

The applications of Mill's principles

This handout follows the handouts on 'The Harm Principle' and 'Mill on Liberty'. You should read those handouts first.

Mill turns to the question of applications once he feels he has established his two principles that regulate when society is justified in restricting individual conduct. The first principle is the Harm Principle, which he rephrases as: 'the individual is not accountable to society for his actions in so far as these concern the interests of no person but himself'. The second principle is the application of his utilitarianism:

for such actions as are prejudicial to the interests of others, the individual is accountable and may be subjected either to social or to legal punishment if society is of opinion that the one or the other is requisite for its protection. (163)

There are, once again, cases of 'legitimate harm', where an action harms others, but society should not seek to prevent it, because to do so would cause greater harm. For instance, two people may compete for a job – the one who does not get it is harmed by the other's success. But it is good for society that there is competition like this.

His discussion of cases, Mill says, is not intended as further argument for the principles, but an illustration of the kinds of decisions that they support. For reasons of space, we will not cover all Mill's examples, but just five which continue to be highly relevant in today's society.

RELIGION

In the handout on 'Harm and offence', we look at three cases of religious morality being invoked against activities not harmful to others. In each case, Mill argues that the interference by society is not justifiable. In the first two cases – an Islamic prohibition on eating pork, and a Puritan (or Taliban) prohibition on many forms of entertainment – he expects his readers to resist the prohibition. In the third – the persecution of polygamous Mormons – he expects his readers to approve of the prohibition. Part of Mill's argument from the very beginning has been that there is no consistency in what society is willing or unwilling to ban. People want to ban what they disapprove of, but will not to tolerate a ban on their own activities that offend others.

Two more examples: at the time Mill was writing, Catholicism was the only religion you could practice legally in Spain. His Protestant readers would want to resist the ban. But then they cannot consistently use their own religion as the basis of laws. If anyone replies, 'but we are right to ban other religions, because our religion is right', they should recognise that when the other religion says exactly the same thing, they resent it. There are no grounds they can appeal to which the other religion can't also appeal to.

Second, Christianity says that one day of the week should be kept for rest and worship. Until the 1950s, people were not allowed to work on Sundays. And until 1994, the exception was made only for sports, entertainment and Sunday markets. The first day

shops were allowed to open on Sundays was 6 July 1994. Mill argued that society had no justification in preventing everyone working, when allowing some would enable others to enjoy themselves.

Again, no one can legitimately appeal to divine law, because 'It remains to be proved that society... holds a commission from on high to avenge any supposed offence to Omnipotence which is not also a wrong to our fellow creatures' (159). To suppose otherwise would legitimate complete religious persecution. Mill's point applies against any appeal to divine law. So, for instance, he would be completely against the imposition of those aspects of sharia law that do not relate to harm to others.

ALCOHOL

Mill opposed the Temperance movement, which attempted to restrict the consumption of alcohol. Restrictions on alcohol involve a prohibition on much that is perfectly innocent in an attempt to prevent what is considered bad (156). One opposer to alcohol argued that drinking undermined his 'social rights' – it creates social disorder, but he has a right to security; it weakens and demoralizes society, but he has a right to intellectual development. But this is equivalent to saying that we have a right that everyone behaves just as they ought to! We have no such right, and drunkenness, where it does not cause harm to others, should not be prohibited.

We can, however, ban drunken behaviour that causes harm, and someone who has harmed others while drunk may be legitimately banned from drinking – as this increases the risk of harm to others (167). We can also place restrictions on the sale of alcohol (171). Wherever it is sold will need policing, and so society can regulate who can sell it and at what times. But the purpose of this should not be to make alcohol more difficult to obtain; that would be a violation of people's liberty.

What about taxing alcohol? If the purpose of the tax is to discourage people from drinking (which is the argument often used by governments today – it is a 'sin' tax), then this is illegitimate. However, governments have to raise taxes, and however this is done, it will adversely affect someone. So the state can consider what people don't need – which obviously includes things that harm them – and tax those.

TRADE

There is no general argument in Mill against taxation in general. All trade, he says, is a social act; selling is not primarily self-regarding, but affects the interests of others. (He must mean that trade affects third parties, people not immediately involved in your exchange of goods and money. The buyer consents to trade with you, and consenting acts count as self-regarding.) Because it affects others, and clearly can harm them, there can be legislation governing how trade is conducted.

Mill argues that 'the principle of individual liberty is not involved in the doctrine of free trade [trade with minimal restrictions], so neither is it in most of the questions which arise respecting the limits of that doctrine' (164). Other political philosophers have disagreed, and argued that the freedom to trade is a fundamental right.

PROSTITUTION

What about restrictions on what we can trade? The issue of prostitution is interesting and complex. We cannot ban people from having sex; and it would be impossible to regulate people having sex for money. But should someone be allowed to be a pimp? If someone is free to sell their body, should someone else be free to encourage and enable them to do so?

Mill says that people must be free to receive advice about what to do, so they must also be free to give advice. But the issue is more complicated when the advisor receives personal gain, as in the case of the pimp who makes his living by enabling people to sell sex. On the one hand, surely if you are allowed to do something (advising people to sell their bodies), just making money from it shouldn't make it illegal. On the other hand, for activities that are quite possibly harmful to the individual (the prostitute), society should protect people from advice that is not disinterested, helping them to make up their minds on their own.

Mill does not discuss a more pressing question about prostitution. If we allow pimping, will we be able to prevent many of the clear harms that pimps inflict on prostitutes, including violence and extortion? Of course, these are illegal anyway, but more such actions will occur if pimping is allowed than if it is not. In other words, can we ban pimping because it is associated with harm, even if we think that, in itself, it should not be banned?

We could invoke Mill's view that, although we cannot ban drinking, we can ban someone who has harmed others while drunk from drinking. But in the case of pimping, we are not talking about banning people who have harmed prostitutes from pimping again; we are talking about banning the whole profession.

All trade involves the interests of others, so restrictions on trade do not necessarily violate the Harm Principle. All we need, then, is a good utilitarian argument against pimping. Mill's discussion illustrates the complexities involved when weighing individual liberties against social harms.

SOCIAL BENEFITS

Mill's final discussion is not, he says, an application of the Harm Principle. Instead of looking at when government may interfere to prevent harm, it looks at when government may interfere to benefit its citizens. It is worth briefly noting some of Mill's remarks, as they are illustrative of his view of the relation between government and citizens.

The government should not intervene to help its citizens in three sorts of case:

1. when individuals will do it better themselves, i.e. being given freedom will produce a better result than compliance with government directives, e.g. free trade and (interestingly in these days of a 'national curriculum') the provision of education;
2. when doing it themselves will benefit people's development as individuals, e.g. trial by jury and local government;
3. whenever it is unnecessary, because any addition to the state's power is problematic. The more people that are employed by the government, the less real freedom there will be. No reform that went against the interests of the government would be possible if many people were dependent on the government for their livelihoods.

Instead of intervening to benefit its citizens, it is better if the government provides opportunities for them to benefit themselves: 'A government cannot have too much of the kind of activity which does not impede, but aids and stimulates, individual exertion and development. The mischief begins when... it substitutes its own activity for theirs' (187).