

Mill's Harm Principle

1 The Principle

“The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the 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. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him, must be calculated to produce evil to some one else. 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.”¹

**The Harm
Principle**

paternalism

moralism

**merely self-
regarding acts**

“There are many who consider as an injury to themselves any conduct which they have a distaste for, and resent it as an outrage to their feelings; as a religious bigot, when charged with disregarding the religious feelings of others, has been known to retort that they disregard his feelings, by persisting in their abominable worship or creed. But

¹ Mill, *On Liberty*, ch. 1, par. 9

offense there is no parity between the feeling of a person for his own opinion, and the feeling of another who is offended at his holding it; no more than between the desire of a thief to take a purse, and the desire of the right owner to keep it. And a person's taste is as much his own peculiar concern as his opinion or his purse.”²

2 Which categories are most important?

1. Categories of behavior: purely self-regarding vs. harmful to others.
2. Categories of reasons for interference.
 - a. Paternalism: protect the target of interference.
 - b. Moralism: prevent behavior that is wrong, but not harmful.
 - c. Repugnance: prevent offensive behavior.
 - d. Harm principle: prevent harm to others.

3 Relationship to utilitarianism

3.1 According to Mill

“I forego any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being. Those interests, I contend, authorize the subjection of individual spontaneity to external control, only in respect to those actions of each, which concern the interest of other people.”³

² *On Liberty* ch. 4, par. 12

³ *On Liberty* ch. 1, par. 11

3.2 Utilitarianism

“By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, to promote or to oppose that happiness.”⁴

“By Utilitarianism is here meant the ethical theory, that the conduct which, under any given circumstances, is objectively right, is that which will produce the greatest amount of happiness on the whole; that is, taking into account all whose happiness is affected by the conduct.”⁵

3.3 What you expect a utilitarian to say about liberty

the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is ~~self-protection~~ *producing the greatest amount of happiness on the whole*. That the 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~~ *to produce the greatest amount of happiness on the whole*.

3.4 Aggregation over large numbers

“The striking feature of the utilitarian view of justice is that it does not matter, except indirectly, how this sum of satisfactions is distributed among individuals any more than it matters, except indirectly, how one man distributes his satisfactions over time. The correct distribution in either case is that which yields the maximum fulfillment. ... There is no reason in principle why the greater gains of some should not compensate for the lesser losses of others

⁴ Bentham, *Principles of Morals and Legislation*, ch. 1, §II.

⁵ Sidgwick, *The Methods of Ethics*. Bk. 4 Ch. 1 Sec. 1 Para. 2.

or more importantly, why the violation of the liberty of a few might not be made right by the greater good shared by many.”⁶

4 Apparent exceptions, even for non-utilitarians

4.1 Truth and free speech

“When [Oliver Wendell] Holmes said that ‘the best test of truth is the power of the thought to get itself accepted in the competition of the market,’ he cannot simply have meant an idealized market, since he was arguing for not regulating certain kinds of speech in the actual social context of political and commercial activity The assumption of this approach is that, at least with regard to truths relevant to politics ... the literal commercial market approximates to an idealized market. The trouble is that there is very little reason to accept this assumption. ... The literal market generates a high level of noise. Everyone knows that in modern conditions of communication messages compete for attention and cancel each other out, and that they are picked out for reasons that need have nothing to do with their truth.” ... “Critics of the marketplace approach to First Amendment doctrine have pointed out that in institutions that are expressly dedicated to finding out the truth, such as universities, research institutes, and courts of law, speech is not at all unregulated. People cannot come in from outside, speak when they feel like it, make endless, irrelevant, or insulting interventions, and so on; they cannot invoke a right to do so, and no-one thinks that things would go better in the direction of truth if they could.”⁷

4.2 Offense

Imagine the worst bus ride of your life.⁸

⁶ John Rawls, *A Theory of Justice* (Harvard University Press, 1971), p. 26.

⁷ Bernard Williams, *Truth and Truthfulness* (Princeton University Press, 2002) pp. 215, 217.

⁸ Joel Feinberg, *Offense to others*, vol 2 of *The moral limits of the criminal law* (Oxford University Press, 1988).

4.3 Harm to self (paternalism)

Restrictions that we would want if we were rational. E.g., those that save us from our own irrationality, seat belt requirements, anti-smoking laws, etc..⁹

4.4 Wrongs (moralism)

“We do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law, by the opinion of his fellow creatures; if not by opinion, by the reproaches of his own conscience.”¹⁰

⁹ Gerald Dworkin, “Paternalism”, in Feinberg and Coleman, editors, *Philosophy of Law*. 8th edition (Thomson Wordsworth, 2008), pp. 281–91.

¹⁰ John Stuart Mill, *Utilitarianism*, ch. 5, par. 14. For the general point, see Gerald Dworkin “Devlin was right: Law and the enforcement of morality.” *William & Mary Law Review*, (1999) 40:927–946.

