



REPLIES

Trade, Piecework, and the Liberty Principle

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Abstract

John Stuart Mill does not contradict himself in *On Liberty* with respect to the issue of piecework, contrary to Dale E. Miller's charge that he does. Miller fails to understand that the liberty principle (LP) limits society's authority to regulate trade in that society has no legitimate authority to prohibit or make unduly expensive a buyer's post-trade use of his purchased product in self-regarding ways. LP gives an employer who has purchased labor under a trade contract in a free and fair competitive labor market a right to conclude a separate mutually consensual self-regarding piecework contract with any skilled worker already in his employ.

Keywords: Mill; trade; piecework; liberty principle

Dale E. Miller claims that John Stuart Mill contradicts himself in *On Liberty* on the issue of piecework in which employers contract to “pay workers a set amount for each unit they produce rather than paying by the hour or the day.”¹ According to Miller, the self-contradiction arises because Mill says on the one hand that “trade is a social act” and therefore not covered by the simple principle of liberty (LP) which guarantees freedom by right only to self-regarding acts; and yet he also says on the other hand that society has no legitimate authority to prohibit piecework contracts because they are the workers’ “private concerns” protected by LP and therefore immune from society’s meddling.²

Miller appears to be right when he charges that “Mill is guilty of ... a blatant inconsistency.”³ Mill seems unable to make up his mind as to whether the exchange of labor for pay is social or self-regarding activity. Such ambivalence, if he is really guilty of it, would strike at the heart of his liberal utilitarian doctrine. It would feed into the suspicions of his critics that he is a careless thinker whose bold rhetoric should not be taken seriously. For if the trade of labor is correctly seen as social conduct, then it is legitimately regulated whenever society judges that the general happiness is promoted by preventing or punishing the non-consensual harms caused to others by the conduct, taking

¹Dale E. Miller, “Principle, Pragmatism, and Piecework in *On Liberty*,” *Utilitas* 35 (2023): pp. 312–19, at p. 313.

²*On Liberty*, CW XVIII, pp. 293, 287. References to Mill's works are to *The Collected Works of John Stuart Mill*, 33 vols. ed. by John M. Robson (Toronto and London: University of Toronto Press and Routledge, 1963–91), and include volume and page numbers.

³Dale E. Miller, “Piecework,” p. 318.

into account the social costs of establishing and maintaining the regulatory regime. If it is correctly seen as self-regarding conduct, however, then society should not even consider coercive interference because LP gives workers complete freedom to work under any terms and conditions they choose, including piecework contracts.

Miller and I agree that Mill sees trade as social conduct, although Miller shows some uncertainty provoked by Mill's seemingly libertarian remarks about piecework contracts.⁴ So, unless he can show that piecework is not invariably trade and that piecework contracts are self-regarding contracts in certain situations, Mill is in trouble as Miller charges. I will argue, however, that Mill can explain when piecework is self-regarding conduct. Miller is incorrect to accuse him of self-contradiction.

I proceed by first underscoring Mill's view of economic laissez-faire (section I) and next consider (what Miller does not consider) his account of how LP limits society's legitimate authority to regulate trade (section II). His account is then applied to regulation of the labor market to explain under what conditions piecework is self-regarding conduct (section III).

I. Free and fair competitive markets

Mill accepts "the so-called Doctrine of Free Trade" which, though distinct from LP, rests on "equally solid" grounds.⁵ Losers in an open economic competition experience wasted efforts and financial injuries including the prospect of evils such as bankruptcy and unemployment against their wishes. But civilized societies do not consider these sufferings as wrongs: "society admits no right, either legal or moral, in the disappointed competitors, to immunity from this kind of suffering."⁶ In short, although society can legitimately consider whether the government or some other agency should be given authority to set prices and plan inputs and outputs of scarce commodities, such coercive interference with the competitive market should not be implemented because it does not generate the consequences which its advocates desire, namely, more efficient allocations of resources and better economic growth than generated by competitive markets.

