

Mill's extraordinary utilitarian moral theory

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abstract

D.G. Brown's revisionist interpretation, despite its interest, misrepresents Mill's moral theory as outlined in *Utilitarianism*. Mill's utilitarianism is extraordinary because it explicitly aims to maximize general happiness both in point of quality and quantity. It encompasses spheres of life beyond morality, and its structure cannot be understood without clarification of his much-maligned doctrine that some kinds of pleasant feelings are qualitatively superior to others irrespective of quantity. This doctrine of higher pleasures establishes an order of precedence among conflicting kinds of enjoyments, including moral as well as non-moral kinds. In particular, as he indicates in *Utilitarianism*, Chapter V, the higher kind of pleasure associated with the moral sentiment of justice, namely, a feeling of 'security' for vital personal concerns that everyone has and that ought to be recognized as equal rights, is qualitatively superior to any competing kinds of pleasures regardless of quantity. Justice (more generally, morality) is conceived as a social system of rules and dispositions which has as its ultimate end the maximization of this pleasant feeling of security for everyone. The upshot is that an optimal social code that distributes and sanctions particular equal rights and correlative duties has absolute priority over competing considerations within his utilitarianism. The code seeks to prevent conduct that, in the judgment of suitably competent majorities, causes grievous kinds of harm to other people by injuring their vital personal concerns. To prevent the acts and omissions which are judged to cause such undue harm, the code assigns equal duties not to perform them, and authorizes due punishment of anyone who fails to fulfill his duties. Punishment is always expedient to condemn and deter wrongdoing. But it is properly a separate issue which particular ways of inflicting punishment are expedient in any particular situation. Given that feelings of guilt are a way of inflicting punishment, coercion is not necessary for punishment. Thus, Mill's claim that wrongdoing always deserves to be

punished in some way does not imply that coercive legal sanctions and public stigma are always expedient for the enforcement of moral duties.

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1. Interpreting Mill's moral theory

Donald G. Brown, in a preceding article,¹ defends a revisionist reading of Mill's utilitarian moral theory in which the principle of utility is seen not as a practical guide to right action, but merely as an axiological principle. According to Brown, the principle states that collective happiness is the sole ultimate good or end of the general art of life, of which the art of morality is a component art, but it supposedly leaves open which particular actions are right or wrong in light of this ultimate end. Mill is not committed to maximizing utilitarianism, Brown insists, despite various textual remarks that may seem to suggest otherwise. Instead, Mill should be interpreted as an early proponent of so-called philosophical utilitarianism, a generic position that imposes two constraints on morality: (1) moral decisions must be based only on factual information about individual utilities, which in turn presupposes a conception of utility, in Mill's case, a hedonistic conception; and (2) the procedure employed to make moral decisions must be impartial between individuals. As John Skorupski, who also reads Mill along these lines, explains: 'All that philosophical utilitarianism says is that every individual's well-being has absolute value, and that this value must be counted impartially in assessing overall good . . . [In short,] the good is the well-being of all, impartially considered.'² Philosophical utilitarianism thus understood admits many different impartial decision-making procedures besides a traditional utilitarian calculus that aims to maximize the sum total of utility. Indeed, Skorupski makes clear that, for revisionists of his ilk, philosophical utilitarianism has appeal precisely because it allows those who admire Mill's liberal ideals to ignore as 'unattractive' not only 'the classical utilitarians' sum-total criterion', but also their hedonistic conception of utility.

Brown goes on to argue that Mill's moral theory, while compatible with philosophical utilitarianism, is a common-sense art of collective self-defense which is independent of maximizing utilitarianism. The goal of this Millian art of morality, as interpreted by Brown, is impartially to protect individuals from suffering harms, or certain types of harms, inflicted on them without their consent by others. In pursuit of this goal, common sense dictates giving special importance to minimizing the relevant disutilities for each individual, instead of maximizing the sum total of utilities: 'the disutilities (the negative utilities) are by far the most important morally'.³ At the same time, individuals' utilities and disutilities must be counted impartially (as philosophical utilitarianism demands) to determine

moral duties that serve to minimize everyone's disutility: 'Utilities and disutilities alone are being weighed throughout, and the aim pursued in various ways is to minimize the latter, so the rational constraint of philosophical utilitarianism is satisfied.'⁴ Equal duties not to harm others in the relevant ways must be distributed and enforced, it seems, so that the disutility of all, impartially considered, is minimized. Moreover, to identify the specific duties which ought to be distributed and enforced for this purpose, Mill is said to rely on common-sense norms of 'non-maleficence and fairness' instead of a utilitarian maximizing criterion: 'the derivations [of moral duty] . . . seem to flow from premises which include requirements of non-maleficence and fairness'.⁵

If I understand correctly, Brown suggests that Mill implicitly relies on common-sense principles of non-maleficence and fairness to perform at least three related functions for the art of morality: (1) identify which utilities and disutilities, and whose, are relevant for morality; (2) impartially assess and weigh these utilities and disutilities in the course of generating moral decisions; and (3) decide on the basis of the utility information which conduct is morally wrong, and thus, by definition, deserving of punishment, because it causes the kind of disutility to others which is judged to be unfair or maleficent. The Millian moral art distributes equal duties to refrain from causing the relevant disutilities, and affirms that anyone who fails to fulfill his moral duty deserves to be punished. Punishment, which Brown equates with coercive measures such as legal penalties and organized public boycotts as opposed to guilty feelings per se, is apparently justified only to the extent that it is needed to deter violations of these duties to others: 'by the rules of self-defence by punishment, it is unjust to inflict suffering beyond the minimum necessary for deterrence'.⁶ Furthermore, Brown argues, the deservingness of punishment does not imply that punishment ought to be imposed all things considered, because coercive measures may be inexpedient for discouraging violations of duties in some situations. Thus, according to Brown, Mill is saying that immoral conduct is deserving of punishment, yet it may properly go unpunished in situations where coercion cannot be expediently applied.

It is worth remarking immediately that, as reconstructed by Brown, Mill's test for the wrongness of conduct, namely, that the conduct causes a kind of harm to others that deserves to be punished in some way, appears puzzling because wrong conduct may, nevertheless, *expediently and legitimately* escape punishment. For Brown, the assertion that conduct is deserving of punishment means that the conduct ought *pro tanto* to be coercively prevented, that is, coercive interference ought to be considered insofar as the conduct is deemed to cause harm of the relevant kind to others. But it may turn out that coercive measures ought not to be implemented, all things considered. The implementation of coercion is a separate question of expediency, he suggests, and it has no bearing on the wrongness of the conduct. Wrong conduct remains wrong even if punishment (understood as coercive interference), though deserved, cannot be expediently applied. But Mill seems to be in deep trouble if he is genuinely committed to this view that punish-

ment sometimes ought not to be inflicted for immoral conduct, given his claim that the test of immorality is that the conduct deserves to be punished in some way. It seems pointless or worse to claim that a wrong act always deserves to be punished, yet then argue that sometimes a wrong act ought not to be punished after all. In short, the common-sense norms of non-maleficence and fairness seem to be clashing with utility in this context, the former calling for punishment as deserved whereas the latter rejects it as inexpedient.

Whatever importance may be assigned to this puzzling aspect of the test of wrong conduct as he reads it, Brown emphasizes the futility of any attempt to derive the Millian art of morality from the principle of utility viewed in the traditional way, as a principle that guides the individual always to act, so far as he is able, to bring about outcomes that maximize the sum total of utility. Rather, the rules of morality apparently import independent norms of non-maleficence and fairness to identify when coercive interference is deserved, if not expediently implemented, with the goal of deterring people from inflicting particular types of harms on one another. Moral duties distributed in accord with these rules are duties to refrain from conduct that is deserving of punishment (understood as coercive interference) because such conduct harms others without their consent in ways that common sense judges abhorrent. Brown is at a loss to explain what, if anything, these common-sense duties have to do with the promotion of happiness, although he emphasizes that ‘Maximization of aggregate utility will be at best an agreeable by-product.’⁷ Indeed, after complaining about the ‘indefensible obscurity’ of relevant passages in *Utilitarianism*, Chapter V, he speculates that Mill does not know, and does not care, exactly how moral duties arise from considerations of utility: ‘Exactly how, in completely general terms, the principles of morality arise from such a foundation Mill neither knows yet, nor now cares.’⁸

The best way to complete the Millian moral project, whether Mill was fully aware of this or not, Brown insists, is to rely on common-sense norms of non-maleficence and fairness instead of a utilitarian maximizing criterion to derive moral rules and duties on the basis of utility information. The art of morality does not seek to maximize collective utility, but rather seeks to establish a fair scheme of collective self-defense in which everybody is equally protected from suffering the kinds of disutilities deemed by common sense to be wrongful and thus deserving of coercive interference. Brown recognizes that this means abandoning the traditional heart of utilitarianism in order to construct what David Lyons calls ‘a *morally acceptable* version of utilitarianism’, in which utility maximizing is constrained by independent norms of morality: ‘utilitarian moral theory would be driven by external factors rather than by its own guiding utilitarian idea’.⁹ But such a morally constrained utilitarianism comports with philosophical utilitarianism, Brown argues. Moreover, it has the great virtue of explaining to the many critics of maximizing utilitarianism why (to paraphrase the title of Skorupski’s recent book) Mill is still worth reading today.¹⁰

In my view, Brown, Lyons, Skorupski, and other revisionists are clearly correct

that Mill is not plausibly read as a traditional maximizing utilitarian for whom conduct is morally right if and only if that conduct maximizes a simple sum total of utility. Mill does not subscribe to any of the familiar versions of utilitarianism, including act utilitarianism and rule utilitarianism, which are united in the assumption that utility is a uniform good or value such as a feeling of pleasure, including relief from pain, that varies in quantity, but never in intrinsic quality irrespective of quantity.¹¹ Rather, his form of utilitarianism is so unorthodox that it can hardly be recognized as a member of the utilitarian family as the family is traditionally conceived.

Nevertheless, Mill's doctrine as outlined in *Utilitarianism* is best interpreted as an extraordinary maximizing utilitarianism that seeks to maximize collective happiness both in point of quality and quantity. It is an alluring version of utilitarianism that abandons the rash assumptions about utility information which are needed to run a traditional utilitarian calculus. As even a casual reading of Chapter II of *Utilitarianism* confirms, Mill rejects the assumption that feelings of pleasure, including relief from pain, are all homogenous in quality across their various sources and objects. Moreover, he never assumes that it is possible even in principle to gather rich cardinally measurable and interpersonally comparable information about pleasures. From a Millian perspective, the traditional picture of maximizing utilitarianism, in which people's utilities and disutilities are invariably treated as homogenous in quality and simply added together with the aim of selecting an outcome that maximizes the sum total of utility, is a bizarre perversion of genuine maximizing utilitarianism.

Unlike its traditional counterpart, Mill's maximizing utilitarianism encompasses spheres of life beyond morality, and its distinctive structure cannot be understood without clarification of his much-maligned doctrine that some kinds of pleasant feelings are qualitatively superior to others irrespective of quantity. This doctrine of higher pleasures establishes an order of precedence among conflicting kinds of enjoyments, including moral as well as non-moral kinds. In particular, as he indicates in *Utilitarianism*, Chapter V, the higher kind of pleasure inseparably associated with the moral sentiment of justice, namely, a feeling of security for vital personal concerns that everyone has and that ought to be recognized as equal rights for all, is qualitatively superior to any competing kinds of pleasures regardless of quantity. Justice (more generally, morality) is conceived as a social system of rules and dispositions which has as its ultimate end the maximization of this pleasant feeling of security for everyone as a crucial component of their happiness. The upshot is that an optimal social code that distributes and sanctions particular equal rights and correlative duties has absolute priority over competing considerations within his utilitarianism.

