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Mill and Sexual Reform¹

Abstract

Should positional sexual misconduct (sexual advances or interaction where one party is known, or should be known, to have a significant power over the other) be included into the list of morally forbidden behaviours? I explore benefits and costs of this moral reform with the help of J. S. Mill.

1. Introduction

We are witnessing an attempt at moral reform in our sexual behaviour. This much seems evident from the recent #metoo campaign on social media and the recent flood of allegations of sexual harassment and general sexual misconduct brought against people in various positions of power. H. Beebe and H. Widdows both endorse and describe the reform:

This behaviour – all of the behaviour on the spectrum [“from sexist comments and an unwelcome but (in the circumstances) non-threatening hand on your knee at one end to rape and serious sexual assault at the other”], not just the behaviour at the most egregious end of it – was always recognisably ‘bad’ but now it is unacceptable. Behaviour at the less egregious end of the spectrum is quite quickly coming to be regarded as more than merely uncomfortable or inappropriate – not just a misjudged individual action. What we can now recognise is the systematic abuse of power. What Weinstein, Westminster and Philosophy – and doubtless the rest of academia too – share are traditional power differentials: older powerful men and younger women whose career can be broken with a bad reference or dismissive comments. (<https://iainews.iai.tv/articles/weinstein-westminster-and-philosophy-structures-of-abuse-auid-978#>)

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A moral reform by definition advocates a certain change: it may want people to regard as permissible behaviour commonly found impermissible (as was mostly the case during the so-called sexual revolution of the 60s and 70s), or, as in the present case, to condemn as impermissible behaviour that is mostly considered permissible (even if in some sense “bad” or inappropriate). In other words, there is a new item that our society is supposed to include in the catalogue of wrongdoings. Which item? Some items are already on the black list: sexual assault; so-called quid pro quo sexual harassment, where sex is demanded in exchange for some benefit which the person might or might not already have a right to get; sex requested by someone who occupies a hierarchical position in the same organization (your boss, your professor). Although the latter two may not be genuinely believed to be wrong by everybody or even the majority, there do exist laws and professional codes that forbid and sanction them, and to that extent a reform of sorts has already taken place.

2. Positional Sexual Misconduct

The new item on the black list is somewhat hard to define—and there might be some disagreement among the reformers themselves—but here is a hopefully reasonable formulation: sexual advances or subsequent sexual interaction among sane adults where one party is known (or should be known) to have a significant power over the other.

In a way, this is an extension of the last item above (the hierarchical case), because they both appeal to the concept of a power asymmetry. But the asymmetry in this case is not tied to occupying determinate roles within the same institution or workplace. It cannot be simply read off an organigram or a job specification. Still, the power must be “significant” enough, and this will exclude things like being taller (though taller people may in a clear sense enjoy more power, e.g. they can reach higher). Also, the power must be had “over” the other, that is, the power asymmetry must enable one person to actually make a significant difference to the other person’s life that the latter cannot make to the former’s. Merely ranking above the other person on some power scale or other won’t do. For example, your having a higher IQ than me by itself does not give you any particular power *over* me, though in some sense it makes you more powerful than me. But things like being richer, better connected, higher up professionally or simply being employed may give you significant power over me, assuming

there are available opportunities for you to exercise that power. In any case the power balance may not be obvious at first glance. Being richer or well-connected does give some people power over others, but on the other side there could be a genuine counterbalancing power to destroy their reputation (however, it doesn't count if such a power is acquired and employed long after the sexual interaction; what is supposed to matter is the balance here and now). And the relevant form of power may be quite contextual; for example, that my partner can speak the local language and I cannot may give her a certain power over me as long as we live in that country.

It should also be clear from these examples that the source of power must be something prior to and independent of the relationship itself. Once a relationship gets going, normally both partners enjoy some power over each other created by the very fact of the attraction or the feelings involved, and it may well be that this power is not equally distributed in the couple (e.g. one partner may have invested more sentimentally than the other). But since this kind of power differential depends on the existence of the relationship, it cannot explain what's wrong with even initiating a relationship.