Restrictions on trade, or on production for purposes of trade, are indeed restraints; and all restraint, *quâ* restraint, is an evil: but the restraints in question affect only that part of conduct which society is competent to restrain, and are wrong solely because they do not really produce the results which it is desired to produce by them.⁷

So regulation of the competitive market is generally inexpedient if the goal is to improve its signals for prices and allocations of goods and services. Its price signals flow together with rough estimates of demand and supply based on the decentralized information provided directly and spontaneously by individual buyers and sellers, and this information is generally not available immediately if at all to social planners.

It is important to appreciate that when he defends laissez-faire, Mill is defending *free and fair competitive* markets. He is not defending a libertarian free-for-all in which government is discouraged or even forbidden to regulate concentrated market power used

⁴Miller says that "the passage" in which trade is described as a social act "reflects Mill's considered view" ("Piecework," p. 318). He also claims that Mill rejects "doctrinaire libertarianism."

⁵*On Liberty*, CW XVIII, p. 293.

⁶*On Liberty*, CW XVIII, p. 293.

⁷*On Liberty*, CW XVIII, p. 293.

to establish non-competitive prices or wages, gouging consumers or oppressing workers. He is also explicit that government has legitimate authority to prevent or punish traders' violations of moral rights. The competitive market's operation must be fair. Society can justifiably interfere "when means of success have been employed which it is contrary to the general interest to permit – namely, fraud or treachery, and force."⁸

Government intervention is legitimate to deter traders from violating the many rights which competent civil majorities already now recognize such as property rights, rights of contract, personal security rights, the right not to be defrauded, and the right to a safe workplace. Although not yet recognized by majorities, also needing recognition is the absolute right of self-regarding liberty which Mill argues is grounded in the general interest. And government can justifiably protect the public at large and any group within it from suffering wrongful harms, even if those wrongs are not properly viewed as violations of individual rights. Society properly intervenes to prevent undue pollution of the environment, for example, regardless of whether any determinate individual is properly said to have a right to clean air or water.

I cannot discuss in any further detail the various regulations which Mill prescribes to promote market efficiency and fairness, or which he might reasonably be expected to prescribe as social circumstances change.⁹ But from what I have already said it is evident that he would never endorse forms of piecework that involve abuse and oppression of the moral rights of vulnerable workers such as racial minorities or illegal immigrants. Miller acknowledges his commitment to fairness for workers: "No matter how efficient piecework is, Mill would not think that employers should use it if this would be unjust to workers."¹⁰

I will return to the point later in the context of labor markets since *laissez-faire* as it existed in those markets in Britain and its colonies during Mill's lifetime was blatantly unfair to workers and a long way from any enlightened version of the free-trade doctrine as he understood it.

II. LP and the regulation of trade

Miller and I also agree that LP confines the moral right of liberty to the self-regarding spheres of competent individuals and voluntary groups of such. Liberty means "doing what one desires" or "act[ing] in accord with [one's] own inclination and judgment."¹¹ Full liberty in this sense is not permitted in the social sphere. Private owners cannot use their properties as they please, for example. Their property rights permit some uses but forbid others. Similarly, rights of personal safety do not permit the right-holder to initiate unprovoked attacks on innocent people, and there are usually enforceable limits even on the actions he can take to defend himself against attacks by others.

An anonymous referee brings up the fair point that Miller and I may disagree over Mill's conception of harm, and that this disagreement could affect our shared view that the "singular object" of *On Liberty* is to defend LP.¹² We probably do not fully agree on the conception of harm, although I am not sure of Miller's considered opinion on this

⁸*On Liberty*, CW XVIII, p. 293.

⁹For Mill's detailed discussion of "large exceptions" to *laissez-faire*, see *Principles of Political Economy*, CW III, pp. 913–71.

¹⁰Miller, "Piecework," p. 313.

¹¹*On Liberty*, CW XVIII, pp. 260, 294.

