Private acts, social acts and entrepreneurship: Can Millian liberalism justify regulation against bad nudges?

Robert Sugden

School of Economics, University of East Anglia, Norwich NR4 7TJ, UK

r.sugden@uea.ac.uk

ORCID: 0000-0002-3401-3139

Revised 9 July 2025

Abstract

Retail firms routinely use non-deceptive 'nudges' (i.e., psychological cues) to induce consumers to buy their products. Le Grand and New (*Government Paternalism*, 2015) and Oliver (*A Political Economy of Behavioural Public Policy*, 2023) argue in favour of regulations ('budges' in Oliver's terminology) that prohibit such nudges when regulators judge the relevant product to be harmful to consumers. These writers claim that such regulations are compatible with John Stuart Mill's Harm Principle. I examine this claim through a close study of Mill's relevant writings. I show that, when Mill explicitly considers issues analogous with present-day discussions of nudging, his position is broadly similar to those taken by Le Grand and New and Oliver. However, he is able to take that position because his mental model of a competitive market is that of early and mid-nineteenth century political economy. That model does not represent the entrepreneurial mechanisms by which competitive markets can support and promote what for Mill is a fundamental human value—the value of *individuality*. If the role of entrepreneurship is recognised, Le Grand and New's and Oliver's justifications for regulations against non-deceptive but supposedly harmful nudges are contrary to the spirit of the Harm Principle. (196 words)

Competing interests: I have no competing interests.

Acknowledgements: An earlier version of this paper was presented at a workshop on to workshop on 'The Lessons of Classical Liberalism for the Modern World', held at King's College London in May 2024. I thank participants in this event, especially Malte Dold, Adam Oliver and Mario Rizzo, and an anonymous reviewer for constructive comments.

Keywords: John Stuart Mill, private acts, social acts, entrepreneurship, nudges, budges

JEL codes: B12, B31, D63, D91

[Note: *** denotes a reference to a paper in the symposium by the named author.]

1 Introduction

In their manifesto for 'libertarian paternalism', Richard Thaler and Cass Sunstein represent individuals as having two selves – a rational self (the 'Planner') whose intentions can be subverted by an impulsive self (the 'Doer'). As an illustration, they describe a Cinnabon stand at Chicago O'Hare Airport, whose oven aromas subvert the health-oriented intentions of Planners heading for the nearby fruit and yoghurt stand. With the implicit suggestion that the Cinnabon stand may have been deliberately designed to allow its aromas to reach passers-by, Thaler and Sunstein use it as an example of an imperfection of competitive markets: 'Even when we're on our way to making good choices, competitive markets find ways to get us to overcome our last shred of resistance to bad ones'. And more generally: 'Markets provide strong incentives for firms to cater to the demands of consumers, and firms will compete to meet these demands, whether or not those demands represent the wisest choices' (Thaler and Sunstein, 2008: 49).

In Thaler and Sunstein's conceptual framework, the dispersal of the cinnamon aromas is a feature of the *choice architecture* within which airport customers choose between the offerings of the Cinnabon and fruit-and-yoghurt stands—analogous with the positioning of food items on the counter of the cafeteria in their leading example of nudging (2008: 1–3). The guiding principle of libertarian paternalism is that public policy should create choice architectures in which individuals make the choices that are best for them, 'as judged by themselves' (by which is meant: as they would have judged to be best for them, in the absence of error, bias and lapses of self-control).[1] Regulations against the commercial use of choice architectures which promote bad choices would be consistent with this principle. Thaler (2018) seems to have this kind of regulation in mind when he distinguishes between 'conscientious' choice architects who 'nudge for good' and firms whose marketing nudges 'encourage buyers in order to maximize profits rather than to improve the buyers' welfare' and proposes clean-up campaigns to counter such 'nudging for evil'.

As is clear from the term 'libertarian paternalism', Thaler and Sunstein acknowledge that their justification for regulations against the latter kind of nudge is paternalistic. The paternalism is *indirect*: the restrictions are imposed on firms rather than on individual consumers. Nevertheless, the aim is to protect consumers against their own propensities to make choices that are bad for them. By asserting (as they do in the title of their first paper on the topic) that libertarian paternalism is 'not an oxymoron', Sunstein and Thaler (2003) are locating their proposals within a tradition of liberal political philosophy. The principal basis

[1] With co-authors, I have argued that the 'as judged by themselves' clause rests on a psychologically ungrounded model of a human decision maker as an 'inner rational agent' that interacts with the world by means of error-prone psychological mechanisms (Infante et al., 2016; Sugden, 2017). Sunstein (2018) presents a counter-argument.

for that suggestion is that their proposed paternalism is *soft*: there are no restrictions on what individuals may choose, only on the ways in which choice problems are framed.

Other writers have denied that regulations against supposedly harmful nudges are paternalistic at all. I use the qualification 'supposedly' to indicate that, for the purposes of the current paper, the 'harm' of a nudge to the individuals who are to be protected is harm *as judged by the authority that is empowered to impose the relevant regulation*. That authority might follow Thaler and Sunstein in claiming that it is using individuals' own judgements, corrected for error, about what is harmful to them. But it might define harm in relation to some other concept of well-being, for example, 'capability' as defined by Amartya Sen (1992), or a hedonic measure of 'experienced utility' (Kahneman, Wakker and Sarin, 1997).

