

[00:03:19.29] No two ages, and scarcely any two countries, had decided it alike. And the decision of one age or country is a wonder to another. Yet the people of any given age and any country no more suspect any difficulty in it than if it were a subject on which mankind had always been agreed. The rules, which obtain among themselves, appear to them self-evident and self-justifying.

[00:03:51.71] This all but universal illusion is one of the examples of the magical influence of custom which is only, as the proverb says, a second nature but is continually mistaken for the first. The effect of custom in preventing any misgiving, respecting the rules of conduct which mankind impose on one another, is all the more complete because the subject is one on which it is not generally considered necessary that reasons should be given either by one person to others or by each to himself.

[00:04:29.51] People are accustomed to believe and have been encouraged in the belief by some who aspire to the character of philosophers that their feelings on subjects of this nature are better than reasons and render reasons unnecessary. The practical principle which guides them to their opinions on the regulation of human conduct is the feeling in each person's mind that everybody should be required to act as he and those with whom he sympathizes would like them to act."

[00:05:07.54] TOM MERRILL: Thank you, Sarah. I guess one way of starting the conversation is, what does Mill mean when he says that custom is a second nature?

[00:05:19.64] JOHN MCGOWAN: So one of the things that's interesting here is the notion that on a level of human and unexamined intuition we have a sense of the rightness of certain kinds of things. One of the ways I talk about this with my students is say, look around the classroom and look at how you're all dressed. And where did this dress code come from, about not being too informal when you come to class?

[00:05:46.77] They don't usually come in their pajamas. At the same time, they also don't wear dresses and ties. So we take for granted we've learned somehow, absorbed from our society, what's appropriate. And we don't have any way of articulating where that came from or really what the reasons for it are.

[00:06:07.92] TOM MERRILL: Right, nobody stands in front of their closet in the morning and

[00:06:59.43] And maybe there are nudists out there who do feel that way. But I mean, this concept that he has of custom or second nature or social tyranny of the majority, it goes to deeper things than that, than just wearing of clothes and other social practices of that kind. Isn't that right?

[00:10:44.52] But he hasn't yet freed himself completely from it, that he's partially freed himself from it. And that might be a sign that there's still more work to do, even if you took Mill's premise as a correct premise that this is the beginning of a labor that is not easy and doesn't get done in a single day and that just requires continual self-attention to the ways in which we rely on opinions that we've gotten without ever thinking about what their unjust consequences might be.

[00:11:19.82] JOHN MCGOWAN: Yeah, I think that's really interesting to talk about the work that needs to be done, because in fact it's sort of surprising that Mill is not particularly interested in tolerance. So it's not a virtue that he wants to spend a lot of time talking about.

[00:11:36.19] So it's not just that you're supposed to cultivate a kind of indifference to or willing to agree to disagree with other customs in other cultures. He really does want you to work in examining your own culture by light of what other cultures deem as appropriate or proper behavior.

[00:11:58.03] TOM MERRILL: Correct, and he even says that we oftentimes-- the only time that we're really able to tolerate other people is when we don't really care about the issue that we disagree about, which is another way of saying that it's not really a live issue, which just goes to show, I think, the real problem of trying to talk about these opinions that we have that shape our worldviews but that also need to be examined and questioned in the light of alternatives.

[00:12:27.37] JOHN MCGOWAN: Right, so we'll get to Sarah here, I think, with the classroom. I mean, this is a way of saying, if the discussions in the classroom don't shake you to the core, then we haven't done our job.

[00:12:39.05] TOM MERRILL: Yeah, I guess one question we might ask is, do you think our students-- they probably don't know the phrase "social tyranny of the majority." But do you think that they know the thing? You think that's part of their lived experience?

[00:12:52.81] JOHN MCGOWAN: They've all been to high school.

[00:12:54.89] [CHUCKLING]

[00:12:58.53] TOM MERRILL: Well, you know, I always ask students at American University-- you know, I've been teaching there for a decade now. And I always ask innocently, is there social tyranny of the majority at AU? And invariably-- invariably; you don't have to prompt them in any way-- they will say, well, everyone knows conservatives are not allowed to speak, which is a funny thing because it's part of the folklore of the modern university, right?

