



## Philosophy and the Human Situation

### *Liberty and Offence*

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Mill is famous for his harm principle. Essentially Mill tells us that the only reason why the Government may legitimately interfere with our action is to prevent harm or threat of harm to other people. Mill says that the Government may only intervene then if you are likely to harm or threaten harm to another person. If they dislike what you are doing that isn't harm. It's not enough that you are acting in a way that other people don't like, you have to be acting in a way that does them some sort of harm or other. Mill's goal here is to rule out what could be called State paternalism. State paternalism is a view that the State should act like a father to its children, that is, stopping individuals from doing things which harm no-one but themselves. It's not the State's business, Mill thinks, to tell you what to do unless your actions are likely to impinge on the freedom of action of another person. So, Mill says we need to be protected from each other, but that protection is simply protection from harm. Notoriously though, Mill never quite defines harm. It is quite clear that harm is not the same thing as dislike, or offence, but we never get from Mill a positive account of what harm should be.

He does give examples though and it's quite clear that for Mill certain things would count as harm, so you have physical interests and you have financial interests. And damage to your physical interests, for example, if someone attacked or assaulted you, would count as harm, and it would also count as harm if someone damaged your financial interests by taking your property, taking away your money, at least without your consent.

Now it's not true that Mill outlaws all harms. There are, Mill thinks, some permissible harms. Most obviously, judicial punishment would be a way of harming individuals, but in a legitimate fashion. If the Government is to punish people by locking them up, or fining them, then by Mill's account of harm, this would be to harm those individuals, but it is perfectly justified, at least if the punishment is justified.

That was the first case, then, in which Mill allows harm in case of punishment, but there is a second case too, and this is a more interesting one in a way. It is the case of economic competition. To explain, when the new supermarket opens up at the end of my road, it's bound to put some local traders out of business. This undoubtedly will be a harm to their financial interests and thereby on Mill's account a harm to them. We allow economic competition though. We allow people to harm each other in this way. Notice that the harm done is just as serious a harm to those individuals as if their business was bombed or burned down by a competitor. Nevertheless, there are certain forms of economic competition that Mill thinks are quite legitimate. So Mill does allow some forms of harm: harm by punishment and harm through legitimate economic competition. Also, and this may be more surprising, Mill is prepared to outlaw some things which are not clearly harm. Remember we said that for Mill offence is no harm? Well, Mill does seem prepared to rule out certain cases of public offence. That is, Mill is prepared to ban certain things which by common standards would be counted indecent.

In the Section in *On Liberty* where Mill discusses this, the Section called Applications, Mill seems to want to deal with this topic in some haste; we get only a couple of lines which lack Mill's normal clarity and it seems as if he's rather in a hurry to move on to the next subject. But what Mill tells us is that there are certain actions which, if performed in private, would be perfectly acceptable, but if performed in public count as an offence to good manners and thus he says can properly be prohibited. What cases does Mill have in mind? Well, unlike other cases he discusses in *On Liberty* he never gives us any examples, but it's easy to supply examples for ourselves. Sexual intercourse for example between a legally married husband and wife would be perfectly permissible in private, according to perhaps every moral and religious code, but it is something which few moral or religious codes would sanction in public. So Mill says there are certain actions if performed in private they are perfectly acceptable, but if performed in public can rightly be banned. They could be rightly subject to criminal action. What is interesting here is that Mill sees an asymmetry between public and private. There are

certain actions which can be performed in private, but their public performance can rightfully be banned.

Now we might agree with Mill. We might disagree. But the question is this – How can Mill justify this belief? We saw that Mill says that the only reason for interfering with the freedom of action of any individual is if they cause or threaten harm to another, but is it harmful to be subjected to acts of public indecency? It may be offensive, but Mill is famous for the view that mere offence is no harm. And we can see some problems here – suppose that your religion offends me, your religious practices offend me, if we can ban things simply because they cause offence, then could I ban your religion, your religious practices? So there are certain things that Mill would not want to ban, yet they cause offence. So how can it be that we can ban some things that cause offence and not others? Furthermore, there seems to be a problem that this type of argument could extend to private behaviour too. The cases perhaps are obvious, some people are much more offended at the thought that homosexual relations are taking place, even behind closed doors, than they would be by the observation of public heterosexual behaviour. So if offence is a reason to ban actions, isn't it a reason to ban some religious practices, isn't it a reason also to ban some things that happen even in private? What should Mill do? Some have argued that Mill's attitudes to public indecency is quite understandable for someone writing in the 1900s and it is simply a manifestation of the common Victorian attitude. Such people will say that in more enlightened times we can be much more tolerant of what might be called public indecency but, really, these things do no real harm and should be permitted. So on this view the real logic of Mill's position is that public indecency ought to be allowed, perhaps it should not even be called public indecency any more and that we should really overcome Mill's rather staid attitude in this respect.

Now it is perfectly possible that we could adopt such a policy, that we could say that offensive behaviour is merely that, offensive, and should never be made the subject of legal prohibition, but if we adopt this line, then we ought to be clear exactly how much behaviour we would be permitting. The American philosopher, Joel Feinberg, in his important book *Offence to Others*, has an illustration of just this problem. There's a short section in the book called *A Ride on the Bus* and Feinberg asks you to imagine that you are a passenger on a crowded bus. You could leave the bus, you're not a captive, but to do so would be a great inconvenience to you and on this bus, of course, there is no other seat to move to and no prospect of leaving your seat to stand. And so Feinberg gives us a series of examples, each illustrating some form of offensive behaviour. So we begin innocently enough with a cluster of stories that involve affronts to your senses – horrible smells, migraine-inducing colour combinations, intolerable noises and so on.

