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On liberty and crime: Adam Smith and John Stuart Mill

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Abstract The author considers some of the works produced by Adam Smith and John Stuart Mill, who from different perspectives discuss notions such as transgression, deviance and crime. It is argued that the analysis of power crime may immensely benefit from an excavation into economics, for its concern about the creation and acquisition of wealth, the legitimacy of certain conducts as opposed to others, and ultimately the circumstances in which competition and enterprise may cause human and social harm.

Economists have often paid visits to the field of criminology, examining the rational logic of offending. In a defence of his work on crime as choice, Nobel Prize winner Gary Becker [1] remarked that one should not be repelled by the idea that an offender can be treated like any other *homo oeconomicus*, and reminded readers that two important contributors to criminology during the eighteenth and nineteenth centuries, Beccaria and Bentham, explicitly applied an economic calculus. This paper returns the visit: it is an excursion into the realm of classical economic thought, and is meant to ascertain whether the traces of some familiar criminological concepts can be found there, left for us as a legacy by important, often neglected, ancestors.

The classics of economic thought examined below are perhaps the giant oeuvres shaping the logic, the rationale and the philosophy underlying liberalism and the notion of market freedom. Such oeuvres strive to rid the prevailing culture of the time from the traditional obstacles and the moral restrictions surrounding economic initiative and its development. In brief, the works examined here provide a theoretical behavioural framework which was and remains inescapable for entrepreneurial activity, assigning to those involved predictable and mutually-binding roles while encouraging, or prescribing, precise conducts to all. Such a framework contains boundaries which attempt to separate acceptable practices from unorthodox ones, thus indirectly formulating tentative definitions of crime and its

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control. The authors considered are Adam Smith and John Stuart Mill, who from different perspectives discuss notions such as transgression, deviance, conventional criminality as well as criminality by the elite. In their writings the echo can be detected of contemporary discussions around crimes committed by powerless as well as powerful individuals or groups. Criminological analysis may immensely benefit from an excavation into other disciplines, particularly economics, for its concern about the creation and acquisition of wealth, individual and collective behaviour in the market place, the legitimacy of certain conducts as opposed to others, and ultimately the circumstances in which competition and enterprise may cause human and social harm.

Idle and labouring criminals

In Adam Smith, justice is violated when individuals are injured as individuals, as members of a family, or as members and citizens of a state. Violations may undermine our natural rights, for example the right of *liberi commercii*, namely the right to exchange goods and services with those who are willing to deal with us. Those who hamper such a right violate what Smith terms *iura perfecta*, that is to say ‘rights that we have a title to demand and, if refused, to compel another to perform’ ([29]: 8). *Iura imperfecta*, conversely, pertain to expectations, to duties which might be performed by others for our benefit, but to which we have no entitlement nor can we compel others to perform. ‘Thus, a man of bright parts or remarkable learning is deserving of praise, but we have no power to compel any one to give it him’ ([29]: 9). Similarly, beggars may be the objects of our charity and may be assumed to have a right to demand it, but we are not compelled to share our wealth with them. In this initial classification, Smith argues that perfect rights relate to communicative justice, whereas imperfect rights refer to distributive justice.

Violations of perfect rights are examined by Smith in the section titled ‘On Police’ of his *Lectures on Jurisprudence*. In that section he discusses the regulatory role ‘of the inferior parts of government, for example, cleanliness and security’. The police are entrusted with ‘carrying the dirt from the streets and the execution of justice’, along with preventing crimes and ‘keeping a city guard’. In a thoughtful remark, the author warns that cities with large police presence whose operations are subject to a wide range of regulations are not necessarily the safest cities.

In Paris, the regulations concerning police are so numerous as not to be comprehended in several volumes. In London there are only two or three simple regulations. Yet in Paris scarce a night passes without somebody being killed, while in London, which is a larger city, there are scarce three or four in a year ([29]: 486).

Does this mean that more police activity renders cities less secure? Rather than focusing on the intensity and scope of the institutional control exercised on city inhabitants, Smith provides an explanation through a careful reading of urban social compositions. In France as well as in England, at least until Queen Elisabeth’s reign, large numbers of individuals and families were kept idle as ‘retainers’ in accommodations adjacent to the house of the aristocrats they served. Badly paid, if at all, such retainers ‘had no other way of getting their subsistence but by committing robberies and living on plunder, which occasioned the greatest disorder’.

Smith suggests that this feudal arrangement, still preserved in France, accounts for the different criminality rates observed in Paris as opposed to other cities. He notes that the nobility in Paris keeps 'far more menial servants' than elsewhere, and these 'are often turned out on their own account through the caprice of their masters' and, being in the most indigent circumstances, are 'forced to commit the most dreadful crimes'. In Glasgow, where almost no body has more than one servant, there are fewer capital crimes than in Edinburgh, where servants abound.