¹²For Miller's statement that "the singular object" is to defend LP, see his "The Place of 'The Liberty of Thought and Discussion' in *On Liberty*," *Utilitas* 33 (2021): 134.

matter. Even so, we agree that piecework cannot be self-regarding conduct if it violates basic rights and duties, although I would go further to insist that it also must not directly cause any non-consensual empirical harm to the participants or any third parties. We agree as well that piecework can be self-regarding despite any mere dislike or disgust felt by others who experience no harm from it. The upshot is that any disagreement over harm has no impact on the question under consideration. Since I demand more than he does for any action or contract to be classified as self-regarding, Miller would have no reason to dispute a sound conclusion by me that piecework is self-regarding conduct under certain conditions.¹³

Remarkably, though, Miller ignores what Mill says in the text immediately after his remarks that distinguish LP from the free-trade doctrine. For Mill goes on right away to claim that LP limits the interference which society can legitimately impose when regulating trade: “there are questions relating to the interference with trade, which are essentially questions of liberty.”¹⁴ He illustrates his claim by referring to

the Maine Law [prohibiting the sale of alcohol in that state of the USA]; ..., the prohibition of the importation of opium into China; the restriction of the sale of poisons; all cases, in short, where the object of the interference is to make it impossible or difficult to obtain a particular commodity.¹⁵

Notice that all of the prohibited commodities in this list can be consumed or used in self-regarding ways. Mill then tells us: “These interferences are objectionable, not as infringements on the liberty of the producer or seller, but on that of *the buyer*.”¹⁶

Evidently, prohibiting the sale of a commodity which has self-regarding uses, or making it too expensive for virtually anyone to buy, is tantamount to prohibiting its purchase by buyers who wish to use it in self-regarding ways. Such interference with the self-regarding actions of the buyer is forbidden by LP, and society cannot legitimately impose any regulation that transgresses this limit because the moral right of self-regarding liberty is absolute. Indeed, if society does so anyway, the regulation is justifiably condemned as immoral because it violates the buyer’s right to liberty. This is how LP sets a limit *in principle* on the regulation of trade under Mill’s liberal utilitarian doctrine.

Someone might object by arguing that Mill should not be talking about self-regarding conduct of the buyers but instead should reject the ban on trade only because majorities correctly judge that leaving competitive sellers and buyers of these products alone promotes general utility. In other words, society retains jurisdiction over trade and could legitimately prohibit sales and thus purchases but decides not to do so because a *laissez-faire* policy is more generally expedient than prohibition. This seems to be Miller’s view as he expresses dismay that Mill makes reference to LP to

¹³Our potential disagreement over Mill’s idea of harm arises because it is conceivable that a moral right or duty can be violated despite the victim suffering no non-consensual empirical harm. Admittedly, this possibility would rarely occur in civil societies with predominantly liberal moralities. But not all civil societies are liberal. When rights and duties are recognized whose violation does not imply any non-consensual empirical harm, such as a duty not to appear in public in the innocent garb of a foreign culture, the implication is that society may regulate what Joel Feinberg (*Harmless Wrongdoing* (Oxford: Oxford University Press, 1988)) calls “harmless immoralities.” But these concerns may be left aside for present purposes.

¹⁴*On Liberty*, CW XVIII, p. 293.

¹⁵*On Liberty*, CW XVIII, p. 293.

¹⁶*On Liberty*, CW XVIII, p. 293, emphasis added.

justify liberty of piecemeal work: “Mill could acknowledge that society has jurisdiction over the labor market and still criticize restrictions on piecemeal work for the same pragmatic reasons that he criticizes other restraints on trade.”¹⁷

But the objection is misplaced. For one thing, it is overly dismissive of Mill’s statement that his sole purpose in *On Liberty* is to defend LP. This point by itself does not defeat the objection. Yet it is of some importance to see that the objection is in tension with Mill’s sole aim in the essay. In the course of his defense of LP, he seeks to clarify LP’s practical implications for legitimate modes of regulation. In other words, he aims to “decide which among the possible modes of regulation are or are not contrary to principle.”¹⁸

He is not concerned merely to dictate whether any particular society like Britain should or should not regulate the trade of this or that item. If he were, he would not say that prohibition violates the buyer’s liberty in principle. He would say instead that although society could legitimately prohibit trade of the item to prevent the non-consensual harms caused by this social activity, society nevertheless ought not do so because the general benefits of permitting the sale and purchase outweigh the non-consensual harms. His concern is to make clear which modes of regulation are altogether illegitimate because they are contrary to LP, which requires that “purely self-regarding conduct cannot properly be meddled with in the way of prevention or punishment.”¹⁹ This requirement of principle applies in all civilized (as opposed to “backward”) societies: “No society in which these [self-regarding] liberties are not, on the whole, respected, is free, whatever may be its form of government; and none is completely free in which they do not exist *absolute and unqualified*.”²⁰

