

On two ways to expand on the harm principle

Sobre duas maneiras de expandir o princípio do dano

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ABSTRACT

In this article I survey the historical antecedents of what has been commonly referred to as John Stuart Mill's Harm Principle and some of the ways in which the principle has been discussed in the work of recent analytic philosophers. Subsequently, in the article's substantive core, I focus entirely on what Mill refers to as the "moral coercion of public opinion". Here I address matters which I take to underexplored in the literature, namely some difficulties that arise for Mill's treatment in connection with our ordinary notions concerning politeness and social avoidance. Though the problem of avoidance has been addressed by Dan Threet and John Dilulio, among others, I believe that my approach to the problems created by Mill's take on politeness is entirely original with me. Considering the foregoing, I propose adding two supplementary clauses to the Harm Principle. I conclude by presenting a modern statement of said principle.

Keywords: John Stuart Mill. Harm Principle. Public opinion. Liberalism.

RESUMO

Neste artigo, passo em revista os antecedentes históricos do que se tem normalmente chamado de Princípio do Dano, de John Stuart Mill, assim como algumas das formas pelas quais o princípio tem sido discutido por filósofos analíticos recentes. Subsequentemente, no núcleo substantivo do artigo, passo a focar inteiramente aquilo a que Mill se refere como a "coerção moral da opinião pública". Neste sentido, abordo questões que reputo insuficientemente exploradas na literatura, a saber, algumas dificuldades que se colocam para o tratamento fornecido por Mill no contexto das nossas noções comuns de polidez e evitação social. Embora o problema da

evitação tenha sido abordado por Dan Threet e John Dilulio, entre outros, creio que a minha abordagem dos problemas criados pela posição de Mill sobre a polidez é inteiramente original. Considerando o que se disse, proponho acrescentar duas cláusulas suplementares ao Princípio do Dano. Concluo com a apresentação de uma formulação moderna do referido princípio.

Palavras-chave: John Stuart Mill. Princípio do Dano. Opinião pública. Liberalismo.

Introduction

I begin this article by quoting the full statement of John Stuart Mill's Harm Principle as presented in *On Liberty*. Next I present his historical antecedents and then go on to conduct a brief survey of some of the controversies attending the interpretation of the Harm Principle in recent work done by analytic philosophers. I state my reasons for remaining neutral on such controversies. Having dealt with such preliminaries, I proceed to argue that the Harm Principle should, quite regardless of the controversies mentioned, be expanded on to include what I refer to as supplementary clauses. The last clause is meant to dissolve an alleged puzzle in connection with what Mill himself called the "moral coercion of public opinion". I conclude the article with a modern statement of the Harm Principle that incorporates the need to take the supplementary clauses into account.

I Mill's statement of the principle

In the 9th paragraph of Chapter I (Introductory) of *On Liberty*, John Stuart Mill enunciates what he calls "a very simple principle" from which many of the essential features of his book are supposed to derive. Although Mill himself did not use the term, in contemporary philosophical jargon – most notably among commentators from the analytic school – the expression "the Harm Principle" is commonplace.

For my purposes throughout this article, it will be convenient to reproduce the full paragraph containing the Harm Principle. The full quote serves two purposes: ease of recapitulation and comparison. As it will be seen in Section V of this article, it has seemed to some commentators that there is a tension between the Harm Principle and a vital passage contained in the fifth paragraph of Chapter V. The Harm Principle reads as follows.

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 *civilised 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 (MILL, 2014, pp. 223-224; emphases added by the present author)¹.

II Preliminary remarks on Mill's historical antecedents and goals

On Liberty is comprised of five chapters. These are Chapter I (Introductory), Chapter II (Of the Liberty of Thought and Discussion), Chapter III (Of Individuality, as One of the Elements of Well-being), Chapter IV (Of the Authority of Society over the Individual), and Chapter V (Applications).

Let me address first the concerns voiced in Chapter II.

Invectives against state and church interference in freedom of conscience preceded Mill by centuries. The unfettered choice of religious confession and freedom of expression more generally had already been an active operating ideal in the public sphere.

As far as intellectuals are concerned, ideals such as the rejection of censorship, tolerance and freedom of expression had been championed by, among others, such prominent figures as John Milton (MILTON, 2016)², John Locke (LOCKE, 2003)³ and Benjamin Constant (CONSTANT, 2003)⁴.