Smith concludes that it is not so much policing activities that prevent the commission of crimes as 'the having as few persons as possible to live upon others'. Dependency is therefore the source of corruption of humankind, while independence 'increases the honesty of the people'. A number of implications follow from this view, for example, that 'the establishment of commerce and manufactures, which brings about this independency, is the best police for preventing crimes'. Work and wages are presumed to generate probity and solidarity among people, so that 'nobody will be so mad as to expose himself upon the highway, when he can make better bread in an honest and industrious manner' ([29]: 486–7). Smith's argument, here, echoes the orthodox Marxist notion that the central locus of social control lies in the exchange between labour and wage, that is in the employer–employee relationship. The argument also chimes with aspects of Durkheim's analysis, according to whom solidarity lies in the consensus generated by a widely accepted form of division of labour. The assumption that 'idle' individuals are more prone to crime, however, also echoes widespread suggestions that acquisitive crime is the result of unemployment or that poverty and lack of purpose are crucial triggers for offending. Smith seems therefore to adopt a paradigm centred on *deficit*, an explicative philosophy that is still significantly prevalent among conventional criminologists. Crime, in other words, is deemed the outcome of *want*, be this of work, resources, socialisation, and so on. But in a surprising turn, Smith distances himself from this paradigm when he analyses more specifically the division of labour generated by commerce and manufacture. Let us follow the logic of his enquiry.

The division of labour contributes to economic growth through the segmentation and simplification of productive processes, through the development of connections among individuals and the goods and services they exchange. Social and economic interconnected action creates a climate of cooperation and mutual dependence which ensures that stability and solidarity are automatically maintained. The introduction of commerce, Smith remarks, is accompanied by the spread of virtues such as probity and punctuality. 'These virtues in a rude and barbarous country are almost unknown', because 'where people seldom deal with one another, we find that they are somewhat disposed to cheat' ([29]: 539). Where interaction and exchange are rare, it is also rare that the collective advantages of norms and regulations presiding over them are fully appreciated. However, the division of labour, at the same time, confines workers to a set of pre-established, simple operations, reducing their capacity to exercise their mental skills; it widens the gulf between 'the philosopher and the ordinary man' and between the latter and his employer. Smith believes that the worker can lose the habit of mental exertion, thus gradually becoming as 'stupid and ignorant as it is possible for a human creature to become'. In turn, mental torpor may render workers not only incapable of taking part in any socially meaningful project, but also 'of conceiving any generous, noble, or tender sentiment, and

consequently of forming any just judgement concerning many even of the ordinary duties of private life' ([28]: 38–9).

Human beings so described may be regarded as totally apathetic, therefore unable to conceive not only any generous or noble sentiment, but also any harmful deed, the latter requiring initiative, imagination and a will to act. As for the inability to form 'any just judgement concerning many of the ordinary duties of private life', one might assume that such inability also extends to 'duties of public life', and conclude that the working individuals described by Smith display some anti-social characteristics disposing them to crime. What is crucial in this analysis, however, is the centrality given to work rather than lack of it: that which other analysts would deem the major source of social control and acceptable conduct is seen by Smith as an important pre-condition of anti-social behaviour. This hypothesis implies that economic development does not necessarily bring social harmony; on the contrary, it may produce, along with greater material benefits, the 'mental mutilations' which prevent people from appreciating the importance of the collective good. Smith is thinking about labourers who may envelop their life in their immediate personal interests, who become oblivious to the cooperative effort and mutuality their occupation requires. Disillusionment is the cause of this form of selfishness, as the promises that economic development would bring material and spiritual fulfillment reveal their falsity. In this sense, one could equate Smith's 'mental mutilation' with relative deprivation as we understand it in criminological analysis, whereby those enjoying a certain range of benefits are constantly led to aspire to more. One could also refer to anti-social behaviour as the expression of the quest for excitement, a thrilling experience or a 'carnival' sought after by those who want to escape the 'mental torpor' induced by work [13, 21].

Finally, Smith's analysis of commerce and manufacture as potential generators of anti-social behaviour relates to suggestions that crime is one of the options offered to all individuals, who are faced with a structure of opportunities arising from both the legal and the illegal arenas. Idle and dependent on others, or regularly and fully employed, Smith's anti-social individuals remind us that each official position occupied in society may entail possibilities to alter or escape such position through the adoption of a set of illicit practices [23]. All may become 'cheats at work' [15], and looking at the amount and range of crimes committed by people who are employed, one may conclude, along with Box [3], that work, not lack of it, is the prime source of illegal conduct. This brings us to the different sphere of crimes committed by relatively powerful individuals, and to the analysis thereof proposed by Adam Smith.

Self interest as public good

Smith consolidates a perception of society as made up of two spheres: an economic sphere of individual initiative and interaction, governed by impersonal laws that assure a beneficial outcome of the pursuit of self-interest; and the rest of social life, including political, religious, and moral interactions, 'which require the conscious balancing of self-interest with social considerations' ([9]: 1). Anti-social behaviour caused by the division of labour, as described above, may be partly neutralised, in Smith's view, through education provided by the state, with a view to instilling in

disaffected and selfish individuals a sense of the common welfare. However, whether educated or not, by experiencing the tension between the economic and the social sphere, individuals may be led to adopt harmful behaviour. Smith believes that the activities carried out within markets and the logic of economic initiative itself transform selfishness into its opposite: that is to say, regard and consideration for others. Thus, by being selfish within the rules of market relations, we are actually being good to our fellow human beings: 'private selfishness turns into public altruism' ([9]: 3). The following may be an explicative example.