Adam Oliver (2023: 134–148; see also ****) is one such writer. Oliver argues for a type of regulation he calls 'budging'. A *budge* is 'a regulation against the negative externality of a behavioural-informed manipulation'. A firm engages in such manipulation if it uses psychological cues ('the behavioural influences') to induce its customers to buy 'more of [its] products than they would otherwise desire'; this constitutes 'an infringement upon the notion of a free and fair exchange'. Oliver's concept of 'behavioural-informed manipulation' includes the use of attractive anthropomorphic figures on breakfast cereal packets, and the placement of alcoholic drinks in prominent end-of-aisle locations in supermarkets—practices which, although clearly intended to increase sales, are not deceptive (pp. 138, 145). Oliver treats any such manipulation as an infringement on liberty. If it causes harm to the customers who are manipulated, that harm is a negative externality of the firm's behaviour. If the harm is sufficiently substantial, a budge may be justified. Oliver argues that the fundamental justification of budges is not to protect customers against their own mistakes; it is to protect them against illegitimate actions by firms. Thus, he claims, budges are not paternalistic.

This characterisation of budges is important for Oliver. On the opening page of *A Political Economy of Behavioural Public Policy* (the source of the quotations in the previous paragraph), he declares that his approach is in the same spirit as the liberalism of John Stuart Mill and Wilhelm von Humboldt. He will present the case for

> a political economy of behavioural public policy that is anti-paternalistic— that stands with the notion that the choices, actions and behaviours of those who are imposing no harms on others ought to be free of manipulative or coercive interference from third parties (and particularly from policy makers). (Oliver, 2023: xi)

Julian Le Grand and Bill New (2015) make a similar argument in support of what Oliver calls budging. Discussing situations (such as firms' use of nudges in marketing harm-inducing products) in which 'private interests seek to nudge individuals through exploiting reasoning failure to act in ways that may damage their well-being', they say:

> In these situations neither the private interests concerned nor the government could be said to be acting paternalistically. In the case of the private interests, their intention is not to improve the welfare of the individual but merely to maximize their profits, the effect on the individual being irrelevant at least to their intention. So, if the effect were detrimental, then government intervention to prevent such would not be paternalistic either but merely intended *to prevent harm to others*; hence it would be an application of [Mill's] harm principle. (Le Grand and New, 2015: 140–141; italics in original)

I will say more about Mill's Harm Principle in Section 2. Le Grand and New (2015: 53–54) do not fully endorse this principle, and suggest (I think correctly) that Mill's own proposals are not always consistent with it. Nevertheless, they clearly think it important to align their analysis with the liberal tradition of political philosophy.

Consider what Oliver, Le Grand and New are saying. If a non-deceptive marketing strategy activates non-rational psychological cues to promote sales of some product to willing buyers, and if consumption of that product is judged on balance to be harmful, regulations against that strategy are not paternalistic. Marketing strategies routinely make use of psychological cues to promote sales—for example, by directing customers' attention to immediately attractive features of their products (as in the use of prominent displays in supermarkets), or by activating associations of ideas between their products and pleasurable experiences (as in television adverts that show mid-range cars being driven by attractive people in exotic locations). If sugary breakfast cereals, cinnamon buns and bottles of wine are on the wrong side of the harm threshold, a very wide range of potential regulations of retail markets are being classified as non-paternalistic.

One might ask how much it really matters whether or not a policy can be called 'paternalistic'. As far as I know, no writer in the current literature of behavioural public policy has claimed that paternalistic policies, without exception, are morally impermissible for democratic governments. Nevertheless, paternalism is a concept with the negative connotation of treating adults as though they were children in need of parental guidance. Oliver, Le Grand and New are sensitive to the potential criticism that their budge proposals are the policies of a 'nanny state'.[2] They are anticipating this criticism by arguing that these proposals are consistent with the most famous philosophical statement of the liberal objection to paternalism—Mill's essay *On Liberty* (1859/1972, henceforth *OL*). This is not a mere rhetorical flourish. It is a serious claim about liberal political thought, deserving of examination.

---

[2] The title of Le Grand and New's book, *Government Paternalism: Nanny State or Helpful Friend?*, signals their intention to propose forms of paternalism that are *not* nannyish.

The object of the current paper is to examine whether regulations against supposedly harmful nudges are consistent with the letter and spirit of Mill's writings on liberty and political economy. I will show that, when Mill explicitly considers issues analogous with present-day discussions of nudging, his position is broadly similar to those taken by Oliver, Le Grand and New. However, I will argue that Mill is able to take that position because his mental model of a competitive market is that of early and mid-nineteenth century political economy. That model does not represent the entrepreneurial mechanisms by which competitive markets can support and promote what for Mill is the fundamental human value underpinning the Harm Principle – the value of *individuality*. If the role of entrepreneurship is recognised, Oliver's, Le Grand's and New's justifications for regulations against non-deceptive but supposedly harmful nudges are paternalistic, and contrary to the spirit of the Harm Principle. This, of course, is not to say that such regulations should never be imposed, or that governments should never be paternalistic.

2 Trade and the Harm Principle

Mill's essay asserts what he calls a 'very simple' principle – one that has come to be known as the *Harm Principle*:

> That principle 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 civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise, or even right. (*OL*: 72–73).