Some might like to add that the advances must be “unwelcome” by the less powerful to count as wrong (see the quote above from Beebee & Widdows). But this should be resisted: the source of the wrongdoing in question is supposed to lie in the relevant power asymmetry, and so it shouldn't make a difference whether the advance turns out to be welcome or not. Moreover, the advances could turn out to be welcome exactly for the reasons that make the interaction wrong: for example, we may accept the advances precisely in the hope that the more powerful will use their power differential to our advantage, or for fear they may hurt us if we reject.

For the sake of convenience, and to distinguish it from other cases of harassment, I will call this behaviour “positional sexual misconduct”—where “position” refers not to any sinful sexual gymnastics but to the power position one partner holds over the other.

3. Mill and the Central Benefit of the Reform

Is the proposed moral reform a good idea? What makes, in general, a moral reform acceptable? The fact that some or even the majority of people want the reform is obviously insufficient to establish we ought to go ahead with it. This is supposed to be a moral, not a formally political reform. John Stuart Mill, himself a great moral and social reformer in 19th century Britain, can help us navigate this complicated question. Mill is well-known for his advocacy of personal liberty (“Over himself, over his own body and mind, the individual is sovereign”, *On Liberty*, 1.9), defended on the basis of a utilitarian ethics, where the ultimate justification for any sort of action (including reforms) is that it will promote the general happiness. But Mill also gives us a clear distinction between what strictly belongs to morality (duties, obligations) and what doesn’t—self-regarding action, sacrifices beyond the call of duty, matters of taste, mere policy and so on. The key difference is in how we are entitled to treat those who fall below the respective standards: those who fail in their moral obligations merit a punishing response (in some cases also handed down by the law, but mostly by means of social disapproval and pangs of conscience), whereas those who make fools of themselves, or engage in inelegant, but permissible behaviour, may merit our dislike, but not moral condemnation (*Utilitarianism*, 5.12). Part of what it means to be “sovereign” over our own body and mind is for Mill exactly this: to be free from social stigma (and from its threat) when our actions affect ourselves only.

Reformers want to include positional sexual misconduct under the rubric of morality (in Mill’s sense): if you have significant power over her, and you make advances on her, you’re in for a well-earned dose of social disapproval (plus, you should feel guilty as well). Your behaviour is not just ugly, it is wrong. But wrong how? It might be a case of not honouring what Mill (following a long tradition) calls an imperfect duty: perhaps you simply show insufficient care or regard for her well-being. But reformers have something more serious in mind. Start from the widely agreed thought that she, the less powerful, has a complete right to reject the advances or abandon the interaction, in this as well as in any other sexual context. For the reformers what needs to be appreciated is that this context (characterized by the significant power asymmetry) makes it especially difficult for her to *exercise* the right to reject *in a safe way*. Given your power over her—for example, you could make or break her career as an actress—rejecting your advances puts her in a position of objective vulnerability, and this no matter how well-intentioned or decent you might be: your motives are not supposed to make a difference to the wrongdoing. And if it is true that she cannot safely exercise the right to reject you, then by making an advance you are not just doing something

wrong, you are *wronging* her, because you *wrong* someone when you mess around with their *rights*. And, by the way, since the right to safely reject advances is an obvious example of personal liberty, it seems that Mill would squarely stand with the reformers on this one.

4. The Costs of the Reform

But there is another side to this. This is a reform that raises the stakes: it demands that society be ready to compel, discipline, and sanction certain behaviours, that people be afraid of incurring social stigma, and so that some sharp social and psychological boundaries be set where previously there were none or looser ones. Every system of sanctions has inevitable costs of production and maintenance. And the sanctions themselves, as long as they are public and painful enough, don't come cheap either, especially when on top of the stigma one may lose one's job or suffer major professional or personal drawbacks. (I am assuming that the reformers don't necessarily want any legal or criminal reform on this particular matter. But if they do, then even clearer costs will be added.)