This point of principle alone is not decisive against the objection because it does not explain how Mill can escape from Miller’s charge. The decisive point provides the requisite explanation: Mill is able to escape because trade and the buyer’s consumption or use of the commodity he has purchased are distinct kinds of activity. There is no denial that trade is social conduct. But once a trade has been made, what the buyer does with the commodity he now owns is not trade. Instead, it can be self-regarding conduct if the commodity has self-regarding uses.

The distinction is not *within* trade but instead is *between* trade and post-trade use by the buyer of his own product or service.

A fair market must not violate anyone’s basic rights, including the absolute right of self-regarding liberty. Once self-regarding conduct is identified, there is no need for any debate about what society ought to do: majorities should not even consider coercive interference.

In the part [of his conduct] which merely concerns himself, [the competent individual’s] independence is, *of right, absolute*. Over himself, over his own body and mind, the individual is *sovereign*.²¹

Society has no legitimate jurisdiction within any individual’s self-regarding sphere.

Mill goes on to discuss the trade of poisons to illustrate that even when a product has both self-regarding and wrongful social uses and uncertainty exists as to whether a buyer will use it in one way or the other, LP still forbids society from prohibiting the

¹⁷Miller, “Piecemeal,” pp. 318–19.

¹⁸*On Liberty*, CW XVIII, p. 294, emphasis added.

¹⁹*On Liberty*, CW XVIII, p. 295.

²⁰*On Liberty*, CW XVIII, p. 226, emphasis added.

²¹*On Liberty*, CW XVIII, p. 224, emphasis added.

sale or purchase of the product. But limited space forbids me to go into the details of the case of uncertainty here.²²

This Millian analysis of the relation between LP and the legitimate regulation of trade is applicable to the passages in *On Liberty* which Miller thinks show that Mill contradicts himself.

III. Piecework as self-regarding conduct

Mill's enlightened view of laissez-faire holds that, provided a competitive labor market operates without "fraud or treachery, and force," leaving workers and employers alone to bargain over wages and jobs is more generally expedient than a social policy in which government or some independent board sets wage rates and allocates jobs. Free competitive bargaining may be a quite turbulent affair: employers and workers will inevitably exert pressure on one another to conclude a settlement, for example, and they may rudely yell and shout over the terms and conditions of a new contract.

But these market participants are not permitted to take wrongful actions to achieve their goals. Government should interfere when interference is reasonably judged to promote market efficiency and fairness: it ought to prevent employers and workers from violating anyone's basic rights; ensure that workers can form trade unions to bargain on their behalf if they wish; enforce contracts arrived at through collective bargaining; deter any party from arbitrarily breaking a contract; support union rules against free-riding by workers who wish to benefit from union contracts but refuse to pay union dues or participate in strikes; require employers to provide a safe workplace; forbid child labor; establish a maximum work day (say, eight hours) and require overtime pay for work beyond that; and so on. Mill also implies that government should prevent interference with workers who wish to do piecework, and it should also forbid the use of coercion to make workers do piecework. The justification for these remarks about piecework is better appreciated, perhaps, once piecework is shown to be self-regarding activity.

As already indicated, laissez-faire as it actually existed in Britain in Mill's day deviated significantly from any enlightened version of the free-trade doctrine which he might have endorsed. In the case of labor markets, the deviation was due not only to the British government's failure as yet to enact regulations of the sorts listed above designed to promote a fair and efficient competitive market. Parliament itself was an active source of market imperfections: it passed laws that enabled employers to systematically oppress the working classes and thereby distort the market's price and allocation incentives. In short, the government did not leave employers and workers alone to freely and fairly bargain over wage rates and allocations of jobs; instead, it interfered to create labor markets that were legally biased in favor of employers, as can hardly come as a surprise since men of property, including aristocrats and wealthy merchants, controlled the government prior to the Reform Act of 1867 which extended the franchise to most male workers.