Remarkably, the dominant revisionist school of Mill interpretation generally overlooks Mill's claim that utilities may differ in quality irrespective of quantity. Instead, the revisionists appear wedded to the traditional view that utility is always homogeneous in quality, with the implication that happiness is entirely

a matter of quantity of enjoyment. Brown is typical in this respect. He ignores Mill's doctrine that some kinds of pleasant feelings are qualitatively superior to others, and implies that the higher-pleasures doctrine is vacuous as it stands because Mill supposedly has no clear idea of 'the proper order of precedence' among different kinds of utilities (or ends) when they come into conflict.¹² Unlike Mill, he apparently views utility as something whose intrinsic quality remains invariant across its various sources, as if pleasant feelings always feel alike in quality whether derived from an ice-cream cone or a beautiful piece of music or an enduring social code of justice, and he takes for granted that utility thus construed is independent of morality, as when he says that 'judgements of utility' are 'one type of non-moral judgement'.¹³ It does not seem to occur to Brown or his fellow revisionists that, for Mill, a higher kind of pleasant feeling, qualitatively superior to all competing kinds, is inseparably associated with the moral sentiments as he understands them.¹⁴

In what follows, I shall attempt to clarify how Mill's theory of morality fits consistently within his extraordinary maximizing utilitarianism as he depicts it in *Utilitarianism*. It will emerge that the six 'puzzles for interpretation' listed by Brown near the beginning of his article all vanish. I shall return to these puzzles in my concluding section, but it is worth stressing now that they are problems of interpreters' own making. Mill is not fairly accused of misleading readers. Rather, interpreters must ignore or revise what he says in the text for these puzzles to arise. Even Brown, I am afraid, must be included among those who are guilty of seriously distorting Mill's language. He refuses to accept that Mill treats the principle of utility as the ultimate principle of right conduct, for example, despite Mill's repeated statements to the contrary, as when he states that 'the greatest-happiness principle . . . [is] the fundamental principle of morality, and the source of moral obligation'.¹⁵

Brown also dismisses Mill's stated view that feelings of guilt are a way of inflicting punishment and insists instead that genuine punishment involves coercion, thereby creating the puzzle mentioned earlier, to wit, Mill's moral theory says that conduct is wrong if and only if it ought to be punished, yet coercion is admittedly not always expedient to prevent wrong conduct. This problem of interpretation leads to others because, as Brown sees things, Mill's theory of moral requirement logically complements his theory of individual liberty understood as negative freedom from coercion. Yet Mill makes clear that society ought to refuse to employ coercion to prevent an individual from doing wrong in some situations, although the wrongdoer deserves to be punished and ought to be educated to inflict feelings of guilt on himself to condemn and deter his wrongdoing. An individual who breaks a promise to his lover in some important intimate matter known only to themselves should experience punishment or blame for his wrongdoing, for instance, even though the punishment cannot be expediently inflicted by third parties (who, by assumption, do not know the details of the situation) through legal sanctions or coercive forms of public disapproval. The

individual should punish himself by feeling guilty and making amends, although he will only in fact do so if he has developed a sufficiently strong conscience or desire to do right.¹⁶ Thus, Mill's theory of liberty is *not* the complement to his theory of moral requirement, and his views as to when coercion is legitimate and expedient must not be conflated with his theory of moral obligation.

Mill's theory of liberty in the negative sense of freedom from coercion is evidently the complement to his theory of social coercion, but coercion must be distinguished from punishment.¹⁷ As just indicated, punishment does not imply coercion. An individual is sometimes expediently left free from coercive interference to engage in wrong conduct that ought to be punished by feelings of guilt, and this policy of *laissez-faire* remains expedient even if the individual does not possess a sufficiently powerful conscience actually to feel guilty. Moreover, coercion does not imply punishment. Coercion is sometimes expediently employed to regulate conduct that is not wrong. Coercion is legitimate to prevent harm to others without their consent, but such harm is not necessarily the product of wrong conduct. Legal sanctions are legitimately employed to force sick people into quarantine to help them get healthy and to prevent them from unintentionally spreading infectious diseases, for example. This use of coercion is expedient even though an individual is not doing wrong and thus does not deserve punishment merely for catching an infectious disease.¹⁸ Coercion is also justifiably used to prevent children and others who are incapable of rational persuasion from unintentionally harming themselves. Again, an individual is not doing wrong and thus does not deserve to be blamed merely because he is not yet sufficiently mature intellectually to avoid harming himself.¹⁹

But I am running ahead of my general argument, which proceeds through several steps. The first step is to look more closely at philosophical utilitarianism. According to one possible interpretation, philosophical utilitarianism implies maximizing utilitarianism, although not necessarily maximizing utilitarianism as traditionally conceived. If so, there is a contradiction between philosophical utilitarianism, according to which individual utilities impartially considered must be the sole determinants of moral decisions, and any art of morality which prescribes that moral requirements should be derived from utility information using independent norms or values (of, say, fairness) that assign different weights to identical amounts of utility or disutility. Any such art of morality, although it may exhibit impartiality between persons, fails to be impartial between equal amounts of utility, and this failure is at odds with philosophical utilitarianism as interpreted.

Even if philosophical utilitarianism is reinterpreted so that it no longer requires impartiality between equal quantities of utility, however, there is conclusive evidence that Mill insists on impartiality in this strong sense. So, either a philosophical utilitarian must be a maximizing utilitarian, in which case Brown, Skorupski, Lyons, and other revisionists must concede that Mill is a maximizing utilitarian, albeit an unorthodox one, or philosophical utilitarianism substitutes a weaker idea for Mill's strong idea of impartiality, in which case philosophical utilitarian-

ism does not adequately capture Mill's maximizing utilitarianism. In either case, revisionism fails as a reading of Mill's doctrine.

2. Philosophical utilitarianism

T.M. Scanlon, when he introduces the notion of philosophical utilitarianism, says that 'once philosophical utilitarianism is accepted, some form of normative utilitarianism seems to be forced on us as the correct first-order moral theory'.²⁰ Unlike Skorupski or Brown, he is inclined to think that philosophical utilitarians must endorse orthodox maximizing utilitarianism. Philosophical utilitarians will find it difficult to avoid arriving at the traditional sum-total criterion, in his view: 'If all that counts morally is the well-being of individuals, no one of whom is singled out as counting for more than the others, and if all that matters in the case of each individual is the degree to which his or her well-being is affected, then it would seem to follow that the basis of moral appraisal is the goal of maximizing the *sum* of individual well-being.'²¹

Scanlon is on solid ground, I think, when he suggests that philosophical utilitarianism forces us to adopt some version of maximizing utilitarianism, although he seems to take for granted the traditional conception of maximizing utilitarianism.²² For the moment, let us accept the traditional conception, although as I have already indicated it is a caricature of the far more credible version of maximizing utilitarianism suggested by Mill. In any case, as Scanlon says, philosophical utilitarianism holds that individual utilities are 'the *only* fundamental moral facts', and that moral rules and decisions must be 'impartially acceptable'.²³ But if individual utilities are the only basic moral facts, and if morality must be impartial between individuals, then it seems that moral rules and decisions must be impartial between equal quantities of utility, whether experienced by different individuals or by the same individual. This implies a commitment to maximizing utilitarianism, because maximizing utilitarianism is the only doctrine that always gives equal positive weight to equal quantities of utility.²⁴

In contrast, if morality assigns different weights to the equal quantities of utility, then basic norms or values besides individual utilities, impartially considered, count for morality. Non-utility norms, such as common-sense norms of non-maleficence and fairness, become 'fundamental moral facts' that help determine what right and wrong conduct is. Perhaps certain norms of fairness dictate that the utility of a very poor individual is morally worth far more than the equal utility of a very rich one, for instance, or that the disutility suffered by a thwarted wrongdoer is worth far less than the equal disutility that would have been suffered by his intended victim. The problem is that factual information about these norms of fairness is apparently not allowed by philosophical utilitarianism to influence morality. Philosophical utilitarianism seems to exclude all non-utility information as morally irrelevant, and to insist that facts about individual utilities are the *only* fundamental moral facts.

It may be helpful to illustrate the bite of philosophical utilitarianism thus understood with reference to the quasi-Rawlsian moral decision procedure known as 'leximin'.²⁵ According to leximin, moral choices must give lexical (that is, absolute) priority to the worst-off individual's utility, where the worst off is determined by comparing utility levels. A choice that maximizes the utility of the worst off is morally required, even if this entails that a better-off individual must sacrifice a much greater amount of utility than is gained by the worst off. The leximin procedure is incompatible with philosophical utilitarianism, as interpreted so far, because leximin implicitly relies on norms besides utility to generate moral choices: an overwhelming concern for the worst-off members of society, rooted in a sense of distributive justice which is independent of utility considerations, is built into the very form of the leximin procedure. This concern for the worst off is thereby treated as a 'fundamental moral fact', whereas philosophical utilitarianism requires that facts about individual utilities are 'the only fundamental moral facts' and that they must be impartially considered.

Philosophical utilitarianism thus understood is more demanding than the conditions known in the formal social choice literature as 'welfarism' and 'anonymity', respectively, even if these conditions are combined.²⁶ Leximin is an anonymous and welfarist moral decision procedure, yet it is at odds with philosophical utilitarianism as interpreted. It is important to be clear about this. Consider welfarism. Roughly, welfarism is a neutrality condition which stipulates that, for any given permutation of the possible outcomes (states of affairs, actions, objects, and so forth) over which the set of individual utility rankings is defined, such that x and y everywhere replace w and z respectively, and vice versa, within the individual rankings, the moral ranking of x and y in the one case must be the same as the moral ranking of w and z in the other.²⁷ According to welfarism, then, the only information *about the possible outcomes* which matters for the process of moral decision-making is utility information, as opposed to non-utility information. Any welfarist moral choice process admits only individual utilities as inputs to generate moral outputs. So far, welfarism matches philosophical utilitarianism: both reject as irrelevant any non-utility information contained in a description of the possible outcomes.

But welfarism does not otherwise constrain the moral choice procedure: norms besides utility values may permissibly be embodied within the very form of the procedure used to translate the utility inputs into moral outputs. The internal structure of the choice process is left open by welfarism, and this structure may incorporate norms that give different weights to equal amounts of utility for one reason or another.²⁸ In the case of the leximin rule, the form of the procedure incorporates a fairness norm that gives absolute priority to the worst-off position in society, such that utility for any individual who occupies the worst-off position is treated as far more important morally than an equal amount of utility for anyone else.

The anonymity condition, even when combined with welfarism, does not take

leximin any closer to philosophical utilitarianism as construed. Roughly, anonymity is an impartiality requirement which stipulates that moral decisions must not be affected by any permutation of the individual identities attached to the utility rankings: the moral ranking of any pair of outcomes x and y must remain invariant, for example, if individual i 's utility is transformed into individual j 's, individual j 's is transformed into k 's, and k 's is transformed into i 's.²⁹ According to anonymity, then, morality must be impartial between individuals: information about individual identities does not matter for moral outputs. But anonymity does not imply that morality must be impartial between equal quantities of utility, even when non-utility information about the possible outcomes is barred by welfarism. Anonymity still permits (as does welfarism) the moral decision-making process to incorporate independent norms of non-maleficence and fairness that discriminate between equal amounts of utility.

Welfarism in combination with anonymity does not imply that morality must be impartial between equal quantities of utility. Thus, in contrast to philosophical utilitarianism which, as interpreted, does demand this, anonymous welfarism is compatible with myriad moral choice procedures, including the leximin procedure, beyond maximizing utilitarianism. Maximizing utilitarianism is special because it is the only anonymous and welfarist choice procedure that always gives equal positive weight to equal quantities of utility. There are not any non-utility norms built into the form of a utilitarian maximizing procedure: utility values alone matter, and they are impartially counted. This remains true when the traditional conception of maximizing utilitarianism is replaced with the unorthodox Millian conception, although the traditional understanding of utility's nature, and of the richness of our factual information about it, is rejected by the Millian conception.

The conclusion that maximizing utilitarianism is the sole option for philosophical utilitarians can be avoided, however, by jettisoning the understanding of philosophical utilitarianism presented up to now. Brown, Skorupski, and others apparently have in mind a less demanding interpretation of philosophical utilitarianism. More specifically, perhaps philosophical utilitarianism should be weakened so that it becomes equivalent to the combination of welfarism and anonymity. Procedures such as leximin, and the rules of the Millian moral art of self-defense as interpreted by Brown, are compatible with such a weakened variant of philosophical utilitarianism.