[00:13:26.98] And the fact that they all say it means that there's something there. But it also means that it can't completely be true, right, because I think the pure definition of social tyranny of the majority is something that you're not even aware that there's an alternative.

[00:13:39.52] SARAH MARSH: Mhm.

internalized social constructions. And it could lead you in the direction of feminism, of radical feminism, of Marxism. Certainly many texts that we read in the University that have to do with race are dealing with similar concepts.

[00:20:59.04] Mill says, "The beliefs which we have most warrant for have no safeguard to rest on but a standing invitation to the whole world to prove them unfounded." And it often seems to me that one could give a long commentary on each phrase of that sentence. But what do you think that means for the classroom?

[00:21:21.90] SARAH MARSH: Well, just to say a few words about the transition from high school to college, right-- and this is, I think, a continuation of what John was saying-- the project of education in elementary school and middle school and high school-- and I think we've all got kids who have gone through those systems, so we've watched them-- the project does not seem to be dialectic in nature.

[00:21:52.21] It seems to be a project in imbibing or internalizing certain kinds of information. And I think there are some disciplines that lend themselves toward dialectical thought in primary and secondary education more than others.

[00:22:12.09] But then students arrive at the university. And that whole project is exploded. And instead of asking students to know stuff about the world and to write that stuff down on exams and in papers, we want them to think about the things they don't know. And that's a massive cultural shift.

[00:22:34.21] And I think we've probably all had that experience of a student coming to us and saying, Professor, what do you want? And it's really hard to demonstrate that the things that we want are for students to take responsibility for their own educations.

[00:22:51.99] And I think the first year is the place where you start to do that work. But the project is really a four-year long endeavor. And I don't know that it necessarily always happens because the training of those early years is so formative, right? It's custom. It's the custom that Mill's talking about.

[00:23:10.11] TOM MERRILL: Right, it might be longer than four years actually.

[00:23:12.92] SARAH MARSH: Right, right.

[00:23:16.28] JOHN MCGOWAN: So it's interesting that one way of approaching that problem, I assume-- it seems like this is your way, Tom-- is to give them Mill, which is an explicit argument and description of what it would mean like, what it would feel like and be like, what you need to do. So do you find being that explicit useful?

[00:23:40.29] TOM MERRILL: I do. I mean, I guess I just feel like you don't want to let things go unstated in the hopes that people pick up on. I mean, there is something that's-- what happens in the classroom is an activity. And we're trying to get students to engage in that activity. And you need to give them pointers.

[00:24:01.77] I mean, one way of thinking about what's going on in this chapter in particular of On Liberty-- there are no answers here. This is a how-to book. This is like a series of exercises

that you would have to do in order to get the benefit from, more than something that you could sort of passively ingest and then appreciate.

[00:24:23.97] So yeah, I think it helps to give them kind of a goal, or this is the kind of activity

academics, to make sure that the things that we think that we know are really the best of our knowledge, and I always tell them that this is why we keep the universities open, because we are constantly skeptical of what we know as being the best of what knowledge could be.

[00:27:44.41] And I think that that is [CHUCKLES], it's a little disconcerting, I think, as a first-year university student who has been told a certain kind of story about what a university education is for. And then you show up, and your professor is telling you that, well, maybe we'll really never know.

[00:28:04.32] And this is the thing that troubles me the most whenever I think about how a university education is supposed to translate into meaningful action in the world. If we're supposed to keep open the questions and keep asking, when do we stop and do something about it?

[00:28:23.41] And I was wondering if y'all could talk a little bit about that problem. Tom and I have framed it as the difference between, or the continuity between, university intellectual methods and activism. But I wonder if there are other insights that you all want to bring in. And, John, maybe I'll ask you to go first.

[00:31:00.22] Now, obviously that's not such a good idea if you're in the practical sphere. If everything is a real experiment with real human beings, then the consequences are going to be dire. So you need a kind of space, a space of imagination in which you can think things through without having to live with all the consequences of what it is that you're thinking. I think that's part of the purpose.