Bias against the workers is evidenced in the series of Masters and Servants laws which were more or less continuously in place in one form or another for more than five centuries ever since the Statute of Laborers of 1351 was promulgated to force workers to stay put in their jobs during the Black Death.²³ This tradition of legislation,

²²See *On Liberty*, CW XVII, pp. 294–95.

²³Douglas Hay, "England, 1562–1875: The Law and Its Uses," in *Masters, Servants, and Magistrates in Britain and the Empire, 1562–1955*, eds. Douglas Hay and Paul Craven (Chapel Hill: University of North

which was not abolished in Britain until 1875, a couple of years after Mill's death, empowered employers to have workers arrested for breach of employment contract at the slightest of provocations, including asking for a wage increase, being late for work or idle for an hour, and speaking rudely to the master. Once arrested, the worker was hauled before a local magistrate (justice of the peace), nearly always convicted on the word of the employer, and then punished as a criminal, with fines, whippings, and even imprisonment. Even after this, the worker was not necessarily released from the contract: he would have to go back to work for the same employer until the original term of employment (usually a year) was completed. For the period 1858–75, an average of about 10,000 workers per year across various trades were prosecuted for breach of contract, more than 90% were convicted, and some imprisoned for up to three months.²⁴

Protests against the legislation had taken place throughout the nineteenth century and long before, but its repeal only succeeded as a result of political pressure exerted by the trade union movement after the 1867 Reform Act gave workers the vote. Trade unions themselves only gained clear legal status with passage of the Trade Unions Act of 1871, which also made strikes legal. Even then, organizing a strike remained difficult because peaceful picketing was still illegal until 1875, when the more equitable Employers and Workmen Act was passed. That act established a legal framework for the regulation of labor markets which, as supplemented by laws such as the Workmen's Compensation Act of 1897, is still largely in force.

I have said a bit more about the contrast between the actual condition of the British labor markets and Mill's enlightened understanding of the free-trade doctrine in order to preclude any suggestion that his support for laissez-faire and for piecework comes at the expense of justice for workers. As mentioned earlier, Miller agrees that Mill is committed to justice for workers. But Miller also argues that in Mill's view society may progress in an egalitarian direction such that citizens of high moral character will reject piecework as unjust, which might be taken to imply that majorities in such an advanced society can properly decide to prohibit piecework contracts, a point to which I will return.

Speaking of piecework, Miller insists that it is invariably social conduct whereby skilled workers directly cause non-consensual harm to their unskilled competitors:

If the best workers agree to be paid by the piece, inferior workers will be paid less, whether they also have to accept piecework or whether they work for daily wages that are lower than they would be if all workers were paid by the day. Notably, Mill never suggests that bad workmen are wrong to believe that it will cost them money if their betters are paid by the piece.²⁵

Although the bad workmen are right that they will be paid less per hour than their skilled competitors, they are wrong to believe that a piecework agreement between

Carolina Press, 2004), pp. 59–108. As the essays in this volume show, the Masters and Servants legislation continued to flourish throughout the British Empire until the middle of the twentieth century long after it had been repealed in the mother country. Indentured servants (workers in various trades), apprentices, and the like were reportedly treated no better than, and at times worse than, chattel slaves.

²⁴Suresh Naidu and Noam Yuchtman, "Coercive Contract Enforcement: Law and the Labor Market in Nineteenth Century Industrial Britain," *American Economic Review* 103 (2013): 107–44. The authors argue that the Masters and Servants legislation gave workers an opportunity to make credible commitments to long-term contracts at low wages so as to guarantee employment through booms and busts instead of enduring cycles of high wages and no work without the contract.

²⁵Miller, "Piecework," p. 317, footnote omitted.

the employer and skilled workers costs them money when labor markets are competitive and fair.

As in the retail case, Miller fails to appreciate the crucial distinction between trade of labor, which is social conduct, and post-trade use by the buyer of the labor he has purchased, which can be self-regarding conduct. In this case, however, the buyer, the employer, is only a co-owner of the labor for a limited period. For any post-trade use, he must obtain the genuine consent of the seller, the worker, who is the permanent owner and has only agreed to co-ownership for the limited period. The worker, though he has already agreed to trade his labor at the competitive market wage rate for the given kind of job, has not by virtue of that yet agreed to do piecework.