In connection with the free development of personality, mainly covered by the considerations adduced in Chapter III (Of Individuality as one of the Aspects of Well-being), it bears noting that in his posthumously published *Autobiography*, (MILL, 2008, 260)⁵ acknowledges his indebtedness to Humboldt (HUMBOLDT, 1969)⁶ in whose honor Mill had written the frontispiece of *On Liberty*.

As to the contents of Chapter IV (Of the Limits to the Authority of Society over the Individual), it is worth our time recalling that the "tyranny of the majority", as channeled through public opinion, is liable to silence dissenting voices and to promote social conformity. This had already been sadly acknowledged by Alexis de Tocqueville, who also exercised a major influence on Mill. In his classic *Democracy in America*, (TOCQUEVILLE, 2000)⁷. Tocqueville was confronted by the perplexing realization that, in the freest country of his day and age, public opinion more often than not induced intellectual conformity and a distinct reluctance to deviate from majority customs. Thus, the basic notion that every adult and mentally healthy individual should enjoy a sphere of autonomy in their private choices does not, of course, originate with Mill⁸.

It is no wonder then that in *On Liberty* Mill himself admits that "to many persons, the doctrine may have the air of a truism" (MILL, 2014, p. 226). Still, it is by no means hard to see that

¹ Originally published in 1859.

² Originally published in 1644.

³ Originally published in 1689.

⁴ Originally published in 1815.

⁵ Originally published in 1873.

⁶ Originally published in 1792.

⁷ Originally published as two volumes in 1835 and 1840.

⁸ Despite all the progressive elements of his thought, Mill was of course an author who composed the bulk of his work in the Victorian age, with at least some of the attendant vices of that age. Here the implicit concession is that *uncivilized* communities might be legitimate objects of intervention. This is not surprising. Mill's job for much of his life was in the East India Company. *By his lights*, Indians were not fully civilized yet. Elsewhere in his works, it emerges that he hoped that uncivilized peoples would be fully integrated into civilization. Even with this qualification, these are of course, *by our lights*, outdated and unfortunate views. In fairness to Mill, though, it should be added that he thought that the British should rule over India only until the Indians were mature enough to rule over themselves. He defended a *paternalistic* rather than *oppressive* conception of Empire.

the doctrine is much more than that. For, in reference to *On Liberty*, Mill also says in his *Autobiography* that “It is hardly necessary to remark here that there are abundant differences in detail, between the conception of the doctrine by any of the predecessors I have mentioned, and that set forth in the book” (MILL, 2008, p. 261)⁹. And Mill goes on to remark that, as neatly summarized by Riley, there is no reason to assume that “the best qualities of transitional periods will automatically persist into subsequent organic periods” (RILEY, 2015, p. 34). After all, there was a danger in assuming that the enlightened qualities of Mill’s European intellectual milieu would necessarily be secured in perpetuity. There is also, as Mill saw it, a need for principled advocacy of the qualities in question. This is what Mill aims at, as there is no guarantee that freedom of thought and action will be permanently shielded from legal authorities and the tyranny of the majority that had figured so prominently among Tocqueville’s worries. Also needed was a principle “grounded in reason and in the true exigencies of life” (MILL, 2008, p. 173), apt to be placed at the disposal of reasonable people in subsequent periods. Should the “truism” of Mill’s cease to be a truism in later periods, Mill expected that those individuals concerned with the preservation of liberty could still rely on his principle. It is precisely having such a reversal of fortune in mind that, according to Mill, “the teachings of the *Liberty* will have their greatest value” (MILL, 2008, p. 260).

It is, therefore, plain that the novelty of Mill’s presentation in *On Liberty* does not reside in the topics discussed. The really novel aspect of Mill’s contribution is his claim to have written “a textbook of a single truth” (MILL, 2008, p. 259) as expressed by the above-mentioned Harm Principle, in the sense that Mill expects the book’s remaining truths to derive from it – or, more plausibly, to cohere seamlessly with it¹⁰.

