


REPLY

# J.S. Mill and market harms: a response to Endörfer

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## Abstract

Endörfer has recently argued that proponents of the harm principle are wrong to exempt market harms as potential justifications for state interference. I argue that – contrary to suggestions in Endörfer’s article – John Stuart Mill did not exempt market harms from his harm principle. On Mill’s view, the state can (as a matter of principle) legitimately interfere with free markets to prevent market harms where they occur but, on the whole, it is better policy not to interfere. Mill’s general preference for free trade rests on utilitarian considerations and not on his harm principle, which does not exclude market harms.

**Keywords:** Endörfer; harm; J.S. Mill; markets

## 1. Introduction

Richard Endörfer argues that ‘market harms’ (welfare losses through pecuniary externalities) should not be an exception to the harm principle (HP), which he defines as a pro tanto justification for coercive interference in any conduct likely to be harmful to other citizens (Endörfer 2022: 223). Endörfer argues that, in principle, non-market harms might be internalized, and thus turned into market harms, by creating markets for externalities, such as pollution rights (cf. Wilkinson 2022: 206, n.16). If every non-market harm can be transformed into a market harm, then there is no basis to distinguish them. We either accept that *neither* kind of harm justifies interference or that *both* do.

It is not my aim to challenge the substance of this argument, but I argue that Endörfer’s discussion misrepresents John Stuart Mill. Though this is not crucial to his larger point, Mill is a sufficiently influential figure that it is worth setting the record straight. First, Endörfer’s HP is importantly different from Mill’s HP. Further, contrary to Endörfer (2022: 225), Mill does not exempt market harms from his HP. While Mill thinks that society generally ought not to interfere with markets, he regards trade as a social act, and therefore not something protected by his HP (Mill 1977 [1859]: 288, 293). Market harms – like any other harms – could, in

principle, justify intervention. Mill thinks that society is usually better off not interfering in these cases, but it has jurisdiction to do so if necessary.

## 2. Mill's Harm Principle

Endörfer (2022: 223) correctly observes that 'different versions of HP have been proposed in the literature'. While he notes that his HP is most similar to that of Feinberg (cf. Edwards 2014: 266), he also suggests that the HP he discusses is merely a 'restated' version of Mill's 'original formulation' (2022: 223). However, Mill's HP is very different.

Endörfer's HP states that the likelihood of harm to others is always a pro tanto justification for coercive interference. Mill's HP, however, involves no commitment to this positive thesis. It merely states a negative thesis, that *nothing other than* harm to others can justify coercive interference: 'the *only purpose* for which power can be rightfully exercised over any [competent adult] member of a civilized community, against his will, is to prevent harm to others' (Mill 1977 [1859]: 223, emphasis added). In particular, Mill holds that the agent's own good is not sufficient justification for coercive interference, thereby rejecting (hard) paternalism (cf. New 1999; Mabsout 2022). Thus, Mill's HP is a negative claim, that there are no other legitimate grounds for coercion.

To be sure, Mill *assumes* that preventing harm to non-consenting others is, at least often, a good reason for interference. He does not argue for this, presumably because he expects his readers to agree. But the purpose of *On Liberty* is to argue that various other considerations – such as prevention of self-harm or harmless immorality – do not justify coercive interference.

Far from restating Mill, Endörfer (2022: 223) signals disagreement with this negative thesis, when he suggests that 'there might be other reasons that allow the state to intervene with its citizens' conduct'. Perhaps there are. It is not my aim to defend the truth of Mill's HP. However, Endörfer is here contradicting Mill. Mill's HP rejects *any* other reasons for coercive interference, besides preventing relevant harms.<sup>1</sup> We violate Mill's HP, then, by coercing a competent adult for other reasons, such as for their own good or because we consider their actions immoral (though not harmful). An exception to *this* principle, which prohibits coercion except to prevent relevant harm, would be something else justifying coercion.

Mill does allow at least one possible exception to his HP when he suggests that a public officer could hold someone back from an unsafe bridge, at least long enough to establish that they were aware of the danger (Mill 1977 [1859]: 294; cf. New 1999: 68–69). He apparently thinks this justifiable because it is unlikely someone wants to fall in the river, and therefore their liberty to do what they want is not really impeded. Though this involves temporary coercion, it is not (in Mill's view) a restriction on freedom (cf. Saunders 2016).

However, it unclear what is meant by the claim that 'Mill himself also seems to suggest that market harms constitute an exception to HP' (Endörfer 2022: 225).

<sup>1</sup>I use 'relevant' because Mill's HP does not concern all harms. The harms in question must be (i) to others (rather than the agent herself), (ii) caused directly, and (iii) not freely consented to. However, I argue that market harms are, for Mill, not excluded from relevance.