[00:31:28.66] SARAH MARSH: And it makes me think again of where we started with Mill's imperialism, right? I mean, it's one thing to say that despotism is the best way of governing barbarians, which is, I think, a rough paraphrase of the way Mill articulates the idea in *On Liberty*. It's one thing to write it on the page, and it's another to form colonial polities with real flesh and blood societies that are organized by a concept of hierarchy and subjection with power being exercised not through public opinion but through violence.

[00:32:11.22] And so I think you're right, Tom and John, to say that there are different spheres. And the university is important because it allows us an opportunity to flesh out these questions and problems and to really work on them before we do the flesh and blood version of them out in the world.

[00:32:36.34] One of the other things I wanted to engage you both on is this idea that Tom's been centering our discussion on about an invitation to the whole world to prove these beliefs unfounded. And that, I think, frames the question as one between the individual and everybody else.

[00:33:03.06] But I also think there's an ideal kind of inquiry where that debate or that invitation is sort of internalized and one is grappling with oneself about the ideas in question. How do you cultivate that kind of work in a classroom or even in individual assignments?

[00:33:28.58] TOM MERRILL: Can I make a stab? And I'm interested to hear what John has to say. I mean, social tyranny of the majority suggests that we see the world through a distorting lens. But it might also mean that we see ourselves through a distorting lens, that we never quite have direct access to our, quote, unquote, "true selves."

[00:33:50.12] So I sometimes think when you're talking with students, and I wonder if this is your experience as well, that you'll meet a student, and you'll realize that the student is wearing a costume, a mental or a spiritual costume, that they don't even realize is a costume, that there's some layer of appearance that's not the full self that they're showing.

[00:34:13.49] And so that's just another way of saying-- I think what you're saying, Sarah-- that's, how do we get ourselves to start trying to work through those things? Is there a way to get,

are separate. John, I think you had a quote about civility that you wanted to read and have us talk about.

[00:38:14.32] JOHN MCGOWAN: Yeah, just, this is at the very end of chapter 2. Mill actually takes up the question of civility. And he pretty much wants to be a free speech absolutist. He wants to say it's impossible to govern speech, certainly by laws he would be really against.

[00:38:32.93] But even he wants to get away from, I guess you would say, the implicit censorship of certain kinds of notions of what's civil and what's not civil. And it seems to me in this respect he's a bit naive thinking that everyone is entering the conversation in good faith.

[00:38:50.50] And this passage at the very end of chapter 2 shows us his assumption that people will act in good faith. He says, "Undoubtedly the manner of asserting an opinion, even though it be a true one, may be very objectionable and may justly incur severe censure.

[00:39:12.22] But the principal offenses of this kind are such as it is mostly impossible, unless by accidental self-betrayal, to bring home to conviction. The greatest of them is to argue sophistically, to suppress facts or arguments, to misstate the elements of the case, or misrepresent the opposite opinion.

[00:39:34.92] But all this, even to the most aggravated degree, is so continually done in perfect good faith by persons who are not considered, and in many other respects may not deserve to be considered, ignorant or incompetent that it is rarely possible on adequate grounds conscientiously to stamp the misrepresentation as morally culpable; and still less can law presume to interfere with this kind of controversial misconduct."

[00:40:06.16] Well, in an age of disinformation deliberately spread, this is, to say the least, rather naive. And to think that it's never morally culpable-- and I don't know what legal solutions to this do not seem particularly appropriate. At the same time, safeguarding against misinformation is a severe test that our society is trying to struggle with right now.

[00:40:34.13] TOM MERRILL: So, John, you're probably opposed to, when there's a controversy in class, of people who tend to throw their hands up and say, well, there are two sides. We have to hear both sides. And one sees this sometimes in the media.

[00:40:49.92] And it sounds to me like you want to say sometimes to students or to other people, I don't think you're offering that argument in good faith. And I don't believe that that argument is true or valid. Is that correct?

[00:41:06.89] JOHN MCGOWAN: Well, no, I tend not to go in that direction. I tend usually to have the problem of things that are based on false facts, false information. So I could be seen in the classroom often as throwing my weight of authority on one side of the question. But I'm insisting that we be fact-based.