Mill draws a fundamental distinction between two domains of individual action. One is the domain of *external relations*:

> In all things which regard the external relations of the individual, he is *de jure* amenable to those whose interests are concerned, and, if need be, to society as their protector. (*OL*: 74)

Mill argues that governments should be cautious about taking on this role of protector: in many cases in which one person's actions harm another person's interests, non-intervention is the lesser of two evils. Nevertheless, the Harm Principle applies only to the second domain:

> But there is 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, or if it also affects others, only with their free, voluntary, and undeceived consent and participation. (*OL*: 75)

Mill divides this 'appropriate region of human liberty' into three parts. He begins with liberty of thought. Although fundamental to political liberalism, this has only marginal relevance to the regulation of retail markets. Then:

> Secondly, this principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow-creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong. Thirdly, from this liberty of each individual, follows the liberty, within the same limits, of combination among individuals; freedom to unite, for any purpose not involving harm to others; the persons combining being supposed to be of full age, and not forced or deceived. (*OL*: 75)

One might have expected that this liberty of combination would imply freedom of adult individuals to make voluntary exchanges of goods and services between themselves, subject to the conditions of non-deception and not harming others. Buying a cinnamon bun because of the aroma near the stand, buying a breakfast cereal because you are attracted by the tiger cartoon on the packet, or buying a bottle of wine because it happens to be displayed at the end of a supermarket aisle may be foolish and may not make you happier; but it *is* doing as you like, subject to such consequences as may follow.

However, Mill takes a different line:

> [T]rade is a social act. Whoever undertakes to sell any description of goods to the public, does what affects the interest of other persons, and of society in general; and thus his conduct, in principle, comes within the jurisdiction of society: accordingly, it was once held to be the duty of governments, in all cases which were considered of importance, to fix prices, and regulate the processes of manufacture. But it is now recognised, though not till after a long struggle, that both the cheapness and the good quality of commodities are most effectually provided for by leaving the producers and sellers perfectly free, under the sole check of equal freedom to the buyers for supplying themselves elsewhere. This is the so-called doctrine of Free Trade, which rests on grounds different from, though equally solid with, the principle of individual liberty asserted in this Essay. (*OL*: 150)

The implication is that regulations against harmful nudges do not contravene Mill's Harm Principle, as he interprets it. But why not? A person who undertakes to sell a type of good makes a generic offer to individuals *in general*, rather than a specific offer to a specific person. In that sense, making such an offer might reasonably be called a 'social act'. But if the offer is not deceptive, it can affect any given individual only with their voluntary consent. Why, given the Harm Principle, does the making of such offers come within the jurisdiction of society?

3 Drinking and gambling

As a preliminary to tackling this question, it is illuminating to look at Mill's discussions of drunkenness and gambling. Writing in mid-nineteenth century Britain, Mill is in no doubt that these are major causes of self-harm and that they are obstacles to self-improvement, particularly for working-class people. Nevertheless, in accordance with the Harm Principle, he defends each individual's freedom to drink and gamble to excess, subject to not violating duties to specific others (such as the duty of a husband or father to his family, or of a worker to their employer). He opposes laws that prohibit the sale of alcohol (such as the 'Maine Law' which imposed prohibition in that US state), since the purpose of such laws 'is to make it impossible or difficult to obtain a particular commodity'. But, crucially: 'These interferences are objectionable, not as infringements on the liberty of the producer or seller, but on that of the buyer' (*OL*: 151). In other words: *selling* alcohol to consumers is trade, and thereby outside the scope of the Harm Principle, but *consuming* it is a private act, protected by the same principle.

Mill realises that this distinction can be difficult to maintain, but persists with it. For example, the Harm Principle requires the permission of private acts of gambling (although not the enforcement of gambling debts by the State). This permission extends to private gambling clubs with facilities financed by members' subscriptions, but not necessarily to gambling-houses operated for profit, which are a form of trade (*OL*: 155).

Coming closer to issues relevant to libertarian paternalism and budging, Mill faces another question:

> In cases of personal conduct supposed to be blamable, but which respect for liberty precludes society from preventing or punishing, because the evil directly resulting falls wholly on the agent; what the agent is free to do, ought other persons to be equally free to counsel or instigate? […] To give advice or offer inducements to any one is a social act, and may, therefore, like actions in general which affect others, be supposed amenable to social control. But a little reflection corrects the first impression, by showing that if the case is not strictly within the definition of individual liberty, yet the reasons on which the principle of individual liberty is grounded are applicable to it. If people must be allowed, in whatever concerns only themselves, to act as seems best to themselves, at their own peril, they must equally be free to consult with one another about what is fit to be so done; to

> exchange opinions, and give and receive suggestions. Whatever it is permitted to do, it must be permitted to advise to do. (*OL*: 153–154)

But then Mill has a further reflection: what if the advice comes from someone who would derive a benefit from its being acted on? He gives serious consideration to (and ultimately seems to accept) the argument that the State is warranted in imposing regulations that exclude

> 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. (*OL*: 155)

Thus, although the commercial sale of alcohol must be permitted, the State may impose restrictions on practices by which sellers might promote what the State judges to be excessive consumption. Mill rejects the idea that the State might make alcohol more difficult to obtain by restricting the number of points of sale, which he sees as a weaker version of prohibition. However, he gives positive approval to the principle of imposing indirect taxes on alcohol at whatever level maximises tax revenue. Since the State has to raise revenue by taxing *some* commodities, it should tax those that it judges 'the consumers can best spare' – not, significantly, those that *consumers* judge they can best spare or that they will in fact spare (*OL*: 155–156). Needless to say, the whole point of indirect taxation is to tax consumption that is *not* spared.

