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Ribeiro On Mill's Harm Principle

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Ribeiro's article is broadly sympathetic to Mill's harm principle. However, it argues that there is no one conclusive argument in its favor. Rather, there are a plurality of different arguments that all lend strength to Mill's general conclusion, at least in particular categories of cases.

The Article begins by noting that the harm principle is not limited to criminalization. In various ways short of criminalization, the law seems to prefer some ways of life over others on what seem to be paternalistic or moralistic grounds rather than any kind of obvious harm the actors are doing to other people. We don't ban cigarettes, but we do tax them. We don't punish atheists, but it is religions that get a tax deduction. We don't ban pornography, but we affirmatively subsidize the arts and not pornography. Some states don't ban surrogacy arrangements, but they won't enforce surrogacy contracts either.

The distinction between criminal laws and other forms of legal moralism is an important one, but I would like to know more about what Gonçalo wants to do with the distinction. Does he want to say that the law must reject all non-harm-related moralistic arguments or all paternalistic arguments? With a plurality of factors at play, there may be a stronger case for not criminally punishing these types of behavior than there is for being 100% neutral toward them in all legislation.

But let's take a look at the plurality of arguments on which Gonçalo relies. The first argument might be called either the "equal respect" or the "reasonable pluralism" argument. I am not sure that these are ultimately

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the same argument. A full-throated equal respect theory would say something like this: As long as a person satisfies his responsibilities to others, no one else has any jurisdiction to question how that person chooses to find value with his own life. As Mill said, the person has a sphere in which he is sovereign.

Gonçalo doesn't seem taken by this jurisdictional argument in its full reach. Some life plans just aren't valuable, like the guy whose idea of the good life is to watch TV and drink beer. But he wants to say that there are a lot of life plans that are good, and that the state should be neutral to these reasonable plans. Maybe he has in mind here something like the neutrality the state should observe between various religious traditions.

I have a couple of questions here. First, I want to know what his criteria are for reasonable or worthwhile lives. If religious traditions are a paradigm case, is it relevant that most, maybe all, religions rest on factual premises and claims that contravene many canons of rationality in the forming of beliefs? To me, the beer guzzling guy, at least if he isn't harming others by stealing to get his beer, subsisting on the public dole, or neglecting his children, is at least not suffering from any serious cognitive illusions. If you ask me whether I am more confident that his life has value or that of the ascetic monk, I would choose the beer guzzler. But maybe that's just me.

The other question I have is how to cabin the "reasonable pluralism" idea. If the state does have jurisdiction to say that some life plans are just bad, why doesn't it also have jurisdiction to say that other life plans, while not devoid of all value, are much less valuable than others? This is especially serious if one is going to include with the harm principle all legislation that tilts, however modestly, against some life choices and in favor of others.

The second argument that Gonçalo considers has its origin in Kant's philosophy. Here the idea is that the whole notion of forcing somebody to be moral is a kind of contradiction. The moral person does what is right because it is right, not because he is afraid of the law or divine retribution or because he believes he will profit by having a business reputation as a straight shooter.

I don't want to question the premise that our first-best objective should be to have a society in which people do the right things for the right reasons. On the other hand, we don't live in a first-best world. We know that the road to hell is paved with good intentions, and I would in general prefer a world where bad intentions led to good results than one where good intentions led to bad results.

I also think that this Kantian argument is more relevant to purely moralistic legislation than it is to paternalistic laws. If we pass motorcycle helmet laws, what really matters is that people start wearing their helmet, and

whether they are doing it because they are afraid of sanctions or because they have seen the light regarding their own good is rather secondary. A purely moralistic law may be different. Some people would say that sodomy is a bad practice even if it makes its participants happy; you are still transgressing God's law or some other moral commandment. But it may not be reasonable to believe that one has gotten right with God if you still believe in your heart that sodomy is a wonderful thing and the only reason you don't engage in it is that you are afraid of the law and its sanctions.

The third argument that Gonçalo considers is the benefits we derive from "experiments in living." I think this argument is persuasive in general. We learn even from goofy ways of life why some things just don't work, and we learn even more from ways of life that aren't goofy but that we never would have thought of on our own. But let me pose a challenge. Mill's criterion actually rules out some experiments in living. I may want to live in a community with enforced conformity, or even if I'm not sure I would want to live in it myself, I might want to know how such a community would work in practice. Maybe we should allow local governments to violate Mill's principle so that we can all see what enforced conformity really looks like from a genuine experiment, rather than having to speculate from our armchair about it.

The fourth argument was that Mill's principle follows from premises about democracy. If we are going to defer to people's judgment about how to rule their collective lives, why are we not going to defer to the judgment of individual people about how to rule their individual lives? Again, I think this is a persuasive argument. I would put it a lot more strongly. There is far more reason for thinking that people will get their individual life right than there is for thinking their collective judgments will be sound. It doesn't pay any individual to invest in learning what will produce good collective results, while it does pay in making that investment for yourself.

However, a couple of "devil's advocate" questions here. What do we do if the people collectively decide that they want certain options removed, perhaps because they don't want to be tempted by them? Gambling and drugs would be obvious examples. If we are deferring to people's wisdom, why don't we defer to the wisdom they show in passing those laws? Also, it is possible that the median person has good judgment, or that bad judgment by individuals is somewhat random and will come out in the wash in a large collective judgment. But some individuals are just poor

planners of their lives. Should we the people act paternalistically toward the minority who are less talented in putting a coherent life together?

The fifth and last argument for Mill's principle is what Gonçalo calls individualism, but the substance of the idea seems to be that there is some positive good to variety and differences in life. Again, this seems right to me, but I was wondering about the following. Some critics may believe that people are naturally way too inclined to conform to convention, and if everybody is left to their own devices we won't see enough diversity. Should the state subsidize wild and exotic alternatives that people would not have thought of on their own, perhaps like modern art? In other words, Mill's principle allows for diversity, but it doesn't guarantee that we'll get it. You might get more diversity by artificially propping up different alternatives, as we may be doing with Indian tribes.

Let me finish by agreeing with Gonçalo on a particular point. The harm principle has much more practical bite than we are inclined to think. It's hard to think of any examples of behavior that have zero effects on other people. But the harm principle remains relevant, because it sorts between the different kinds of arguments that can be made for particular laws. Maybe seat belt laws can be justified because of the harm that injured people cause to the public health care system. But let's have that debate unclouded by a paternalistic argument about forcing the individual to be happy. If paternalistic arguments are indeed bad, let's clear them out of the way, without any illusions that this will definitively settle many public policy disputes.