It might be replied that these costs cannot be held against such a reform project. For example, changing people's attitudes (and the law) about marital rape arguably had its own "production and maintenance" costs, but most of us would not even consider such costs as reasons not to endorse that moral and legal change, because it seems unlikely that there were any *independent* reasons in favour of keeping the status quo. However, the case with positional sexual misconduct is importantly different, because, as I explain immediately below, there are specific burdens to the individuals that do need to be taken into account before endorsing the reform. And if these burdens are real, then the "production and maintenance" costs mentioned above acquire some relevance too. In other words, the costs of change cannot be ignored when there are at least some good *prima facie* reasons against that change.

While I have described the central putative benefit of the reform (preventing people being put into vulnerable positions), there are burdens as well for both the individuals involved. For one, we will need to reorganize our sexual and in turn our romantic and family lives around the notion that we first need to watch out for the power balance between us and our

prospected partner. That means ruling out many potential partners who might have turned out to be very good matches in other respects (physical attraction, character, interests etc.). Clearly the existence of a power asymmetry does not mean that there cannot be any important affinities between two people. It is also troubling that the proposed reform might cast a shadow of guilt and condemnation over our otherwise happy past and present relationships, if they originated from positional sexual misconduct.

Moreover, a significant amount of work might go into finding out about the power balance, since as stated above the relevant power asymmetries need not be self-evident. It's not simply that it is a time-consuming endeavour. A practice of running "background checks" prior to propositioning seems rather peculiar, and very possibly off-putting and intrusive to the one who gets checked (no, online dating with people's profiles and résumés available for all to see is not necessarily the way forward, even assuming that people are sincere there). No doubt one can more easily find out about power asymmetries after a few dates, but then it may be already too late: if we discover a significant asymmetry, the wrong has already been committed and one has to decide whether to live with it or abandon the relation (remember that the sexual interaction being "welcome" is not supposed to make a difference).

Also, what is the more powerful supposed to do if *he receives* advances from the less powerful? It might be said that "who started it" makes all the difference here, since the wrong described above depended on the more powerful propositioning the less powerful. When the advances come from the less powerful, she runs no risks. So he can accept her advances. But reformers will say that this is naïve. If the more powerful accepts the advances, this will still lead to a power-imbalanced sexual or romantic relationship, where the less powerful will be at his mercy (unless things substantially change). Her right to reject him (which of course she retains at any stage of the relationship) will still be exercised from a position of vulnerability. So, while (particularly from a Millian viewpoint) she must be granted the freedom to pursue her attraction, it seems that the more powerful has an obligation to decline her advances on top of the obligation not to make advances himself. In other words, any sexual interaction between these people will be forbidden. And what will *she* make of this situation? She might well want to oppose a moral reform that allows her to satisfy her legitimate desires only at the cost of her partner's immorality. While she won't be the guilty one, her desires are frustrated if he behaves as he ought to. In sum, also the less powerful will need to radically reorganize their sexual, romantic, and family lives.

If people will have to pick from a relatively narrow range of partners (the ones they have no power over and who have no power over them), not only will their sexual and romantic experience be limited, but the scenario begins to look worryingly similar to societies that used to ban inter-race or inter-caste relationships. Nor could reformers seriously apply here Mill's one famous exception to the principle of individual sovereignty: you have no right to sell yourself as a slave to another. Whatever harm it may do, propositioning the less powerful certainly does not make you her master, nor does her propositioning amount to abdicating her freedom.

It might seem, though, that whatever might be said about the costs of the reform, as long as the benefit is the protection of a *right*, the case is already settled. But this would be begging the question against those yet unreformed. The question whether positional sexual misconduct should be forbidden is *at the same time* the question whether we should condemn positional sexual misconduct as infringing some right. The decision to treat a certain issue as a matter of rights to respect or protect, at least for a utilitarian like Mill, is the outcome of a complex social cost-benefit analysis like the one summarily sketched here. Prior to such analysis, the central benefit outlined above cannot be called "the defence of a right", but simply defence from a certain sort of vulnerability.