What Endörfer seems to mean is that Mill does not consider market harms to justify coercive interference. That is, Endörfer apparently takes market harms (like consensual harms) not to be relevant justifications for interference.

Even if this were true, that would not make market harms an *exception* to Mill's HP (which, again, limits state interference) but rather an *addition* to it (a further restriction on what the state can interfere with). In any case, this is not true. While Mill thinks that the state should not usually prevent market harms, he holds that it has standing to do so if necessary. That is, market harms can satisfy HP's necessary condition. However, whether interference is actually justified requires consideration of costs and benefits (cf. Turner 2014: 301).

Mill's HP tells us that we have no justification for interfering with an individual's private or self-regarding actions. This establishes a 'sphere of action in which society, as distinguished from the individual, has, if any, only an indirect interest: comprehending all that portion of a person's life and conduct which affects only himself (Mill 1977 [1859]: 225). This is the most basic domain of liberty, consisting of actions that do not harm anyone else.

This 'private sphere' need not contain everything that we intuitively think of as private. In particular, it does not include 'private' market transactions (Riley 1989: 127) nor, indeed, many other things that we can do only in conjunction with others. However, Mill immediately expands this area by adding conduct which 'also affects others, only with their free, voluntary, and undeceived consent and participation' (Mill 1977 [1859]: 225). While these actions *do* affect others, they could be seen as the private or self-regarding joint acts of the group, so long as they do not harm anyone outside the group (Riley 1989: 124). This, presumably, would exclude from consideration any harm suffered by contracting parties, but not externalities.

The doctrine of free trade further expands the sphere of liberty, by adding that society should also not interfere with free market transactions (Hansson 2015: 744–747). Conduct in this area may be free only in the sense that it is not actually interfered with, rather than being inviolable. The freedom that agents enjoy here is not the perfect freedom to do whatever they want, but only an absence of coercion provided they stick within conventional rules (Riley 1989: 127–128). This expansion results in a larger sphere of liberty, going beyond that specified by HP. However, this does not involve any contradiction of or exception to HP, since HP does not say that what is not self-regarding should be interfered with, but only that what is self-regarding should not be. HP leaves open whether interference with other conduct is always justified.

It might be replied that, while Mill's HP indeed operates differently from Endörfer's HP (excluding interference with what is not harmful, rather than justifying interference with what is harmful), this is immaterial. The crucial point is whether Mill exempts market harms from counting as relevant harm. If he does, then Endörfer would still be justified in including Mill amongst those who distinguish market harms from non-market harms. However, this is also a mistake.

### 3. Mill on Markets

Mill does indeed maintain that society should not interfere with market competition, even when it causes harms (Mill 1977 [1859]: 292; cf. Endörfer 2022: 225). However,

Mill never (to my knowledge) denies that these market harms are relevant harms. Indeed, he implies that they are, as we see earlier in the very paragraph that Endörfer quotes to support his interpretation. Mill writes:

[I]t must by no means be supposed, because damage, or probability of damage, to the interests of others, can alone justify the interference of society, that therefore it always does justify such interference. In many cases, an individual, in pursuing a legitimate object, necessarily and therefore legitimately causes pain or loss to others. (Mill 1977 [1859]: 292)

Mill's point here is that harm, though necessary to justify interference, is not sufficient. In order for competition to illustrate this point, the pain or loss to the loser must qualify as a relevant harm, which society could intervene to prevent. This shows that, though Mill thinks society should not intervene in these cases, this is because doing so would be inexpedient, rather than because market harms are ignored by the HP.<sup>2</sup>

To be sure, Mill goes on to add that 'society admits no right . . . to immunity from this kind of suffering' (1977 [1859]: 293). This *could* be read as saying that these harms do not satisfy the HP. However, as we have just seen, Mill's point is that harm, though necessary, is not sufficient to justify interference. Thus, I take it that the HP's condition *is* satisfied by these harms. This is why Mill goes on to emphasize that the case for free trade 'rests on grounds different from, though equally solid with, the principle of individual liberty asserted in this Essay . . . the principle of individual liberty is not involved in the doctrine of Free Trade' (Mill 1977 [1859]: 293).

In other words, Mill's HP does not protect market interactions, because trade is a social act, affecting the interests of others (cf. Riley 1989: 129). Thus, trade *is* within the jurisdiction of society. Society has the right to intervene if necessary, according to HP – 'the restraints in question affect only that part of conduct which society is competent to restrain' (Mill 1977 [1859]: 293) – though Mill held non-interference to be the better policy in most cases. This explains why he thought the state could legitimately intervene in some cases, such as market failure. Indeed, Mill even argues that procreation could be regulated by law, because increasing the supply of workers threatens to reduce wages (Mill 1977 [1859]: 304). This appears to be a case of intervention in order to prevent market harms, again suggesting that Mill took these harms to satisfy his HP.