[00:41:29.86] So a favorite example of mine is-- so Hannah Arendt says, we can argue about the causes of World War I till the cows come home. But if you start the argument by saying Belgium

[00:45:51.70] SARAH MARSH: Well, this is probably a good moment to transition into the harm principle, right? I mean that helps us think through the grounds for civil discussion because there, as Douglass' experience points out, the physical and spiritual violence of chattel slavery makes something like dialectics impossible.

[00:46:21.78] It makes conversation impossible because you have these intractable positions. Tom, do you want to say a little bit more about the harm principle and how it can help us think through this issue of absolute moral stances?

[00:46:37.94] TOM MERRILL: Sure, let me try to pose the issue this way, which I think is a restatement of what John just said. So if Mill is right in chapter 2, in order to really own our own opinions we have to have this kind of intellectual anarchism in which we're seeking out the opinions with which we disagree. And in advance we can't know how far that goes, OK?

[00:46:57.75] So that's on the one hand. On the other hand, we live in a society. And as you say, Sarah, in your example of grades, that there's power relations, and we have to make decisions about how we're going to live. We don't have the luxury of the academic of always being able to go back and reconsider decisions because our decisions have real-life consequences. So there's a tension between what the community needs and what the life of the mind needs.

[00:47:23.07] Mill wants to say, knowing that there's a tension there, he wants to say that he's going to give us a principle that's going to help us solve or navigate, which might not be the same thing, that tension. That's the harm principle. And I'm going to read a passage from the end of chapter 1. To
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[00:49:27.41] JOHN MCGOWAN: This is funny because in some ways it gets us back to the issue of custom. I think it has become a common sense principle, that there is fairly widespread agreement within our society. So it's an easy place to fall back on to at least start the conversation.

[00:49:45.18] So the obvious example is drunkenness. So we feel as if society has no right to tell you you cannot get drunk. But we're very comfortable with the fact of society having strict penalties for drunk driving, because once you're drunk driving, then you're possibly causing harm to others, not just to yourself.

[00:50:06.11] So I think that's gotten baked into our common sense, and that it works for some cases to help understand the rationales for our legal structures. There are obviously difficult cases it doesn't work so well for.

[00:50:22.56] TOM MERRITT: 3/4 Using me give a counter-example that sometimes people give in class. So let's say that you're doing some unhealthy behavior that ends up with hefty health care costs. In a world in which health care is at least partially socialized, health care costs, don't those things carry weight for other people?

[00:50:48.15] So if I'm a smoker, you might think, well, I'm only harming myself. I'm not endorsing this argument. But this is the way the argument goes. But because there are the long-term health costs of you having lung cancer and society having to support you on that, isn't the line between public and private kind of messy?

[00:51:10.03] JOHN MCGOWAN: Absolutely messy?

[00:52:41.74] TOM MERRILL: Yeah, that's an empirical argument based on the consequentialist argument, based on what are experience and what happens if you try to prohibit. But one thing that's striking to me in those last chapters of *On Liberty*, is that it turns out that the social coercion turns to-- he has more positive things to say about it in the latter half of the book than he does in the first half, that that's a legitimate way for society to send people messages about what society thinks is better or worse.

[00:53:12.94] JOHN MCGOWAN: Well, even in the passage that you just read at the very beginning, he says remonstrances are perfectly allowable.

[00:53:20.67] TOM MERRILL: Right, yeah, that's exactly what I'm thinking of, that sometimes-- but maybe there's a distinction between trying to persuade your erring brother that he has messed up in some way and using coercion on that person. That's a distinction that Mill very much wants to build, that he's not suggesting that we just have to sit back and accept whatever everyone else does in the world without making any judgments. That would be an inhuman thing. But, Sarah, do you have thoughts about this?

[00:53:58.62] SARAH MARSH: So I do have thoughts about-- I want to pivot back to the example of domestic violence, which is something that Mill talks about in *The Subjection of Women*. So the problem with prosecuting domestic violence, Mill says, is that often the legal remedies for the problem merely deliver the victim right back into the location of her brutalization.