An objection to this move of weakening philosophical utilitarianism is that it allows norms besides utilities impartially considered to count as 'fundamental moral facts' which must be taken into account to arrive at moral decisions. Given that the non-utility norms are helping to determine morality, why continue to call the weakened generic view a version of philosophical *utilitarianism*? Moreover, if utilities and non-utility values are both allowed to count, then philosophical utilitarianism apparently does not exclude in principle any sources of value. Rather, it requires merely that non-utility values must be built into the form of

the moral choice procedure so that the procedure can then restrict its attention to information about individual utilities defined over the possible outcomes. This seems to be a matter of technical convenience, or perhaps an aesthetic requirement, instead of a substantive moral constraint.

Another objection is that the weakened version of philosophical utilitarianism seems ill-suited, at least from a consequentialist perspective, for accommodating independent norms of fairness and the like. Recall that its welfarist component excludes any role for non-utility information about the possible outcomes of the moral choice procedure. Yet non-utility norms may nonetheless be built into the form of the procedure. What are these non-utility norms based on? They cannot be based either on utility information or on non-utility information *about the possible outcomes*. Thus, they must have their status independently of any factual information about the consequences of moral rules and decisions. In short, the weakened version of philosophical utilitarianism can only regard the non-utility norms as self-justifying deontological norms. The implication seems to be that morality is comprised of plural irreducible values, including utility and independent norms, which can only be combined into a coherent whole (if at all) by rational intuition. Whatever its merits, such an approach appears to boil down to what Mill calls intuitionism, an approach to which he repeatedly takes exception throughout his writings.

But even if such objections to the weakened version of philosophical utilitarianism are considered unpersuasive, there remains a decisive objection against any attempt to employ it to read Mill as something other than a maximizing utilitarian. For he is explicit that equal quantities of utility must be given equal positive weight to arrive at moral decisions. As he says, 'the principle of utility . . . may be more correctly described as supposing that equal amounts of happiness are equally desirable, whether felt by the same or by different persons'.³⁰ But this implies that he endorses some version of maximizing utilitarianism, because maximizing utilitarianism alone always gives equal positive weight to equal quantities of utility. True, he registers the caveat that 'proper allowance' must also be made for different kinds or qualities of utility, and this caveat is of central importance for any appreciation of the difference between his extraordinary maximizing utilitarianism and the traditional doctrine. But the point remains that his extraordinary maximizing utilitarianism continues to count equal amounts of utility *of the same kind* equally. Like traditional maximizing utilitarianism, his doctrine is impartial between equal quantities of utility, provided the utility can be assumed homogeneous in quality.³¹

Brown's sweeping claim that Mill is not a maximizing utilitarian cannot stand, even though I agree that Mill is not a maximizing utilitarian as traditionally conceived. Mill's art of morality must be integrated within his extraordinary maximizing utilitarianism. This Millian art of collective self-protection cannot be viewed, as Brown would have it, as an art that relies on non-utility norms of non-maleficence and fairness to assign different values or weights to equal amounts

of utility or disutility in the course of determining which kinds of disutilities are deserving of punishment. But to see how Mill's moral theory fits within his peculiar maximizing utilitarianism, it is necessary to say more about the extraordinary structure of his maximizing doctrine as outlined in *Utilitarianism*. I shall only sketch it here, however, because I have discussed it at greater length elsewhere.³²

3. Maximizing utilitarianism

Mill's extraordinary maximizing utilitarianism is so different in structure from traditional maximizing utilitarianism that it obliterates the traditional understanding of what maximizing utilitarianism is. The most important difference is that Mill rejects the traditional assumption that utility is homogenous in quality across its various sources. Instead, he puts forward his controversial doctrine of higher pleasures, according to which the kind of pleasant feeling inseparably associated with the moral sentiments has a much higher intrinsic value or quality *as pleasure* than any competing kinds of pleasant feelings. Brown, like the vast majority of commentators, ignores this controversial aspect of Mill's thought. Unless the doctrine of higher pleasures is properly taken into account, however, it is impossible to understand the way in which Mill's maximizing utilitarianism seeks to bring about 'an existence exempt *as far as possible* from pain, and *as rich as possible* in enjoyments, *both in point of quantity and quality*'.³³

A second difference between Mill's utilitarianism and traditional utilitarianism is that, even for individual utilities of the same kind, Mill does not make the traditional assumption that the utilities are, at least in principle, cardinally measurable and interpersonally comparable, as is required to calculate a factual sum total of utility. Instead of assuming that individuals' feelings of pleasure can be measured and compared so that they can be added together in an incontestable way, he apparently assumes that only quite poor purely ordinal utility information is available. In other words, the only information about people's pleasant feelings of any kind which he relies on is the information contained in their distinct and typically conflicting individual preference orderings defined over the objects that are the feasible sources of that kind of enjoyment, taking for granted that a rational individual prefers more pleasure to less of the same kind. As a hedonist, Mill believes that competent individuals are ultimately motivated by their expectations of pleasure, including freedom from pain, so that their preference rankings reveal their expectations of pleasure.³⁴ Each individual is assumed to rank the feasible sources in accord with his rough estimates of the amount of pleasant feeling of the relevant kind which he expects from the sources. Even if attention is restricted to pleasant feelings of the same quality, therefore, it is misleading to read in the traditional manner Mill's constant endorsement of conduct that increases, or tends to increase, the sum total of happiness. It is misleading because he never assumes that pleasant feelings can be cardinally measured and interpersonally compared so as to yield a precise sum total that all reasonable people must accept. Thus, an

unorthodox way of reading the sum-total criterion must be found, even apart from the need to make 'proper allowance' for different kinds of utilities.

How, then, should we understand Mill's qualitative distinction between higher and lower kinds of pleasant feelings? What does he mean that 'proper allowance' must be made for the different kinds in order to maximize the general happiness? And how should we interpret his suggestions that, for any given kind of pleasant feeling, the sum total of that kind of pleasure ought to be maximized consistently with making proper allowance for the different kinds? How is it even possible to maximize the total quantity of any kind of pleasure subject to the constraint that proper allowance must be made for the different kinds of pleasure? Briefly, my answers to these questions are as follows.

When he introduces his doctrine of higher pleasures in *Utilitarianism*, Chapter II, Mill says that a higher kind of pleasant feeling is superior in quality to a lower kind, regardless of the quantities of the different kinds of pleasures.³⁵ Qualitative superiority means intrinsic superiority, that is, the higher of two kinds of pleasant feeling is intrinsically more valuable as pleasure in virtue of its inherent quality, regardless of quantity. This can in turn be interpreted as *infinite* superiority, in the sense that even a bit of higher pleasure is more valuable as pleasure than any quantity of lower pleasure, no matter how large a finite mass of lower pleasure is assumed.

To make proper allowance for the different kinds of pleasant feelings, therefore, the different kinds must be arranged into a hierarchy such that a higher quality of pleasant feeling always takes absolute priority over a lower quality in cases of conflict. The different kinds of pleasure have different sources, and these different sources can be treated as different aspects or features of possible outcomes. An outcome that is reasonably expected to bring any amount of higher pleasure must be ranked above an outcome that brings only lower pleasures, no matter how much lower pleasure is expected. Competent individuals who have experienced the different kinds of pleasures do reveal such preferences, Mill insists, or, if there is disagreement, the majority of them do.

Although I cannot further discuss in detail the much-maligned doctrine of higher pleasures, it is worth emphasis that, according to Mill, most people who are competently acquainted with the different kinds of gratifications which can be experienced by human beings do act as if they accept a particular ranking of the kinds in terms of their inherent quality, regardless of quantity. Even if they do not agree with him that a hedonistic account of the ranking can be given, he implies, enlightened and fair-minded people generally acknowledge that 'the pleasures of the intellect, of the feelings and imagination, and of the moral sentiments' have 'a much higher value as pleasures than . . . those of mere sensation'.³⁶ Briefly, and at the risk of oversimplification, his doctrine apparently maintains that the pleasant feelings associated with products of our intellect are qualitatively superior to the inchoate sensations of pleasure registered by our body alone, that is, by our 'animal nature' when assumed to be 'disjoined' from our intellectual

capacities of forming ideas and propositions, reasoning, imagining, remembering, and so forth. Moreover, within the broad category of intellectual pleasures, the kind of pleasant feeling associated with the moral sentiments is qualitatively superior to any competing kinds of pleasures. Nevertheless, the kind of gratification associated with aesthetic sentiments of beauty and sublimity may be qualitatively supreme because genuine aesthetic pleasures are not in conflict with the moral pleasures. The implicit ranking of the different kinds of pleasures in terms of increasing quality, from purely physical sensations through intellectual and moral feelings up to aesthetic emotions, is no doubt contestable, but it deserves further consideration. There may well be widespread agreement among suitably competent people that the demands of morality are overriding, for instance, even if many refuse to account for this in terms of a higher moral kind of pleasure. And perhaps genuine aesthetic emotions of beauty and sublimity cannot arise in association with perceived immorality.

In any case, a ranking of the different kinds of pleasant feelings in terms of their inherent qualities is a very special sort of preference ordering, namely, a lexicographical (or lexical) ordering. The lexical ordering is a very special ranking because it captures the discontinuities of intrinsic value produced by the infinite superiority of higher pleasures over lower ones: no finite amount of lower pleasure, however large, can ever be equal in value as pleasure to even a bit of higher pleasure.

Apart from his argument that some kinds of pleasant feelings have a superior inherent quality compared to other kinds irrespective of quantity, Mill also seems to reject the assumption, commonly thought indispensable to utilitarian ethics, that rich cardinal and interpersonally comparable utility information is available. He seems to rely entirely on individual preference rankings of the feasible sources to obtain competent, yet fallible estimates of the amounts and kinds of pleasant feelings to be expected from the sources. Given his reliance on such purely ordinal information about pleasures, he cannot suppose that a factual sum total of any kind of pleasure can be determined in the traditional manner. Instead of an orthodox utilitarian procedure that adds up pleasant feelings of the same kind, he apparently has in mind something like a democratic voting procedure in which individual preferences defined over the sources of a given kind of gratification are given equal positive scores or votes and the votes are added up to select an outcome that has the greatest sum total of votes. Provided individuals are competent and cast their votes independently, the selected outcome is very likely to be an outcome at which the sum total of pleasant feelings of the relevant kind is in fact maximized. But such a maximum likelihood estimate of a best option does not tell us the actual amount of the greatest sum total of happiness. Nor does it imply that anybody has any idea of how to add up in a meaningful way the actual feelings of pleasure experienced by different individuals.

As it turns out, the democratic voting procedure only needs to be employed to select an optimal social code of morality, given that the moral kind of pleasure

associated with the moral sentiments is qualitatively superior to any competing kinds of pleasures. I shall return in due course to this key point and its implications. In the meantime, it might be objected that Mill is unclear about the particular form of democratic voting procedure which he favors, although the objection is difficult to sustain in the face of his extensive discussion of popular government in *Considerations on Representative Government*.³⁷ A more generous reading is that he is willing to accept that competent citizens or their representatives may employ any of various voting rules, including simple majority voting, to make collective judgments about the enjoyments to be expected from the feasible outcomes. Indeed, he seems inclined in *Utilitarianism* to take majority voting for granted. Just as majorities with competent experience of the different kinds of pleasant feelings ought to make a judgment for society of the order of precedence among the kinds in terms of their inherent qualities regardless of quantity, he indicates, so majorities competently acquainted with a given kind of pleasant feeling ought to judge for society the amounts of that particular kind of utility which can reasonably be expected from the feasible outcomes.

When he speaks of the sum total of any kind of utility, Mill is apparently referring to the estimated sum total which can be inferred from the competent, yet fallible majority's ranking of the outcomes as sources of that kind of pleasure. Each competent person's ordinal estimate of the quantities of pleasure which he expects from the outcomes, expressed merely in terms of more or less pleasure as revealed by his own ranking of the outcomes, is counted for exactly as much as another's in a majority voting procedure, to produce an ordinal estimate of the total quantities of pleasure, as revealed by the majority's ranking of the outcomes. Total pleasure is maximized at an outcome with the most votes. If most people rank *x* above *y*, for instance, then *x* is reasonably expected to yield a greater sum total of the relevant kind of satisfaction than *y* is, because any person's ranking of the two outcomes is the only (purely ordinal) measure of the amounts of utility he expects from those outcomes, and each person's ranking must be counted equally.³⁸ True, majority rankings may be incoherent, a point that Mill may not have fully appreciated.³⁹ But majority preference cycles, in which a majority prefers *x* to *y*, *y* to *z*, and *z* to *x*, cannot arise if we take an adequate view of what is meant by counting individual preferences equally, to wit, each person's preference must be given equal positive weight, as is the case if each person is given an equal ballot and the votes are added up. Strictly speaking, majority rule per se, without the ballot, does not give equal positive weight to different persons' rankings. Rather, it impartially counts the rankings without attempting to compare or weigh them relative to one another, and simply reflects the shared rankings of the greater number.

