

Harm principle vs offense principle philosophy essay



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Liberal governments usually point to one of two principles to provide some justification for the limiting of individual liberty by coercive legislation. The first principle is the harm principle, which states that the government is justified in limiting individual liberty in order to prevent harm to others. The second is the offense principle, which states that the government is justified in limiting individual liberty in order to prevent offense to others. Which principle ought the state rely upon when legislating individual liberty? Any legitimate government derives its power from the consent of the governed. Autonomy and security would therefore be guaranteed to the greatest reasonable degree. Further, autonomy is fundamental to human happiness. Between the two principles, it is the harm principle that gives more respect to the autonomy of the individual, and their ability to make choices and judgments. Therefore, I propose the state ought to rely upon the harm principle as the sole basis for limiting individual liberty.

The person linked to the establishment of the harm principle is John Stuart Mill. His principle, established to show where constraint of liberty is permitted by the government, went through a couple of revisions before ultimately settling on a single sentence: " A person ought to be free to do as they want unless in doing so they violate a distinct and assignable obligation to someone else. While he never specifically defines what the distinct and assignable obligations are, it is evident what they are not. A person is not responsible for the harm to another's character or feelings. Nor are they responsible for competitive harms or failure to benefit others, such as applying for a job and getting that job over another. Even though you have obviously harmed another, Mill says harm of this sort does not count. This

principle means that social coercion is justified only when someone threatens our security or autonomy.

The reason for legislation to protect security is easy enough to discern. If our security is violated there will be as a result clear and present harm. The United States Supreme Court has traditionally held an attitude of preservation of life, a position that has consistently been reaffirmed throughout case law; *Cruzan v. Director, Missouri Department of Health* is one such example. In the case, Nancy Cruzan was on life support following a traffic accident. Her parents' wishes for the hospital to cease the treatment were not sufficient to express the desire of their daughter to forego a life in a persistent vegetative state. Until enough evidence was presented to express Nancy Cruzan's wishes, the courts ruled that her parents could not inflict the harm that would result from the removal of life support. However, security is not limited to just physical security. In cases involving the compromise of property or of a violated contract the harm is an easily quantifiable sort. But what can be said for legislation limiting liberty in order to protect autonomy? One answer can be found in the liberal nature of our society. Another can be found in the final cause of humanity.

Happiness is widely accepted as the fundamental end of human existence. At the very least, the happiness an action could potentially produce weighs heavily in a person's decision to take that action. In Aristotle's *Nicomachean Ethics*, the final cause of humanity is to achieve happiness; however, happiness means different things for different people. Whatever the definition one adopts, it is certain that autonomy is required. To be autonomous is to be free to act upon one's judgments. If one is unable to act

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upon one's judgments, one is unable to move toward that definition which one prescribes to happiness. For this reason autonomy must be unbridled as is consistent with the protection of security.

Happiness as the fundamental end of human existence is not without objection. Eleanor Roosevelt said, "happiness is not a goal; it is a by-product." People espousing this position often claim religion as the end towards which humanity moves, but this objection is nothing more than arguing over semantics. As Aristotle believed happiness was living virtuously and Saint Thomas Aquinas believed it was obtaining the grace of God, whatever you judge to be your final end, it cannot be achieved without autonomy. The harm principle would ensure citizens the greatest freedom to pursue whatever ends they like.

The nature of the society we live in further provides explanation for why autonomy should be protected. We live in a liberal society founded upon social contract theory. Social contract theory holds that the members of a society have contractually consented to the formation a government institution (consent of the governed being the only basis for legitimate government). Because the benefits to us living in a group outweigh the benefits to ourselves living as individuals, or even competing factions, we agree to the formation of a society, otherwise life be "nasty, brutish, and short." So we enter this contract with a reasonable expectation that it will help further our interest/happiness. The implication of a liberal government with such an end is that autonomy will be preserved to the greatest reasonable degree. In this way the greatest number of potential pursuits are left free to be pursued, which follows from a liberal society. The harm <https://assignbuster.com/harm-principle-vs-offense-principle-philosophy-essay/>

principle accomplishes this by limiting individual liberty only where it comes into direct conflict with individual liberty.

An objection can be raised when appealing to a piece of legislation's reasonableness, as the harm principle does when ensuring security and autonomy to the greatest reasonable degree. The problem with using a standard of reasonableness as justifying legislation limiting liberty is that such a standard is subjective. What is reasonable to one person might be absolutely appalling to another person. A specific example that comes to mind is the right to privacy. There are presently laws in place which prevent employers from asking certain questions to prospective employees. Some may feel that legislation protecting the prospective employee's supposed right to privacy protects them from harm-namely the security they would enjoy were they to get the job; however, such legislation also limits the liberty of the employer whose speech in a job interview could hardly be said to cause harm. Thus relying on the harm principle alone provides for ambiguous situations.

On the face of this argument, the harm principle does indeed appear to be ambiguous. However, a deeper analysis provides elucidation in the case of the job interview. It cannot be argued that the prospective employee might suffer harm. His security would no doubt be affected upon being asked particular questions and, subsequent to answering, being dismissed from the job opportunity. But the harm inflicted by the employer is a secondary effect of his behavior. In which case the employer is not acting harmfully at all, he is acting offensively; the ambiguity is dissolved.

Mill provides a utilitarian argument in support of his harm principle. It is Mill's position that the exercise of autonomy is intrinsically good; therefore respect of autonomy is important. The respect of autonomy has several implications. The first is to refrain from acting paternalistically toward another person. The second is to refrain from substituting one's own judgment for the other person's judgment. And the third is that respecting autonomy is not necessarily the same thing as permitting someone to do whatever he or she wants to do, because there may be other valid reasons for limiting their autonomy, such as one's own interest or the interests of others. However, Mill himself acknowledges a criticism that can be raised against his argument.

