

Is It Ever Wrong To Do Nothing?

In *Mark*, chapter four, Fran raises the question of whether crimes are condemned because we don't like people to commit them, or because we don't like what people do and so call them crimes. There are some clear examples of each case in the sphere of actions, but the question becomes more difficult in the sphere of inaction. John Stuart Mill says in chapter 1 of *On Liberty*,

... A person may cause evil to others not only by his actions but by his inaction, and in either case he is justly accountable to them for the injury. The latter case (injury caused by inaction**) it is true, requires a much more cautious exercise of compulsion than the former. To make anyone answerable for doing evil to others is the rule; to make him answerable for not preventing evil is, comparatively speaking, the exception ... (Mill, *On Liberty*, p. 957)

It might be useful to examine some model cases in order to understand the difficulty of requiring action in a situation and punishing the agent if he fails to act.

In Chapter four, exercise 30 of *Social Inquiry*, the following case is presented.

If a railway switchman failed to throw a switch, with the result that there is a tragic accident, and if afterwards the switchman claimed he was innocent, saying, "I didn't do anything," would that be an acceptable defense?

It is quite clear that this would not be an acceptable defense and that he is not innocent. It is his duty to throw the switch. There is no one else, the engineer for example, who might see that he had not acted and act in his place. It is his inaction which caused the deaths of people and the destruction of property. We would be quite right to punish him for the harm he is responsible for.

Now let us look at a case in which inaction is clearly not punishable. Suppose that my friend decides that the social conventions of attire are restricting on her personal freedom and decides therefore, to disregard them and drape herself in parachutes and laundry bags. I may see the potential trouble this will cause for her. It may be that her decision will make her life unpleasant in ways she had not anticipated. Yet I say nothing because I understand this as a choice she has a right to make. Should these predictions come true: she is rejected socially, she finds it difficult to find employment, she is no longer welcome in her family's home, people gape at her on the street; nevertheless, my inaction, failure to comment or warn, does not make me punishable for the hurt she suffers.

It will be useful to decide what makes these cases different, perhaps to arrive at some criteria by which we may judge less clear examples. In the first case, action was a duty; therefore, inaction was a failure to fulfill duty. It resulted in damage and death. It was possible for the agent to foresee the harm his choice would cause. It was possible for him to choose; i.e., he was not restrained by having a gun held to his head. In the second case, there are conflicting duties, viz. to warn my friend and try to persuade her not to make

her life difficult and the duty to allow her as much personal freedom as she chooses that does not hurt others. In this case, then, inaction was the placing of allowing freedom over the prevention of inconvenience. The results were harmful only to herself. It was possible for the agent (me) to foresee the harm my inaction might result in, but this harm was indirect, and is counterbalanced by the harm my interference might have caused. I was able to choose.

What distinguish these cases are the clarity with which duty may be perceived and the results of the inaction. Now let us turn to some borderline cases to test our criteria. The third case is one concerning the abuse of children. Recently in the United States, it has become a requirement that teachers report cases of suspected abuse by parents of children in their classes. In the event that the child is found to be abused and there have been signals that the abuse was occurring and the teacher has failed to report these to her superiors, she is liable to be prosecuted. This has been challenged by teachers' unions and by individuals. If the teacher fails to act in this case, is she punishable?

Suppose there is a child appearing in school, occasionally with a black eye, once in a while badly bruised on the arm, on other occasions with broken fingers, wrists, ribs. Upon questioning the child, she is told that these injuries are the result of accidents at play, a fall, not paying attention. She comments that the child seems to have more problems of this kind than the other children. She makes the same comment to the parents when they come to school for the parent-teacher meeting and they say nothing, or they do not appear at all. After several months the teacher learns that a neighbor of the child's family has reported them to the police for abusing their child. The following day she is called to the principal's office and asked is she has been aware of this situation. At this moment all of the bruises, injuries, and stores the child has told her fall into place. She has not acted on them, she has not suspected abuse, she has naively believed the child's explanations. Is she an accomplice in the crime? Is she punishable? If we return to our criteria, we may be able to answer the question. The first issue is a question of duty; it seems clear that her duty is to report what she suspects. However, in this case she did not suspect, rather she believed what she was told. Many might argue she was foolish to accept the child's word when the instances were frequent, that expressing her concern to his parents and having them not respond caused her to do nothing more, that she was in fact derelict in her duty by not looking for the signs of the very thing she has been told she is responsible for. What is the hurt in this case? At best, prolonged abuse which might have been avoided had she been more suspicious or perceptive; at worst, permanent harm both physical and psychological to the child. Was she able to foresee the possible results of not acting? Yes, except that her lack of suspicions prevented her. And was she free to act? Yes, except that her lack of suspicions prevented her. And was she free to act? Obviously she was. Now it seems that the case rests with the question of duty - is it her duty to be suspicious? A case could be made for either side, but the criteria have been useful in narrowing the field in which we must inquire in order to determine her capability.

In the fourth case we shall consider, that of giving money to a beggar, I would propose that in the society which permits poverty there is no question of punishment although it raises interesting questions about our criteria. If I should pass by a person obviously in need who asks me for money, am I responsible for the subsequent harm she may suffer as a result of malnutrition, exposure, and the like? We have said already that if the society permits me to have money and permits her not to, then it has no business bringing trouble to me for not acting. I am capable of foreseeing the possible hurt to this person if she continues without relief, and let us assume that I am able to offer something to provide relief. Then I may argue that I have responsibility for the suffering she endures, but I may argue equally that the system which allows her to continue thus is more responsible, or that my contribution merely reinforces her practice of begging rather than seeking the channels of help which have been established. I may feel that I have a moral duty, although not a legal one, to fulfill in her case. However, when we include moral duty it seems that we have to increase our criteria to take many more factors into account. And we must return to the law and its purposes to decide whether we can compel people to act for the fulfillment of moral principles - a bigger question.

Our cases suggest that Mill is right in his claim that there are indeed cases where inaction is punishable because it results in harm which could have been prevented by action and that these cases are more difficult to decide than those where action has occurred.

I think this question is of great pedagogical importance. The treatment of Fran's question in *Mark* would be incomplete if cases of inaction were not considered. It is conceivable that young people would not think of this aspect of the question were it not brought to their attention.

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References

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