It is useful to break the analysis into two distinct stages. At the first stage, the worker sells his labor at the competitive market wage, over which he and the individual employer have no perceptible control. This hourly or daily wage rate is set by the multiple buyers and sellers of labor competing in the market, and the individual employer or worker must accept that wage rate if free and fair competition truly exists. It tends to be proportional to the marginal physical productivity of labor in the job at hand, which for convenience can be equated with average productivity (as Miller assumes) and normalized so that it equates to a market wage per unit of output produced by workers in the occupation. At the second stage, after the market trade is completed and he has secured a job at a competitive wage, the skilled worker can agree to do piecework at the invitation of his employer, without directly causing any non-consensual harm to anyone else. The piecework rate is at the same competitive market wage per unit and thus does not alter the market wage paid to skilled and unskilled workers alike. Nobody loses their job which has already been allocated in the market trade contract concluded between the employer and workers. And neither the employer nor the skilled worker is forced to do piecework: the employer only agrees to piecework if he estimates that demand exists for the increased units of output produced through piecework, and the skilled worker only agrees if he wishes to get the increased pay per hour or day which his superior productivity makes possible for him.

There are really two distinct contracts at work in this situation. A trade contract exists according to which the employer hires workers at a competitive market wage of, say, \$20 per hour for an eight-hour day with terms and conditions of employment including some requisite level of productivity such as one unit of output per hour. All employment contracts specify at least implicitly some such requisite level as a minimum for continued employment: employers do not pay workers to do nothing but sit around idly. Once the trade is completed and he has a job, a skilled worker can agree to a separate self-regarding piecework contract with his employer. Under the piecework contract, he might agree to produce, say, three units of output per hour at the same rate of \$20 per unit as all workers receive under the trade contract. The self-interested employer has no incentive to pay more and the self-interested worker has no incentive to accept less.

No competitive social behavior is involved in the piecework contract because no non-consensual harm to anyone is involved. So, by Mill's lights, this is not a trade. Instead, it is a self-regarding arrangement between employer and worker in which they mutually consent to exchange labor for pay. If one party breaks the terms of the piecework contract without excuse and without the consent of the other, society has legitimate authority to enforce contractual obligations. Some unskilled or lazy workers may dislike piecework and complain that the skilled worker earns \$60 per hour whereas

they earn \$20. But their mere dislike is not harm: they are paid at the same market wage per unit and their jobs are already secure under the trade contract.

The existence of the two distinct contracts is hidden, and may be easily missed, if one assumes as Miller apparently does, that employers can directly offer piecework contracts to workers. In this regard, recall that Mill is not defending a non-competitive labor market in which an employer has power to set unfairly low wages to vulnerable workers who have no option but to put up with the injustice. I do not mean to suggest that Miller accuses him of deliberately defending such injustice. As already stressed, Miller knows that he is committed to justice for workers, and even quotes his statement that "When the payment per piece is not sufficiently high [in other words, not as high as a competitive market wage per unit], that is a just ground of objection."²⁶ But Miller does make reference to situations in which piecework is "viewed unfavorably, suspected of lending itself to the exploitation of workers in sweatshop conditions."²⁷ Without further explanation that piecework in such situations is rejected by Mill as unjust, this reference carries a danger of suggesting that he is unwittingly defending an unjust labor practice.

While it is not technically impossible to directly offer piecework contracts in a competitive labor market, it would certainly be awkward. A piecework contract which is attractive to both employers and skilled workers cannot even be developed until after both parties have acquired essential information from the competitive market. The employer cannot know prior to experience of the current market for the kind of job he offers the numbers of skilled workers available or their different levels of skill at piecework. He cannot intuit *a priori* the competitive wage per unit which he must pay to attract skilled workers. Nor can a skilled worker know beforehand what competitive wage per unit he should accept to do piecework.