To remove any possibility of preference cycles, a scoring function, or positional rule, can be superimposed to mimic the way in which ballots are distributed to voters, so that different persons' preferences are not only treated impartially,

but also counted equally in the stronger sense that each gets equal positive weight for determining the collective ranking of the outcomes. Although the ballot typically covers only the voter's top-ranked option instead of his entire ranking, the scoring function can be extended to cover his entire ordering. A scoring function such as Borda count might be employed, for instance. Under Borda count, each person ranks the m possible outcomes from best to worst, and $m - 1, m - 2, \dots, 1, 0$ points are assigned to the best, next-best, \dots second-worst, worst outcomes, respectively. The procedure then selects an outcome with the greatest aggregate point total.

More generally, to escape from the Borda method's insistence on *equal* spacing of points awarded for first choice, second choice, and so forth, a generalized scoring function could be employed whose points assignments are unique only up to a positive monotonic transformation so long as such transformations are applied to every person's ranking. Although it looks as if it implies that interpersonal comparisons of utility are being carried out, this generalized scoring function is just a way to count consistently one person's ranking (and thus his estimates of pleasure to be expected from the outcomes) for exactly as much as another's. There is no attempt to justify the function in terms of interpersonal comparisons of actual pleasures or satisfactions. Rather, the scoring rule is merely a tool for implementing the classical utilitarian norm that prescribes giving equal positive weight to equal amounts of pleasure of the same kind, where only purely ordinal information about pleasure is available, and it is supposed that any two persons' pleasures are equal in degree if the pleasures are expected to come from outcomes that occupy the same relative positions in the two persons' rankings of the outcomes. On this view, the utilitarian norm itself is the expression of a moral attitude that individuals ought to be treated in this strongly impartial fashion to arrive at collective decisions, independently of any claim to be able to measure cardinally or compare the individuals' actual pleasant feelings.⁴⁰

As I read him, then, Mill supposes that the only available utility information is contained in suitably competent, yet fallible individuals' estimates of the various kinds and amounts of pleasant feelings to be expected with respect to any given domain of possible outcomes. The estimates are embodied in individual preference orderings defined over the relevant domain. There are plural kinds of preferences, keeping in mind that the different kinds of pleasant feelings have different sources which may be treated as different aspects of the feasible outcomes. A suitably competent person has a set of $k + 1$ separate preference rankings, as follows: k rankings defined respectively over the k different aspects of the outcomes, one ranking for each of the k kinds of pleasant feelings and each ranking reflecting his estimates of the quantities of the relevant kind of pleasant feeling which he expects from the aspect that is its source, $k > 1$; and a lexical ranking of the k preference rankings which reflects his judgment of the different qualities of the k kinds of pleasant feelings irrespective of quantity. An individual will not form a complete set of these $k + 1$ preferences, however, unless he has developed

the intellectual, moral, and aesthetic capacities required competently to experience the higher pleasures.

Mill's utilitarianism in effect boils down to the judgments of quality and quantity of pleasure made by suitably competent, yet fallible people. Given their broad agreement that the kind of gratification associated with the moral sentiments is qualitatively superior to any conflicting kinds of gratifications, majorities of these suitably competent people will recognize that a democratic voting process should only be employed to generate collective judgments about how to maximize this moral kind of gratification. In the sequel, I shall give some textual support for my claim that Mill views this moral kind of pleasure as a complex feeling of security that reflects a warranted belief that vital personal concerns shared by individuals are recognized and protected by society. Collective judgments are needed to determine a social code of moral rules which (as far as competent, yet fallible people can estimate) is very likely to be an optimal code that maximizes the sum total of this moral kind of pleasant feeling, provided there is general compliance with the rules. Rules that impartially distribute and sanction equal rights and duties are the sole source of the moral feeling of security, so competent individuals seeking to experience security in this sense must propose and choose among alternative codes of rights and duties and sanctions to enforce them.

It deserves emphasis that, according to Mill's utilitarianism, an individual ought to be free from coercive interference to pursue in his own way all other kinds of pleasures besides security, as long as he fulfills his duties distributed by the moral rules established by suitably competent majorities. Competent majorities recognize that there is no call for a voting procedure to arrive at collective judgments with respect to the other kinds of pleasures. Rather, the individual is given capacious freedom to live his own life as he sees fit, in accord with his moral rights.

Keeping all this in mind, we can begin to appreciate how Mill conceives of a utilitarian doctrine that ultimately aims to maximize happiness both in point of quantity and quality. Because the qualitative superiority of the moral kind of pleasure over competing kinds of gratifications means that the optimal moral code selected by competent, yet fallible majorities takes absolute priority over conflicting considerations, there is no fundamental conflict between personal happiness and the happiness of all. Instead, the ultimate aim is an outcome in which each and every individual who is competently acquainted with the different kinds of pleasures simultaneously maximizes his *personal* happiness in point of quantity and quality. As Mill puts it, 'the ultimate end, with reference to and for the sake of which all other things are desirable (*whether we are considering our own good or that of other people*), is an existence exempt as far as possible from pain, and as rich as possible in enjoyments, both in point of quantity and quality'.⁴¹

4. Justice as maximization of security

If Mill's utilitarian art of life is an extraordinary maximizing utilitarianism that allows for different kinds of utilities of intrinsically different qualities, then the art of morality, whose central core is justice, is best understood as the art of maximizing the higher kind of utility associated with the moral sentiments, epitomized by the moral sentiment of justice. This higher pleasure of justice, he says, is an enjoyable feeling of 'security' that can only be maximized under an effective and enduring social code that distributes and sanctions particular equal rights and duties for all.⁴² The rights and duties which are distributed and enforced by society are the source of the individual's moral feeling of security:

When we call anything a person's right, we mean that he has a valid claim on society to *protect* him in the possession of it, either by the force of law, or by that of education and opinion. If he has what we consider a sufficient claim, on whatever account, to have something guaranteed to him by society, we say that he has a right to it.⁴³

After making clear that everyone feels the immense importance of enjoying security from grievous injuries at the hands of others because 'on it we depend for all our immunity from evil, and for the whole value of all and every good, beyond the passing moment', he goes on to say that this 'extraordinarily important and impressive kind of utility . . . cannot be had, unless the machinery for providing it is kept unintermittedly in active play'.⁴⁴

For convenience, let us assume that an optimal social code of morality is wholly a legal code enacted and enforced by the official 'machinery' of the state. This is not an essential assumption – some moral rules, including rules of justice, cannot be expediently enforced as legal rules, and legal rules have purposes other than the enforcement of morality. But it allows us to simplify things in order to concentrate on core aspects of security maximization that remain central even when the assumption that moral rules are always established as laws is relaxed. For instance, it allows us to conceive of the democratic voting procedure as a formal political process which aims to construct a legal code of justice. Social sanctions can also be identified with legal sanctions.

Given the simplifying assumption, we can say that the 'machinery for providing [security]' is essentially the official political machinery which is 'kept unintermittedly in active play' to enact, interpret, and enforce the law. A legal code of justice must be constructed, modified, and enforced over time through the cooperative efforts of various public officials. Moreover, officials and private individuals alike must be taught the importance of the rule of law and constantly reminded of their legal rights and duties. This continuous active play of the machinery for providing the pleasant feeling of security works to heighten the intensity of the feeling for anyone who accepts the legal and moral code, so much so that the feeling comes to be felt as a distinctive kind of utility, qualitatively superior to competing kinds:

Our notion, therefore, of the claim we have on our fellow creatures to join in making safe for us the very groundwork of our existence, gathers feelings round it so much more intense than those concerned in any of the more common cases of utility, that the difference of degree (as is often the case in psychology) becomes a real difference in kind. The claim assumes that *character of absoluteness, that apparent infinity, and incommensurability with all other considerations*, which constitute the distinction between the feeling of right and wrong and that of ordinary expediency and in expediency.⁴⁵

Given that the security afforded by a legal and moral code of recognized equal rights and duties is infinitely more valuable than any competing enjoyments, this social code of justice takes absolute priority over any competing considerations of expediency. An individual's equal rights can never be legitimately overridden without his consent to promote other people's happiness because even a bit of the higher pleasure of security (no matter who feels it) is intrinsically more valuable than any finite amount of lower pleasures (no matter how many different persons are assumed to experience them).⁴⁶

The qualitative superiority of the pleasure of justice over competing kinds of pleasures implies that any suitably competent person gives absolute priority to considerations of justice over competing considerations in order to maximize his own happiness both in point of quality and quantity. Any such individual will voluntarily give such priority to justice in his interactions with like individuals, because they can be trusted to reciprocate. Moreover, his maximization of his own happiness is logically compatible with his fellows' maximization of their personal happiness, and thus with maximization of the general happiness, regarded as nothing but the simultaneous maximization of everyone's personal happiness. His own moral feeling of security is maximized if and only if everyone else's is also maximized because the moral feeling implies that *equal rights must be distributed to all*. Codes that distribute equal rights and duties are the sole source of the higher pleasure of security associated with the moral sentiment of justice. No competing kinds of enjoyments should ever override this enjoyable feeling of security according to most people competently acquainted with the different kinds. Thus, a competent individual's own happiness necessarily coheres with like individuals' personal happiness to the extent of their equal rights. Neither personal utility nor general utility can be promoted by violating rights.

Even to form a moral sentiment of justice, an individual must be able to identify the particular social rules of justice with which to comply. Until he knows the particular code which ought to be accepted, he cannot know the particular equal rights and duties which ought to be recognized by everyone within his community as belonging to him and anyone else in like circumstances. But to establish rights and duties that are publicly endorsed by his society in its laws and conventions, the individual must participate with his fellows in a political process, given that an ideal observer is not available to determine the best moral and legal code. An open process of free discussion and debate is essential for fallible beings to assess

proposals and converge on an optimal social code, that is, a code that impartially distributes those particular equal rights and duties which, at least so far as competent, yet fallible people can tell, maximize the feeling of security enjoyed by anyone and everyone who possesses them. In short, the individual's sentiment of justice presupposes a voting procedure to select an optimal code upon which any fair-minded individual must rely to guide his interactions with his fellows.

A considerable virtue of my interpretation is that it allows us to see why, for Mill, any suitably competent agent who seeks to maximize his own happiness is motivated to become a utilitarian along Mill's lines: justice demands it, and the pleasure of justice is infinitely more valuable than any competing kinds of pleasures. It should be noted that the moral feeling of security includes the gratification which is felt by a just person at the due punishment of wrongdoers. Thus, the fair-minded person desires duly to punish wrongdoing even if delivering the punishment has a negative impact on his own selfish material interests. He will choose to incur considerable costs of delivering the punishment, even though he has no reasonable expectation of recovering the costs, because even a bit of the moral pleasure of security trumps the lower kinds of pleasures which he might gain from allowing the wrong to go unpunished. He will pay his fair share of taxes to support the social system of justice, for example, and take steps to make sure that people who fail to fulfill their duties to punish wrongdoers are duly punished themselves.⁴⁷

Given that the pleasure of justice is infinitely more valuable than any competing enjoyments, it follows that an individual can never reasonably be *forced* to give up his own recognized equal rights. He can reasonably refuse to waive his rights despite others' appeals that their happiness depends on his waiver. The moral feeling of security requires that equal rights are distributed and sanctioned, so nobody can have a moral claim that others must sacrifice their recognized rights to promote his own happiness.⁴⁸ Every fair-minded individual can reasonably consider his feeling of security as a permanent kind of pleasure that can *always* be fully enjoyed in harmony with the similar feelings of security enjoyed by his fellows in possession of their recognized equal rights and duties. There is no moral duty to sacrifice even a bit of one's security to promote others' enjoyments, and nobody is ever deserving of punishment for his failure to do so.