How to justify selfishness in the form of exorbitant profits? In Smith's self-regulating view of the economy, an industrial sector showing profit rates much higher than other sectors will attract investors and entrepreneurs, who will be followed by labour. As a result, the output of the industry will rise, while prices and profit rates will decline, thus re-establishing the equilibrium temporarily compromised: exorbitant profits for some, therefore, will create opportunities for others. Symmetrically, entrepreneurs will tend to shun industrial sectors which under-perform in terms of profits, thus causing an increase in prices in those sectors and pushing profits high for colleagues who continue to operate in them. In brief, the economy as a self-regulating system requires no external governance, selfishness being the most effective regulatory force.

Smith recognises that, with the increase in labour productivity, fewer workers will be required in specific sectors; but the resulting unemployed, he posits, will eventually be absorbed by new entrepreneurial initiative in other productive sectors. As for the harm caused to individuals and families in the interim period between unemployment and re-employment, it is to be assumed that such harm is not to be associated with the violation of a 'perfect right', the right to self reproduction being, in Smith's classification, 'imperfect'. Human beings are not entitled to a job, this being at most part of their expectations, of an ideal distributive justice to which nobody can be compelled to conform.

There are cases, however, in which external governance of the economy is required, and these are identified by Smith with the circumstances experienced by 'infant industries', namely productive sectors and enterprises which attempt to venture into the open market and, due to their fragility, risk to be destroyed by foreign competition. In order to protect such industries and help them through their infancy, governments are advised to intervene and, therefore, suspend the principles of *laissez-faire*. Smith is unclear whether intervention should take the form of tariff restrictions, export subsidies or low-interest loans; he is also ambiguous about intervention *per se*, as at times failure to intervene in industry, as he puts it, may be the most efficacious way of intervening.

This apparent paradox re-emerges in contemporary criminological analysis of offences committed by entrepreneurs. When rigging markets, fixing prices, and violating antitrust laws, entrepreneurs appear to claim that market freedom includes the right to violate the very principles inspiring such freedom [25]. In this respect, research has found a range of common defences offered by entrepreneurs to explain their crime: all measures to control business constitute government interference with the free enterprise system, regulations reduce profits, violations are due to economic necessity [5, 30]. On the other hand, when bribing officials to gain contracts, they may claim that theirs is an 'infant industry' needing institutional support; in brief, that unfair competition is the only practice available to them to compete fairly. However, when violating labour rights and health and safety regulations [33], they may defend themselves by asserting their right to escape state interference. In some

cases, therefore, freedom of enterprise is guaranteed by external governance interfering with that freedom, while in others by the self-regulating mechanisms of the economic system.

This paradox is also illustrated by Smith's famous observation that it is not from the love or goodwill of the butcher or baker that we get our dinner, but from our appeal to their self-interest through our paying for meat and bread. On the one hand, this means 'that we have no alternative to accepting the distributional inequities and moral violence that accompany private property relations as the means to securing our dinner' ([9]: 43). On the other hand, this also means that selfishness should be the pivotal variable orienting our action, irrespective of how destructive this might be. Whether, in Smith's analysis, such destructive action includes entrepreneurial crime is unclear, as is controversial whether contemporary criminal entrepreneurs 'learn' the techniques and rationalisations of their conduct from Adam Smith. Surely, there is a Christian-Hebraic stance in this suggestion, whereby a superior entity will arrange things so that every egoistic conduct will find its synthesis in a higher, inscrutable, harmony. This is a hubristic theory positing that we resemble the God who made us, and that we no longer need his judgement on our exploits. In sum, we are depicted as animals, full of instincts, innate desires and egoism [2], but at the same time as gods who turn their animal nature into universal harmony. This resonates with the contradiction noted above whereby, despite the adherence to the doctrine of laissez-faire in theory, Adam Smith maintains 'a strong interest in promoting policies' that further accumulation and favour enterprise, whether legitimate or otherwise ([20]: 10). Let us move on to interpret other aspects of his analysis of crime.

Crime, conflict and negligence

Smith's *Theory of Moral Sentiments* is central in this respect, particularly for the efforts the author makes to define virtue and identify its origin. What makes certain conducts praise-worthy and certain actions the spontaneous object of approbation and admiration? 'And, secondly, by what power or faculty in the mind is it that this character, whatever it be, is recommended to us?' ([28]: 5). How does our mind prefer certain acts and behaviours to others?