It is hard to avoid the conclusion that Mill is struggling to find consistent arguments for policies which, independently of his official doctrines, he believes to be sensible. Clearly, he is discussing difficult practical issues of public policy. It is to his credit that he often recognises conflicting arguments that have to weighed against one another, and unsurprising that he does not always reach firm conclusions about the best policies to implement. But my sense is that Mill is struggling *as a theorist* – struggling to find consistency between principles to which he is committed.

4 Individuality and trade

Recall that the Harm Principle applies to 'all that portion of a person's life and conduct which affects only himself, or if it also affects others, only with their free, voluntary, and undeceived consent and participation'. If trade is to be classed as a social act, Mill's definition of 'life and conduct' must exclude activities that a person carries out *as a trader*; and if this is to be more than an ad hoc stipulation, 'trader' must belong to some general class of excluded roles. But what is that class, and what are the grounds for excluding it?

I suggest that Mill's answer is implicit in his discussion of *individuality*. The epigraph of *On Liberty* is a quotation from Humbolt:

> The grand, leading principle, towards which every argument unfolded in these pages directly converges, is the absolute and essential importance of human development in its richest diversity. (*OL*: 63)

On my reading, the most eloquent and deeply felt chapter of *On Liberty* is Chapter 3, 'Of individuality, as one of the elements of well-being'. In this chapter, Mill weaves together different strands of argument about what individuality is and why it is important.

In one sense of the word, individuality is simply a fact about human beings: as humans, we have individual characters. Different modes of life are suited to different individuals, and each individual is normally the best judge of which mode is best for him:

> 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. […] The same mode of life is a healthy excitement to one, keeping all his faculties of action and enjoyment in their best order, while to another it is a distracting burthen, which suspends or crushes all internal life. Such are the differences among human beings in their sources of pleasure, their susceptibilities of pain, and the operation on them of different physical and moral agencies, that unless there is a corresponding diversity in their modes of life, they neither obtain their fair share of happiness, nor grow up to the mental, moral, and aesthetic stature of which their nature is capable. (*OL*: 125)

If each individual in a society is free to choose their own mode of life, there will be diversity and experimentation in ways of living. Each individual's experiments can provide knowledge that helps other people to make better choices about *their* modes of life:

> As it is useful that while mankind are imperfect there should be different opinions, so it is that there should be different experiments of living; that free scope should be given to varieties of character, short of injury to others; and that the worth of different modes of life should be proved practically, when any one thinks fit to try them. It is desirable, in short, that in things which do not primarily concern others, individuality should assert itself. (*OL*: 114–115)

Most of what Mill says in the two preceding quotations can be read as arguing that each individual's freedom to choose their own mode of life has value as a means to their own and other people's self-perceived happiness. However, the clause about achieving mental, moral and aesthetic stature suggests that Mill is also working on a different moral plane, expressing a view of what is ultimately good in human life. On this more high-minded view, the development of individuality *just is* a human good:

> If it were felt that the free development of individuality is one of the leading essentials of well-being; that it is not only a co-ordinate element with all that is

> designated by the terms civilisation, instruction, education, culture, but is itself a necessary part and condition of all those things; there would be no danger that liberty should be undervalued. (*OL*: 115)

> He who lets the world, or his own portion of it, choose his plan of life for him, has no need of any other faculty than the ape-like one of imitation. He who chooses his plan for himself, employs all his faculties. He must use observation to see, reasoning and judgement to foresee, activity to gather materials for decision, discrimination to decide, and when he has decided, firmness and self-control to hold to his deliberate decision. […] It is possible that he might be guided in some good path, and kept out of harm's way, without any of these things. But what will be his comparative worth as a human being? It really is of importance, not only what men do, but also what manner of men they are that do it. Among the works of man, which human life is rightly employed in perfecting and beautifying, the first in importance surely is man himself. (*OL*: 117)

It is clear from these and similar passages in *OL* that when Mill writes about the development of individuality, he is primarily concerned with choices that an individual makes *as a private person*, as opposed to choices made in accordance with the demands of some social role. As an example of the latter, consider decisions made by someone while acting as another person's agent—say, as a labourer working on behalf of an employer or as professional acting on behalf of a client. The idea that an agent should use such decisions as a means of pursuing personal self-perfection seems out of place. It would be similarly out of place for the agent to appeal to the value of individual self-development as an objection to restrictions on what he can do *as an agent*, having freely agreed to take on that role.

For Mill, trading for profit is a social role. Thus, a shopkeeper who sells alcohol to his customers is not acting as a private person. Mill probably takes as given that a shopkeeper's freedom of action is severely constrained by the laws of political economy. But insofar as the shopkeeper has discretion, his primary concern is with what potential customers want to buy, and how much they are willing to pay for it. This might involve thinking about *customers'* modes of life and recognising the diversity of *their* tastes and interests, but it does not make shopkeeping a domain for the development of the shopkeeper's individuality.

I interpret Mill as intending the Harm Principle to apply only to a person's *private* life and conduct. On this interpretation, a private person who desires to drink or gamble and is willing to pay the costs of doing so is entitled to appeal to the Harm Principle if the State tries to prevent traders *in general* from catering to his demand. However, the potential operator of a public house or gambling saloon is not entitled to appeal to the Principle if the State imposes restrictions on his line of business, or even completely prohibits it.

The boundary between private life and commerce is sometimes ill-defined (as in the case of the gambling club), but there are many areas of economic activity in which it is reasonably clear. It is particularly clear in retail markets where profit-seeking firms sell goods and services to final consumers – the kinds of market that typically feature in discussions of budging. Thus, if regulations against supposedly harmful nudges could be interpreted as restrictions *only on the behaviour of firms*, they would not infringe the Harm Principle, either in letter or spirit. But this interpretation would be unjustified if the opportunity for firms to make such nudges, like the opportunity for them to sell alcohol to willing buyers, was an integral part of a process by which consumers develop and express individuality. Mill seems to discount this possibility. But why?

