

Somerville Law Induction Course 2017: Session 3

Study Skills and Essay Writing

Part C

Somerville first year law students: this handout (which was used some years ago with summer school students) is to help you understand a little of the context of the two sample essays we would like you to read and think about for discussion in the Study Skills and Essay Writing session on Monday Oct 2nd. Read through the following quickly, to get a sense of the topic the students were writing about in their essays, and spend most time reading the essays and the comments on them, in conjunction with the Criteria for Assessment supplied to you.

Sutton Trust Summer School: Jurisprudence tutorials

Please read through this handout, and have a think about the questions at the end of it. We will discuss some of these questions, and the material in this handout, in your Jurisprudence tutorial later this week, Jurisprudence is a subject in which discussion and debate are very important, and in which there are no simple answers. So don't worry if you are unsure about your views on the issues raised below, and about the questions at the end. All that you have to do is to come along to the tutorial ready and willing to talk about the questions and exchange ideas with your tutor and colleagues and we will explore these tricky issues together. That is what tutorials are all about.

(1) A word about Jurisprudence first of all:

The subject of Jurisprudence, which is studied in the second year of the undergraduate law degree in Oxford, is sometimes also called Legal Philosophy, or Legal Theory, or the Philosophy of Law. As these names indicate, in this subject, we are concerned with thinking about law in abstract and philosophical ways. So instead of learning, for example, what is the law of contract in England, or what does European Union Law tell us about gender discrimination, in Jurisprudence, we ask much more general and abstract questions than this, such as:

- Must all legal systems use sanctions (such as fines, prison, etc.) in order to function?
- Are law and morality separate, or do all legal systems have some moral content, and some moral value?
- Is there "really" law in legal systems which have pursued what we think of as morally bad aims, for example, was there really law in Nazi Germany, or in Apartheid South Africa?
- If all judges have had extensive legal training, and so know what the law is in their country, why do they disagree so much when cases come to court?
- Should you always obey the law, no matter what its content? If not, then when is it permissible to disobey the law?
- Should law be allowed to interfere in any area of people's lives, or should there be limits to how far law is allowed to regulate our behaviour? What should these limits be?

(2) The tutorial topic for this week:

If you come to study law at Oxford, then for each tutorial that you do, you will be given a topic, and some reading to do, and you will usually be asked to write an essay about it as well. This week, we are not writing any essays in Jurisprudence, but you should read this handout, have a think about this week's tutorial topic and the questions at the end of this handout, and come to the tutorial ready to discuss these. The topic which we will discuss this week is: **Should law be allowed to interfere in any area of people's lives, or should**

there be limits to how far law is allowed to regulate our behaviour? What should these limits be?

(3) An introduction to the idea that there should be LIMITS on how far law can interfere in our lives: the ideas of John Stuart Mill in his book, *On Liberty*.

John Stuart Mill was a philosopher who lived and wrote in the nineteenth century (1806-1873). Although his ideas are more than a hundred years old, they are still extremely important to philosophers and political philosophers (who think about the proper role of government in society, and whether governments are justified in doing certain things) today. One of Mill's most famous works is his book *On Liberty*. This book is about the importance of individual freedom and liberty, and about what should be the proper role of government and law in light of the importance of individual freedom. Mill is a firm believer in the idea that there should be a principled **limit** on law's ability to interfere with our lives. Mill wanted this clear limit defined in advance, so that it marked a definite line that governments, and law, should not step over. So, for example, governments might have to decide whether to create laws banning smoking in public places, or forcing people to wear seatbelts, or making certain kinds of drugs illegal, or encouraging people to stop eating hamburgers and start eating more healthily. Mill did **not** want governments to decide these matters on a "case by case" basis, for example, banning one drug, like cannabis, while allowing other drugs to be remain legal, for example tobacco, and alcohol. Instead, Mill wanted to find a line, a limit, that would apply to **all** cases, and which would tell us when governments should and should not use law to interfere in our lives.

There are 2 important points to note here in understanding Mill's views:

(a) The idea that there should be a PRINCIPLED LIMIT on governmental intervention through law:

"Men range themselves on one or other side in any particular case, according to this general direction of their sentiments." (*On Liberty*, p68 - all page references are from 1974 Penguin Classics edition of *On Liberty*) – but no overall **principle** concerning the proper limits of societal compulsion of individuals is formulated or consistently followed through. The search for and application of this principle is Mill's declared aim in *On Liberty*.

(b) Where to draw the line/what is the principle which Mill suggests should mark the line over which governments should not step:

THE HARM PRINCIPLE:

"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 civilized community, against his will, **is to prevent harm to others**. His own good, either physical or moral, is not a sufficient warrant." *On Liberty*, p68:

This principle is often referred to as the **HARM PRINCIPLE** because it states that the **only** reason why a government may use law to coerce someone against their will is **to prevent harm to other people**. According to the Mill's harm principle, the idea that something will be for someone's own good is NOT a good enough reason for the law to interfere in people's - well, at least adults of sound mind - lives and force them to do things they do not want to do/force them to stop doing things they want to do. Some practical examples will help to explain this a bit more.