5. The Subjection of Women

Perhaps there is something more to be said for the reform. In *The Subjection of Women* Mill paints a bleak picture of marriage in 19th century Britain (and in past eras as well). Husbands had, both by law and by common understanding, a practically absolute power over wives. And the price for rejecting a suitor, or for rejecting married life altogether, was impossibly high for any woman, except for those of a very privileged condition. Now, positional sexual misconduct is not necessarily based on the more powerful (usually, in fact, a man) enjoying the same kind of institutionally and socially accepted control over the less powerful (usually, a woman) that 19th century husbands enjoyed over wives. Still, some of the power dynamics denounced by Mill as the core element of sexual inequality do seem to occur in acts of positional misconduct as well as in possibly ensuing relationships: like husbands *could* get away with all sorts of mistreatment, so often *can* the more powerful get away with threats,

harassment, rape, and physical violence. And, just like Mill stressed that no matter how nicely most husbands may behave, wives were still harmed by the marriage contract terms, reformers may now stress that positional sexual misconduct is wrong in virtue of the very terms of the relationship, regardless of whether and how the more powerful go on to use their power.

In addition, Mill's own ideal of marriage did not seem to tolerate much difference, let alone a significant power imbalance:

[T]wo persons of cultivated faculties, identical in opinions and purposes, between whom there exists that best kind of equality, similarity of powers and capacities with reciprocal superiority in them—so that each can enjoy the luxury of looking up to the other, and can have alternately the pleasure of leading and of being led in the path of development. (*The Subjection of Women*, 4.18)

Reformers might argue that by calling out power-asymmetrical sexual interactions we can get closer to Mill's ideal. In turn, Mill thought that a change in this direction would even lead to a general "moral regeneration" of humankind.

These points are worth taking seriously by those who oppose the reform. However, while every new marriage did in principle sustain an institution both unjust and far from his ideal, Mill did not believe for a second that this made it *morally wrong* for men to proposition, as well as to propose to, women. Moral indictment of men was never part of the solution for Mill. Indeed, "the very foundation" of his hopes for legal and cultural change was the growing number of men who lived with their wives "in the spirit of a just law of equality" (*The Subjection of Women*, 2.13). Clearly Mill thought that at least these men had committed no "positional" wrong against the women they married.

To this, reformers might reply: "Of course one cannot reasonably blame individual men in a society where the only alternative to marrying a subordinate is not marrying at all. But our society is different, because we do have the alternative of a relationship between equals, and so individual choices of sexual as well as long-term partners can be morally criticized." But opponents will in turn answer that, first, as seen above, forcing (if only morally) a certain alternative in this sphere of life creates important burdens to both parties. Second, to the extent that so many women have not yet reached a substantial, and not simply legal, equality

with men, the effective availability of that alternative (a true “partnership between equals”) is something that remains open to dispute nowadays as it did in Mill’s time.

6. Conclusion

I remain agnostic on whether the benefits of adding positional sexual misconduct to the black list of moral wrongs justify the costs. Also, reformers may want to set the bar of what it means to have “significant power over another” somewhere higher than I have assumed here, so that the pool of eligible partners gets somewhat wider. Or they may be fine with “downgrading” positional misconduct to a case of breaching an imperfect duty. Pending a decision on all that, we can for one last time turn again to Mill.

He holds that what is not condemnable in a strictly moral sense can still be the object of dislike, disgust, and even contempt, at least in particularly egregious cases of “lowness or depravation of taste” (*On Liberty*, 4.5). Mill is talking about how we are entitled to respond towards people who, by their personal deficiencies, harm themselves only. But in this despicable category one may also include people who, by their sexual advances and their power position (plus, possibly, a good dose of low taste as well!), have imposed vulnerability on others, while falling short of *wronging* them. What is more, Mill endorses even harsher responses as appropriate to the case: “we have a right to avoid” the depraved person, and also “a right, and it may be our duty, to caution others against him” (*ibidem*). Again, this can be applied to the present case. The person who runs a risk to be harmed by the more powerful does need to be guaranteed the right to avoid him, and the right to caution others as well. But ensuring these rights is primarily a matter of empowering people in the right ways, and in the longer term addressing the social issues behind some of the power asymmetries. Embarking on a moral reform that effectively bans people from forming certain types of relationship seems an extra step that does not immediately follow from these legitimate demands.