Despite the high quality of the pleasant feeling of security enjoyed by any individual who is competently acquainted with this kind of utility so that he endorses the particular equal rights and duties which are the source of it in his community, this moral kind of pleasure is not necessarily the highest kind of pleasure. Some aesthetic feelings that can never conflict with morality may be of even higher quality as pleasure. A noble individual in pursuit of these aesthetic pleasures may reasonably choose to waive his own rights so as to perform beautiful supererogatory actions that provide great benefits for others, for example, even though by waiving his rights he sacrifices his own vital interests and perhaps even his life. Nevertheless, the noble person remains fallible and so cannot legitimately

presume to decide this issue for others. In other words, he cannot insist on his own infallibility by claiming that waiver of rights is the only reasonable course of action for every person who finds himself in circumstances like his.⁴⁹ He does not maintain, therefore, that others (even other moral agents) must also choose to waive their rights or that society can legitimately compel such a waiver by threatening to punish those who fail to do so. Rather, he recognizes that others may reasonably refuse to waive their rights because (unlike noble or saintly people like him) they consider moral feelings of security as the highest kind of pleasure for themselves.

It remains the case that the moral pleasure of security *always* trumps any other kinds of pleasant feelings that can possibly come into conflict with it. Even a bit of the moral pleasure is intrinsically more valuable than any finite amount of a competing kind of enjoyment. The noble agent who goes beyond the call of duty to help others does not deny this. True, he may waive his own rights so as to enjoy what he considers a qualitatively supreme aesthetic kind of pleasure, but he does not force others to sacrifice their rights. His pursuit of aesthetic pleasure is consistent with his fulfillment of his recognized moral duties to others. There is no conflict between the aesthetic pleasure, which he but not the majority believes is qualitatively supreme, and the moral pleasure of security, which is inseparable from equal rights and duties for all, because he chooses to waive his own rights.⁵⁰

If the Millian art of morality has the ultimate goal of maximizing security as a higher kind of utility, then it becomes easier, perhaps, to see why Mill says that the fundamental principle of morality, namely, the 'highest abstract standard of social and distributive justice', is a 'direct emanation' from the utilitarian maximizing criterion, and is 'involved in the very meaning' of the complex 'first principle' of utility as he conceives it.⁵¹ According to the highest abstract standard of justice, individuals and institutions have a 'great moral duty . . . to do to each according to his deserts, returning good for good as well as repressing evil by evil . . . all institutions, and the efforts of all virtuous citizens, should be made *in the utmost possible degree* to converge [toward this abstract standard]'.⁵² In other words, to promote security for everyone's vital concerns as much as possible, society must establish and duly enforce an optimal code of equal rights and obligations. By doing so, society 'treat[s] all equally well who have deserved equally well of it' because they have satisfied their recognized moral obligations. Moreover, any individual treats all equally well who have deserved equally well of him, if he respects the rights of others who respect his rights distributed by the code. But society must also treat all equally badly who have deserved equal evil from it because they have violated their recognized moral duties. Any individual fails to treat others equally well who have deserved equally well of him if he violates their rights when they have respected his. Such an individual does wrong, that is, he inflicts the kind of harm on others which society has recognized, in its assignment of equal rights and duties, as the kind that injures any person's vital

concerns, and is deserving of some form of punishment. Thus, to enforce equal rights and promote security, society must reciprocate the wrongdoer's evil, by inflicting punishment on him with the aim of condemning and deterring repetitions of the wrongdoing by him or others.

Contrary to what Brown says, Mill leaves no doubt that the principle of utility, 'considered as the *directive rule of human conduct*', is also the 'first principle of morals' that ultimately determines right and wrong conduct.⁵³ Given that there are different kinds of utility of different intrinsic qualities, the principle of utility is a multidimensional principle. The highest abstract standard of justice is the component of the principle of utility which ultimately directs humans to maximize security, the higher kind of utility associated with the moral sentiment of justice, a kind of utility that is intrinsically more valuable *as utility* than any competing kinds of utility. According to this abstract standard of justice, the suitably competent, yet fallible majority ought to construct (no doubt in a gradual and piecemeal fashion) a social code that impartially distributes and sanctions the particular equal rights and duties which, upon reflection, are believed to maximize the pleasant feeling of security for all in the given civil society. Fair-minded individuals can then look to these recognized rights and duties for direction as to how to perform right acts and omissions and avoid wrong ones. In short, morality is the art of maximizing security. As Mill says, 'morality . . . may accordingly be defined [as] the rules and precepts for human conduct, by the observance of which an existence such as has been described [that is, a happy existence in terms of both quantity and quality of pleasure, including freedom from pain] might be, *to the greatest extent possible, secured* to all mankind; and not to them only, but, so far as the nature of things admits, to the whole sentient creation'.⁵⁴

5. Identifying moral wrongs

In light of my interpretation of Mill's philosophy as an extraordinary maximizing utilitarianism, I shall also attempt to clarify some important differences between Brown's interpretation and my own of Mill's criterion of moral wrongness. There is little doubt that, for Mill, the test of wrong conduct is that the act or omission in question is judged to be deserving of punishment for the kind of harm that it causes to others without their consent. As he says, 'We do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law, by the opinion of his fellow creatures; if not by opinion, by the reproaches of his own conscience.'⁵⁵ If we call conduct wrong, then we imply that the individual has a moral duty to refrain from the conduct. We say that he has a duty to do something if and only if we think that he 'may rightfully be compelled' to do it: 'Duty is a thing which may be *exacted* from a person, as one exacts a debt. Unless we think that it might be exacted from him, we do not call it his duty.'⁵⁶ A person who fails to fulfill his duty performs a wrong act or omission, and thus ought to be punished in some way. Moreover,

society legitimately takes steps to force people to fulfill their duties if they would otherwise fail to do so. These steps include forcing people in youth to participate in a system of moral education designed to encourage the individual to develop a powerful wish to do right.

Brown recasts Mill's statement of the test of wrong conduct by introducing the distinction between *pro tanto* deservingness and all-things-considered expediency of punishment understood as coercion. As Brown states it, conduct is wrong even if it should not be punished all things considered: 'conduct is, all things considered, morally wrong *if* it is significantly harmful to others without their consent and it deserves to be punished, that is, ought *pro tanto* to be punished'.⁵⁷ This permits Brown to escape from the implausible claim that coercion should always be employed to prevent wrong conduct. But the move creates confusion, I think, and is unnecessary once we appreciate that, for Mill, punishment is not the same thing as coercion. Before discussing this further, however, I shall say a bit more about how moral wrongs are identified in Mill's utilitarian philosophy. How can an individual identify the particular acts and omissions which he has a duty to refrain from doing because they cause the kind of harm to others that is deserving of punishment? As should already be clear, Brown and I offer very different answers.

Recall that, according to Brown, the Millian art of morality relies on independent common-sense principles of non-maleficence and fairness to identify which kinds of disutilities deserve to be punished: 'the appropriateness of punishment . . . derives from the principles of societal self-defence, in which the central notion is the fairness of attaching a given penalty to a given kind of harm'.⁵⁸ Punishment is understood in terms of external sanctions that amount to coercive interference of one form or another. Thus, harms that 'common-sense morality' classifies as unfair, or unjust, deserve to be coercively interfered with, even if coercion is not actually implemented because it turns out to be inexpedient in the relevant situations, all things considered. Brown admits that such reliance on common-sense norms of justice to identify which kinds of disutilities are deserving of sanctions cannot be squared with maximizing utilitarianism: 'a maximizing-consequentialist moral requirement is not relevant'.⁵⁹ But he argues that the reliance, which he refers to as 'common-sense dealing in utilities', is compatible with philosophical utilitarianism as he understands it:

common-sense dealing in utilities . . . holds that utilities are what count; that the main things are to avoid doing harm and to prevent or relieve harm; that we need rules which protect anyone in the situations concerned; that everyone's utilities are equally important; and that we are all in this together . . . what determines the point of entry for the calculation of utilities is the appropriateness of coercion, as a matter of deciding the deserving or not deserving of sanctions . . . In practice, then, Mill is found relying on the structure of the [common-sense] art of morality, which includes the art of justice, to derive moral requirements from considerations of utility.⁶⁰

I have already made my case that Mill cannot properly be interpreted as a philosophical utilitarian in the weak sense apparently favored by Brown, Skorupski, and others (Section 2). I shall now underline how the kinds of disutilities deserving of punishment are determined within Mill's extraordinary maximizing utilitarianism as outlined (Sections 3–4).

As indicated earlier (Section 4), an individual seeking to be fair in his interactions with others requires a particular social code of justice to learn which particular equal rights and duties (of the many possible) are operative within his society. In other words, any individual who desires to do right cannot complete the formation of his own moral sentiment of justice until society has employed a voting procedure to determine the social code that distributes the particular rights and duties which he ought to recognize as belonging equally to him and others. Given that Mill's art of morality seeks to maximize collective security as a higher kind of utility, the individual's fully formed sentiment of justice presupposes a purely ordinal utilitarian calculus (a majority voting procedure including a scoring rule to give equal positive weight to every voter's preference ranking defined over alternative possible codes of equal rights and duties, the sole source of security) to select an optimal social code of justice. An individual cannot know how he should act to maximize the pleasure of security (or minimize the pain of insecurity) in any given social situation, until suitably competent, yet fallible majorities have judged that this rather than that social code of justice is most likely to maximize the moral kind of gratification.

It follows that the kinds of harms identified as wrongs deserving of punishment are violations of the recognized rights and duties distributed by the optimal code, which is selected by the majority of people competently acquainted with security as a higher kind of utility. These competent people have the intellectual, moral, and practical capacities required to give at least a rough estimate of how much security is likely to be associated with any proposed code of equal rights and duties. Each forms a personal preference ranking that ranks alternative possible codes from best to worst in terms of the amounts of security to be expected from them. If these individuals disagree, then the majority's judgment must be final. But the only information that counts is the ordinal information about the pleasure of security that is embodied in the individual preference rankings. Moreover, equal amounts of security count equally in the sense that the individual preferences containing the estimates of security are given equal positive weight in the voting process. There is no reliance on independent common-sense norms of fairness or justice that give different weights to equal amounts of security.

An optimal social code of justice selected by a suitably competent majority distributes and sanctions the particular rights and duties which, in the majority's judgment, provide the best protection for what the majority considers the vital personal concerns shared by the members of the community. The majority's judgment is very likely to result in a code that maximizes the sum total of the moral gratification of security actually enjoyed by the equal right-holders, although it is

not claimed that we can precisely measure and add up the amounts of this moral feeling experienced in fact by the different individuals. It is possible that different individuals do experience different amounts of the feeling of security from the same rights, but we do not claim to possess the rich utility information needed to decide one way or the other.

Anybody who violates another's recognized equal right, as distributed by the optimal code, does something that causes the kind of harm to others which is considered by the competent majority to be wrong and deserving of punishment. The wrongdoer has failed to fulfill his duty correlative to the other's right, and thus has behaved unjustly. But it must not be thought that Mill is committed to a negative moral theory that seeks merely to prevent individuals from inflicting wrongful physical and economic injuries on others without their consent. Rather, justice requires respect for equal rights, and these rights may include positive rights of assistance from others who have correlative duties to provide the assistance. Mill defends an equal right to poor relief or subsistence funded by the general taxpayer, for instance, although he also believes that those receiving support should work for it if able to do so, and that anyone receiving support should not be entrusted with the franchise. In any case, security from starvation or abject poverty is certainly something that a majority of suitably competent people can be expected to recognize as a vital personal interest that ought to be guaranteed by society, at least in societies where a threshold level of collective wealth has been achieved.

Other kinds of harms are judged morally and legally permissible by the suitably competent majority, because such harms are not violations of any recognized rights or duties and thus pose no credible threat to security. For instance, the harm of losing a fair competition for some scarce job is a kind of harm that competent majorities do not consider wrong, and thus do not assign duties to prevent. In other words, competent people agree that a right against this kind of suffering is not needed to promote security for our vital concerns: 'society admits no right, either legal or moral, in the disappointed competitors, to immunity from this kind of suffering; and feels called on to interfere, only when means of success have been employed which it is contrary to the general interest to permit – namely, fraud or treachery, and force'.⁶¹ Instead, such competitive behavior is morally permissible, and ought to be encouraged to the extent that it is reasonably expected to bring collective benefits that outweigh harms of the kind suffered by the losing competitors.