Until they acquire knowledge of the competitive market's price and allocation signals, both parties lack the knowledge required for a mutually acceptable piecework contract. The employer does not know the competitive wage per unit he must pay to attract the size of labor force he needs to meet expected demand for the product or service he sells. So he cannot frame a piecework contract that will enable him to make a normal profit and stay in business. Similarly, the skilled worker does not know the competitive wage per unit which is reasonable for him to accept to do piecework.

So, the time required to gather the relevant competitive market information in effect forces a separation between the competitive trade contract offered to all workers and the self-regarding piecework contract negotiated with skilled workers. Even if an employer advertised piecemeal contracts together with trade contracts at the same time by, say, offering to pay for piecework at whatever the competitive wage per unit turned out to be, it would make little difference since negotiations with the skilled workers would still need to be conducted separately from the competitive wage contract offered to all workers hired by the employer.

That the piecework contract is separate from the trade contract under competitive conditions is also clear from the fact that the employer is not obligated to offer piecework to all workers who have a job with him and, even if he does offer it to all, they are free to refuse the offer without any danger of losing their jobs secured under the trade contract.

²⁶"Piecework," p. 314, quoting Mill, *Political Economy*, CW III, p. 783n. Miller also notes that Mill elsewhere objects to "unfairly low" piece rates; see, e.g., *Chapters on Socialism*, CW V, p. 743.

²⁷Miller, "Piecework," p. 313, footnote omitted.

An anonymous referee has asked for “empirical examples” of self-regarding piecework contracts. I have not conducted an empirical study nor did Mill, although he does claim that in his day “judicious employers” typically make use of piecework when it is suited to their kind of work.²⁸ In any case, the results of an empirical study have no bearing on the soundness of the Millian analysis. Even if not a single example of self-regarding piecework could be observed today in a country like the United States, Mill could, and no doubt would, reply that this only shows that there are no judicious employers afoot in our country these days, assuming that suitable occupations for self-regarding piecework continue to exist. Even if every employer is a vicious exploiter of vulnerable workers hidden away in miserable sweatshops, Mill would never condone the fact, as Miller acknowledges.

The Millian analysis tells us what to look for if we wish to identify an empirical example of a self-regarding piecework contract. Perhaps another hypothetical case might help to sharpen what is involved. Suppose the owner of a textile factory wishes to hire workers to make shirts at a competitive hourly wage rate, which she learns is \$30 for an eight-hour day from observing wage price signals in the competitive labor market. The average shirt-maker is assumed capable of producing two shirts an hour as a requirement of the job in this industry. Given her rough estimates of expected demand for her factory’s shirts, the employer hires 100 workers at a total cost of \$24K per day, expecting to earn a normal profit of \$500 per day net of all expenses.

She soon learns that demand is higher than she expected, and so she offers to pay her skilled workers \$15 per shirt if they produce four shirts an hour. A skilled worker who accepts the piecework contract and actually makes four shirts per hour now earns \$60 per hour, twice what an unskilled worker earns. But this higher hourly rate reflects the same competitive per unit rate as the unskilled workers earn for producing two shirts per hour. No unskilled workers are harmed; none lose their jobs secured by the trade contract. The skilled workers are not paid at a higher per unit rate than the competitive market rate which everyone receives under the trade contract, and the employer willingly takes on any added risk for her business associated with the piecework contract.

Since piecework in these circumstances is self-regarding conduct, LP implies that skilled workers have a right to practice it or not as they wish. Coercive interference is immoral because it violates their right to self-regarding liberty. Society properly intervenes to deter bad workers who merely disapprove of piecework from obstructing it. The employer ought to fire any worker who does obstruct and, if further steps are deemed expedient, the state properly enforces laws that punish the act of obstruction. Similarly, forcing a worker or employer to engage in piecework is impermissible because it violates their self-regarding liberty. This explains why Mill is intolerant of interference with piecework and yet tolerant of voluntary refusal to accept it.²⁹

Miller correctly points out that, for Mill, there are higher standards of distributive justice than what might be termed the selfish or capitalist standard underling piecework. This capitalist standard, or “principle of private property” in the means of production, prescribes “from each according to his ability, to each according to his contribution to production”: it thus rewards the more skilled, talented, and efficient

²⁸Mill remarks that “judicious employers always resort to [piecework] when the work admits of being put out in definite portions, without the necessity of too troublesome a surveillance to guard against inferiority in the execution” (*Political Economy*, CW II, p. 140, quoted by Miller, “Piecework,” p. 313).