5 Free trade

Recall Mill's claim that the Harm Principle and the doctrine of Free Trade rest on different (although equally solid) grounds. As the author of successive editions of *Principles of Political Economy*, the most authoritative English-language economic textbook of his time, Mill was a leading expositor of this doctrine (Mill, 1871/1909; henceforth *Principles* or *PPE*). Since the Harm Principle is grounded on the moral value of individuality, the apparent implication is that, for Mill, the justification of free trade is independent of that value. And that is indeed true of Mill's treatment of the economics of free trade in *Principles*.

Mill's economics is in the *classical* tradition of David Ricardo and of Mill's father James Mill. In comparison with the tradition of economics that developed from the 'marginal revolution' of the 1870s, classical economics works with more objective conceptions of value and wealth, and gives more attention to production and distribution relative to consumption. The 'laws' of political economy are grounded on assumptions about rational behaviour, but the behaviour to which the laws apply is that of manufacturers and merchants, and the rationality is the maximisation of monetary profit. As a preface to his treatment of the topic of 'value' in *Principles*, Mill says:

> I must give warning, once for all, that the cases I contemplate are those in which values and prices are determined by competition alone. In so far only as they are thus determined can they be reduced to any assignable law. The buyers must be supposed as studious to buy cheap, as the sellers to sell dear. The values and prices, therefore, to which our conclusions apply, are mercantile values and prices[.] (*PPE*: 440)

Mill recognises that the laws of value apply only imperfectly to retail markets, because 'purchases for private use, even by people in business, are not always made on business principles'. Well-off consumers are often too careless or lazy to search for the lowest prices, while poor consumers suffer from ignorance, shortage of time and 'defect of judgment'. But Mill treats these factors as minor disturbances in the grand scheme of political economy:

> For these reasons, retail prices do not follow with all the regularity which might be expected the action of the causes which determine wholesale prices. The influence of those causes is ultimately felt in the retail markets, and this is the real source of such variations in retail prices as are of a general and permanent character. (*PPE*: 440–441)

It seems that, for Mill, the mechanisms explained by political economy affect consumers through their effects on 'mercantile' values and thereby on retail prices, but consumers' preferences, beliefs and attitudes to search have no fundamental role in those mechanisms. Far from treating this as a gap that might be filled by future theoretical developments, Mill makes a famously ill-judged statement: 'Happily, there is nothing in the laws of value which remains for the present or any future writer to clear up; the theory of the subject is complete' (*PPE*: 436).

When Mill discusses 'what commerce does for a country', he refers to Ricardo's theory of comparative advantage, supplemented by Adam Smith's theory that extensions of the market allow greater division of labour. He dismisses the common misperception that commerce is a source of national wealth by virtue of the profits it creates for merchants. The ultimate effect of trade between two countries is to increase the volume of commodities that can be produced using those countries' combined resources, or (equivalently) to reduce the resource cost of the countries' combined production. In the long run, the benefits accrue to consumers:

> Commerce is virtually a mode of cheapening production; and in all such cases, the consumer is the person ultimately benefited; the dealer, in the end, is sure to get his profit, whether the buyer obtains much or little for his money. (*PPE*: 580)

Clearly, this analysis applies not merely to international trade, but to competitive markets in general. This general application is presumably what Mill has in mind when, in distinguishing between the Harm Principle and the doctrine of Free Trade, he claims that free trade ensures the cheapness of commodities. Notice how, in the argument that trade cheapens production, consumers are represented as passive beneficiaries of effects that take place in the world of production. Mill's claim that free trade ensures the good quality of commodities gives consumers a somewhat more active role as assessors of quality, but the context of that claim suggests that Mill is thinking of these assessments as objective. There is no suggestion of any relationship between the predicted effects of free trade, namely the cheapness and quality of commodities, and the development of consumers' individuality. Perhaps surprisingly, Mill does not discuss the mechanism by which extensions of the market and the division of labour allow a greater variety of goods to be purchasable by each consumer—an effect which, one might have thought, would have helped people to choose modes of life that suited their individual characters.

Having outlined these 'economical advantages of commerce', and before going on to a long chapter on the theory of comparative advantage, Mill adds an isolated paragraph about the surpassing importance of two 'intellectual and moral' (and by implication, non-economic) effects of international trade. The first is that trade contributes to human improvement by increasing 'communication between civilized nations' and 'placing human beings in contact with persons dissimilar to themselves, and with modes of thought and action unlike those with which they are familiar'. Here, Mill seems to be thinking about the improving effects of these contacts on the characters of the merchants who organise the trade, rather than on the consumers who merely experience the resulting lower prices.[3] The second effect is more diffuse: international trade promotes peace by teaching people that the wealth and progress of other countries is a source of wealth and progress for their own country, rather than being a threat to it (*PPE*: 581–582). There is a striking discontinuity between the concreteness and materialism of Mill's account of the economics of trade and the abstractness and high-mindedness of his account of its intellectual and moral effects.