No doubt further clarification is required of many aspects of an optimal social code of morality. I cannot provide such detailed clarification here. But I remind the reader that I have focused on justice as the most important part of morality, and ignored entirely Mill's discussion of the so-called imperfect moral duties of charity and beneficence, which he says are not expediently enforced as legal duties.⁶² Moreover, it requires emphasis that even if attention is restricted to justice, the rules of an optimal moral code are not all expediently enacted and

enforced as laws. For ease of exposition, I have assumed that an optimal code of justice is wholly a legal code, duly enacted in accord with a majoritarian political procedure and expediently enforced by state officials. But the assumption needs to be relaxed in a more nuanced discussion, where it is recognized that some rules of justice are expediently enforced as laws, others as social customs instead of laws, and still others merely as shared dictates of conscience.⁶³

In this regard, we can imagine that, in some civil societies, an optimal code of justice might consist not of laws, but of customary rules, perhaps tabulated to facilitate cooperation, but expediently enforced by public stigma rather than by the state. In that case, the rules of justice would be implicit in the customs and habits of suitably competent majorities, and wrongdoers would be punished by organized displays of public contempt, including protest rallies, marches, demonstrations, and boycotts, for their violations of rights and duties regarded as customary by the majority. The majority voting procedure can then be seen as an evolutionary social process of custom formation in which competent majorities develop similar habits and standards of moral behaviour to imitate each other's conduct, and thereby implicitly reveal as customary the same preference ranking defined over alternative possible codes of rights and duties. Majorities in effect vote for the same code of customary rules as optimal because they converge on the same customary preference ranking.

Indeed, an optimal code of justice might conceivably consist merely of shared dictates of conscience, expediently enforced by feelings of guilt alone. Wrongdoers would then be punished solely by their own guilt for their violations of any rights and duties distributed by the code. This reliance on the reproaches of conscience alone to enforce morality would obviously be inexpedient in many social contexts, including our own, where significant numbers of people have failed to develop a sufficiently powerful desire to do right to be able to rely on it to condemn and effectively deter their own wrongdoing. But in ideal societies, where virtually everyone is a highly developed moral agent with a powerful desire to act so as to maximize the moral pleasure of security, it may well be enough to establish an optimal code of shared dictates of conscience, expediently enforced solely by self-inflicted feelings of guilt. Such highly developed individuals can trust each other to respect the reciprocal rights and duties distributed by the code, once the code has been established in the sense of being learned by the members of the community. The majority voting process can then be viewed as an ongoing social process of moral education in which virtually everyone learns in childhood to form the same powerful preference ranking over alternative codes of rights and duties, so that they, as adults, willingly comply with an optimal code to avoid the intense feelings of guilt that would otherwise beset them for violating the rights and duties distributed by the code.

An optimal social code is optimal, then, because of the content of the particular equal rights and duties that it distributes to all for the ultimate purpose of maximizing security. These equal rights and duties are selected by a suitably compe-

tent majority of individuals, each of whom may only be motivated to identify the particular rights that he estimates will give himself the greatest amount of the feeling of security for the vital personal interests shared by all. The individual need not be motivated by any independent notion of collective security. As a happy by-product of the majority voting process, however, the equal rights and duties selected by the competent majority are highly likely actually to give each person the greatest amount of security for his vital concerns. The voting procedure gives a maximum likelihood estimate of the genuine security-maximizing code, assuming that competent voters are more likely to be correct than incorrect in their personal estimates of how much security to expect from any possible code, and that they form their estimates independently.

The social code's optimality as a means to security does not depend on whether it is established as a legal code, a customary code, or a code of conscience internalized and shared by most members of society. Apart from its optimality as an instrument of justice, however, the question arises as to the most expedient ways in which to enforce the code against those who are unwilling to comply with its rules. Should the rules be enforced as laws backed by legal penalties, as customs backed by public stigma, as dictates of conscience backed by self-inflicted guilt, or as some blend of these? This question of the most effective methods of enforcement only arises because feelings of guilt alone cannot reasonably be relied upon to deter wrongdoing, except in ideal societies composed almost entirely of enlightened and virtuous individuals. The question is properly distinct from the question of which particular code of equal rights and duties is optimal as an instrument of justice assuming that everyone possesses a desire to do right sufficiently powerful to override all competing desires and thus compel him to comply with the rules. A competent majority can decide which particular rights and duties are best for maximizing security in their society, and then consider the best ways to ensure that people who are inclined to break the rules will, nevertheless, perform their duties.

6. Guilt as a form of punishment

When asserting that 'we do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it', Mill says that the ways in which a person can be punished include 'the reproaches of his own conscience'.⁶⁴ He never says otherwise, as far as I am aware, and seems to take for granted that self-blame is a form of punishment.⁶⁵ Moreover, it does not appear to be an abuse of ordinary language to say that feelings of guilt are a way of inflicting punishment or, what is the same thing, delivering blame.⁶⁶

Nevertheless, Brown refuses to accept that Mill means what he says. Instead, Brown argues that guilty feelings are not a genuine form of punishment. A guilty conscience indicates an offender's acknowledgment of wrongdoing and his recognition that he deserves punishment. But guilt per se is not punishment

and so its appropriateness is not part of the test of immorality: 'It . . . is not the case, that the appropriateness of guilt feelings in particular was in [Mill's] view part of what made actions wrong . . . Listing the reproach of conscience along with law and opinion is rhetorically effective, but misleading as to the criterion of wrongness.'⁶⁷ Genuine punishment is some form of coercive interference, Brown insists, such as legal imprisonment or a public display of humiliation. To avoid incurring external sanctions of this sort, an individual is forced to refrain from doing wrong in the eyes of others. The sanctions are described as external because they are deliberately inflicted on an offender *by others* with society's authorization or permission. If a wrongdoer only suffers internal sanctions of guilt instead of external sanctions, Brown implies, then he gets away with his wrongdoing scot free, without suffering any genuine punishment. Thus, if Mill were to say that wrongdoing should only be punished by a guilty conscience in some situations, then, according to Brown's understanding, Mill would be saying that the wrongdoing does not deserve to be punished at all. But Mill would then be contradicting himself, given that his criterion of wrongness is that wrongdoing deserves to be punished.

But Brown's reading creates unnecessary difficulties for Mill. An important implication of Brown's view of punishment as necessarily coercive is that immoral conduct may sometimes expediently escape genuine punishment, even though punishment is deserved. Given that punishment implies coercive interference, and that coercive measures against wrongdoing are not always expedient, it is sometimes expedient to let wrongdoing go unpunished, all things considered. Thus, Brown argues that 'It is unnecessary to attribute to Mill the view that expediency of punishment is a necessary condition of moral wrongness.'⁶⁸

Unlike Brown, I accept at face value Mill's statements that the reproaches of conscience are a form of punishment. I maintain that if wrongdoing deserves to be punished in some way, as Mill's criterion says, then *some* way of punishing wrong conduct must be expedient. If punishment is deserved, then punishment is required by justice to promote collective security. But *which* particular ways of inflicting punishment are expedient in a given situation is properly a separate question. Thus, I reject Brown's distinction between the deservingness of punishment and the expediency of inflicting it, because his distinction suggests that immoral conduct might expediently go unpunished, all things considered. My reading accommodates the insight that coercive ways of inflicting punishment, including legal sanctions, may not be expedient in some situations, whereas non-coercive ways of inflicting it, including spontaneous reproaches of conscience as well as guilty feelings triggered by others' persuasive arguments, may remain expedient in those situations. But it can never be expedient to exempt immoral conduct from punishment, because punishment of wrongdoing is required to promote the moral feeling of security. Of course, it may turn out that, despite society's best efforts, wrongdoing sometimes goes unpunished, but this in itself is wrong and inexpedient.

It is not entirely clear why Brown is so concerned to reject Mill's view that guilty feelings are a way of inflicting punishment. Brown seems especially bothered by the suggestion that 'the reproaches of conscience' are 'the centrally relevant form of punishment', so that 'blame, even merely self-blame' is 'the universally appropriate medium, the expediency of which must be shown against all odds to be implied by moral wrongness'.⁶⁹ But we must be careful here. Against Brown, I want to claim that, for Mill, punishment *means* blame for wrongdoing.

7. Punishment as blame

Mill implies that punishment consists of what I shall call 'artificial penalties'. Such penalties do not flow naturally or spontaneously from other people's dislike of the penalized person's conduct and character. If we confine attention to legal penalties, for instance, society's legislative representatives, or at least a majority of them, have decided that anyone who breaks its laws deserves to suffer the relevant penalty, whether or not anyone dislikes the law-breaker's conduct and character in the relevant situation. The penalty is of a kind that is inseparable from the majority's claim that its infliction is justified against wrongdoing. It is artificial in the sense that it has been deliberately constructed by the suitably competent majority for social purposes which the majority deems worthy or right, namely, to deter people from conduct that breaks the law, to retaliate against anyone who violates his legal duties, and to express society's disapproval of such violations and of the character of anyone who voluntarily engages in them.

In contrast, what Mill calls 'natural' penalties are 'strictly inseparable from the unfavourable judgement of others'.⁷⁰ Natural penalties are already implicit in another person's dislike of the penalized person's character and conduct. Such penalties are inseparable, therefore, from our moral right to choose as we like, including to avoid what we dislike, in self-regarding matters: 'We have a right . . . to act upon our unfavourable opinion of any one, not to the oppression of his individuality, but in the exercise of ours.'⁷¹ We have a right to avoid anyone's company if we are displeased by his self-regarding conduct or disposition, for instance, and we have a right to warn others of what we consider his self-regarding faults, as well as a right to give some breaks and favors to others rather than to him. 'In these various modes a person may suffer very severe penalties at the hands of others, for faults which directly concern only himself; but he suffers these penalties only in so far as they are the natural, and, as it were, the spontaneous consequences of the faults themselves, not because they are purposefully inflicted on him for the sake of punishment.'⁷²

The individual may suffer 'natural' penalties, yet this kind of penalty is not punishment. Nor is such a penalty coercive. Natural penalties are spontaneous by-products of an individual's purely self-regarding conduct. They do not force him to desist from the conduct that displeases others – he remains free to choose, and he may not be persuaded to change his self-regarding ways by others' dislike,

avoidance, and so forth. Nor do natural penalties express society's disapproval of his conduct. Indeed, competent majorities choose an optimal code of justice that distributes and sanctions an equal right of any mature individual to do as he pleases within his self-regarding sphere.

It is instructive that Mill says that there are natural penalties which are neither punitive nor coercive. He leaves open the possibility that some kinds of artificial penalties resemble natural penalties in these respects. Artificial penalties are not necessarily coercive, for instance, because guilty feelings are a way of inflicting the kind of artificial penalty that constitutes punishment. Moreover, artificial penalties may be coercive without necessarily being punitive because society may construct them for purposes other than punishment, as when competent majorities decide to force sick people into quarantine to prevent the spread of disease, for example, or to force people who wish to park their vehicles downtown to pay hourly parking fees. If this is correct, what more can we say about Mill's idea of punishment?

Mill's idea, I submit, is that punishment is a type of artificial penalty which is inflicted on an individual, possibly by himself, to condemn and deter conduct that is considered wrongful by competent majorities because of the kind of harm it causes to others. Punishment confirms and expresses society's condemnation of the conduct as immoral. Such wrongful conduct violates duties which have been recognized as duties to others by society, that is, by majorities competent to construct an optimal code of justice.

In short, punishment is blame for wrongdoing. It presupposes that society has already determined which particular conduct is to be considered wrongful, namely, acts and omissions that violate duties which competent majorities have decided ought to be distributed and sanctioned for the ultimate purpose of maximizing collective security. If conduct is deserving of punishment, then that means the conduct is deserving of blame by the agent and by others for the insecurity it causes. If blame is deserved, then justice dictates that blame must be delivered in some way or other. This implies that *some* way of inflicting the blame is expedient, because 'objectively the dictates of justice coincide with a part of the field of General Expediency', a moral part overseen by a peculiar moral sentiment that feels far more demanding than feelings of simple expediency.⁷³ But *which* particular ways of inflicting blame are expedient in any given situation is properly a separate question.