The process allowing us to distinguish between objects of approval or disapproval, according to Smith, depends largely on our capacity to engage in 'other-regarding' activities, and involves a repertoire of abilities and propensities which include sympathy, imagination, reason and reflection. This 'interactionist' argument is translated by Smith into a basic principle, according to which human beings possess a patrimony of feelings which permit them to feel joy or sorrow when faced with their fellows' feelings of pleasure or pain. Our 'acts of reflection and imagination' produce expressions of sympathy for other persons, and such acts consist of taking the place of others and forming 'an opinion with regard to their mental state'. Of course, our judgement with regard to others is always likely to be imperfect, at least in the sense that we can have 'no immediate experience of what other men feel'. However, reason will help us discern the two key 'aspects' or 'relations' under which we may judge an action taken by ourselves or others. Judgement is expressed 'first, in relation to the cause or object which excites it;

secondly, in relation to the end which it proposes, or to the effect which it tends to produce' ([28]: 5). We therefore perceive a conduct as laudable when we share the motives behind it and when we appreciate its beneficiary effects. On the contrary, acts lacking these two 'aspects' may be seen as undeserving of reward, and our resentment towards them may turn into demand for punishment. Smith expresses his view with the following words:

Nature when she formed man for society, endowed him with an original desire to please, and an original aversion to offend his brethren. She taught him to feel pleasure in their favourable, and pain in their unfavourable regard. She rendered their approbation most flattering... for its own sake; and their disapprobation most mortifying and most offensive ([28]: 9).

This general disposition, he warns, may be insufficient to ensure an adequate source of control over our actions and passions, due to the problem of self-interest. However, our experience teaches us some 'general rules of morality' pointing to 'what is fit and proper to be done or to be avoided', and such rules become standards against which we can judge our conduct and 'correct' our self-interest or self-love.

The constitution of this form of self-control is accompanied by a process involving others. In pursuing our objectives we find a crucial motivation in the reaction of the surrounding social environment, in the sense that our good deeds are inspired by the good reputation they grant us among our fellow human beings. Why do we pursue wealth and avoid poverty? What is the end of avarice and ambition, of power and pre-eminence? The 'desire to be thought well of' is what guides our economic exploits: 'To be observed, to be attended to, to be taken notice of with sympathy, complacency, and approbation, are all the advantages which we can propose to derive from it'. Our actions, however, may have hurtful consequences for others by accident or design. The race for wealth and honours may strain every nerve and every muscle with the purpose of defeating competitors. If we do not violate the rules of fair play, admiration by others is our reward, but we do 'the indulgence of the spectators is entirely at an end'. Knowledge of the resentment on the part of the spectators is therefore the other source of self-control, a deterrent force guiding our sense of justice. Here, Adam Smith associates economic conduct with justice, which in his formulation 'is the main pillar that upholds the whole edifice'. With the removal of the idea of justice, 'the immense fabric of human society... must in a moment crumble into atoms'. ([28]: 10).

In this argument Smith displays a singular optimism, as he assumes that virtuous behaviour is collectively recognizable and that its features and characteristics can be universally agreed upon. There is no notion, here, of how individuals and groups may make their conducts acceptable to others by virtue of the position they occupy in the social and institutional system. The notion that there are conflicting interests in society is temporarily neglected. But it emerges, clear and powerful, if we bear with a few more pages of his argument, when the issue of 'how does government originate' is addressed.

When analysing the 'sources of authority', Smith links popular obedience with 'utility', but also with 'personal qualifications, age, fortune, and birth'. At first sight, therefore, he combines what Weberian analysis would indicate as charismatic authority, on the one hand, and traditional authority, on the other. In Weber [35], the

former type of authority is associated with natural leadership, and rests on specific gifts of the body and the spirit. Charisma also characterises patriarchal power, which is rooted in the provision of recurrent and routinized necessities of everyday life. Traditional authority, instead, is based on a system of norms which possess undue sacredness; it is therefore irrational, and belongs to the realm of arbitrariness, where judgements are made on the basis of 'personal', not 'functional' role divisions. Weber, however, posits that the procedures and modalities through which authority is achieved are crucial for it to be recognised and accepted. Qualified leaders may lose their legitimacy as soon as the authority relationship on which they base their status, and the way in which they have built that status, are questioned.

Smith simplifies all this by placing particular emphasis on 'fortune' or wealth as a source of authority, thus separating a material status (being wealthy) from the way in which that status is acquired. This is a crucial passage in his analysis: wealth is interpreted as emanating power and eliciting admiration in that the poor owe their subsistence to those who might be generous enough to share it. The hope that this may happen leads to the neglect of the ways in which 'fortune' is actually accumulated, leaving therefore the wealthy in the condition to negotiate the degree of virtuosity of their acts. Persons endowed with wealth, in other words, may constantly move the threshold beyond which their conduct is to be deemed immoral. Smith is well aware of this dynamic, for example, when he notes that wealth represents an important source of authority, but also an important object of dispute. In a situation where property can be acquired, he argues, there are advantages to be gained by committing acts of injustice, because 'that situation tends to give full rein to avarice and ambition'. Hence the necessity to establish a 'civil government'. But 'civil government, so far as it is instituted for the security of property, is in reality instituted for the defence of the rich against the poor, or of those who have some property against those who have none at all' ([35]: 12).

