do what is best for all. In this respect picketing differs essentially from the speech pimps use, because Mill believes unions that picket could be pursuing collective interests that conceivably promote moral progress, whereas pimps are pursuing their own selfish interests. Even if the picketers, through dread-inducing reproaches, were to undermine decisional autonomy without causing or risking definite damage to others – something Mill may doubt if the picketers' speech lacks the direct connection to the listener that the pimp has with the prostitute – they are not, like pimps, selfishly promoting sinister

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or serious molestation" (CW 6:189, 208–9). Mill's willingness to prohibit "personal insults" may have ebbed in *On Liberty* (1859), depending on what he means in expressing reluctance to prohibit "invective, sarcasm, personality, and the like" – he says he'd be less reluctant if we could enforce this prohibition fairly (OL, CW 18:258–9).

<sup>44</sup>CW 5:660. Turner cites this passage to support the view that (contrary to Jacobson's view) Mill would restrict not just conduct but speech that harms (Turner, Introduction, 130).



interests for immoral ends. While Mill doesn't say so explicitly, the argument for punishing pimps could be that where the principle of liberty is violated by those who undermine a person's decisional autonomy even though no harm to others is caused, punishment is appropriate only if needed to counteract immoral influences. The undermining of decisional autonomy could trigger a consideration of whether to punish, and his utilitarian-grounded 'counteract immoral influence' argument could decide that question. That Mill is open to limiting some speech depending on whether its content promotes or inhibits moral progress suggests he would not think regulations of speech must be viewpoint-neutral.

#### IV. Conclusion

Mill did not settle on whether pimps should be punished. But he is willing to consider that the state may "exclude the influence" of procurers, even fine or imprison them, not to prevent non-consensual harm to others, as he doesn't think pimps cause definite damage to non-consenting others, but in order to protect decisional autonomy and ensure positive moral influences aren't sabotaged. Mill's principle of liberty doesn't just limit whom the state or society may punish; it permits the state to enforce the principle against individuals who exercise coercive power so as to restrict individual liberty for reasons other than preventing harm to others. Speech that manipulates or coerces could undermine its target's autonomy even if it does not cause harm, and Mill could oppose such speech because of both the intrinsic value of decisional autonomy and his utilitarian-grounded concern that positive moral influences not be undermined. In his passage on pimps Mill suggests that pimps potentially threaten decisional autonomy by constituting a class of people who, unlike picketers, self-interestedly exert immoral influence that the state may reasonably think requires counteracting.

Mill may have difficulty resolving the pimp question in part because he has difficulty deciding when persuasive speech becomes coercive and a threat to decisional autonomy; or he may be uncertain whether the utility of counteracting immoral influence sufficiently justifies an exercise of coercive power upon someone who has not harmed others, even though they have violated the principle of liberty by themselves non-consensually exercising power over another for reasons other than to prevent harm. While Mill's passage on pimps does not resolve the pimp issue or the deeper issues it involves, it is instructive. I have argued that it shows he is open to prohibiting speech that does not harm others. Mill values freedom of speech; but he also recognizes the threat some speech poses to decisional autonomy.

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