[00:54:36.48] And so I think whenever we're talking with students about these issues, which I think, broadly construed, we could say are sort of like tensions between the individual good and collective good, I think it's really helpful to try to sift down and be as granular as we can be about the lived realities of these experiences, because it's one thing to frame the discussion in a particular way and say, well, you know, smoking is only bad for me. But then it would potentially have these other collective effects, right?

[00:55:20.43] Even the advent of something like a pandemic changes the stakes of a conversation like that, where we carry individually these new kinds of exposures, these new kinds of risks. And being together socially is a kind of danger.

[00:55:43.41] And so I do think that, again, it's really hard. And it's a constantly evolving conversation with students to properly contextualize what we're talking about, but also to bring up the intricacies of these problems, which is not something we're particularly good at in our public discourse.

[00:56:08.32] JOHN MCGOWAN: So one of the ways I think about this and one of the places where Mill falls down is the notion that I pick up from John Dewey, but other liberals in the 20th century obviously are interested in, of effective freedom.

[00:56:25.24] So if we think of your domestic violence example, it's not only that the state has some kind of responsibility to punish the perpetrator, but the state then has a responsibility to provide the resources for the victims of that violence so that they can actually go on with their

lives in a way that shelters them from the violence. So there are positive resources that are needed in order to actually act on the kinds of freedom that Mill is trying to convey.

[00:56:56.71] TOM MERRILL: John, I wonder if that connects back with some of the things we're talking about with issues in the classroom, that, if I understand Mill correctly, freedom is a very great good. What puts a person in a position to be able to use that good effectively and in a way that's going to help their life flourish?

[00:57:18.92] And those questions, I think, are much harder to see because I think that there are material conditions. There are also spiritual conditions or a sense of self-confidence in the world that allows you to question yourself, that if you start out in a place where you feel that you're completely bereft and you have no resources, it can be very hard and scary to say, well, maybe justice isn't what I thought it was. So that question about what are the conditions that allow this activity to be good, I think, is a hard one to answer in Mill's framework.

[00:57:58.87] JOHN MCGOWAN: And also, going back to Sarah's point, Mill does seem to bypass questions of power. So concentrations of power are not always governmental concentrations of power. And there are cases where you want to enlist the state in fact to guard against or dismantle or at least curb the effects of concentrations of power that are non-state actors, obviously economic power being a crucial one.

[00:58:29.46] SARAH MARSH: Mhm.

[00:58:30.42] TOM MERRILL: Right, right. I mean, Mill seems to assume that everybody can just start using liberty and that we're all basically in the same

[01:00:13.48] TOM MERRILL: Well, we should wrap up. Do we want to make any closing comments here? Sarah, do you want to say something?

[01:00:20.75] SARAH MARSH: Sure, so what I would like us to continue to do-- and this is part of my own research interests in the origination of chattel slavery, of racial chattel slavery, in Anglo America, both during the colonial period and then in the early national era-- I want to just put a pin in the conversation we've been having about Douglass and power and the way that white supremacy and other kinds of structures of domination are constitutive of the notion of liberty and that liberty itself is an idea that really ought to be historicized as something that did

[01:04:04.45] And justice raises the question of, what are the impediments to that? And what can the state do to alleviate those impediments? And racism is just an obvious example. And so that's where it seems the conversation needs to go next.

[01:04:24.07] TOM MERRILL: Right, would you see that as overturning Mill or completing Mill?

[01:04:29.14] JOHN MCGOWAN: Well, I think it becomes the development of 20th century liberal thought from people like John Dewey to John Rawls, et cetera. And it's also obviously central to the current political debates in our country, where social justice is an epithet of disgust and outrage on the political right at this moment. To be a social justice warrior is somehow despicable, as if it were a threat to freedom rather than a way to make freedom available.

[01:04:59.75] TOM MERRILL: Right, right, right.

[01:05:01.99] SARAH MARSH: Right.

[01:06:03.06] JOHN MCGOWAN: Yep, bye bye.

[01:06:04.20] TOM MERRILL: Bye bye.