Mill's harm principle can explain why we have laws against murder, rape, theft, assault etc. very well. If someone commits a murder or a rape or assaults someone, then this action harms another person. According to the harm principle, we are therefore justified in using law to coerce people to stop them from murdering and raping and assaulting other people by having laws against these things, **because these activities harm other people**. Mill's claim, however, is that if you do an action which does **not** harm any **other** person, then even though that action may not be good for you, then the law is **not** justified in stepping in to coerce you to get you to stop. Examples of actions which may not harm anyone except yourself here may be taking cannabis, heroin or cocaine, or not wearing a seatbelt, or taking part in dangerous sporting activities (for example a very dangerous mountain climb, or bare knuckle fighting), or overeating to the point of morbid obesity, or smoking, or drinking and then cycling home whilst very drunk, or buying an excess of paracetamol to commit suicide. If by doing these activities, you will not harm anyone else, then even though you yourself may be harmed, then according to Mill's harm principle, **the law is not justified in stepping in to stop you**, because the law can only coerce you and force you to do things or stop doing things, when you do an action **that will harm other people**.

There is actually an exception here that we should mention, which is that Mill said that the harm principle should only apply: "to human beings in the maturity of their faculties. We are not speaking of children or of young persons below the age which the law may fix as that of manhood or womanhood." (On Liberty, p69). So Mill would allow the law to protect children and young people from harming themselves. An example of this may be age limits on smoking and drinking, or making children have to go to school up to a certain age. However, for adults, who know what they are doing, Mill thought that the only reason for using law to force them to do certain things, or stop doing certain things, was if those adults were harming other people. Otherwise, you might say, you are treating adults like children if you force them to do things or stop doing certain things and justify this by saying to them: "its for your own good". Mill was very much against this idea of treating adults like children. For Mill the harm principle was valuable because it drew a line over which government and law should not step, and so it allowed adults a sphere of protected liberty and freedom in which those people could try out different ways of life, and could decide for themselves the best way to live. For Mill: "The only freedom which deserves the name is that of pursuing our own good in our own way..." (On Liberty p72) – **Do you agree?**

(4) Taking things further: problems with defining what counts as "harm":

Even if you think that you agree with Mill's idea that the law should not interfere to stop adults doing things, or to force them to do things unless those adults harm other people, there might be some problems with applying Mill's harm principle in practice. This is because there might be all sorts of difficult questions as to what counts as harm, and as to whether **any** acts truly **only** affect or harm oneself. In the case of murder or rape, it is easy to see that these actions harm other people. But other cases may be more difficult. If I am an adult and I choose to waste my life by sitting at home every day and getting completely drunk and not doing anything else, then it would seem that, for Mill, the government should leave me alone to do this, as I am not harming anyone except myself and my own life.

But what if, for example, I have a partner or children who are upset or otherwise affected by my alcoholism? If I have children who are emotionally distressed and cannot do well at school because I am drunk all the time, are they "harmed"? If they are, is the government justified in using the law to prevent me from drinking so much if I have this effect on my children? Or what if I drink so much that I damage my liver and then I need a liver transplant on the National Health Service which other people pay taxes towards etc.? Have I "harmed" other people, that is to say, other tax payers who are contributing their money in taxes towards the costs of my NHS treatment? What about seatbelts? If I don't wear a

seatbelt, and sustain major injuries in a car accident and once again, need treatment on the National Health Service, have I harmed society, or harmed other tax payers, by my actions? Can emotional upset or offence count as harm? For example, if every day when I go to work people make racist or sexist remarks, or remarks about my religion, am I harmed if I feel upset? Should the law step in to prevent people from making racist or sexist or religious remarks? What about racist or sexist or religious jokes? The trouble here is that the more we think about it, the more we may conclude that almost ALL our actions are capable, in some sense, of harming others, so that the harm principle may not keep the government and the law out of very many areas of our lives. This was not what Mill wanted. Mill wanted the harm principle to ensure that individuals had a sphere of liberty and freedom of their own, where law could not coerce them, so he envisaged the harm principle restricting governmental intervention to a significant degree. But this seems to be a problem when we think about what should count as harm.

(5) Some questions to think about:

- **Do you agree with John Stuart Mill and his harm principle – is it a good idea to draw a line over which the government should not step and to allow people personal freedom and liberty to do as they please so long as they do not harm other people? Why/ why not?**
- **Does the UK government follow Mill's harm principle, and only use law to intervene to prevent people harming each other? Should it? What about governments in other countries?**
- **Why do the government use law to force adults to wear seatbelts in cars, and crash helmets on motorbikes? In this justified?**
- **Why do the government use law to ban adults from taking certain drugs such as heroin and cocaine, whilst allowing them to take tobacco and alcohol? In your view, should the government be doing this?**
- **In light of the growing obesity problem in the UK, should the British government use the law to ban junk food? Should unhealthy food be taxed at a very high rate? Should morbidly obese people have to pay for NHS services to help them tackle their obesity?**
- **Why are the government using law to ban smoking in public places? Is this in line with Mill's harm principle? Should the government go further, and use law to ban smoking altogether, no matter where it is done?**
- **Do any of the activities mentioned above, e.g. taking drugs, eating junk food, not wearing a seatbelt, or smoking actually harm other people, apart from the person doing these things? Who else might be harmed?**
- **Are there ANY actions which are entirely 'self-regarding' ie which affect only oneself and are not capable of harming others?**
- **If Mill's harm principle is too 'austere' and rules out too much government action for our own good which we now take for granted, where *should* we draw the line? Should the government be allowed to regulate ANY area of our lives if it believes it will be for our own good? If not, then where should we draw the line over which government and law should not step?**