

Question: To what extent is society justified in regulating the behavior of individuals?

Answer: Individuals in society must:

- (1) Conduct their behavior so as not to injure the rights of others;
 - (2) Bear their share of societal duties.
- ↗ Determined via legal provisions or tacit understanding
- ↘ Ex: defense of society and members from injury or molestation

Society is justified in enforcing (1) and (2). In general:

Harm-To-Others Principle

The only legitimate ground for social coercion is to prevent someone from doing harm to others

Q: What about behavior that doesn't violate the rights of others but is deemed hurtful?

A: Offender can be punished by public opinion, but not by law.

Duties to oneself: Self-respect, self-development, prudence, etc. These are not socially obligatory unless they affect the rights of others.

Duties to others: Consideration of the rights of others. This is socially regulatable.

Self-Regarding Qualities

- The cultivation of these qualities is a social process, but society cannot enforce them by law.
- The Harm-To-Others Principle does not promote selfish indifference to others - we should be concerned about the cultivation of these qualities in others.
- However: The individual is the "final judge" on these matters (pg. 161): "He is the person most interested in his own well-being."

Again: Some people are despicable in their tastes/qualities and should rightly be despised as objects of contempt. But their individuality cannot be suppressed. (Note: *We* have a right to express *our* individuality by despising them.)

Note: Mill's view - Society is comprised of individual autonomous units. The parts are greater than the whole.

Two Objections to the Harm-To-Others Principle

Objection #1: How can you make a distinction between actions that risk harm only to yourself and actions that may harm the rights of others?

“No person is an entirely isolated being.”

Example: Joining the Charles Manson Flying Saucer Cult. Members are required to wear Charles Manson tee-shirts.

- (a) Harmful act to yourself?
- (b) Harmful act to others?
 - (i) People who are offended by Charles Manson.
 - (ii) People who are offended by belief in flying saucers.

Objection #2 (Paternalist Objection): Shouldn't society be obligated to prevent people from harming themselves?

Weak Form: Shouldn't we restrict individuals from those practices that have been shown to be harmful in the past and not useful or suitable to anyone's individuality?

Example: Heroin use.

Response to #1: Actions that risk harm to others = actions that violate a distinct and assignable obligation to others.

Ex1: A man who squanders away his wealth by gambling and becomes unable to pay debts and thus causes his family to suffer.

He is punishable for his violation of his (distinct and assignable) duty to his family to support them, but not for his gambling habit. (If good intentions were behind his loss - bad investments, say - he would still be punishable.

Ex2: A drunk on-duty police officer. Punishable for breach of duty to the public, and not for the act of drunkenness itself. Again, the cause of the breach is not punishable; rather, the breach itself is.

Responses to #2:

1. Individual freedom is a greater good than any inconvenience suffered by society as a result of conduct by an individual that is hurtful only to him/herself.
2. Society already has sufficient power over self-regarding qualities (i.e., through education and public opinion, for instance). There is no need for legal enforcement, too.
3. Legal enforcement of self-regarding qualities might be self-defeating - it might motivate rebellious behavior.
Example: Teens and smoking.
4. The examples set by hurtful self-regarding behavior are not bad for others, but good - they indicate what hurtful behavior to oneself can do.
5. (Strongest Argument) On matters of self-regarding actions, society can only have opinions of what are good and bad. The imposition of public opinion is contrary to the cultivation of human nature (i.e., the exercising of the faculties of critical choice).

Examples of the dangers of the imposition of public opinion:

1. Pork-eating example (Muslim majority/Christian minority).
2. Married clergy example (Catholic majority/Protestant minority).
3. Puritan example.
4. Mormon example.

Others?

5. Same-sex marriage.
 6. Scientology in Germany.
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Applications

1. Harmful actions do not include *fair competition*.

- (a) academic
- (b) professional
- (c) economic - free market

Interference in trade infringes on the liberty of the buyer

Example: Prohibition Laws (alcohol, drugs, poisons)

2. Prevention of Crime and Accidents

How far can liberty be invaded for the prevention of harm?

Recall: Mill is very much against paternalism: The mere potential for harm to others is not sufficient reason for social regulation.

Furthermore, according to Mill, preventive measures have more potential for abuse than punitive measures.

Example: Sale of poisons should not be restricted solely because of their potential use in crime. Similarly for other potential instruments of crime.

Mill's suggestion: No prohibitions; rather restricted sales:

- (a) labeling laws
 - (b) registration laws
- ← These are devices that do not significantly impede the purchase of the item, but do impede its use in crime.

Concerning the prevention of accidents, Mill advocates warnings, not restrictions.

3. Public Prostitution and Public Gambling

These are cases in which an occupation involves "instigating" others to engage in social vices. Does this constitute harm to others?

Mill: Not in private, but in public, yes. In the public sphere, such instigators should not be tolerated - their influence on the decisions of others can legitimately be suppressed by law.

Mill also thinks this is the case with "offenses against decency".

Note: Mill thinks restrictions on sellers of alcohol are different. Such sellers are biased, like the pimp or the casino owner, and want to influence the public to consume their good. However, alcohol sellers are the only means of obtaining their product for legitimate use. (pg. 175)

4. Enforcement of Slavery and Marriage

- Slavery cannot be enforced. The grounds for not interfering with self-regarding actions are consideration of a person's liberty. By selling oneself, one gives up one's liberty. (Mill: you are not free to not be free.)
- So: Society cannot enforce contracts of bondage that prescribe the complete giving up of one's personal liberty. However, society can enforce contracts of bondage when they involve a third party:
- Marriage contracts can be enforced when violating them would violate distinct and assignable obligations to third parties (i.e., children).

5. Social Welfare

Think of this as a form of positive paternalism: actions by a society that do not restrain individuals, but help them.

Mill is against this:

1. Individuals can usually do better jobs than society when it comes to helping themselves.
2. If they cannot, then they should be allowed to, for their own education and development.
3. The power of government should not be increased unnecessarily.