We have here a formulation that conflict theorists would certainly endorse: the whole process of lawmaking and law enforcement 'reflects the deep-seated and fundamental conflicts between group interests and the more general struggles among groups for the control of the state' ([34]: 236). There is however an important underlying rationalisation (or technique of neutralisation) which helps Smith develop his argument while outflanking possible imputations of immorality or illegality. In his analysis 'the constant drive to better our condition' provides the stimulus to economic growth which ends up benefiting all: in sum, the pursuit of private interest is compatible with public benefit, as we have seen. One might conclude that even illicit or unorthodox economic practices, like conventional economic activity, will contribute to the dream that privileges will be extended and that power, the usual attendant of wealth, will be in some measure diffused among all the members of the community. Against Hutcheson's view that self-love may at times be pernicious, and contrary to Mandeville's suggestion that the pursuit of self-interest should be regarded as vicious, Smith deems individual initiative, and even egoism, as virtuous.

In the chapter 'Delinquency' of his Lectures on Jurisprudence, the author finally clarifies his views on the subject matter. The initial distinction is made between damage produced by 'wilful injury' or the *malice propense* of the offender, and damage caused by 'faulty negligence, or *culpa*'. ([29]: 103). In a list of what we would now describe as white collar crimes, he mentions 'those injuries which may

be done to one's personal estate', a variety of frauds, including the acts of 'cheating another out of his property' and offences like perjury and forgery. He then describes in some detail 'fraud with regard to insurance', where 'the insurers, on the masters giving in an account of the value of the ship and cargo, insure her for that sum'. A 'master', we are told, may make mendacious claims, and 'having insured his ship above the value, might take an opportunity of wrecking her on some place where he might easily save himself and crew; and by this means enrich himself to the great loss of the insurers' ([29]: 132). We are also warned that the detection of such operations is very difficult, and that the great profits made in this way is the cause of the great temptation to commit this specific form of fraud. After briefly discussing some examples of 'financial crime', such as 'forgery of bills, India bonds, banks bonds, bank notes and all other payables', Smith moves his attention to 'the crimes which the sovereign may be guilty of against the subjects'. But who are the subjects? This question leads him to a number of further considerations on authority and power.

The definitions of subjects and citizens vary enormously between countries. In general citizenship entitles to peculiar privileges, and when linked to family descent, the number of citizens is very small. In some countries, citizenship grants the privilege of electing or being elected out of a vast number of individuals. In other countries the place of one's birth generally determines whether or not one is to be described as a citizen. Yet in other places, birth does not make one a citizen. So who are the victims-subjects of the sovereign? Smith remarks that there is no court which can try the sovereigns themselves, there is 'no authority sovereign to the sovereign'. So, are we faced with a limitless form of power? Smith admits that limits can be statutorily established, but also notes that disputes are often decided by force and violence. 'If the sovereign got the better of the subjects, then they are condemned as traitors and rebels; and if the subjects got the better of the sovereign, he is declared to be a tyrant and oppressor not to be endured' ([29]: 311).

We can briefly summarise this section in the following terms. The virtuous circle translating self-love into public good may also turn into a vicious circle. But when this occurs it is likely that imperfect, rather than perfect rights are violated. In other words, if economic initiative causes unemployment, destruction and destitution, it still remains a legitimate form of development, because work and environmental or personal wellbeing are only imperfect rights, and as such may be violated. Authority emanates from wealth, whatever the modality in which it has been accumulated, and is aimed at protecting those who possess property against those who possess none. As for the subjects, it is uncertain that they exist, let alone that they are victimised. Finally, legitimacy is decided by force and violence.

It comes as no surprise, against this background, that crimes committed by wealthy and powerful individuals and groups, described by Smith in his *Lectures on Jurisprudence*, will fall under the rubric of offences resulting from 'faulty negligence or culpa', rather than those caused by 'wilful injury or malice propense'. Smith could not have anticipated the future success of his formulations. A cursory look at the literature on white collar and corporate crime reveals how frequently Smith's notions recur. It is noted, for example, that this type of crime is characterised by the relative invisibility of the victim [6], that it is of difficult detection [18], and that often it is not a *mala in se* but simply a *mala prohibita* [36]. White collar and

powerful offenders are said to escape detection and prosecution due to their wealth, status and authority [30], to lack an ‘offending mind’ (*mens rea*), and to act in the name of freedom [10]. Interfering with their conduct amounts to limiting that freedom. With this formulation we enter a more specific aspect of liberal thought.

Dissenters and deviants

The main idea handed down to us by John Stuart Mill is that individuals are free and sovereign, an idea of liberty strikingly similar to that posited by Locke, who equates freedom to the capacity of individuals to command their actions and dispose of their possessions, as well as themselves, as they think fit. In Locke, however, this type of liberty only exists in a state of nature, where opportunities arise to harm others in their health, liberty, possessions, or life. The state of nature being inadequate, humans enter civil society, thus consenting to limit their liberty of action. In the utilitarian tradition, civil society is in fact not only the artificial device allowing for the protection of one’s possessions, health and life, but also an organisational setup permitting the greatest possible number achieving the greatest possible happiness. Mill sets off with a critical view of this very formula, questioning whether happiness can be pursued through a calculus of pleasure and pain, ‘a calculus that could only be arrived at rationally, analytically.’ ([12]: 13). He does believe that happiness is the test of all rules of conduct, the end of life, but its attainment, he argues, is not the direct and conscious objective of conducts, rather, it is the unintended outcome of other objectives: ‘the happiness of others, the improvement of mankind, art, beauty, the contemplation of nature, any activity pursued for its own sake’ ([12]: 15). This philosophy of anti-self-consciousness echoes Adam Smith’s notion discussed earlier of individual interest as public good.

