

A critique of mills  
harm principle  
philosophy essay



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In this essay, I will be writing a critique on Mill's harm principle. Evaluate its criticisms and explain why its positive influence far outweighs the negative ones in a society which its citizens are free to dictate their notions.

In his Autobiography of 1873, John Stuart Mill described *On Liberty* as 'a kind of philosophic textbook of a single truth' (Mill (1989 edn), p. 189) and rather than speak in terms of rights, some may claim a 'right' not to be harmed, Mill said only Harm (or the threat of Harm) is a sufficient justification for exercising power over another. Mill further qualified his Principle by adding that it wouldn't be a sufficient condition to exercise power over someone simply for their own good and he does permit some exemptions to the Harm Principle.

So he allows coercion in an economic context, like when a more efficient and presumably more profitable company "Harms" a competitor by seizing an increase in market share. Another exemptions are of the incompetent, the retarded, the ignorant, children, all those below the age of consent. They may all be coerced; in short all those not competent are exempt and Mill allows for coercion by the judiciary. So for example the type of legal coercion which punishes murder by imprisonment is exempt.

However probably the most controversial exemption in, *On Liberty* is Mill's reference to 'backward states of society', Mill refers to barbarians and says

" We may leave out of consideration those backward states of society in which the race itself may be considered as in its nonage."

(Mill, John Stuart. Stefan Collini (ed.), *On Liberty and Other Writings*, (2000 edn), p. 13.)

Mill is referring here to societies so backward they'd hardly be capable of understanding the Harm Principle let alone responsibly applying it. The implication here is that society needs to recognize concepts like 'free discussion' before it can achieve that level of education and understanding which enables it to benefit from The Harm Principle.

Yet when considered in its totality his Principle is anything but 'simple', because *On Liberty* is concerned with, Isaiah Berlin's later defined concept of Negative Liberty that is, freedom from interference. To quote Berlin,

" the freedom of which I speak is opportunity for action, rather than action itself. If, although I enjoy the right to walk through open doors, I prefer not to do so, but sit still and vegetate, I am not thereby rendered less free.

Freedom is the opportunity to act, not action itself". (Berlin (1969), p. xlii).

Some significant criticisms of, Mill's Harm Principle have been expressed over the years. I intend to consider the three leading arguments,

1. VAGUENESS. In other words what exactly does Mill mean when he uses the word Harm?

It's notable that no definition of 'Harm' is to be found in, *On Liberty*, granted Mill gives us some exemptions, but no more than that and accordingly Mill's use of the word 'Harm' is often considered imprecise. It's this very lack preciseness (vagueness) that prompts us to wonder if there could be a point at which acts of offence become acts of Harm. Without an adequate

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definition of Harm it becomes difficult to derive to a meaningful definition of Offence and without that judgments of rightness or wrongness are in danger of becoming blurred.

In a book by the philosopher Joel Feinberg entitled, *Offence to Others*, he discusses a thought experiment whereby the reader is assumed to be a passenger on a crowded bus. It's possible to leave the bus of course, but that would be inconvenient and there's not another seat to move to and there's also no prospect of leaving one's seat to stand. Feinberg relates a set of examples, each more offensive than its predecessor, which take place in full view of the passengers. He starts innocently enough with comparatively mild examples like horrible smells, migraine inducing lights, intolerable noises and so on. In the next section which is headed, *Disgust and Revulsion*, he outlines even more revolting examples; people eating live insects, each other's vomit and so on. Further on Feinberg talks of sex acts on the bus, both heterosexual and homosexual. He goes on to suggest increasingly more offensive examples, cataloguing in all 31 distinct illustrations. It emerges that some actions, although offensive, can be tolerated in public whilst others may be so intolerable as to be better conducted in private.

During our earliest years we learn to be conscious of concepts such as yours and mine (that is your sandwich but this is my sandwich) and it's from these formative years that our notions of property as well ideas like property rights and obligations derive. Mine has a deeply personal value ascribed to it, encompassing not only physical things (like sandwiches) but also more abstract things, like personal space. An invasion of mine can invariably bring with it an almost instinctual reaction and Suppose someone, in an effort to

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signal friendliness, stands that bit too close or the person in the next seat plays their walkman that little bit too loud. We can feel aggrieved perhaps even angry? We often describe the other person as, invading our space. A proportion of the public space has become deeply personal. In other words, something about that public space has become mine. In this respect then we often hear somebody say that what someone is doing is, so unnecessary. By that she means it's unnecessary for an activity to be conducted in public, because it could just as well be carried on in private. It may well be then that offensive public displays should be prohibited by law but still be allowed in private.