6 Entrepreneurship

The materialism of Mill's political economy was not a universal feature of the economic thought of the time. Introducing Book III of *Principles*, 'Exchange', Mill explains why he has placed this after 'Production' (Book I) and 'Distribution' (Book II) rather than making it Book I. He acknowledges an un-named 'eminent writer' (in fact, Richard Whately) who has argued that political economy is the study of exchange relationships, and which would therefore be more aptly named 'the science of exchanges' (or 'catallactics'). Mill's response is that political economy has a more fundamental subject matter than exchange, namely the production and distribution of wealth. The laws of production 'aris[e] from the nature of things' and apply to all societies at all times, while exchange is a 'merely temporary' social arrangement (*PPE*: 435–436).

Underlying this disagreement about the subject matter of political economy are two very different mental pictures of an economic system. Mill sees a system in which 'wealth', understood in terms of objective quantities of physical commodities, is produced and distributed. Whately (1831/ 1847) sees a complex of exchanges between private individuals,

[3] Mill recognises, but treats as an exceptional case, that a country 'whose resources were previously undeveloped for want of energy and ambition in the people' may benefit from the opening of foreign trade through consumers' development of new tastes. Significantly, however, the benefit is not the enjoyment of new forms of consumption but the incentive to work harder and to save more, thereby promoting industrial development (*PPE*: 581).

acting on their subjective inclinations as consumers, suppliers of labour, savers or borrowers. Merchants and entrepreneurs act as intermediaries in these exchanges, purposefully seeking out potential gains from trade between individuals who may be unknown to one another. In taking this view, Whately was not alone. Similar ideas are developed in the more famous work of Jean-Baptiste Say (1821/1880).[4] In proposing the first theory of price discrimination and as the inventor of cost-benefit analysis, Jules Dupuit (1844/ 1952) shows how, by identifying differences in individuals' willingness to pay for the same commodity, entrepreneurs can recover the fixed costs of production processes. Dupuit's use of cost-benefit analysis to guide decisions about public works is a form of public-sector entrepreneurship.[5]

If entrepreneurship is understood as the intermediation of voluntary and undeceived transactions between private individuals, each private individual's transaction with a merchant or firm is a part of his life and conduct that affects other private individuals, but does so only with their consent. Continuing with Mill's example of the sale of alcohol, think of a pub with an owner-manager (the publican), and of a customer who buys and drinks beer there. On this view of entrepreneurship, the underlying exchanges are between the customer and the many private individuals who have supplied the factors of production embodied in the drink – the labour time of the farm workers who cultivated the barley, the labour time of the employee who serves the beer, (if the publican has a 'sleeping' business partner whose capital is tied up in the pub) the abstinence of the sleeping partner, and so on. In addition to being one of the suppliers of labour time, the publican is one of the entrepreneurs who has intermediated these exchanges. If the underlying exchanges fall within the scope of Mill's 'liberty of combination', the Harm Principle requires that the customer should be free to choose how much to drink, even if the State judges his conduct to be contrary to his best interests. This is one of the many freedoms that allow the customer to experiment with different modes of life and to develop and express his individuality.

What if the publican, acting in the role of entrepreneur, finds it profitable to charge loss-leading early-evening prices to attract customers who intend to leave after their first drinks but who can be predicted to change their minds and stay to drink more at the full prices? If the State prohibits this pricing strategy on the grounds that the resulting alcohol consumption is harmful, is it acting paternalistically? For Oliver, Le Grand and New, the answer is presumably 'No': the aim of the prohibition is to prevent the publican from harming her customers. In Oliver's conceptual scheme, loss-leading pricing is a 'behavioural-informed manipulation'; in Le Grand and New's it is an exploitation of

---

[4] Say's treatment of entrepreneurship is examined by Gregor Koolman (1971).

[5] For more on this reading of Dupuit, see Sugden (2015).

‘reasoning failure’.[6] Mill, I take it, would give the same answer, on the grounds that in trying to influence her customers’ decisions, the publican is not acting as a disinterested adviser; she is promoting a personal objective of profit.

But profit-seeking is essential to entrepreneurship. There is a fundamental dualism between two facets of entrepreneurship. The entrepreneur discovers and intermediates voluntary transactions between private individuals who thereby realise gains from trade. At the same time, she appropriates a share of those gains. These are two sides of the same coin: it is because the entrepreneur takes a share of the gains that she has an incentive to seek out their source. In a competitive market, the entrepreneur’s share will be competed away as others discover the same source of gain; but the short-term gain is essential to the mechanism.

It is through this mechanism that competitive markets satisfy the diversity of consumers’ preferences and promote the discovery of new ways in which private individuals can exercise liberty of combination. In his discussion of individuality in *On Liberty*, Mill inadvertently reveals his neglect of this mechanism:

> A man cannot get a coat or a pair of boots to fit him unless they are either made to his measure, or he has a whole warehouseful to choose from; and is it easier to fit him with a life than a coat, or are human beings more like one another in their whole physical and spiritual conformation than in the shape of their feet? (*OL*: 125)

Around the time Mill was writing, shoemaking and tailoring were mainly performed by individual craftsmen who ‘made to measure’. Such producers had little need to anticipate consumers’ demands. But over the course of the nineteenth century, these crafts were supplanted by factory production. After this process had run its course, most consumers chose to buy factory-made shoes and coats from shops which, unlike the warehouses that Mill had imagined to be necessary, stocked limited ranges of sizes and styles, broadly adapted to the range of what by then had become consumers’ tastes. This kind of adaptation emerges from interaction between consumers who are looking for products they want to buy at prices they are willing to pay and entrepreneurs who are looking for products that consumers are willing to buy at prices that provide a margin of profit. At one and the same time, consumers are experimenting in living and entrepreneurs are experimenting in profit-making. The fact that entrepreneurs’ objective is profit does not invalidate their actions as contributions to a process in which consumers develop and express their individuality.