Mill, however, shifts the emphasis from the outcomes of individual choice and its impact on the collectivity onto individual choice itself. The opening lines of *On Liberty* offer a concise summary of his whole enterprise. The book is said to assert one very simple principle, namely that no authority should govern by means of compulsion and control the dealings of individuals, whether the means be physical force in the form of legal penalties, or the moral coercion exerted by public opinion. Interference of government on any member of a community is only justified when it is intended to prevent harm to others. Conversely, there is no justification for the authority to intervene to ensure the ‘physical or moral good’ of those who, by making choices, may cause harm to themselves. The individual

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 ([17]: 47).

In brief, individuals can only be deterred from acting when theirs is a calculated choice to produce evil to someone else.

Conservative criticism of Mill’s argument revolves around the imputation that what he posits is a form of moral laissez-fairism in which each individual, while encouraged to make free choices, is dispensed from distinguishing between good and bad. Such criticism would stress that a similar notion of liberty constitutes an

implicit denial of human history, in which progress and civilisation depend upon the appropriate use of moral, religious, and legal coercion. Individual choice may lead to vice, and suppression of vice is as much the law's business as the suppression of subversive activities [11]. Liberals would retort that a distinction must be made between self-regarding and other-regarding actions. No intervention is to be invoked over individuals in matters affecting their own 'moral and spiritual welfare', whereas intervention is required when individuals lacking control of the outcome of their acts may injure other individuals. There are, however, several issues which both conservative and liberal criticism neglect, and what follows attempts to examine such issues one by one.

When Mill argues that the only 'purpose for which power can be rightly exercised is to prevent harm to others', he refers to 'any member of a *civilised* society' ([17]: 59, my *italic*). After clarifying that his doctrine is meant to apply only to human beings in the maturity of their faculties, and that those who still require being taken care of by others must be protected against their own actions, he extends his argument in the following manner:

For the same reason we may leave out of consideration those backward states of society in which the race itself may be considered as in its nonage. ... Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement and the means justified by actually effecting that end. Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion' ([17]: 69).

In other words, freedom is only applicable to free people. Mill draws a 'map of liberty' and delimits the social spheres and the nations deserving it. He establishes a neat border between the deserving, namely the civilised, and the undeserving, that is the barbarians. *Civilisation* distinguishes wealthy and populous nations from savages; it is the opposite of rudeness: In a narrow sense, it refers to the ontology of a place—Europe generally, and Great Britain in particular ([19]: 307). Mill implies that inability to engage in 'free and equal discussion' amounts to incapacity to exert self-control, to bend impulses to calculation: all characteristics of barbarians. Despotism is therefore a legitimate way of dealing with those who are deaf to dialogue, and judges, soldiers and executioners are ideal candidates for the healing of the 'deaf'.

Returning to Mill's similarities with Locke, it should be noted that the latter does advocate 'liberty of opinion', but delimits such liberty to exclude opinions contrary to human society, or to those moral rules which are necessary for the preservation of civil society. These ideas, he stresses, should not be tolerated. For example, the denial of the existence of God is socially and politically ruinous, because 'promises, covenants, and oaths, which are the bonds of human society, can have no hold upon the atheist' ([12]: 9). If for Locke, only religious people can be allowed to operate in the market, for Mill only 'civilised' individuals can be entrusted with individual liberty. There is also an echo of Smith's argument, here: as industries in their infancy, contrary to the principle of *laissez-faire*, require state protection, so communities and groups in their 'nonage' require intervention: they are to be denied enjoyment of liberty.

There is another important issue raised by Mill that deserves analytical attention. Liberty, not truth, is the mark of individuality, he asserts, meaning that dissenters

from conventional truth express their individual independence more than proponents of that truth. Liberty and truth are, however, closely connected, as the latter emerges from the former, while all sorts of other positive outcomes (i.e. virtue, vigour and even genius) will stem from the cultivation of individuality. For this reason, qualities hampering individuality, such as conformity, obedience, restraint, discipline, custom, tradition, public opinion, and social pressure, will divert from truth. This exaltation of the individual, along with a deep distrust of conformity, convention, and social pressures of all kinds, leads to profound suspicion towards the rise of popular government that Mill sees as the pre-condition of a new and more formidable despotism. The ‘tyranny of the majority’, that Tocqueville [32] sees in ‘people being increasingly like each other’, in Mill is not confined to the political sphere, but spills over to cover every aspect of social life. Conventional society itself, therefore, becomes the true tyrant, and customs turn into despotism.

