

Mill on Harm and offence

This handout follows the handout on ‘The Harm Principle’. You should read that handout first.

THE DISTINCTION

Mill wants to distinguish between harm and having our *feelings* adversely affected (143f.). We may come to any number of negative opinions about what someone does or believes, even when their actions or beliefs don’t affect our interests. In these cases, Mill argues, the person has not harmed us, even though we may feel that they are offensive, foolish, or depraved.

But why don’t these feelings, e.g. feeling offended, count as harm? Surely there is such a thing as ‘mental’ harm, just as there is physical harm. Mill agrees that there is such a thing as mental harm, in the sense that an individual’s development – and the mental capacities involved in development – can be injured. However, this is quite different from and much more serious than having our feelings hurt. Furthermore, being harmed usually involves being harmed against our will. By contrast, if we find someone offensive, *we can avoid them*, and then continue our lives with no damage done.

But what about being offended by the *mere existence* of people who do or believe something offensive to us? Isn’t their doing or believing what they do a kind of harm to me, since I am offended, even if I never have to deal with them personally? Ultimately, Mill’s response is that my ‘interest’ in not being offended is simply not the same as my interests in not being physically damaged, deceived, imprisoned, and so on. His argument that offence should not count as a harm regulated by the Harm Principle is part of his argument in favour of freedom of thought, expression, and action.

Harm is harm to our interests, in particular, our permanent interests as progressive beings. Being offended is not a harm to our interests, it does not in any way prevent us from developing as individuals or living out our own lives as we see fit. However, attempting to coerce someone into not acting in a way that offends us does harm their interests, as it limits the freedom they need to develop as individuals. So to allow offensive practices causes no harm, but to ban them causes harm.

But is Mill right that we should not ban offensive behaviour? Mill mentions four causes of offence. There is what someone simply doesn’t like (e.g. 151). But, Mill replies, ‘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’ (151). This cause is too insignificant for us to discuss it further. Second, there is what someone judges to be harmful to the individual, though not to others, or foolish or depraved (142f.). Third, there is what goes against someone’s religious beliefs, including their religious morality (e.g. 152f.). Finally, there are cases which are not offensive in private, but are offensive when done in public (168). We shall look at each in turn, after a brief complication.

Customary morality and offence

This is the core of Mill's view on offence. However, matters are not so simple. Mill uses customary morality as a yardstick for judging when society may interfere with harmful actions. If a harmful action violates someone's rights, then it may be punished by law. When a harmful action violates moral rules, it may be punished by public moral disapproval (141). Customary morality is a good guide to utility, because over time, people have automatically, through trial and error, worked out which actions tend to produce happiness (*Utilitarianism*, Ch. 2). This is what our inherited moral rules actually are: 'tell the truth', 'don't steal', and 'keep your promises' are embodiments of the wisdom of humanity that lying, theft, and false promising tend to lead to unhappiness.

However, many people morally disapprove not just of harmful actions, but also of offensive ones. Does this mean that what is offensive is detrimental to utility? We know Mill's response is that it is better for people's self-development, and for society, for them to learn to cope with being offended and allow other people freedom. But if offence is not harmful, yet customary morality disapproves of offence, then customary morality can't be a good guide to utility.

It is not often noted by commentators, but Mill distinguishes between public and private morality precisely on this issue of offence:

On questions of social morality, of duty to others, the opinion of the public... though often wrong, is likely to be still oftener right, because on such questions they are only required to judge of their own interests... But the opinion of a similar majority... on questions of self-regarding conduct is quite as likely to be wrong as right... (151)

Customary morality is only a good guide to restricting actions that harms others; it is not such a good guide to 'how to live' more generally that it can be imposed on people's self-regarding actions as well.

OFFENCE AND FOLLY

In arguing that we should not constrain self-regarding actions, Mill does not claim that our feelings should not be affected by them. Of course they are:

There is a degree of folly, and a degree of what may be called (though the phrase is not unobjectionable) lowness or depravation of taste, which, though it cannot justify doing harm to the person who manifests it, renders him necessarily and properly a subject of distaste, or, in extreme cases, even of contempt... (143)

Mill cites rashness, obstinacy, self-conceit, hurtful self-indulgence, and pursuit of animal pleasures. To people with these character traits, we can express our opinions and try to persuade them to change. But if they do not listen, then we can express our opinions in our actions, by avoiding their company and even cautioning other people against them.

But – and this is the crucial point – all of this is a natural extension of our feelings of offence. None of it is intended as constraint, coercion or punishment. We cannot go that far because a person's interest in their own well-being is much stronger than anyone else's, so they have say over it. They should suffer from no more than our bad opinion, and the actions we freely take on the basis of that opinion.

By contrast, we are not merely offended by, but morally disapprove of cruelty, malice, envy, insincerity, disproportionate anger or resentment, greed, pride based on denigrated others, and egotism. Actions that demonstrate these qualities we seek to punish.

But won't someone who suffers from others' bad opinion be just as harmed as someone who is punished? Mill responds that there is a considerable difference between the responses of offence and of seeking punishment. In the latter, we try to make the person's life difficult for them and prevent them from doing as they choose; in the former, we leave them alone. To them, this makes a good deal of difference. Second, society does not get involved in questions of offence. You can only be shunned by people who know you, your circle of acquaintances. *Public* opinion cannot legitimately be brought into play with questions of offence, only with questions of harm.