The criticism he addresses is the issue of paternalism. If we accept that legislation should be based upon utilitarian principles, then this does not seem to be incompatible with governmental paternalism, which would permit the limitation of liberty in many cases. For example, a person might be doing more harm than good to themselves in which case it would be the duty of the government to legislate in a way to prevent such an action. Mill deals with this objection in a very straight forward manner.

According to Mill it would not be good to adopt paternalistic policies because humans are notoriously bad judges of what is good for others. In other words, what is good for the goose is not always good for the gander. The result would be policies that fail to accomplish their goal of promoting the most goodness. It should also be taken into account that the intrinsic good of making autonomous choices may outweigh the resulting bad. So even if a choice has nothing but bad effects, it is conceivable that some such action

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might actually result in the greatest good. Suppose Person A and Person B are having a conversation about linguistics. Person A finds the word 'green' to be slightly offensive-though presumably he finds other words to be equally offensive. Person A asks Person B to choose an arbitrary word and Person B chooses the word 'green.' The goodness entailed in Person B making the autonomous choice of choosing the word 'green' would outweigh the badness suffered by Person A. Therefore, in order to respect autonomy then, coercive legislation limiting behavior merely because it offends is unacceptable, and the harm principle ought to be relied upon instead.

The other side of the debate is picked up by Joel Feinberg, responsible for the development of the offense principle. When speaking of offensive action's Feinberg is careful to implement a great deal of tact. He begins by making a distinction between offensive actions and actions which are to be subjected to the offense principle. One set of offensive actions are those which result in harm. Mill in fact covered just such actions in Chapter 3 of On Liberty. He writes, "An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard." To incite a mob to riot is to cause harm via threatening security, therefore, speech of this sort is considered harmful. Instead Feinberg provides a narrowly tailored sense of offensive actions that should be subjected to the broader offense principle. These are actions that result in no harm with the exception of the offensiveness of the offended party. The

relevant sense of 'offense' is the wrongful, right-violating, conduct of others. He provides four categories of these kinds of offensive actions: nuisances, taunting, sacrilege, and indecency.

Feinberg proposes that if one is forced to suffer an offense, regardless of whether or not actual harm results, one is not less harmed and therefore the government is legitimate in regulating those offensive actions. However, he recognizes the danger in giving government the freedom to permit legislation that limits liberty just because someone somewhere finds something offensive, because there is almost always someone somewhere who will find anything offensive. Feinberg further cites Prosser; "The law does not concern itself with trifles or seek to remedy all the petty annoyances and disturbances of everyday life. . . Thus it has been held that there is no nuisance arising from the mere unlightliness of the defendant's premises . . . or from the temporary muddying of a well, or from an occasional unpleasant odor or whiff of smoke." Instead there are several standards dealing with the seriousness of the offense to determine whether or not an offensive action requires government intervention: The magnitude, the reasonableness of avoidability, the *volenti maxim*, and the discounting of abnormal susceptibilities. Though I will not go into the definition of these constraints, suffice it to say that petty offenses would not be regulated.

Feinberg's argument for the Offense Principle rests up the "intuitive" force of a hypothetical situation in which we are asked to imagine ourselves as a passenger on a bus. While on this bus ride we incur many offenses, and to get off the bus would result in great inconvenience to ourselves. The bus ride results in the suffering of offenses including nuisance, taunting, sacrilege, <https://assignbuster.com/harm-principle-vs-offense-principle-philosophy-essay/>

and indecency in rather graphic detail, and the question arises should there be legislation to protect oneself from experiencing such actions. The argument is that the harm principle is not sufficient to legislate against such offensive actions that we as a society would want to regulate. I can see how many of these offensive instances could incite someone to side with Feinberg, but I remain unconvinced that the harm principle is not sufficient to deal with each story. And where the harm principle is not applicable, the offense suffered is protected by the First Amendment to the United States Constitution.

There are thirty-one bus stories divided into six categories: affronts to the sense; disgust and revulsion, shock to moral, religious, or patriotic sensibilities; shame embarrassment (including vicarious embarrassment), and anxiety; annoyance, boredom, frustration; and fear, resentment, humiliation, anger (from empty threats, insults, mockery, flaunting, or taunting). The stories range from relatively small offenses such as a clashing wardrobe, and unpleasant music, to a group of mourners bashing the corpse with a hammer, to a couple having sex. Most of these stories would present a threat to the security of all passengers. Here the harm principle would be perfectly applicable. And in the stories of offensive clothing or offensive signs, these are clear cut cases protected by the First Amendment. But the offense principle gains ground in the stories where the thing expressed is intended to do nothing but provoke unpleasantness.

It is important not to get caught up in the details of psychology. Feinberg argues that it is a matter of human psychology that the observation of lascivious acts results in the minds absorption. To accept this kind of thinking <https://assignbuster.com/harm-principle-vs-offense-principle-philosophy-essay/>

would be to reduce the willpower to a level of impotence, and suggests that autonomy is not something we are always capable of. That is not something I am prepared to do. If humans have the freewill, than they can certainly choose to avoid the things they find offensive. And if they find themselves unable to avoid them, such as in the bus story provided by Feinberg, than the solution seems obvious. Find another way to get to where you are going.

The harm principle seems the more logical choice for a society that values liberty. Between the harm principle and the offense principle, it is the harm principle which gives more respect to the autonomy of the individual, and their ability to make choices and judgments. If we allow for legislation according to the offense principle we diminish the value and capacity of what it means to be human.

Sources used though not cited due to the drafty nature of these words in the shape of a paper:

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