²⁹Miller provides apt quotes from Mill’s writings to illustrate these views (“Piecework,” pp. 314–16).

worker at the expense of others.³⁰ Mill believes that if citizens transcend their predominantly selfish characters by developing high moral dispositions that motivate them to choose a decentralized market socialist economy in which the standard of justice is “from each according to his ability, to each according to his need,” for example, a standard he ascribes to Louis Blanc rather than Marx, their advanced civil society would exhibit a higher standard of justice than under capitalism and piecework would tend to disappear.

While this aspect of Mill’s thought is important, as emphasized and elaborated by Helen McCabe whose work Miller cites,³¹ it should also be acknowledged that Mill discounts the possibility that a decentralized socialist economy of competing worker cooperatives (the only form of large-scale socialism he accepts) will emerge in the foreseeable future. In the meantime, as Miller admits, he argues that general utility prescribes settling for the capitalist standard. He urges reformers to focus attention on the establishment of a more egalitarian and cooperative form of market capitalism whose institutional framework, unlike those of the distorted and unfair forms of capitalism which still actually prevail, properly reflects the capitalist standard of justice.³²

Nevertheless, it remains undeniable that Mill thinks the capitalist standard underlying piecework is an inferior standard of distributive justice. As Miller quotes, he is explicit that, when it depends on given differences of natural ability, piecework is unjust as compared to a higher socialist standard:

The proportioning of remuneration to work done, is really just, only in so far as the more or less of the work is a matter of choice: when it depends on natural differences of strength or capacity, this principle of remuneration is in itself an injustice: it is giving to those who have; assigning most to those who are already most favoured by nature.³³

But it is unclear what lessons Miller wishes to draw from Mill’s discussion of the different standards of justice, despite its intrinsic interest. In any case, a key lesson is that no civil society, however morally advanced, has legitimate authority to enforce moral or legal rules that prohibit piecework when it is self-regarding conduct. LP is a principle of justice that gives every competent individual an equal absolute right to liberty of self-regarding conduct even in advanced socialist or communist contexts: “No society ... is completely free in which [these self-regarding liberties] do not exist absolute and unqualified.”³⁴

If literally every member of a socialist society has a high moral character, nobody will choose to do piecework: they will all wish to avoid it as LP gives them a right to freely do. But the skilled workers may well use their skill to produce more units of output than the average worker can produce per hour or day, and yet do so from a commitment to

³⁰I ignore the fact that the standard also rewards owners of capital for their smart or lucky investments even if they are otherwise idle.

³¹Helen McCabe, *John Stuart Mill: Socialist* (Montreal: McGill-Queens University Press, 2021), cited by Miller, “Piecework,” p. 315.

³²See, e.g., Jonathan Riley, “J.S. Mill’s Liberal Utilitarian Assessment of Capitalism versus Socialism,” *Utilitas* 8 (1996): 39–71; and Jonathan Riley, “Introduction,” in *J.S. Mill: Principles of Political Economy and Chapters on Socialism*, ed. Jonathan Riley (Oxford: Oxford University Press, 2008, abridged World’s Classics edition), pp. vii–xlvii.

³³*Political Economy*, CW II, p. 210, quoted by Miller, “Piecework,” p. 314.

³⁴*On Liberty*, CW XVIII, p. 226.

their higher socialist standard of justice instead of expecting extra pay. Perhaps we would cease to call their activity piecework in this situation because the term does seem inseparably associated with receipt of added wages. In any case, all workers skilled and unskilled would do their best in accord with a higher standard such as “from each according to his ability, to each according to his need.”

If a few members of the advanced society are not so noble and remain predominantly self-interested, however, this selfish minority is free to engage in self-regarding piecework if they wish, and highly conscientious majorities, if they endorse a Millian theory of justice and right, will not interfere. The majority will no doubt be disappointed in the minority, and may well try to persuade them to improve their characters, but the practice of piecework will be tolerated by right.