III A brief survey of responses to *On Liberty* by analytic philosophers

Among analytic philosophers who have been impressed by Mill’s work, an extensive number of questions have made themselves felt. For starters, some authors question the ultimate correctness of the Harm Principle in its application to criminal law. Notable in this regard is the work of Joel Feinberg, author of a tetralogy that in many ways constitutes a response to Mill (FEINBERG, 1984), (FEINBERG, 1985), (FEINBERG, 1986) and (FEINBERG, 1988). Feinberg argues for the need to embrace what he calls the Offense Principle, to which he dedicates a whole chapter of his (FEINBERG, 1985, p. 50-72). Certain forms of offense would be in the category of what the author refers to as “profound offense” (FEINBERG, 1988, p. 80). Even though an offense of this nature may not exactly constitute harm to anyone, it could in any case, on Feinberg’s view, be a just object of criminal sanction. Mill’s anti-paternalism is in turn attacked by Dworkin (DWORKIN, 1972) and others.

A recent interpretative dispute has Pier Norris Turner and Jonathan Riley in opposite camps. Turner (TURNER, 2014, p. 310-319) downplays the efficacy of the Harm Principle as a bulwark for the defense of a liberal order, while recognizing that it does serve its anti-paternalistic purposes effectively. In doing so, he denies the coherence of an interpretation proposed by Riley (RILEY, 1998), which, as the latter author sees it, furnishes a robust view of harm as “perceptible damage”, and not as mere offense of a sort not caused by perceptible damage. In response, Riley argued in (RILEY, 2015, 137) that Turner’s interpretation effectively turns Mill into

⁹ Originally published in 1873.

¹⁰ No attempt will be made here to address some thorny issues posed by Mill, such as Mormon polygamy (Chapter IV) and voluntary slavery contracts (Chapter V, Applications). Most of what Mill says in this connection strikes me as simply wrong-headed.

“an illiberal utilitarian” who implausibly converts “mere dislike” into non-consensual harm, and hence into a form of other-regarding harm, which appears to dismantle the very distinction at the heart of the Harm Principle¹¹.

Thinkers more enamored of technical philosophizing have explored other lines of enquiry. Anna Folland, (FOLLAND, 2021) points to exhaustive efforts to define the concept of harm in terms of necessary and sufficient conditions, concluding that a precise definition is not necessary for philosophical purposes.

In light of these preliminary observations, the Harm Principle seems both interesting on theoretical grounds and potentially very useful as a guideline for the safeguarding of individuals’ freedom of speech and action against unacceptable encroachments from both organized political and legal power and the meddlesome interference in one’s affairs coming from one’s fellow community members.

Analytic philosophers have produced vast amounts of controversy over the Harm Principle. That there should be controversy is to be expected in light of the fact that discussions of the Harm Principle necessarily make philosophers engage with domains with fuzzy boundaries. Mill nowhere explicitly defines the very notion of harm. It is not to be wondered at that the lines of demarcation between domains should oftentimes be unclear. Who is to say where mere offense ends and genuine harm begins? Feinberg takes the notion of harm to be insufficient. Accordingly, he advocates a separate Offense Principle. And who is to say exactly to what extent the protection of individuality should extend? Many would agree that governments should not ban the consumption of fast-food out of a concern for the health of mature men and women and that their choices in the matter should be respected. But are we all supposed to be such rugged individualists in all sorts of situations? Is a firefighter not within his rights if he rescues from a rooftop a man who is about to commit suicide?

These are hard issues. But, in the words of a popular legal maxim, “hard cases make bad law”. Perhaps Mill seems very happy with the application of the Harm Principle because he was not for the most part concerned with such cases. It is understandable that the Harm Principle has had such a hard time in the hands of analytic philosophers. But, even granting that Mill avows in his *Autobiography* that none of his previous essays exacted from him so much care as *On Liberty* did, I submit that he was to the last an author whose writings on political and moral issues were composed in the same essayistic vein as some of the earlier pieces that will be referred to below.

This being the case, I am not overly concerned with the problems he failed to anticipate, but rather with problems which I believe he might have identified fairly easily from his own perspective as a nineteenth century thinker.

At the end of this article, I will use the results of this investigation to propose a modern reformulation of the Harm Principle in plain, modern English, which will incorporate a concern for such problems.

To the best of my knowledge, treatments of the Harm Principle, as presented in the text of *On Liberty*, have not approached the text of *On Liberty* along the lines that will be suggested here. As will be seen in the next two sections, I believe that some difficulties pertaining to the Harm Principle are best dealt with by expanding on the principle with the explicit use of some supplementary clauses.

