

Lecture Notes on Mill on Harm to Others Philosophy 166

(This is a bit of the lecture for Friday, May 26 that I did not actually state in class.)

Mill's Liberty Principle roughly says that the only morally acceptable reason to restrict a person's liberty to do what she voluntarily chooses to do is to prevent that person from harming nonconsenting others. One set of issues here concerns consent and voluntary choice. Another question is what counts as harming others.

The Liberty Principle might be read as identifying harming others as *wrongfully* harming them. The editor of the Hackett Pub. Edition of *On Liberty*, Elizabeth Rapaport, takes this line. She identifies two principles discernible in the text, which she calls "Principle I" and "Principle II." She thinks Mill is better regarded as affirming Principle II. The provisional Principle I, stated in chapter 1, is that "the only legitimate grounds for social coercion [are] to prevent someone from doing harm to others." This is supplanted in chapter 4 by Principle II, "A person ought to be subject to social coercion only to prevent the violation of a 'distinct and assignable obligation to any other person or persons.'"

The advantage of this reading is that it promises to fend off an objection Mill is clearly worried about. He states it on page 78. The objection is that except for utterly trivial actions, any act a person does that harms herself will indirectly harm others as well.

We might think of the Liberty Principle as taking it for granted that actions can be divided into two groups, the ones that affect no one but the agent herself along with others who consent to bear the costs, and the ones that affect others. Call these the sphere of self-affecting action and the sphere of other-affecting action. Given this background, the Liberty Principle says that restriction of individual liberty is never legitimate when imposed on the self-affecting sphere of actions. The objection then says the self-affecting sphere of action either contains no acts at all or only utterly trivial acts such as he decision whether to get out of bed on the left or right side.

Mill responds to the objection by distinguishing directly and indirectly causing harm to others. He mentions the distinction on page 11, chapter 1. On the face of it, the distinction sounds unpromising. Who cares whether someone causes harm directly—by a simple causal chain—or indirectly—by a complex roundabout causal chain. Harm is harm.

Mill has in mind the distinction between causing harm to other people through harming oneself (this in the indirect kind) and causing harm to other people that does not occur through harming oneself (this is the direct kind). Still, why does this distinction matter? If it is wrong for me to harm you directly, by shooting you in the face, it is surely wrong to harm you indirectly, by shooting a bullet that travels through my shoulder and then hits you in the face. This is clearly not what Mill has in mind. He is thinking of indirect harm as harm that occurs via the sentiments of those who are made sad by harm to the agent and harm that occurs to the interests of those who are relying in some way on the flourishing or success of the agent. Suppose that Tom becomes an alcoholic and his grandmother becomes very upset. Does the harm to the grandmother take Tom's act out

of the sphere of self-affecting acts? Or suppose Tom's grandmother has bet the farm that he will win a certain cycling race, which he loses due to the interference of his drinking with his training. Does this sort of harm to the grandmother take Tom's act out of the self-affecting sphere? Mill wants to say No, in both cases. He discusses the issue on pages 78-80 and comes up with two formulations. One says that when an individual harms himself and harms others through harming himself, the act remains self-affecting unless the act violates "a distinct and assignable obligation to others." On the next page he writes that an act that neither "occasions perceptible hurt to any assignable individual except himself" nor "violates any specific duty to the public" should be counted as self-affecting, and protected by the Liberty Principle.

This is convoluted. But I note that what Mill says does not amount to Rapaport's Principle II.

Mill's text aside, would we be doing Mill a favor by interpreting or revising his Liberty Principle so it protects a person's acts from interference unless they harm someone in a way that is wrongful or perhaps unless they violate another person's rights (Editor's Introduction, p. xvii).

One might worry that if we go this route, the content of the Liberty Principle becomes indeterminate until we are supplied a theory of what it is to wrongfully harm someone or what rights not to be harmed people have. In broad outline it is clear how Mill would fill in this account. He will hold that in a given state of society people should be accorded rights not to be harmed by others that are utility-maximizing. That is, if we were to set the rights differently, their operation would lessen rather than raise the total of human happiness. It is not clear why this procedure of rights establishment would end up with a set of individual rights not to be harmed that is weak, so the individual liberty protected by the Liberty principle is extensive. For example, maybe it would maximize utility to set in place a strong set of rights not to be harmed by others by way of being deeply offended by their conduct. Mill himself notes in chapter 1 that one can sometimes correctly be said to harm others by inaction—this will be so when one's inaction violates a positive duty to aid others. But maybe utilitarianism would justify many such duties. The general issue raised here is the compatibility of Mill's libertarianism (his advocacy of the Liberty Principle as stated in chapter 1) with his utilitarianism.

There is something to be said for interpreting Mill as *not* moralizing the idea of harm to others so it becomes wrongful harm to others. (There is yet another interpretive choice to be faced, the choice between what I called Version 1 and Version 2 of the Liberty Principle as it is stated in chapter 1, page 9.) This chimes in better with some parts of the text. For example, Mill treats the free speech principle discussed in chapter 2 as not entailed by the Liberty principle. When people voice opinions on matters affecting the public interest, their expressive acts can cause harm to others. Mill defends his free speech principle not on the grounds that free speech is protected under the Liberty principle, but on the ground that in the long run the consequences of allowing wide freedom of speech will be better than a policy that selectively restricts speech based on calculations of the harm it might do. In much the same way, Mill says freedom of trade is

not protected by the Liberty Principle. Trade is a social act, with consequences for others, and in principle it falls in the sphere of social regulation. But according to Mill it turns out that society does better to let individuals interact on any terms they find mutually agreeable (chapter 5, page 94). Here Mill takes harm to others in the nonmoralized way, as plain harm to others.

The Liberty Principle is not advanced by Mill as a social theory tells when liberty should be restricted and when it should not. It is supposed to be one element in such a theory. The Liberty principle says that the only good reason (the only type of reason that should be accepted in determining what actions and policies to choose) is to prevent harm to others (version 1) or [alternative formulation] to prevent someone from harming others (version 2). It does not purport to say what determines when harm to others does yield a decisive case for liberty restriction.

Regarding the triviality worry (the Liberty Principle turns out to be toothless), maybe Mill thinks that if one subtracts harm-to-the-agent and harm-to-consenting-others considerations for restricting liberty, what remains will just not amount to much in many controversial cases, and will surely not suffice to warrant restriction. Take legal prohibition of same-sex sex. If one scratches the considerations the Liberty Principle rules out as inadmissible, what is left? The Liberty Principle rules out paternalistic reasons (harm to the agent and consenting others) for prohibition as inadmissible, and likewise Legal Moralism considerations (claims that a type of conduct is intrinsically immoral absent any showing the conduct in question causes harm to nonconsenting others). So Mill might claim, the Liberty Principle has teeth after all. The two spheres way of stating the Liberty principle idea is perhaps misleading.

The questions still remain—what way of interpreting the Liberty principle both fits the texts best and also makes the principle most defensible, and is the Liberty Principle under any construal a principle we should accept or not?