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Balancing Liberty and Authority: An Analytical Comparison of Mill's *On Liberty* and Brand's  
*Philosophy of Law: Introducing Jurisprudence*

When examining the complex connection between law, freedom, and social control, two seminal books prove to be very informative: *On Liberty* by John Stuart Mill and *Philosophy of Law: Introducing Jurisprudence* by Jeffrey Brand. Brand explores the roots of legal theory, considering the nature of law in the theory of legal positivism and the theories of H. L.A. Hart. However, Mill protects the freedom of every person and supports the boundaries of government intervention in personal freedom. The analysis centers on the theme of authority, freedom, and the place of law in society by comparing the views on the subject in *Philosophy of Law: Introducing Jurisprudence* by Jeffrey Brand and *On Liberty* by John Stuart Mill. Through analyzing the legal positivism of Brand and the defense of individual liberty by Mill, the analysis points out their divergence on the boundaries of societal control as well as the interplay between law and personal liberty.

**Summary of *Philosophy of Law: Introducing Jurisprudence***

In Chapter Three, Brand focuses on the multidimensional procedures of lawmaking, justifying, and evaluation. The key questions asked are concerning the contents of laws, their moral justification, and their evaluation. Brand introduces the discussion of the lawmaking process, supposing that the fundamental frameworks of government and legal power have already been established (Brand 53). Next, he proceeds to prescriptive questions, inquiring what

types of laws ought to be passed and what values and principles ought to be embodied in them. Such a part makes the readers think of themselves as legislators, think about which policies they would endorse and why, and how they would explain it to others.

Jeffery Brand puts forward different normative concepts that are applied to justify and evaluate laws. He examines the fact that the issue of moral theories, like consequentialism and non-consequentialism, can play a role in the justification of laws (Brand 61–63). As an illustration, consequentialists may deem that the purpose of laws should be to maximize good, whilst non-consequentialists may tend to focus on personal rights and liberties.

The issue of the morality of certain kinds of laws is also discussed, namely, the criminal law and Bad Samaritan Laws (BSLs), which compel people to come to the rescue of others. Brand also criticizes such laws, considering both the arguments in favor of their implementation and the arguments against them (Brand 82–83). He also speaks of the ethical issues relating to the necessity of making bystanders act, especially the so-called Excessive Demands Objection (Brand 84). It states that such a law may create unrealistic and excessively demanding obligations for citizens.

Lastly, Brand stresses that the analysis of laws must rely not only on how well they fulfill their purposes but also on whether they conform to the basic moral principles (Brand 87). They are the recurrent discussions in the field of legal philosophy regarding the legitimacy and extent of legal duties.

### **Summary of On Liberty by John Stuart Mill**

John Stuart Mill in *On Liberty* discusses the main problem of civil liberty and the nature and extent of the power that society can rightfully wield over people. The prevention of harm to others is the main argument that Mill is making, and according to the theory, the only

justification that society or a government has to interfere with the actions of a person is to avoid harming others (Mill 13). The principle opposes the paternalistic laws that aim at safeguarding citizens against self-harm on the grounds that people must be free to behave in any way they desire, as long as their behavior does not damage other people (Mill 12). According to Mill, the acts that are not directed at others and hence cannot harm others must not be interfered with by society.

Mill also challenges the "tyranny of the majority," where the will of the majority can be used to suppress the will of the minority and their lifestyles. He cautions that, even though only political tyranny by the government can be so detrimental to liberty, so too can the pressure of society. Mill claims that society tends to impose its norms and values on the individual, thus suppressing individuality and creativity (Mill 6–9). The fear of ostracism or the condemnation of others usually causes them to conform and restrict individual freedoms and intellectual development.

The most important element in the philosophy of Mill is his justification of individuality as an important element of well-being. He feels that individuality gives them the ability to explore various types of living, which results in social and intellectual development (Mill 45–53). Mill, however, emphasizes that such freedom is not absolute. Society is free to act when acts are explicitly harmful, and beyond it, people are free to make their own decisions.

