

Session 19 Selections from Mill's *On Liberty*

The Harm Principle:

"[T]he sole end for which mankind is warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. [T]he only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant." (p. 251)

"The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign." (p. 251)

Mill wants to defend the *HP* on the basis of utilitarian considerations alone; that is, while he often appeals to the language of *rights*, Mill thinks of rights as entirely *derivative* from considerations of utility; they have no separate force. (A *right*, on Mill's view, is simply a freedom or an interest that it is almost always contrary to considerations of maximal utility to violate or restrict.)

So we should ask ourselves, as we consider Mill's principle, both whether it seems defensible on utilitarian grounds, and whether it seems defensible on other grounds.

Two things to bear in mind:

- Mill talks a lot about the value of liberty, but as a utilitarian, he accords it merely instrumental value – as an important tool for promoting well-being.
 - Consider, for example, his claim that liberty has no value in a society or for people who aren't capable of exercising it to improve their lot.
- But Mill also took a much more expansive view of happiness/well-being than Bentham – he set great stock in what he called the "higher pleasures" – for which he may have seen the exercise of certain liberties to be essential.

Two questions:

(1) Why are we justified in interfering just to prevent *harm*?

(2) Why are we justified in interfering only on behalf of the interests of *others*, but not on behalf of the interests of the object of our interference?

Let's begin with (1). Mill is a bit unclear about how strict he wants to be about the *harm* condition – about what kinds of things the appeal to *harm* is supposed to exclude.

- Clearly intended to exclude actions considered immoral despite not being harmful (Mill, as a utilitarian, of course, thinks there are no actions that are immoral without being harmful).
- *Not* clearly intended to exclude actions that, instead of actively harming, either fail to prevent harm, or fail to provide an important benefit.

- “There are also many positive acts for the benefit of others, which he may rightfully be compelled to perform, such as, to give evidence in a court of justice, to bear his fair share in the common defence, or in any other joint work necessary to the interest of the society of which he enjoys the protection; and to perform certain acts of individual beneficence, such as saving a fellow creature’s life, or interposing to protect the defenseless against ill-usage, things which whenever it is obviously a man’s duty to do, he may rightfully be made responsible to society for not doing. A person may cause evil to others not only by his actions but by his inaction, and in either case he is justly accountable to them for the injury.” (p. 252)
 - Still, Mill says that when I lack due consideration for another’s welfare but fall short of violating her “rights”, I should be punished by public opinion rather than the law. Why?
 - How far does the duty to rescue go? (Singer)
- Consider also Mill’s discussion of the six-day work-week. He doesn’t think the state is overstepping its limits in prohibiting most businesses from being open 7 days/week, because, he says, some such prohibition is necessary to make it possible for any significant number of people to take a day off (otherwise the pressures of competition and the need to survive in the market would force everyone to work a 7 day week).
 - This is a fairly indirect way in which our behavior can harm or restrict benefits to others...
 - The law here intervenes to solve a coordination problem.
- Mill’s main interest in emphasizing *harm* is to distinguish between actions that *harm* others and those that *merely offend* others, because they disapprove of them. Mill thinks the fact that an action causes *mere* offense is never sufficient for making it illegal.
 - Is offense a form of harm? Should a utilitarian think so? (Consider, e.g., the Westboro Baptist Church, Neo-Nazi marches... but also public discomfort with gay marriage, and in the past, with interracial marriage)
- There is a *big* unanswered question about what counts as a harm:
 - We don’t harm someone *whenever* our actions leave them worse off than they might otherwise have been. So what counts as harming someone?
 - Perhaps we harm someone when our actions damage their interests in a way they have a *right* not to be damaged. But that just pushes the problem back:
 - What is a *right*?
 - And can *utilitarians* help themselves to a notion of rights that’s prior to a notion of harm?

Most of Mill’s argument is addressed towards question (2). And indeed, treating harm to self differently from harm to others seems trickier to defend from within a utilitarian approach. Why shouldn’t a utilitarian think the state is justified in interfering in the lives of others for their own good?