There are different ways of delivering blame or punishment, some coercive, some not. Self-blame is always expedient where it is feasible, for instance, yet it cannot be expected to operate in people who lack a sufficiently powerful conscience to deter their wrongdoing. Society may attempt to force these people to accept that they are blameworthy, by delivering their punishment through coercive external sanctions such as legal penalties and organized displays of public humiliation. But external sanctions are not expedient for this purpose in all cases.

Society clearly ought to encourage people to develop a powerful conscience so that blame for wrongdoing is efficiently delivered to offenders. Self-blame is an expedient way to inflict punishment if the individual develops a firm conscience. In that case, the agent's strong desire to do right *compels* him internally to obey the rules of the optimal social code, by threatening duly to punish him for violating his duties to others. It is as if an impartial spectator has been implanted within him by society to monitor his conduct and threaten him with guilt for doing wrong. There is then no need for external sanctions, which are relatively costly and unwieldy implements, to deter his wrongdoing. The conscientious agent might sometimes desire to break the rules and violate another's rights, but any such passing desire is overwhelmed by his more powerful desire to do right, whose frustration promises to bring him the misery of self-loathing and guilty feelings. Thus, from society's perspective, the internal sanctions of conscience promise to be an expedient form of punishment on all occasions, *if* a powerful conscience can be instilled.

The development of a strong conscience in as many people as possible is also expedient for the delivery of blame through coercive legal penalties or public stigma. An individual's desire to do right is what motivates him to blame others for violating *their* duties to third parties. A narrowly selfish agent might resent and desire to punish those who harm himself or his close associates, but such an egoist is not concerned to punish those who do wrong to strangers. In contrast, a moral agent with a powerful desire to do right displays an intense concern for others considered impartially. Unless enough people develop such a strong conscience, then, we cannot reasonably expect the effective infliction of punishment on wrongdoers by means of external sanctions.⁷⁴

For these reasons, it is desirable for society to encourage individuals to develop a powerful conscience. Among other things, parents and state authorities can legitimately use coercion to force children to undergo a suitable process of moral education that aims to transmit knowledge of the particular rights and duties which are or ought to be recognized by competent majorities in their society. Even so, such an expedient education policy may fail to work as intended to a significant extent. Many individuals may arrive at adulthood lacking a conscience sufficiently powerful on its own to deter them from wrongdoing. In addition to forcing children to undergo suitable schooling and testing, therefore, society legitimately employs external sanctions to prevent people from wrongdoing, whenever external sanctions can be expediently applied. And yet, external sanctions are not always expedient to condemn and deter violations of recognized rights and duties. As Mill says, there are 'often good reasons' for not employing external sanctions against an offender 'either because it is a kind of case in which he is on the whole likely to act better, when left to his own discretion, than when controlled in any way in which society have it in their power to control him; or because the attempt to exercise control would produce other evils, greater than those which it would prevent'.⁷⁵ In such cases, society expediently relies on the

agent's reproaches of conscience alone to deter wrongdoing: 'When such reasons as these preclude the enforcement of responsibility, the conscience of the agent himself should step into the vacant judgement-seat, and protect those interests of others which have no external protection; judging himself all the more rigidly, because the case does not admit of his being made accountable to the judgement of his fellow creatures.'⁷⁶

In some situations, then, individuals are expediently left free to make morally wrong choices without any threat of coercive interference from others. The individual who lacks a strong conscience can violate his duties to others and yet escape all forms of punishment, including guilt, in such situations. But the expediency of this freedom from coercion does not imply that it is expedient or right for the individual to lack a conscience or to escape from punishment for his wrongdoing. On the contrary, he ought to have a strong desire to do right, and he ought always to experience blame for his wrongdoing. He deserves to be blamed, even if society sometimes has no expedient way of forcing him to accept blame and he refuses to blame himself. It can never be expedient to exempt wrongful conduct from punishment because justice requires the punishment of wrongdoing for the promotion of the moral pleasure of security, and justice is a branch of general expediency. But society's inability to rectify expediently the individual's failures of conscience in some cases shows that perfect security and expediency cannot reasonably be expected outside a utopia in which failures of conscience do not exist.

It would be ideal if society could rely solely on the reproaches of conscience to condemn and deter every action deserving of punishment. This would be possible if and only if every individual developed a conscience sufficiently powerful to monitor and guide his own behavior in accord with the optimal social code. In that ideal case, costly and unwieldy external sanctions could be dispensed with altogether. By contrast, in the present stage of social advancement, many individuals do not acquire a sufficiently intense desire to do right. Moreover, to the extent that most people do develop a conscience, however weak, this is largely due to the visible operation of external sanctions against wrongdoing. The individual is spurred to develop a wish to do right because he repeatedly sees that wrongdoers are imprisoned, fined, and stigmatized for their violations of others' rights. He fears that others will inflict the same forms of punishment on him if he also breaks the rules.

It may well be true, as Mill apparently believes, that the desire to do right has only evolved in humans because of the experience of living in a civil society under the rule of law.⁷⁷ If so, an individual's conscience is not innate, but instead has only been generated by the visible working of external sanctions. Mill does seem to subscribe to some such view: 'There can, I think, be no doubt that the *idée mère*, the primitive element, in the formation of the notion of justice, was conformity to law.'⁷⁸ In that case, the internal sanctions of conscience are, in effect, reflections of prior external sanctions rather than the reverse. Even so, this is fully compatible with the definition of punishment as blame for wrongdoing,

and with the claim that a powerful desire to do right is expedient for every way of delivering blame. Moreover, despite his personal beliefs, Mill makes clear that his moral theory does not presuppose any particular theory of the genesis of the individual's conscience, which inflicts blame on the individual for his own wrongdoing, and which also encourages him to inflict it on others for their wrongdoing.⁷⁹

Mill evidently does not hold any traditional utilitarian view of punishment, according to which punishment is justified only if it is needed to deter conduct that fails to maximize the sum total of utility. Rather, he subscribes to principles that are commonly confined to retributive theories, including the principle that punishment cannot legitimately be inflicted against innocents, but only against offenders who violate their moral duties, the principle that such wrongdoing itself calls for due retaliation against the offenders independently of any further consideration of utility consequences, and the principle that the severity of punishment must be (at least roughly) proportional to the moral gravity of the offence, that is, the degree of insecurity caused by it. Thus, his extraordinary utilitarian theory moves in the direction of mixed theories of punishment of the sort proposed by Hart and C.L. Ten, which attempt to combine elements of traditional utilitarianism with features of retributive theories.⁸⁰ The mixed theories accept a standard utilitarian justification for moral rules that have beneficial social consequences, but this utilitarian reason for obeying the rules is combined with independent principles of retributive justice that dictate to whom punishment should be distributed, how much punishment should be distributed, and so forth. Unlike the mixed theories, however, the Millian theory as outlined seeks ultimately to maximize utility alone both in point of quality as well as quantity. Moreover, punishment is defined to include self-blame as well as blame delivered by means of external sanctions.

8. Morality and liberty

Given that a guilty conscience is a form of punishment, competent majorities may, consistently with Mill's criterion of moral wrong, decide that it is expedient to rely solely on the individual's conscience to punish him if he fails to do his moral duty in some situations. In those situations, the individual is left free from any threat of coercive interference to make his own choices, even though he must be expected to do wrong if his conscience proves defective. The sphere in which the individual is expediently left free from coercive interference thus includes not only morally permissible conduct that ought to be legally permissible as well, but also morally impermissible conduct that cannot be expediently prevented by means of external sanctions. It is morally impermissible to ignore one's moral duties, yet the individual is expediently left free to ignore them, all things considered, with only the internal sanctions of his conscience (if he has one) to condemn and deter his wrongdoing.

Brown apparently holds a different view of what Mill has in mind, according to which the individual deserves to be left free from coercion if and only if he is not doing wrong and thus is not deserving of any genuine punishment. In turn, the individual is not deserving of punishment only if he does not cause to others the kind of harms that are condemned as immoral by common-sense norms of fairness. For Brown, therefore, a bright line separates the sphere of liberty, in the negative sense of freedom from coercion, and the sphere of moral requirement. In the sphere of liberty, an individual does not deserve to be punished, that is, punishment understood as coercion ought not even to be considered. In the sphere of morality and law, punishment understood as coercion is always deserved for wrongdoing, even if it is not always expedient to implement the coercion, all things considered.

Brown's view must be gathered from various statements which are difficult to fit together, and so I hope that I have not misrepresented his reading. He does emphasize that Mill's theory of moral requirement logically complements Mill's theory of liberty: 'The moral theory and the theory of liberty are the two faces of one conception, as they concern what conduct is in principle legitimately interfered with and what in principle is not.'⁸¹ He also says that 'Mill's theory of liberty stakes out the realm of conduct which is morally permissible.'⁸² Immoral conduct 'can in principle be legitimately restricted', he claims, whereas conduct 'in principle cannot be restricted' if it is 'not harmful to others, or is so only with their willing consent'.⁸³

But Brown skates over some holes in the ice here. Granted that conduct must be left free if it is harmless to others or only harmful to them with their consent, should conduct ever be left free from interference if it harms others without their consent? If such conduct should sometimes be left free and sometimes not, what is the justification for classifying some non-consensual harms to others as morally permissible, yet classifying others as immoral? Or is harming without the other's consent always immoral? Brown does not answer these questions as clearly as he might.

Brown argues that conduct is morally wrong if and only if the conduct is condemned by common-sense norms of justice as deserving of coercive restriction because of the harm it causes to others without their consent. Unless the common-sense norms classify as unfair every harm caused to others without their consent, therefore, he implicitly admits that conduct that harms others without their consent is not necessarily immoral, because the harm it causes may not be of the immoral kind. So morally permissible conduct might not be limited, even for Brown, to conduct that is 'not harmful to others, or is so only with their willing consent'. Conduct that is harmful to others without their consent may also be morally permissible, provided the kind of harm it causes is not deemed wrongful by the norms of fairness and non-maleficence. Competitive market sellers as well as competitive speakers may freely harm others without their consent, for example, yet the sales and the speech activities are not necessarily condemned as wrong.

Brown might respond that conduct that injures others without their consent is always wrong in terms of common-sense norms and thus always deserves to be prevented by coercion. But this response is untenable. It is implausible to suggest that market sellers are immoral if they drive their competitors into bankruptcy without employing force or fraud, for instance. It cannot be maintained that any individual seller genuinely consents to suffer bankruptcy if he participates in competitive market institutions. People need to earn a living to support themselves and their families, and cannot freely choose not to compete in all markets. Similarly, it is implausible to argue that speakers are immoral if they harm others' reputations by broadcasting the truth about their criminal activities, yet it cannot be said that offenders genuinely consent to have that information made public.

Alternatively, Brown might respond by adopting a technical definition of harm, according to which perceptible injuries are not really harms unless they are classified as such by the common-sense norms of justice. This is a familiar revisionist strategy, which attributes to Mill the narrow idea that genuine harm consists only in damage to certain vital interests that ought to be considered as rights. If harm is not really harm unless it is morally wrong, then it becomes true by definition that the sphere of liberty is the complement of the sphere of morality. In addition to the complaint that it divorces the idea of genuine harm from utility considerations, however, this revisionist approach has other drawbacks. For instance, conduct that, on any common-sense view, clearly hurts others is nonetheless classified as harmless if it is not deemed wrongful. Moreover, what counts as genuine harm varies across different moral viewpoints, in which case the line that divides the sphere of liberty from the sphere of moral requirement also varies across different societies and across different groups within the same society, independently of utility. This renders problematic Mill's claim that there is an empirically observable sphere of purely self-regarding conduct which is 'the appropriate region of human liberty' that ought to be respected by every civilized society: 'No society in which these [self-regarding] liberties are not, on the whole, respected, is free, whatever may be its form of government; and none is completely free in which they do not exist absolute and unqualified.'⁸⁴ It is hardly surprising, therefore, that Mill unequivocally rejects the revisionist strategy that confines the idea of harm to violations of rights and duties: 'The acts of an individual may be hurtful to others, or wanting in due consideration for their welfare, without going the length of violating any of their constituted rights.'⁸⁵

Even if we adopt the revisionist notion of harm for the sake of argument, Brown's version of revisionism gets into trouble. He accepts that it may be inexpedient, all things considered, to interfere coercively with immoral conduct, even though the conduct deserves to be restricted. This obviously implies that people may be expediently left free from coercive interference to do wrong, even though they deserve to be coerced. Yet Brown ignores this point, and continues to insist that, as he reads things, the Millian realm of liberty complements the realm of moral requirement. Clearly, a different reading is needed of Mill's distinction

between the realm of moral and legal duties and the realm where human liberty is appropriate.