This invective against tradition and dull conformity is expressed in a tone which is as combative as it is persuasive. We need protection, Mill says, not only from the tyranny of the magistracy, but also from that of the prevailing opinions and feelings, and our fight should be against ‘the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them’ ([17]: 63). This fight against customs is the only exercise that guarantees the liveliness of our mental and moral powers. Feelings and character must be active and energetic, not inert and torpid. Finally,

An intelligent deviation from custom is better than a blind and simply mechanical adhesion to it... Energy may be turned to bad uses; but more good may always be made of the energetic nature than of an indolent and impassive one ([17]: 124).

An ‘intelligent deviation’ is what in economic thought is known as innovation, and has in Schumpeter [26] its major bard. Schumpeter’s free individuals as entrepreneurs are in perpetual agitation, they possess an inherent transgressive force leading them to incessantly innovate. Mill’s individual fighting against traditions and customs resembles Schumpeter’s entrepreneurs swimming against the flow of conformity and economic stagnation. Entrepreneurs constantly revolutionise the economic structure from within, destroying the old and creating a new one, in a process of Creative Destruction. From Mill through to Schumpeter, the term ‘innovation’ finds its way into the vocabulary of the sociology of deviance: Merton [16] includes innovation among the available deviant adaptations to strained social and economic conditions. In sum, we are faced with an ambiguous concept, forged by Mill’s notion of ‘intelligent deviation’, which after being expanded in economics and the sociology of deviance can now constitute a crucial tool for the analysis of both ‘economic development’ and ‘crime’ as discrete spheres of human activity.

There is, however, an important proviso that Mill puts forward and that may clarify the ambiguity between innovation as economic entrepreneurship and innovation as a deviant adaptation. He reminds us that energetic characters risk becoming ‘merely traditional’, and claims that ‘there is now scarcely any outlet for energy in this country except business’. The greatness of England, he says, was made by free spirits, men of another stamp, ‘and men of another stamp will be

needed to prevent its decline' ([17]: 135). He is thinking of 'people of genius', whom he describes as 'more individual' than any other people, 'less capable, consequently, of fitting themselves, without hurtful compression, into any of the small number of moulds which society provides' ([17]: 139). He is advocating the cultivation of individuality 'within the limits imposed by the rights and interests of others'. Deviance, therefore, must not hurt others, their life, health or interests, and should be confined within the boundaries of victimless behaviour. We have reached a key argument of liberal philosophy, the logic of which still lingers in our times.

The disappearance of the other

Even in what people do for pleasure, Mill complains, conformity is the rule, and choice is only exercised among 'things commonly done'. In this way, while refusing to follow their nature, people will soon discover that they have no nature to follow. The sad conclusion is that peculiarity of taste and eccentricity of conduct are shunned like crime. But what about the cases where peculiarity and eccentricity amount indeed to crime? 'If anyone does an act hurtful to others, there is a *prima facie* case for punishing him by law or, where legal penalties are not safely applicable, by general disapprobation' ([17]: 70). Conducts causing harm to others, therefore, may escape formal punishment where statutory penalties are difficult to apply or are nonexistent. Using our contemporary vocabulary, we may suggest that conducts for which penalties can be 'safely applicable' correspond to conventional criminal conducts, while those for which legal intervention is problematic fall in the domain of the economy, and correspond to unorthodox or illegitimate entrepreneurial practices. Mill appears to suggest, therefore, that the latter practices are punishable through mere general disapprobation.

A range of conducts examined in *On Liberty* fall in this grey area where liberty encounters crime, and Mill's attempt to classify them mirrors our own contemporary endeavour to formulate a taxonomy of offences and the harm these produce. First, each individual is bound to observe a certain set of rules while interacting with others. Not 'injuring the interests of one another' is the basic rule, whether those interests are protected by formal legal provision or by 'tacit understanding'. Such interests ought to be considered as rights. However, some acts may be 'hurtful to others or wanting in due consideration for their welfare', without violating any of their constituted rights. The offender may then be justly 'punished by opinion, though not by law'. ([17]: 141). That Mill is referring to business crime becomes clear a few pages below, when he discusses what degree of public control would be viable for the prevention of fraud by adulteration, and 'how far sanitary precautions, or arrangements to protect workpeople employed in dangerous occupations, should be enforced on employers' ([17]: 165). Even in situations where liberty and crime, in a sense, almost coincide, Mill considers freedom as a priority by unequivocally stating that 'leaving people to themselves is always better than controlling them' ([17]: 165). We are faced with two familiar concepts regularly recurring in debates around white collar and corporate crime. 'General disapprobation' and 'punishment by opinion' echo analyses of corporate crime as conduct whose definition should be elaborated, and whose criminal nature perceived, within the occupational context in

which it occurs. Think of the analytical suggestions of Quinney [22], according to whom only behaviour deviating from the normative structure of an occupational group that solicits disapproval within that group can be defined as deviant. In other words, only when members of that occupation express their own disapproval or deliver their ‘punishment by opinion’, can that disapproval become generalised. The notion of ‘punishment by opinion’, on the other hand, echoes criminological debate around the concept of ‘shaming’, particularly in the area of white collar and corporate crime [4]. Punishment or persuasion? Mill’s argument reminds us of this dilemma, although his belief that ‘leaving people to themselves is always better than controlling them’ would suggest that persuasion, accompanied by disapprobation, would be preferable. This, inevitably, reminds us of the debate over regulation and self-regulation within the literature on corporate crime [27].