- Mill's main claim in defense of this view is this: "Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest." (p. 253)
 - This is partly (perhaps largely) an empirical claim.
- Why think that utility will be promoted by allowing the government to interfere to prevent us from harming others, but not by allowing the government to interfere to prevent us from harming ourselves?
 - The state is more like to be *wrong* about what benefits or harms us that we ourselves are, because:
 - (i) We're the ones who are most *concerned* about our own well-being
 - (ii) We're the ones who *know* the most about our circumstances and what makes us happy (utilitarianism is doing some work here)
 - *But is the state more likely to be right about what benefits and harms others? What about others to whom we have "strong personal attachments", like our children? What about doctors? Teachers?*
 - The state is more likely to abuse its powers in regulating our self-affecting conduct than in regulating our conduct towards others.
 - *Why?*
 - Mill says that when it comes to other-affecting conduct, we need general rules (enforceable laws?) "in order that people may know what they have to expect." (p. 254)
 - *Coordination problems* arise when what I do affects more than just me – e.g., when my actions have negative externalities (pollution) or when they affect what it makes sense for others to do (rule of the road).
 - Six-day work week.
 - Unions? (Was Mill anti-union?)
 - But if I'm the only one affected by my actions, no coordination problem can arise.
 - There are more likely to be better (cheaper and more effective) ways of influencing self-affecting behavior, and encouraging beneficial behavior/discouraging harmful behavior than threatened punishment by the state. Not so in the case of behavior that harms others.
 - *Why? Two considerations:*
 - *Persuading someone to refrain from actions that go against her own interests is less likely to require force than persuading someone to go against actions that go against the interests of another. (But what if she proves unpersuadable?)*
 - *Someone who is acting against her own interests has already shown herself to be a bad prudential reasoner, so it might not be wise to try to prevent her harmful behavior by threatening punishment (think about drug use, e.g.). Other methods might be more effective.*
 - There is a lot of (utility) value in freedom of conscience, and allowing people to determine for themselves what is good.
 - *Consider Mill's arguments in favor of free speech, in this context: experiments in living.*

- Otherwise, we might suppress the truth.
- We might suppress a part of the truth, which we'll get at only through free discussion.
- We might continue to hold false beliefs because they aren't properly challenged.
- We might come to hold true beliefs only through dogmatism and prejudice, and lack the deliberative resources to fully understand and defend our beliefs.
- This might make those beliefs degenerate to a "mere formal profession, inefficacious for good."
- Mill's account of the value of freedom of speech might be generalized to explain the value of allowing people to pursue their own idea of the good more generally...
- Mill also thought that the exercise liberty contributed in a more direct way to well-being, by allowing for the development and exercise of our talents and creativity, which produces higher pleasures...

Mill's Harm Principle is primarily intended to exclude *paternalistic* and *moralistic* interventions by the State into our lives. We'll talk a lot more about that in the next two readings...

More questions on Mill:

- *Why should Mill make an exception for the case of children and (!) "barbarians" – does this threaten to undermine his broader argument?*
- *Are there limits to the extent to which we should be free to act as we like with regard to our own good (e.g., can we sell ourselves into slavery)? Mill says (in a part of On Liberty we did not read) that we should not be allowed to sell ourselves into slavery. Why not?*
 - *One important consideration here is that people who sell themselves into slavery relinquish their ability (much touted by Mill) to determine for themselves what is good for them...*
- *How many actions can we really take today which impact only ourselves?*
 - *Consider, e.g., the question of whether it is an unjust and paternalistic state interference in our lives for us to be required to buy health insurance...*
- *Is it never best from the standpoint of utility to suppress free expression?*
 - *Consider the widespread dissemination of misinformation that is common today (e.g., the birther movement)...*
 - *Also, Holocaust denial, Westboro Baptist Church protests*
 - *Global warming deniers?*
 - *Bird flu research?*
- *Is Mill right that we needn't worry about the "bad example" effects of self-harming actions that go unpunished, since such actions punish themselves, so to speak, and so carry their own lesson with them?*

- *Might we sometimes have to restrict some people from doing things that will have harmful effects only on themselves in order to most effectively restrict others from doing things which will have harmful effects on others?*
 - *E.g., polygamy: the gov't makes polygamy illegal in part because it wants to prevent actions which are harmful and not (properly) consented to – like the marrying off of underage girls. It may have to outlaw some truly consensual plural marriages in its efforts to prevent non-consensual ones.*
 - *E.g., anti-gambling laws may be a more effective means than, say, child-support laws alone to ensure that people pay child-support – since once people have gambled away their money, the best child-support laws can do is punish them for non-compliance – they can't secure compliance.*
 - *Mill says, of actions that can cause indirect harms, that the State should concern itself with regulating the direct source of the harm, rather than the indirect source. So, for example, the state shouldn't regulate drunkenness, but rather failure to pay child support, or disorderly conduct.*
 - *But there may be cases (and this may be one of them) where it's not possible to prevent harm by outlawing the direct source of that harm, and there may be good utilitarian reasons for instead regulating the indirect source of the harm...*
 - *Similarly, what if outlawing drug use proved to be the most effective means (this is somewhat doubtful) of preventing drug-use-related crimes?*
- *Mill distinguishes, towards the end of our reading, between duties to ourselves and moral duties. Does this distinction make sense? Is it justifiable on utilitarian grounds?*

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