Finally, Mill advocates a society that would not prioritize individual freedom far above the necessity of collective security, and which will provide personal freedoms as much as it will prevent harm to others.

### **Comparative Analysis of the Two Readings**

The themes of the relationship between law, liberty, and societal control are discussed both in *Philosophy of Law: Introducing Jurisprudence* by Jeffrey Brand and *On Liberty* by John Stuart Mill, but in two different ways. Whereas Mill emphasizes personal liberty and the ethical boundaries of the state, Brand addresses the institutional and theoretical foundations of legal systems, especially from the perspective of legal positivism.

One of the main similarities between the two texts is how the role of authority and the boundaries of its power are addressed. Mill believes that individual freedom is essential and can only be limited to avoid causing harm to others, which is appealing to the wider legal tradition that individual rights must not be infringed by the state (Mill 9). Similarly, Brand talks about the validity of legal systems and the way laws ought to be explainable in the context of societal practices, noting that law power belongs to the whole society and not to individual power (Brand 85–87). The two recognize the necessity of defending people against unnecessary interference, whereby Mill emphasizes personal liberty, and Brand emphasizes the legal processes that defend such liberties in an organized society.

Nonetheless, there is a considerable difference between the two authors on liberty. The central point of Mill is the moral liberty and self-determination of people, where the government should intervene as little as possible, as long as the actions do not cause harm to others. He gives attention to the issue of societal control as a moral issue, as the right of society to enforce its moral values on individuals. Mill cautions on the tyranny of the majority, where societal pressure may suppress minority opinions, thereby inhibiting personalities (Mill 9). On the contrary, Brand is more institutional and formal in exploring it. He focuses on the legal structure, legal systems, the main and secondary rules, and the development and legitimation of laws in a society (Brand

57–80). The focus of Brand is on how law governs conduct, and gives order to society, rather than the moral and philosophical focus of Mill on the extent of state and social intervention.

Although both Mill and Brand find it necessary to restrict authority in order to safeguard liberty, they both look at the problem in different directions: Mill with his moral and philosophical view on the issue of individual rights and Brand with his legal and institutional view on the structural issues and processes that enable law to exist. Collectively, they present a supplementary understanding of the strike between law and liberty.

### **Evaluation and Implications**

The ideas given by Mill and Brand remain applicable even in modern debates about freedom and regulation. Mill's harm principle is still a core issue in the issue of individual rights, especially in cases such as free speech or individual control, because it offers a clear understanding of when a society can justifiably interfere with individual rights (Mill 9). On the same note, his analysis of the tyranny of the majority is important since social forces keep pushing minority opinions to the periphery. The emphasis that Brand puts on the ethical legitimacy and assessment of laws is also relevant (Brand 61–82). His study of consequentialism and non-consequentialism, as well as his discussion of Bad Samaritan Law, are important instructions on the way laws are supposed to be evaluated, not just based on their effectiveness but also their correspondence with moral principles.

### **Conclusion**

Both *On Liberty* by Mill and *Philosophy of Law: Introducing Jurisprudence* by Brand shed great light on the connection between law, liberty, and the control of society. Mill stresses the freedom of individuals, promoting as little interference in society as possible, according to the harm principle, but he cautions against the tyranny of the majority. Brand, however, offers a

more systematic way to lawmaking, justification of laws by normative theories, and discussion of ethical consequences of legal obligations. Collectively, the creations demonstrate the periodical conflict between personal liberties and government control, which provide necessary guidelines to assess and interpret contemporary law and political systems.

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Works Cited

Brand, Jeffrey. *Philosophy of Law: Introducing Jurisprudence*. Bloomsbury Academic, 2013.

Mill, John Stuart. *On Liberty: The 1859 Political Philosophy Classic*. Batoche Books Limited, 1859.

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