[6] At least, if customers’ initial preferences reflect ends that are deemed to be ‘fundamentally the individuals’ own’, and if their subsequent preference changes are attributed to error (Le Grand and New, 2015: 27–30).

It might be objected that profit-seeking entrepreneurship does not always promote 'genuine' or 'valuable' forms of individuality. In my example of the publican, the result of loss-leading pricing is that customers consume more than they otherwise would of a product they already know well; they spend more time in the pub and less time on other activities, such as engaging with their families or pursuing hobbies. One might ask: How does this contribute to human individuality?

But the same question can be asked of *any* use that people make of the 'liberty of tastes and pursuits' that is guaranteed by Mill's Harm Principle. Drinking and gambling are particularly relevant test cases, because these activities are not well suited to the development of the kinds of individuality that Mill most values. For Mill, as the 'He who lets the world…' passage makes clear, human virtue is associated with the exercise of 'higher' (i.e., more distinctively human) faculties—for example, reasoning, judgement, discrimination and self-control. The pursuit of drunkenness is a deliberate disabling of such faculties to achieve what Mill (1861/ 1976: 7) calls pleasures of 'mere sensation'. To allow one's life to be determined by the outcomes of games of chance is an abdication of the responsibilities of choosing one's own plan of life. But Mill still insists that, provided no direct harm is done to others, each adult should be allowed to choose for himself whether or not to indulge in drinking and gambling. Individuality, he maintains, is not something that can be achieved by collective planning. It is the unplanned outcome of everyone's freedom to do as they like, subject to such consequences as may follow, even if others think what is being done is foolish, perverse or wrong—to which may be added, even if others think it is unoriginal. Whatever one thinks about this conception of individuality, it is clearly the one that *Mill* is using when he defends the Harm Principle. The answer to the question 'How does any specific instance of entrepreneurship contribute to human individuality?' is simply: By being part of a social order in which people are free to do as they like.

If budge regulations are to be consistent with the principle of liberty of combination, there must be some mechanism by which entrepreneurship compromises the voluntariness of the transactions between private individuals that it intermediates (and which otherwise would be protected by the principle of liberty of combination). What could that mechanism be?

Viewed in the moral perspective of Millian liberalism, does it matter if (as in my example of the publican, and in the cases considered by Oliver, Le Grand and New) an entrepreneur's actions are profitable only if her customers' preferences contravene the consistency axioms of neoclassical rational choice theory? I cannot see why it should. It is now well established that everyday human decisions systematically contravene many of those axioms. Extensionally, that was well known in Mill's time, before economists had become interested in theories of rational consumer choice. For example, Dupuit (1844/1952: 260–262) defines 'the only real utility' as 'that which people are willing to pay for', and declares (in relation to price discrimination) that '[t]he variable, yea mobile, nature of the value of utility is indeed well known to business men and has long been exploited by them'. Recall too Mill's reasons for not expecting the laws of value to apply with any exactness to retail prices. Given that the Harm Principle applies to actions that others may judge foolish, perverse or wrong, it would be peculiar to deny its protection to actions that merely contravene abstract principles of mutual consistency. My publican's customers are doing as they like, subject to such consequences as may follow, both when they buy their cheap first drinks and when they buy their more expensive later ones.

Can a case for regulation against bad nudges be based on the claim the entrepreneur is presenting her offers in ways that nudge them away from the choices that would satisfy their *true* preferences? There are general reasons for thinking that the concept of true preference is problematic,[7] but this concept is particularly out of place in arguments that appeal to the value of individuality. It is fundamental to the idea of experiments in living that individuality is developed by experimenting *with* your preferences. That requires a readiness to act contrary to what, at the time, you would think of as your settled preferences, but which the results of your action might *un*settle.

Or can a case for regulation be based on the claim that the entrepreneur is using *persuasion* in the pursuit of profit? Drawing lessons for modern liberalism from the work of Frank Knight, Malte Dold (****) suggests that persuasion is an intrinsically questionable activity—in social life in general, and in business-to-consumer communications in particular. Dold cites Frank Knight's (1936: 235–236) remark that '[p]ersuasion is a form of control, of force, ethically on the same level as any other—or even a lower one, since it always contains a large element of deceit'. But the claim that persuasion always involves deception is surely false. As I understand the concept, a person or firm i uses persuasion in an interaction with person j if it presents j with explicit or implicit reasons for making a particular judgement x, having selected and/or framed those reasons with the intention of inducing that judgement. In normal usage, persuasion differs from *demonstration*, i.e., where i presents valid reasons that entail the truth of x. But if x has no unambiguous truth value and if perceptions of its truth are context-dependent, that leaves a vast amount of space for non-deceptive persuasion. As pointed out in Section 1, the intention of many forms of advertising is not to induce beliefs about any propositions that could be judged true or false, but instead to create positive mental associations between a product and pleasurable ideas or experiences. Other forms of advertising are designed to shift the frame of reference within which a product is viewed, for example by inducing the idea of a wristwatch as an item of jewellery rather than as timekeeping device.

[7] See footnote 1.