Admittedly, Mill sometimes appears to waver from the view that trade is a social act. In one passage, he notes that 'the bad workmen who form the majority of operatives in many branches of industry . . . employ a moral police, which occasionally becomes a physical one, to deter skilful workmen from receiving, and employers from giving, a larger remuneration for a more useful service' (Mill 1977 [1859]: 287).<sup>3</sup> His criticism of this practice seems to presuppose that

<sup>2</sup>Wilkinson (2022: 206) also cites this passage to show that, for Mill, the fact that an action causes market harms provides us with 'no additional moral reasons at all'. But, again, it does not say this, only that it is 'better for the general interest of mankind' if agents are not deterred by such harms. Mill takes the benefits of free trade to outweigh the harms, but the harms still matter.

<sup>3</sup>I thank Dale Miller for pressing me to discuss this passage, though he also notes that it does not appear to reflect Mill's considered view.

it constitutes interference with private concerns. This might be explained if market harms were ignored.

This passage is difficult to reconcile with various other remarks though, including that trade is a social act (Mill 1977 [1859]: 288, 293) and Mill's willingness to restrict procreation in order to protect wages (Mill 1977 [1859]: 304]). Perhaps Mill's criticism of moral policing in *On Liberty* was motivated by his own enthusiasm for piecework (Mill 1965 [1848]: 933–934). In a later essay, Mill even argues that trade unionists are justified in pressuring others, provided this be limited to expressions of disapprobation and withholding of good offices and not extend to physical threats (Mill 1967 [1869]: 660). The concerns expressed in *On Liberty* might have more to do with cases that overstep this boundary. Moreover, even when conduct is not self-regarding, it does not follow that anyone has legitimate authority to intervene.

In any case, a position more consistent with most of his remarks would acknowledge that market harms *are* relevant harms, making societal intervention in principle justifiable (in accordance with his HP), but holding that they are rarely sufficient to justify intervention in practice. Mill thinks that market competition is generally beneficial, since it keeps consumer prices low and, moreover, the alternative (monopoly) is worse (Mill 1965 [1848]: 794). Thus, Mill's support for market competition, unsurprisingly, rests on his belief that it promotes utility, which he maintained was 'the ultimate appeal on all ethical questions' (Mill 1977 [1859]: 224), including the distribution and extent of property rights (Endörfer 2022: 225).

However, it should not be assumed that Mill was indifferent to or ignored the harms of market competition. He preferred a more cooperative economy, in which struggle between opposing classes was replaced by 'a friendly rivalry in the pursuit of a good common to all' (Mill 1965 [1848]: 792). This still involved some competition, but it would be very different from familiar market economies (McCabe 2021). Mill's ideal state would be one 'in which, while no one is poor, no one desires to be richer, nor has any reason to fear being thrust back, by the efforts of others to push themselves forward' (Mill 1965 [1848]: 754). In such a condition, even the losers would not face destitution, for 'society can and therefore ought to insure every individual belonging to it against the extreme of want' (Mill 1965 [1848]: 360). Thus, Mill allowed for some state action to prevent, or at least mitigate, market harms. This shows that he was not simply indifferent to market harms.

To be sure, these measures focus on avoiding very bad outcomes, such as destitution. They do not guarantee that no one will be worse off than they might otherwise have been. So, some market harms will still occur. Nonetheless, Mill's readiness to tolerate some market harms does not mean that he was a market harm exceptionalist, for this is his attitude towards other harms too. There are some harms that 'society can afford to bear, for the sake of the greater good of human freedom' (Mill 1977 [1859]: 282).

#### 4. Conclusion

Mill holds personal freedom sufficiently valuable that society ought to accept various inconveniences, even genuine harms, that come with it. These include

harms resulting from competition (Mill 1977 [1859]: 292), unsuccessful ‘experiments in living’ (Mill 1977 [1859]: 281), pernicious influence – through example or speech – on others (Mill 1977 [1859]: 278), and feelings of disgust or offence (Mill 1977 [1859]: 283; cf. Riley 1989: 126). Even where society has jurisdiction to interfere, it is often better for it not to do so (Turner 2014). That he rejects interference in these cases does not show that he considered them exceptions to his HP, but only that he did not think it expedient for society to try to prevent all harms.

None of this undermines Endörfer’s argument, which remains a powerful challenge to any modern liberals who would exclude market harms from even potentially justifying interference. However, he is wrong to lump Mill in with these market harm exceptionalists. Mill’s HP permits interference in markets; his preference for free trade rests on different grounds.

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