¹¹ My sympathies lie squarely with Riley. But nothing in my discussion hangs on this. I may remain neutral as far as the definition of harm is concerned.

Before I get to that, though, let us recall the *italicized* part of the quote above. Specifically, let us dwell a bit longer on the distinction between “physical force in the form of legal sanctions” and the “moral coercion of public opinion”.

At this point, it is well worth stressing that Mill does not take issue with public opinion *per se*. Had he done so, *On Liberty* would contradict much of what we can read in other parts of the vast Millian corpus. That public opinion does not necessarily impinge negatively on people's lives is a theme which figures prominently in earlier essays of Mill, such as “Perfectibility” (1829), “Civilization” (1836) and “Coleridge” (1840).

Accordingly, it looks as though Mill's exclusive concern in *On Liberty* is with the *negative* effects of public opinion on self-regarding conduct. After all, in proposing the Harm Principle as reproduced above, he talks about *physical force in the form of legal penalties or moral coercion of public opinion*. As for the latter, it is *moral* in so far as it is the product of moralizing. It is a form of *coercion* in so far as it may be forceful enough to inhibit both expression and individuality, as manifested by the lifestyle choices a person makes for himself or herself. As for the former, the historical record abounds with examples.

People have been imprisoned and tortured for their political opinions, persecuted for their religious convictions, burned at the stake as heretics, deprived of the means of obtaining their livelihoods, and much else besides. And not for any harm that they visited upon others.

To mention a classic example of egregious abuse, let us recall that the Irish writer Oscar Wilde was criminally prosecuted for homosexual conduct and ended up serving time in prison, his plight being compounded by a sentence to hard labor, which lasted from 1895 to 1897.

That having been said, Mill is also evidently concerned with the ostensibly less drastic but all-pervading power of public opinion to intrude unduly upon private, self-regarding, conduct and thereby beat people into submission, as it were. By non-physical means, unpopular views may end up being silenced and conformism encouraged. Just as importantly, a free choice of lifestyle may be hindered. Decisions about the private sphere are known to have brought misery upon people because of what others think. Relatives of the present author are old enough to remember the time when a couple's decision to obtain a divorce was frowned upon. As a social force, “the moral coercion of public opinion” stands on its own. It is a force in and of itself.

The remainder of this article is devoted primarily to this force of opinion. The following sections are related to issues which Mill failed to address properly. In each case, consideration of the problem leads me to suggest a supplementary clause to Mill's Harm Principle.

IV The politeness problem

There are certain things that are quite evident for anyone who has ever read Mill's writings or those of his biographers. His favored means of social interaction presupposed the use of reason and persuasion. In fact, two recent scholars have referred to Mill as a “British Socrates” (DEMETRIOU; LOIZIDES, 2013). Just as evidently he appears to have kept throughout his life a gentlemanly demeanor (CAPALDI, 2004). This being the case, the following remarks in *On Liberty* may seem at least initially surprising.

Though doing no wrong to any one, a person may so act as to compel us to judge him, and feel to him, as a fool, or as being of an inferior order: and since this judgment and feeling are a fact which he would prefer to avoid, it is doing him a service to warn him of it beforehand, as of any other disagreeable consequence to which he exposes himself. *It would be well, indeed, if this good office were much more freely rendered than the common*

notions of politeness at present permit, and if one person could honestly point out to another that he thinks him in fault, without being considered unmannerly or presuming (MILL, 2014, 278, italics added).

Is there a *politeness problem* in Mill's *On Liberty*? In a certain sense, the answer is clearly no. He is not suggesting that one may be offensive and rude to strangers on the grounds that their self-regarding conduct is harmful to themselves. Rather, I take it that what Mill is really saying here is that there is no impoliteness in merely *broaching* the subject of other people's self-regarding acts by talking to them about such acts. The problem unanticipated by Mill, which incidentally is particularly relevant in this day and age of omnipresent social media and ubiquitous instances of personal and social harassment, is that even when *broaching* is both allowable and a good thing to do, there are limits to the intensity of the permissible "remonstrating" There is such a thing as *too much* remonstrating. Such limits are due to considerations pertaining to the persistence of the one person doing the remonstrating and the number of people doing the remonstrating.¹² For even if a man allows one or more strangers to engage in benevolent persuasion, rather than compulsion and control, the stranger's or strangers' attitude may turn into an instance of the "moral coercion of public opinion" in at least two scenarios not envisaged by Mill. Let me provide an example of the first such scenario.