When one tries to draw a line between Offensive Acts and Harmful ones it's not unusual to be faced with a dilemma. Suppose someone is running, naked, along a street that could be interpreted by some onlookers as an Offensive Act, it might even be considered a Harmful Act towards children. In a similarly vein it may be that someone could find the idea of a homosexual relationship, even if behind closed doors, more offensive than an intimate heterosexual liaison which takes place in public. So, just as before, it seems that some things are judged offensive if conducted in public but may well be condoned in private. On Liberty makes it clear that in order to tolerate what Mill calls 'experiments in living', the toleration of some things, in private, is necessary. For example, some things which are objectionable to this generation may well be acceptable to the next. To him experimentation is a necessary attribute to drive society forward.

Mill makes it clear that it's by 'experiments in living' that society progresses, an open-minded society would tolerate geniuses because, as Mill maintains, <https://assignbuster.com/a-critique-of-mills-harm-principle-philosophy-essay/>

" to prohibit everything but the norm would have the effect of stifling innovation and 'experiments in living'". Thus, a follower of Mill's Harm Principle allows offensiveness but modifies the distinction to say that, if offensiveness is conducted in private with each participant having full knowledge of 'consequences and outcome' and each being fully and freely aware of what they're doing, then the Harm Principle would be complied with. Others however take a different view.

Lord Devlin however admits no distinction between public and private actions. He maintains, see Dworkin Ronald (ed.) (1977) *The Philosophy of Law*, Oxford University Press, pp76-77, that private morality if widely adopted can become public morality. He considers that just as treasonable acts, plotted in private, can eventually adversely affect society so immoral acts, conducted in private, can become similarly antisocial. For Devlin the test of rightness is not linked to Utilitarian Theory at all. He famously refers to 'The Man on the Clapham Omnibus', his test being the feelings of intolerance, indignation and disgust of a 'reasonable man'. But there are difficulties with relying on what an ordinary person would find morally acceptable. Presumably, in the heyday of the Taliban, if we had asked the 'reasonable man' on a Kabul omnibus whether or not there should be a law barring female children from attending school, his feelings of intolerance, indignation and disgust would be a sufficient justification to allow the introduction of such a law.

H. L. A. Hart, Professor of Jurisprudence at Oxford University, differs from Devlin's 'reasonable man' view holding it better to adopt a 'rational person' test. (Ibid, pp83-88). A reasonable person is neither required to have reasons

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for, nor to justify, moral beliefs. Instead they depend upon convictions of what is and isn't morally acceptable.

It's apparent then that, despite an intuitive appeal, Devlin's approach fails to fully refute Mill's Harm Principle.

2. NO MAN IS AN ISLAND. Mill's implicit assumption that it's possible to undertake an action in such a way that it won't affect anyone else is called into question here.

Of course, it's quite possible to do something which only appears wholly self regarding. Suppose I enjoy rock climbing. I may believe that my climbing, if solitary, could harm no one but myself, even if I should suffer a fatal accident. In such circumstances I wouldn't, on the face of it, be causing Harm to another but should I have a climbing partner she may well be Harmed by my demise, even though not in any way responsible for my misfortune. And even if I made certain that I and only I climbed, in the event of a fatal accident, grieving relations could be harmed. There could well be a similar Harmful effect suffered by members of a mountain rescue team that recovers my body and so forth. Therefore some might say I should be stopped from participating in dangerous hobbies because of a risk of possible Harmful effects an accident to myself may have upon others.

If, being aware of the dangers of passive smoking, I smoke cigarettes heavily but only in my own home, taking care not to impose the effects of my smoking upon others, it could be said that I stand to harm no one but myself and so Mill's Principle would then apply because I could be persuaded of the danger to my health but coercion shouldn't be used. But if my risk of a

serious smoking related disease puts an unfair burden upon an already overstretched asset, perhaps even reducing the resources available to other people with serious illness. For this reason Mill's implied assumption that some actions regard the perpetrator alone has been questioned. Fitzjames Stephen held that, by far the most important part of our conduct regards both us and others... (Fitzjames Stephen (1967 edn), p66). This view is held by many of Mill's critics.

Nonetheless it's implausible to assert that every self-regarding act has a Harmful effect upon others.

3. LIBERTY AND UTILITARIANISM. A foundation of On Liberty is Mill's professed Utilitarianism, where each person's individuality and happiness is the objective of a civilised society. But because Mill's Utilitarianism has its emphasis on 'consequences of action', some have questioned whether it's correct to assume the Harm Principle is truly

Utilitarian and so Mill's Utilitarianism is often termed a consequentialist theory. Happiness, according to Mill, is not as simple as Jeremy Bentham's idea, where he thought of happiness as, " a blissful state of mind". Mill believed happiness to be something more complicated; he thought the sum of human happiness was better served by the preservation of as wide a range of negative liberties as possible. It's been argued though that many of the negative freedoms put forward by Mill were ultimately incompatible with his Utilitarianism because the Utilitarian aim of maximum happiness gives way to other considerations.