Now, of course, these things are annoying, perhaps offensive, but not yet subject to legal regulation, at least in this country. But then we are taken through a section labelled *Disgust and Revulsion* and this involves stories of people consuming live insects, eating up each others vomits and performing other rather disgusting actions. The story continues – we get people engaging in sexual relations, both heterosexual and homosexual on the bus in front of you. How many of these things would you tolerate? In the end Feinberg gives us thirty one distinct examples, all involving a different type of offensive behaviour. If we said that offence should never be the subject of legal regulation then we would be committed to permitting these actions, even on a crowded bus.

Mill doesn't discuss this in enough detail for us to be sure exactly what he would say about these cases, but I think it's clear that Mill would be sympathetic to Feinberg, that in most of these cases of offence, we should make people's behaviour subject to legal regulation. Perhaps it should be illegal to consume live insects on a bus in front of other people, but we saw Mill has some difficulty in making out this case: how can he say that offence is a harm, how can he say this without spreading the ban to other types of behaviour that he thinks should be perfectly permissible? Well the answer, I think, is to recognise that Mill is at bottom a utilitarian. Now a utilitarian is someone who believes that we should maximise the sum total of happiness in society. Governments should act so as to make the general population as happy as possible. This ultimately is the justification of the Government and on Mill's view is the ultimate ground of the liberty principle too. The liberty principle, the harm principle, is defended on the grounds that societies that follow the harm principle will be happier in general than societies that don't. This too gives us the clue to how Mill can defend what we can call his indecency policy, the indecency policy is the view that public indecency can sometimes be prohibited, but nothing people do in private should ever be prohibited. To put it simply Mill would say that a society following the indecency policy will be a happier society

than one that either allows public indecency, or bans things that people do in private that affect no-one but themselves.

Well, we can see in principle that this might work, but we need to look in a bit more detail to see how the argument can be made out. After all, if private behaviour can cause grave offence to very many people, might we not be a happier society if we ban certain types of private behaviour too? Mill's answer is that we will never be happier as a society as a whole in the long run if we ban private behaviour that affects no-one but those individuals who engage in that behaviour. Why is this? Well there are two key concepts here that we must appeal to in order to understand and explain Mill's view as a whole.

The first is the idea of individuality. Mill thinks that individuality is perhaps the most important aspect of human life. It's the most important contributor to human happiness, both in itself and in its contribution to other forms of happiness. So Mill believes we are happiest when we're following out our own plan of life on our own and this is a source of pleasure and satisfaction to the individual, but also if we are engaged in some other activity and we follow it in our own way, that will intensify the pleasure or happiness we get from that particular activity. So individuality, the right to follow one's own way of life, one's own conception of the good, we might put it, is a vital component of human life.

Secondly, Mill appeals to the idea of progress. Now this has two aspects to it, both an individual aspect and a social aspect. Individuals are capable of making moral progress. They can learn, they can change their behaviour, but this also applies to human kind as a whole.

One generation can learn both positively and negatively from the previous generation. If one generation experiments with a type of life style that goes well, members of the following generation will be able to follow that and benefit from it. If, on the other hand, an experiment in living, as Mill puts it, goes badly, then subsequent generations may learn not to follow that experiment. This concept of experiments and living is absolutely vital to Mill's overall view. He would encourage individuals and groups of individuals to experiment, to try out new ways of life. In doing so they may benefit themselves, but also they may be the great benefactors of mankind as a whole. If we learn from their experiments then perhaps all subsequent generations will be able to benefit. For this reason Mill wants to encourage experimentation, but that doesn't mean that experimentation must be conducted in public. Private experimentation may be enough. Think what would happen though if we banned actions in private just because some people found them offensive. If so we might be ruling out experiments in living. We might be ruling out types of life choices that will be of great benefit to posterity.

So we can begin to see how Mill might justify his indecency policy. Public actions, if grossly offensive, may in some circumstances be rightfully banned. Well, what are those circumstances? It seems essential that those actions must be performable in private too. That is, things can be banned in public only if they can be performed just as well behind closed doors. In this case then by banning public action of a certain type we won't have to worry about stifling anyone's individuality. They can express their individuality, but in their own home. Furthermore, if they do that they can continue to conduct their experiments in living. What we find offensive one year, we may find normal behaviour ten years later. So, in other words, we mustn't do anything that rules out experiments in living. If we allow people to experiment in their own home, with their friends, then we can possibly create experiments that will be of benefit to everyone subsequently.

Mill, then, has a good reason for banning gravely offensive public actions under some circumstances. If they are gravely offensive and can also be conducted in private without causing such immediate offence then we have a reason for this prohibition. So finally, looking at this issue we can explain a common reaction people have when they witness public indecency, when they witness acts of public indecency. One thing people say is 'that type of behaviour is so unnecessary', this is a very common reaction, you see someone behaving in an outrageous way and you say 'its so unnecessary to behave that way'. But stop and think – unnecessary for what? Well, Mill at least has an answer. If that action can be performed just as well in private, then it is so unnecessary to do it in public, it's unnecessary to preserve those people's individuality and it's unnecessary to further experiments in living for the possible benefit of us all.