Example 1. John is a cardiologist. Sitting at a restaurant table next to the obese Peter, he approaches him very politely and after some small talk to break the ice, broaches the subject of obesity and so finds himself in a position to give some advice, which Peter consents to. Sure enough, John is a member of the public and the conversation starts out perfectly smoothly. Although he is a member of the public as far as John is concerned, it is plainly wrong to say that he is applying any "moral coercion" on Peter. Peter listens to him very attentively and courteously. At a later stage of the conversation, though, Peter becomes a little impatient and attempts to change the subject of conversation entirely. But John keeps bringing the conversation back to the topic of obesity. Quite regardless of how rational and polite John remains the whole time, I am inclined to say that John's rational remonstrations have metamorphosed into a form of "moral coercion" simply because he cannot bring himself to stop. Behavior that was initially admissible by Mill's lights has turned into unwelcome "moral coercion" because it was taken to excess.

Now, consider one more example:

Example 2. This time Peter is sitting at a restaurant table in the lobby of a hotel where a cardiology congress is taking place. Sitting next to him are several cardiologists all of whom leave their tables, politely approach Peter and strike up a conversation which the extrovert and easy-going Peter is more than happy to go along with. After a while, they begin to shower Peter with well-meaning remonstrations on the subject of his obesity. I submit that this may easily turn into "moral coercion of public opinion" through sheer force of numbers.

Having said that, I am now in a position to introduce my first supplementary clause.

First supplementary clause: (1) a more helpful presentation of the Harm Principle should indicate that there is a threshold past which admissible remonstrations are no longer morally permissible, namely when they move past the point in time when the person to whom they are addressed no longer consents to hear them and the remonstrations turn into "moral coercion" and (2) it should indicate that the combination of separately remonstrations, which would be

¹² I stick to the solemn "remonstrating" out of deference for the language used by Mill in the paragraph containing the Harm Principle. One could easily come up with more colloquial forms of putting the point.

individually fine, may jointly rise to the category of moral coercion of public opinion. And this is so because acceptable *broaching* may turn into unacceptable forms of *pestering* or *overwhelming*, as the case may be, thereby constituting an exercise of “moral coercion of public opinion”.

It is surprising that Mill should be unconcerned with such matters in *On Liberty*. For he gives some indication that he knew all too well the evils attendant on such interactions in the course of our social lives, as witnessed by his praise for solitude in *Principles of Political Economy*: “It is not good for man to be kept perforce at all times in the presence of his species. A world from which solitude is extirpated is a very poor ideal”. (MILL, 2009, p. 756)

Indeed, it seems plainly the case that he would not have gladly accepted to be either *pestered* or *overwhelmed* and that he could easily have noticed that the “tyranny of the majority” may impose itself on others after such a fashion.

V The interference versus avoidance problem

A highly interesting and complex controversy has come to light in connection with the proper interpretation of the initial paragraphs of Chapter IV of *On Liberty*. There is quite a lot going on there. For one thing, Mill insists that his advocacy of non-interference in other people’s self-regarding conduct is not due to selfish indifference to their fate. It would be wrong to hold that those who accept his doctrine “should not concern themselves about the well-doing or well-being of one another, unless their own interest is involved” (MILL, 2014, p. 277). Furthermore, Mill clearly regards self-regarding conduct as morally relevant: “I am the last person to undervalue the self-regarding virtues” (MILL, 2014, p. 277). But the concern to foster their cultivation should of necessity be based on persuasion, with no recourse to “whips and scourges, either of the literal or metaphorical sense” (MILL, 2014, p. 277). Still, one may judge people unfavorably in virtue of their self-regarding conduct. Such conduct may elicit distaste and even contempt.

And, as we have seen in the preceding section, the virtue of politeness should not constitute an absolute impediment if we want to dissuade others from nefarious self-regarding conduct out of a benevolent concern for their well-being.¹³ So far, so good. What comes right after Mill exposes his take on politeness, on the other hand, *does* give rise to a number of concerns. Some authors even think that, taken together, with the Harm Principle, the following passage saddles us with what Threet (THREET, 2018) takes to be a puzzle – “Mill’s Social Pressure Puzzle”.