Intervention against malpractice, in many cases, ‘would produce other evils, greater than those which it would prevent’ ([17]: 70). We are therefore left with two main solutions: either the conduct affecting others is met with free, voluntary, consent by those affected, or those affected somehow ‘disappear’. We are in a crucial part of Mill’s argument, where the author discusses the variable liberty within a highly controversial commercial activity, namely the marketing of poisons. Here, he notes that authority control should not infringe on the liberty of producers or sellers, but on that of buyers. But even in this case, ‘the preventive function of government, however, is liable to be abused to the prejudice of liberty’. Persons should just be warned of the dangerousness of the good they buy. In a clarifying example, Mill describes a person attempting to cross a bridge which has been ascertained to be unsafe. There is no time to warn the person of the danger, but she might be seized and turned back without any real infringement of her liberty, ‘for liberty consists in doing what one desires’, and she does not desire to fall into the river ([17]: 166). In other cases, the person may desire just that, and once warned of the danger, should be left free to make her choice. The conclusion stemming from this example might be that those in charge of the building of the bridge should be granted the freedom to make it unsafe. Potential victims, on the other hand, should be granted the freedom to voluntarily become victims, thus ‘participating’ in the free entrepreneurial process. There is, however, a second solution. Unacceptable economic conduct may be perceived as affecting only the perpetrators, a perception that allows the disappearance of the victims themselves. Let us see how Mill describes this possibility.

Damage, or probability of damage, to the interests of others, cannot alone justify the interference of society on individual behaviour: ‘in many cases an individual, in pursuing a legitimate object, necessarily and therefore legitimately causes pain or loss to others’ ([17]: 164). In other words, once the pursuit of an object is made legitimate one can legitimately cause pain and loss to others. The recent debate over corporate crime addresses this issue by examining less the legitimacy of certain conducts than the social harm they cause, in this way untangling the analysis from the constraints of official legal definitions. Mill, instead, makes the production of harm legitimate through the legitimacy of the objective pursued by actors. In this way, he seems to imply that harm caused by ‘liberty’ of choice should be weighed against the benefits it brings not only to those who exercise such liberty, but to society at large. In sum, the effects of a criminal conduct may appear to benefit

others than the perpetrator. I would term this ‘philanthropic crime’, whereby offenders manage to repel the criminal label from their activity and to persuade others that their goals correspond to those of the collectivity [25].

Conclusion

Critical analyses of crime tend to link offending with the decline of state intervention in the economy and society in general, whereby describing criminal activity as the outcome of withering welfare provision and widespread deregulation [31]. When addressing crime committed by privileged actors, such analyses posit that the growing emphasis on market freedom and privatisation has contributed to the blurring of the boundaries separating acceptable from unacceptable business practices [14]. The celebration of enterprise includes the appreciation of the risk entrepreneurs run in committing their investment to initiatives whose economic outcomes are unpredictable. The appreciation of ‘enterprise risk’ seems to translate into a form of flexibility, or tolerance, towards economic practices and procedures, as if unorthodox or criminal conducts were the price society has to pay for the potential benefits produced by business initiative and development. This paper has attempted to dig deeper into economic liberal thought and, through the reading of some of Adam Smith’s and John Stuart Mill’s work, to discuss the nexus liberty-crime as a crucial point of juncture where classical authors have left a significant legacy to criminologists. Smith’s idea that ‘dependence’ and marginalisation, but also inclusion in the labour market, may cause anti-social behaviour has been discussed. The discussion has been linked with criminological debates focusing on the variables ‘deficit’ and ‘abundance’ as aetiological explanations of illegal conduct. In respect of state regulation of private initiative, it has been noted that radical non-intervention as formulated by Smith chimes with the justifications found by white collar and corporate offenders whereby state institutions should not interfere with enterprise initiative. After analysing how the idea that self-interest turns into collective interest may provide yet one more crucial justification for powerful offenders, similar ideas found in Mill’s work have been discussed. By focusing on individual liberty, Mill is compelled to draw the borders beyond which conducts should be prohibited for their causing harm to others. After noting that his argument on who is entitled to free choice and who is not favours powerful individuals, groups and nations, his view that ‘intelligent deviation’ should be encouraged is compared with the views found in economic thought about the variable innovation and in the sociology of deviance about the same variable. It is extraordinary how Mill’s argument manages to turn conducts affecting others into conducts merely affecting those who adopt them. In this sense, one might suggest that harmful behaviour claims legitimacy when moral principles (defining our obligations and responsibilities to other people) are presented as ethical convictions (defining our individual choices) [7]. When this occurs, even crime may be perceived as an altruistic enterprise. Mill is perhaps unaware that, by encouraging intelligent deviation he contributes to the creation of a horrified intimacy between ‘free individuals’ and their diabolical counterparts: Faust with Mephistopheles, Ahab with Moby Dick, Leopold Bloom with Stephen Dedalus [24, 8]. Rivalry and affinity between these coupled characters suggest a form of secret complicity between the entrepreneur and the criminal.

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