We may still worry that the reactions to offensive behaviour that Mill endorses can act as a tyranny of the majority just as much as the moral disapproval he wants to curb. With busybodies going around making remarks to everyone they are offended by (143-4), will society be the place of freedom and toleration Mill advocates? On the one hand, Mill wants to protect individualism from the tyranny of social opinion; on the other, he thinks that certain self-regarding actions or ways of life are, on utilitarian grounds, nevertheless simply wrong, and it would be better if the person was informed of this. Perhaps he was wrong to think that it would be good if we felt free to tell people who offend us what we think of them.

OFFENCE AND RELIGION

Cases of offence on religious grounds can be difficult to separate from cases in which the person morally disapproves on religious grounds, as many religious moralities do not draw the distinction between harm and offence. Nevertheless, it is clear that some violations of religious codes provoke disgust (and disapproval), while others are disapproved of without disgust. Here are three cases that Mill looks at. (These examples are intended to demonstrate the appeal of the Harm Principle. Anyone who believes that offence *is* a good reason for society to constrain what people do must answer these examples.)

Islam prohibits the eating of pork, some Muslims are disgusted by the practice, and some societies with a Muslim majority have prohibited the eating of pork. In a society with a Muslim minority, the ban on pork certainly wouldn't be accepted. But how can we protest against it? For example, it is not religious intolerance, in that no one's religion *requires* them to eat pork. So no one is prevented from practising their religion. If we resist the ban, it must be because we do not accept Muslims' disgust as a legitimate reason for preventing other people from eating pork. But this applies just as much in societies with a Muslim majority.

In the 16th and 17th centuries, a Christian movement known as Puritanism gained political power in Britain and some parts of the United States. Puritans – like the Taliban in Afghanistan recently – banned many forms of amusement and entertainment, including music, dancing, public games, and the theatre. We can object that the moral and religious sentiments of such people should not be the basis for restricting other people's leisure.

In the 19th century, a religious sect emerged called Mormonism. They were persecuted largely because their religion permits polygamy (for men only). In the face of such

persecution, they moved to uninhabited Utah. Despite the fact that they were no longer part of the same society, people called for them to be prevented from practising polygamy. But Mill argues that as long as people living in Mormon society are allowed to leave if they choose (which has, in fact, *not* always been the case) and no one within Mormon society calls for help from other societies, there is no justification for forcibly interfering with their way of life. If we want to show them the error of their ways, we can send missionaries.

(This example can be extended to any case in which one society seeks to change the practices of another when those practices are not enforced on people against their will. It does not extend to cases in which members of society are harmed or coerced by social customs, e.g. female circumcision and sati.)

So far, Mill consistently rejects offence as a grounds for restricting what people do. This obviously has implications in contemporary society, in which offence is not infrequently invoked as a reason to ban some activity or censor a book or play.

PUBLIC INDECENCY

There are certain offensive acts, e.g. public indecency, that Mill is willing to prohibit:

there are many acts which, being directly injurious only to the agents themselves, ought not to be legally interdicted, but which, if done publicly, are a violation of good manners and, coming thus within the category of offences against others, may rightly be prohibited. Of this kind are offences against decency... the objection to publicity being equally strong in the case of many actions not in themselves condemnable. (168)

We will use sexual intercourse as an example of ‘offence against decency’ and ‘violation of good manners’ when performed in public. Is sex in public harmful? Does it violate someone’s rights or the rules of morality? The ground Mill cites is ‘good manners’. Does being offended by a violation of good manners count as a harm?

If Mill is *not* appealing to the Harm Principle, then this kind of ‘offence against decency’ would be a genuine exception to the Harm Principle. Since he is willing to prohibit them, offences against decency are just wrong, on utilitarian grounds. Here the law should follow utility, not the Harm Principle, it seems.

Apart from the inconsistency in Mill’s thought, we can object that banning public sex is *not* in our permanent interests as progressive beings. More generally, we can object that there is no defensible account of what is decent and what is indecent. For instance, can anyone give us a good criterion for when a sense of decency is ‘correct’ (in accordance with utility ‘in the largest sense’) and when it is not?

If Mill is appealing to the Harm Principle, then he must think that violations of good manners is a form of harm. The text certainly indicates that Mill makes use of the self-regarding/other-regarding distinction – *any* public act is no longer self-regarding. But he seems to move from the act being other-regarding to it being one that may be regulated. But, on the Harm Principle, it is only *harmful* acts to others that may be regulated. Therefore, we must conclude that violations of good manners are a form of harm.

But Mill never defends this premise, and it is hard to see how he could do so, except by using the same argument as above, viz. that 1) customary morality is a good guide to harm, 2) it disapproves of indecency, therefore 3) indecency damages the general interest.

Philosophers have defended a distinction between offence caused by some public display and offence caused by the belief that people are engaged in private in an activity that offends you. The general interest is not served by taking the second kind of offence into account, but it is served by taking the first kind of offence into account, and restricting certain permissible activities from taking place in public. But there is no evidence that this view is Mill's.

Mill says the issue of acts that offend against decency when performed publicly is 'only indirectly connected with our subject' (168), which is why he doesn't discuss it at length. Why is it only indirectly connected? Perhaps because restrictions on publicity are not attempts to restrict the activity in general. They do not seek to prevent or punish the activity within society, only its public display; nor does they express disapproval or condemnation for the activity, only its public display. Because there is no attempt to prohibit the activity in general, we do not need to invoke the Harm Principle to protect it. Mill's arguments are concerned with the individual's freedom to engage in certain activities, not to engage in them publicly. This makes the issue of publicity 'only indirectly connected' with his core concerns.

We can object that to ban public sex is to ban a type of activity that may be some part of some people's 'experiments of living'. But we then have to say that public sex is not simply sex, done in public; it is a different activity. Mill doesn't grant this. The quotes above show that he considers the act – whether done in public or private – as the same act.