To understand why there might be a puzzle here, we had better quote the passage in full.

*We have a right, also, in various ways, to act upon our unfavourable opinion of any one, not to the oppression of his individuality, but in the exercise of ours. We are not bound, for example, to seek his society; we have a right to avoid it (though not to parade the avoidance), for we have a right to choose the society most acceptable to us. We have a right, and it may be our duty, to caution others against him, if we think his example or conversation likely to have a pernicious effect on those with whom he associates. We may give others a preference over him in optional good offices, except those which tend to his improvement. In these various modes a person may suffer very severe penalties at the hands of others, for faults which directly concern only himself; but he suffers these penalties *only* in so far as they are the natural, and, as it were, the spontaneous consequences of the faults themselves, not because they are purposely inflicted on him for the sake of punishment. (MILL, 2014, p. 278).*

¹³ We may concede Mill’s point here and still propose some qualifications on his view, as I did in the previous section. There is no contradiction on my interpretation of Mill’s remarks on politeness.

The puzzle Threet claims to see here is both theoretical and practical. Perhaps, we are once again coming up against the difficulties posed by fuzzy boundaries. Human behavior comes in many forms, and the demarcation line between actively criticizing a man in regard to his self-regarding conduct and simply shunning his company on account of such conduct is not at all that clear. Let me offer an example:

Example 3. To a lesbian woman who recently came out of the closet, a former friend's avoidance of her company *does* send a communicative signal. Even if we may draw a neat theoretical demarcation line between these two different sorts of communicative act, it is certainly questionable if this would make much of a practical difference to the woman who is shunned. The new circumstances she finds herself in *might*¹⁴ end up smacking of stigma or ostracism regardless of how the circumstances were produced.

It is of course true to say that a charitable reading of Mill here could be presented along these lines. He *does* seem to be concerned with the boundaries. And that may well be what prompts him to insist that we should not go around *parading* one's avoidance of a given individual. Parading one's avoidance is a very overt act which may have negative repercussions for that individual. After all, others might fail to show any restraint. Let me explain the point with yet another example.

Example 4. Julie is a religious and conservative woman. She is disgusted to find that her fellow parishioner Mark is an avid porn-watcher. She feels uncomfortable in his company and starts to avoid him. However, she hopes that he will mend his ways and above all she wants to preserve the prospects for their friendship. She actually thinks he is a good man, all things considered. She does not want rumors about Mark's porn-watching habit to circulate. Other parishioners might not be so considerate as she is. They might embarrass him, call him names and the like. Julie does not want to see Mark either isolated or disgraced. By an unexpected and unfortunate turn of events, Susan, Julie's sister falls in love with Mark. Julie is alarmed at the prospect that her beloved sister, who is also a devout parishioner, might be negatively impacted by a relationship with Mark. And so Julie cautions Susan against Mark. Presumably, in so doing, she hopes that her sister will be as discreet as she was. It seems to me that Mill had something of the sort in mind, which led him to envisage a distinction between *parading* one's avoidance of a person and *cautioning* others against that person. Needless to say, things are not so simple. Julie cannot rest assured that Susan, on being apprised of the facts, will keep quiet about them. In practice, the distinction proposed by Mill may seem to dissolve before our eyes. After all, on hearing from Susan about Mark's habits, a lot more people may see fit to offend him or maybe simply to avoid him. The apparently important distinction between *not parading* one's avoidance of Mark and feeling free to *caution* others against him does not in the end seem to amount to much, if this line of reasoning is correct. Still, we may grant Mill his point that we are entitled to avoid a person's company and that we are at a liberty to do so as a form of expressing our own individuality.

I believe this example should suffice to illustrate the alleged puzzle. A variety of responses are certainly possible, though Threet claims to see no solution to it. Speaking for myself, I am happy to concede that there is certainly a *tension* between the ninth paragraph of Chapter I (the enunciation of the Harm Principle), and the passage we quoted last. But I see no genuine *puzzle*.