Perhaps the objection is that the firm's financial interest in selling its product makes its use of persuasion insincere, even if non-deceptive. But, as I have argued elsewhere, much of the creativity of entrepreneurship consists in discovering opportunities for voluntary transactions that would-be transactors are unaware of (Sugden, 2024). Successful entrepreneurship by a firm involves directing the attention of potential customers to the opportunities the firm is offering and to the properties of those offers that it expects customers will find attractive. Attention is a psychological phenomenon; it is a fact of human life that attracting attention involves the use of psychological cues. In a market economy, the fact that firms benefit if their offers are taken up is not a proof of insincerity, it is a matter of common knowledge.

7 Conclusion

I hope I have persuaded the reader that regulations against non-deceptive but supposedly harmful nudges are not compatible with the spirit of Mill's Harm Principle. Mill did not recognise this incompatibility because he used a model of a market economy that did not represent the entrepreneurial role of intermediating voluntary transactions between private individuals. However, the qualification 'non-deceptive' is important. Firms currently use many kinds of nudges that are deceptive or that impose unnecessary hindrances to consumers' attempts to compare the offers of rival firms. The Harm Principle imposes no obstacle to regulations against such nudges.[8] To this extent, Mill was consistent in arguing that trade is a social act, within the proper jurisdiction of society.

To re-emphasise what I said at the end of Section 1, this paper has been an examination of Mill's Harm Principle, not an attempt to justify it. My personal sense is that although the Principle is an inspiring expression of a liberal ideal and a useful benchmark for definitions of paternalism, it is too categorical to be endorsed literally as a constraint on government action. Mill's struggles to reconcile it with his own recommendations for public policy suggest that that may have been true even for Mill himself.

References

Dold, M. (****)

Dupuit, J. (1844/ 1952). On the measurement of the utility of public works. *International Economic Papers* 2 (1952): 83–110. Translated from the French text by R.H.

[8] Building on the Principle of Mutual Benefit defended in Sugden (2018: 255–281), Bruce Lyons and I have proposed a non-paternalistic concept of *transactional fairness* which requires that a firm's trading practices are non-deceptive and do not hinder consumers from terminating a relationship with the firm or from transacting with alternative sellers (Lyons and Sugden, 2023). The non-deceptive but supposedly harm-inducing nudges that are the topic of the current paper are not transactionally unfair.

Barback. First published in French in 1844. (Page references to reprint in *Cost–Benefit Analysis*, edited by R. Layard. Penguin, 1973.)

Infante, G., Guilhem Lecouteux, G. & Sugden, R. (2016). Preference purification and the inner rational agent: a critique of the conventional wisdom of behavioural welfare economics. *Journal of Economic Methodology* 23 (1): 1–25. http://dx.doi.org/10.1080/1350178X.2015.1070527

Kahneman, D., Wakker, P. & Sarinm R. (1997). Back to Bentham? Explorations of experienced utility. *Quarterly Journal of Economics* 112 (2): 375–405.

Knight, F. (1936). Pragmatism and social action. *Ethics* 48(2): 229–236.

Koolman, G. (1971). Say's conception of the role of the role of the entrepreneur. *Economica* 38: 269–286. https://www.jstor.org/stable/2552843

Le Grand, J. & New, B. (2015). *Government Paternalism: Nanny State or Helpful Friend?* Princeton University Press.

Lyons, B. & Sugden, R. (2023). Transactional fairness in consumer markets. *Behavioural Public Policy*, *First View*: 1–23. https://doi.org/10.1017/bpp.2023.23

Mill, J.S. (1871/ 1909). *Principles of Political Economy*. Longmans. First edition 1848.

Mill, J.S. (1859/ 1972). *On Liberty*. Dent.

Mill, J.S. (1861/ 1972). *Utilitarianism*. Dent.

Oliver, A. (2013). *A Political Economy of Behavioural Public Policy*. Cambridge University Press.

Oliver, A. (****).

Say, J.-B. (1821/1880). *A Treatise of Political Economy*. Translated from the French text by C.P. Prinsep. https://cdn.mises.org/A%20Treatise%20on%20Political%20Economy_5.pdf

Sen, A. (1992). *Inequality Reexamined*. Harvard University Press.

Sugden, R. (2015). Consumers' surplus when individuals lack integrated preferences: a development of some ideas from Dupuit. *European Journal of History of Economic Thought* 22: 1042–1063. http://dx.doi.org/10.1080/09672567.2015.1084522

Sugden, R. (2017). Do people really want to be nudged towards healthy lifestyles? *International Review of Economics* 64 (1): 113–123. http://dx.doi.org/10.1007/s12232-016-0264-1

Sugden, R. (2018). *The Community of Advantage: A Behavioural Economist's Defence of the Market*. Oxford University Press.

Sugden, R. (2024). ‘Disengaging liberalism from rationality’. *Social Research: An International Quarterly* 92(1): 289–313.

Sunstein, C. (2018). ‘Better off, as judged by themselves’: a comment on evaluating nudges. *International Review of Economics* 65 (2): 1–8. https://doi.org/10.1007/s12232-017-0280-9

Sunstein, C. and R. Thaler (2003). Libertarian paternalism is not an oxymoron. *University of Chicago Law Review*, 70: 1159–1202.

Thaler, R. (2018). Nudge, not sludge. *Science* 361 (6401): 431. http://doi.org/10.1126/science.aau9241

Thaler, R. & Sunstein, C. (2008). *Nudge: Improving Decisions About Health, Wealth, and Happiness*. Yale University Press.

Whately, R. (1832). *Introductory lectures on political economy: delivered in Easter term 1831*. London. https://oll.libertyfund.org/titles/whately-introductory-lectures-on-political-economy