But this view misses the fact that far from abandoning Utilitarianism, Mill argues that The Harm Principle and Utilitarianism can go hand in hand, so to speak. He certainly holds that there should be complete freedom of thought and discussion. Almost a third of, *On Liberty* is devoted to these vital freedoms yet, as a consequence of his thoughts about 'experiments in living' he also makes the case for individuality and individual freedoms. Mill holds that the very concept of Negative Freedom allows for a choice between good and evil, for the freedom to choose between overall happiness and the gratification of individual desire. In other words people are free to accept or refuse an opportunity. As Mill said, " The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs or impede their efforts to obtain it." (Mill, John Stuart. Stefan Collini (ed.), *On Liberty and Other Writings*, (2000 edn), p. 16.)

In the section of *On Liberty* entitled, *On Liberty*, as one of the elements of well-being. (ibid, p68) Mill maintains that the fact of human diversity is itself an argument for liberty. He argues that imposing one way of life upon every member of a society would be as disastrous as treating a cactus and an orchid in the same fashion. Mill says (putting aside some exceptional circumstance, such as monastic institutions) that human beings differ so much from each other that it would make no sense at all to expect each one to conform to a single model of a good life. Mill differentiates private interests, where no intervention is permitted, and public interests where, to maximize general happiness, intervention is allowed. For example, there are certain things like murder and fraud which a civilized society could not

tolerate and against which it would have to protect itself but that same society should still encompass within it private interests of freedom and liberty. It's clear then that Mill adopts a utilitarian philosophy when addressing matters of public interest, but it's a subtler form of utilitarianism which we've come to know as Indirect Utilitarian. While a direct utilitarian believes that any action which promotes general happiness is good, an indirect utilitarian would follow a more understated interpretation, holding that individuals should not simply be left to maximize happiness for themselves and it's this indirect utilitarianism which Mill assumes throughout, *On Liberty*. He says, 'I regard utility as the ultimate appeal to all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of a man as a progressive being' (Ibid, p. 14)

## **CONCLUSION**

In, *Thinking from A to Z*, Nigel Warburton reminds us that a Socratic Fallacy is:

The mistaken belief that if you can't define a general term precisely you won't be in any position to identify particular instances of it.

Warburton. Nigel. *Thinking from A to Z*. Routledge (2nd edn. 2000), p. 120

The vagueness objection is a Socratic Fallacy, because whilst a concise definition of the word 'Harm' isn't to be found in, *On Liberty* the following argument is sound:

Premise 1. Minor objections should be set aside if an idea withstands the 'test of time'.

Premise 2. On Liberty has withstood the 'test of time'.

Conclusion. On Liberty should have minor objections set aside.

To insist that Mill's Harm Principle is specific at every eventuality is tantamount to asking for the impossible simply because the very concept of freedom (or liberty) carries within it an element of vagueness. The most a person reading, On Liberty with charity could reasonably expect is a Harm Principle with illustrative examples, and where fitting, appropriate definitions.

This essay has reviewed the major criticisms leveled at Mill's deliberations. The question of Mill's alleged vagueness has been addressed as well as the problems associated with deciding what is Harmful as against Offensive and it's been argued that consenting adults, acting in private, are unlikely to harm anyone but themselves. With regard to the claim that Mill has neglected his utilitarian principles it has been argued that, On Liberty has remained true to Mill's utilitarian ideals, accommodating the negative freedoms necessary for an individual's freedoms. Mill's arguments favor through Utilitarian means a concept of negative liberty, making the point that it's only when we're given sufficient freedom to freely choose how to live our lives (follow the good, if you will) that we're most likely to maximize happiness. He says that a diversity of lifestyles is necessary because it allows differing individuals to find their own fulfilling ways of living.

It's useful to remind ourselves that, On Liberty was published in 1859 and that it was intended primarily for the general public, it certainly wasn't presented as a dissertation solely for the academic world. Reading, On

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Liberty one is struck by Mill's feeling for humanity and by his concern for his fellow man. He goes to some lengths to point out that his Principle is intended to protect those less able or, as he said, those not 'in the maturity of their faculties'. All in all, *On Liberty* gives a structure within which to discuss the question of how free a person should be to live life as they please.

For us in the 21st century, *On Liberty* embodies truths of tolerance, liberty and accountability to which the best of our societies aspire to today. From Mill's writings it's clear that the Harm Principle is essentially sound and that Mill is still relevant after nearly one hundred and fifty years.

For example the rise of religious fundamentalism often brings with it an intolerance of alternative views that runs counter to Mill's ideals. By the same token, it's not too difficult to find totalitarian regimes (be they left or right wing) whose subjects are required to repress their individuality in service of 'the common good'.

It's right that the last word be left to J. S. Mill.

" The mischief begins when, instead of calling for the activity and powers of individuals and bodies, it (The State) substitutes its own activity for theirs; when instead of informing, advising, and, upon occasion, denouncing, it makes them work in fetters, or bids them stand aside and does their work instead of them."

(Mill, J. S. *On Liberty and Other Writings*, (2000 edn), p. 115.)

THE END

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