For one thing, I believe that the Harm Principle, as far as public opinion is concerned, is a principle with an *aspirational* character. Mill cannot hold, at least not consistently with

¹⁴The use of *might* as opposed to, say, *will* is of considerable importance for my purposes, as will be made clear in a moment.

his stated doctrine, that some form of legal action is *required* to prevent the situations leading to the puzzle.

And it is certainly the case that no one can be *forced* not to avoid the company of a porn-watcher, even if it is also certainly true to say that *it would be a very sad thing indeed if everybody chose to do so*. It being obviously the case that the *law* should not be brought to bear on the matter, who or what should do so? The obvious alternative would be the *public*. But Threet ought not to support such a view. After all, if it were adopted, a new form of coercion would be in place.

I am convinced that the puzzle can be dissolved once attention is directed to an important asymmetry between active coercion by the public and mere avoidance. As is usually the case, I try to make my point clear by having recourse to an example.

Example 5: A good many people enjoy the practice of nudism. Let us suppose that both Robert and Selena are known to practice nudism in beaches reserved for that purpose. Let us stipulate further that Robert and Selena do not know each other. Now let us suppose that both Robert and Selena have moralist friends. Upon hearing of the nudist practices of Robert and Selena, many of their friends decide to avoid their company. Instead of merely avoiding them, such friends might easily enough have brought misery to Robert and Selena by aggressively criticizing them, pestering them and suchlike. If they are insistent and vociferous enough, they may end up promoting a climate of hostility aimed at nudists in general. They might even attempt to change the laws which permit the practice of nudism in certain places. And who knows? They might succeed in doing so.

What Threet appears to be implying is that something like the silent and subdued avoidance of Robert and Selena by their respective friends would be just as bad. But this is patently wrong. It is true that Robert and Selena are likely to lose friends, but in the absence of general hostility against nudists, they are just as likely to make new non-moralist friends. For example, they might find out about each other's hobby in a casual social interaction. Or more simply as they become acquainted with each other on a nudist beach.

As Dilulio beautifully presses the point in a recent book, it is true that losing "friends and companions" through mere avoidance "is nothing to minimize or undervalue". But those affected would find themselves in a far worse situation if friends such these "turn around and actively participate in stigmatizing, harassing, or ostracizing". After all, the "social cost imposed by freedom of association is not *final*".¹⁵ Individuals "disliked or spurned in a Millian society" will "be far more likely to find other like-minded persons". Able to band together in the absence of "actual social interference", such individuals "might be able to reach back into the general community from a position of strength". (DILULIO, 2012, p. 271).

I am now in a position to state the second supplementary clause.

Second supplementary clause: a more helpful presentation of the Harm Principle should indicate that avoiding behavior need not amount to a form of moral coercion if it is silent and subdued, since their targets are still left enough breathing space. Moreover, the spurned individuals can avoid actual general stigma, as they may find their place inside groups that welcome their lifestyle choices.

¹⁵The emphasis is Dilulio's.

VI Conclusion: a modern version of the Harm Principle

A modern, informal and certainly provisional version of the Harm Principle could go somewhat like this:

The sphere of self-regarding activities should be protected from undue interference by both the legal system and public opinion. Though public opinion is obviously not an evil in itself, it may take on a coercive character, when it expresses itself as imperative and aggressive behavior. However, it should be noted 1) that even though the self-regarding nature of a person's conduct does not constitute a reason why others should refrain from all attempts to persuade the person to act otherwise, not even polite attempts to do so are morally acceptable if they, overtime or through sheer force of numbers, amount to acts of pestering or overwhelming and 2) that out of concern for preservation of individually, any person may choose to avoid others because of their self-regarding conduct. This is oftentimes undesirable but cannot be prevented in a liberal culture. It should be noted, however, that, even if undesirable, such behavior does not have the same social consequences as active harassment, because, in the absence of legal prohibition or society-wide hostility, the shunned persons will likely find comfort in the company of welcoming social groups comprised of like-minded people. Avoidance and actual social punishment through overt acts of coercion do not amount to the same thing and are not likely to have the same social consequences.

Needless to say, the proposal I present above makes no claim on finality. But I am firmly convinced that the considerations adduced in this article warrant further exploration, whether by the present author or by other scholars interested in Mill's Harm Principle.

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Recebido: 04/11/2024

Received: 11/04/2024

Aprovado: 21/11/2024

Approved: 11/21/2024