I shall not spend much time discussing my reading of how Mill divides the purely self-regarding sphere of liberty from the sphere of morality and law, because I have written extensively on this topic elsewhere.⁸⁶ Suffice it to say that the purely self-regarding sphere, as I understand it, is a sphere where the mature individual has a moral right to absolute liberty in the positive sense of doing as he pleases, because self-regarding conduct does not directly and immediately harm or benefit others, or, if it does, only with their genuine consent and participation.⁸⁷ It is not merely a sphere where society expediently leaves the individual free from coercive interference, but also a sphere where the individual ought to make his own choices in accord with his own judgment and inclinations rather than blindly imitate what others are doing. He should choose among self-regarding acts and omissions as he pleases, without fearing any reproaches from his own conscience: 'In what only regards himself . . . Individuality has its proper field of action.'⁸⁸ The purely self-regarding sphere is rightfully beyond morality and law, and no matter which self-regarding acts and omissions the agent chooses, he is not deserving of punishment in any form. No way of inflicting blame, including self-inflicted feelings of guilt, is ever expedient to condemn or deter self-regarding conduct.

By contrast, the sphere of law and morality is the sphere where wrongdoers deserve punishment. Because punishment is deserved, some way of inflicting it, even if only by means of a guilty conscience, is always expedient to condemn and deter wrongdoing. Thus, the self-regarding sphere of absolute liberty, where punishment is never justified, complements the sphere of law and morality, where punishment is always justified to deter wrongdoing. The individual can rightfully do whatever he pleases in the one sphere, whereas he must fulfill his duties to others or rightfully be punished in some way in the other. The fact that there may be no expedient way to inflict the punishment in some situations because the relevant individuals lack a firm conscience, does not touch the justice and expediency of punishing wrongdoing: it is always wrong and inexpedient whenever wrongdoing escapes blame.

The dichotomy between these spheres is recognized and enforced by an optimal code of justice. The code distributes equal rights to complete liberty of self-regarding conduct, and correlative duties to respect those rights. Violating anybody's right to complete self-regarding liberty is a grievous harm of the kind that deserves punishment. Society is justified in punishing any such wrongdoing, and should employ coercion to interfere with the conduct and inflict the punishment whenever coercion is expedient. But sometimes coercion may not be expedient, in which case any individual who intends to interfere with another's self-regarding conduct should be deterred by the pangs of his own conscience. Unfortunately, some people will not possess the requisite conscience, but this is always inexpedient, a failure of society's system of education.

It should be clear from what I have said already that the division between these two spheres does not depend on the expediency of coercion. Coercive interference is certainly never expedient within the self-regarding sphere, because the individual has a moral right to choose as he pleases among self-regarding acts and omissions. Even within the sphere of morality, however, it is sometimes expedient for society to leave an offender free from coercive interference. But on those occasions the individual's conscience ought to deter him from wrongdoing, and if he does wrong anyway, his feelings of guilt ought to punish him for his wrongdoing. True, he may not feel guilt because he has not developed the requisite conscience. Nevertheless, society by assumption has no expedient way of employing coercion to make up for his internal deficiency: external sanctions cannot be designed to deliver effectively the blame that he fails to inflict on himself.

So the expediency of freedom from coercion is not confined to the self-regarding sphere, according to Mill's utilitarian art of life as I understand it. The expediency of negative freedom can also extend within the sphere of moral requirement. Indeed, negative liberty is expedient for yet another distinct sphere, in which any person's conduct is social rather than self-regarding because it does harm or benefit others without their consent, and yet the conduct is not morally wrong because it does not produce the kind of harm that violates duties recognized by the competent majority. Instead, the conduct is morally permissible, as opposed to morally required, because it is reasonably predicted to bring enough collective benefits to outweigh harms of the kind it causes, namely, harms that do not damage what competent majorities consider vital personal interests that need to be rendered secure as rights. It is expedient to leave individuals alone to engage freely in a broad range of speech and trade activities, for instance, despite the fact that successful speakers and marketers directly cause competitors to suffer various perceptible injuries against their wishes.

This distinct sphere of free competition is nested within the sphere of morality and law, insofar as the individual is expediently left free to compete with others only if he follows the optimal social rules of justice and respects others' recognized moral and legal rights.⁸⁹ As long as his competitive conduct is consistent with his duties, however, the individual is legitimately free from coercion as well as from punishment. Any harm caused to others without their consent is a kind of harm that people do not have duties, even of charity and kindness, to refrain from causing. The harm is non-consensual, but the individual who suffers it has no moral right to be protected from it by society. I have argued elsewhere that praiseworthy supererogatory conduct, where an individual willingly sacrifices his own vital concerns, perhaps even his life, to help other people beyond the call of moral duty, also seems to fall within this competitive sphere.⁹⁰

9. Stretching the concept of harm?

As interpreted, Mill seems to hold a very broad idea of harm that includes different kinds of perceptible damage, but excludes mere dislike or annoyance. More specifically, harms are of an immoral kind if they are violations of recognized rights and duties distributed and sanctioned by an optimal social code of morality. Such harms are sources of the painful feeling of insecurity. A utilitarian morality that seeks to maximize the pleasant moral feeling of security aims to prevent them. Indeed, competent majorities may well decide that at least some of these harms are so grievous that an individual cannot reasonably consent to suffer them, as when society withdraws from the individual any power to waive his right not to be murdered, for example, or refuses to recognize any right to sell himself into slavery.

Harms that do not violate any recognized rights and duties are not of the wrongful kind, even if the harms are non-consensual. Perceptible injuries associated with losing a competition that is conducted without force or fraud are sources of painful feelings, for instance, yet the feelings are distinct in kind from the grievous suffering of insecurity. Loss of sales or of audience, loss of reputation as an entrepreneur or as a speaker, unemployment, bankruptcy, and so forth may all be competitive harms, yet competent majorities decide that it is morally and legally permissible to perform competitive actions that cause such harms to others.

Purely self-regarding conduct as defined by Mill does not cause any non-consensual harms to others. Others may strongly dislike the self-regarding conduct or associated character of the agent. But mere dislike that arises apart from any sort of perceptible damage is not harm.

If this is correct, Mill is not working with some strange or unfamiliar idea of harm, even though his idea includes all of the myriad forms of perceptible damage. Yet Brown charges that Mill unduly stretches the idea of harm to cover wrongful omissions, including refusals to help, that do not really involve any harm to others. According to Brown, it is 'rampant cheating' to hold that others are harmed if a person refuses to save them from harm caused by third parties or natural forces.⁹¹ But why is it cheating? Others will by assumption suffer some form of perceptible injury in these circumstances unless the person intervenes. Moreover, if he refuses to help when he could help and the help is necessary to prevent others from suffering harms that will otherwise befall them, then the agent fails to prevent harm to others when it is feasible for him to do so. His failure in this instance exists even though his actions are not the source of the harm to others. So his refusal to intervene comes within the ambit of Mill's principle 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'.⁹² Society therefore legitimately *considers* whether to use coercion to interfere with a person's refusal to protect another from harm, whatever the origin of the harm. This does not imply that society will always find it expedient to force the individual

to help, all things considered, even if the harm to others is imminent and severe. Nor does it imply that competent majorities must find that every such failure to prevent harm to others is immoral and thus deserving of punishment.

But sometimes it is obviously a man's duty to help others to avoid harm that does not originate in his own actions. A person has a moral duty to save the life of another person who has fallen face down into a puddle of water in a diabetic coma, for instance, given that the rescue can be performed without endangering the rescuer even though it may cause him some inconvenience. More generally, a person obviously has a duty to help others when he can promote their moral feelings of security without any risk to his own security or to that of third parties. A competent majority recognizes that others have a right to his help in these situations because the harms that he can prevent are of a kind that damage the others' vital interests, even their lives, whereas the harms of inconvenience experienced by himself or third parties, such as the loss of a day's work and income, are not of that grave kind and might easily be compensated. Any pain arising from such inconveniences may be ignored because it is qualitatively inferior to the suffering of insecurity. Thus, if he refuses to help others in such situations, then he shows that he is 'wanting in due consideration for their welfare' because he violates their rights. Even in these cases where his refusal to help is immoral, however, society may still decide that it is sometimes inexpedient to use external sanctions to force him to act.⁹³

In short, Mill has no obvious problems locating harm to others in the conduct that he treats as wrong. Brown goes astray when he suggests that Mill's moral theory is literally 'restricted to an extremely negative form' in which any individual is morally permitted invariably to refuse to help others.⁹⁴ Mill can persuasively reply to Brown that when competent majorities establish an optimal social code that distributes equal rights and duties to help in situations where the help can be easily provided to prevent or mitigate grievous harms to the beneficiaries, then an individual who ignores his recognized duties thereby does harm others by disappointing their legitimate expectations of help. By ignoring his duties, he wrongfully harms others by his own action (his own refusal to help) because he fails to prevent grave perceptible injuries which he could have prevented at relatively small cost to himself and third parties, injuries which people have equal rights to be protected from experiencing in the circumstances.⁹⁵

10. Conclusion: an extraordinary utilitarian art of life

I have argued that influential revisionist interpretations of the sort proposed by Donald Brown seriously misrepresent Mill's extraordinary utilitarian art of life, including its component art of morality, as outlined in *Utilitarianism*, *On Liberty*, and other writings. Brown and his fellow revisionists are correct that Mill is not a typical maximizing utilitarian. But they are mistaken to think that he relies on basic common-sense norms of fairness to modify, constrain, or override utility

values. Rather, Mill is an extraordinary maximizing utilitarian because he prescribes the maximization of happiness both in point of quantity and of quality (Sections 1–3).

Once the extraordinary structure of Mill's maximizing utilitarianism is brought to light, we can see why the six 'puzzles for interpretation' listed by Brown are not really puzzles of Mill's making.⁹⁶ I shall conclude by responding briefly to each of the puzzles, without attempting to say all that could be said or to summarize my interpretation of Mill's doctrine as presented in the preceding sections of the article. My responses follow the order of the puzzles given by Brown in his list.

The single principle of utility ultimately 'governs the moral criteria of right and wrong action as well as governing prudence and the aesthetics of conduct' because, for Mill, it is a multidimensional principle that takes account of different kinds of pleasant feelings, some of which are of higher quality than others *as pleasures*, regardless of quantity (Section 3). The kind of pleasure associated with the moral sentiments, epitomized by the sentiment of justice, is a pleasant feeling that vital personal interests shared by all are secure from damage by others. This moral kind of gratification can only be provided by social codes that distribute and sanction equal rights and duties, and it is qualitatively superior to any *competing* kinds of utilities, including the gratifications of narrow self-interest. As a result, an optimal social code of justice selected by competent majorities becomes of overriding importance within the Millian art of living (Section 4). Even so, pleasant feelings of beauty and sublimity, not incompatible with the moral sentiments, may be qualitatively supreme irrespective of quantity. Such aesthetic pleasures are produced by praiseworthy supererogatory conduct on behalf of others, for instance, as well as by certain purely self-regarding acts of intellect and imagination, such as those involved in scientific discoveries, spiritual journeys, and the fine arts. The individual is legitimately free to engage in such conduct, which is properly beyond the sphere of moral and legal duties, without fear of any form of punishment. Punishment is reserved for his failures, if any, to fulfill his recognized duties (Section 5).

Many commentators continue to read Mill as 'a typical maximizing utilitarian when he clearly is not', I suspect, because they focus attention on those of his statements that make him sound like a traditional utilitarian. He often refers to the greatest sum total of happiness, for example, and stresses that the ultimate good is 'an existence exempt as far as possible from pain, and as rich as possible in enjoyments'.⁹⁷ But these commentators ignore or misunderstand the import of his assertions that some pleasures are qualitatively superior to others, regardless of quantity, and they also fail to consider that he seems to have conceived of the sum total of (any kind of) pleasures in terms of rough and imprecise estimates embodied in the judgments of competent majorities (Section 3).

Mill clearly regards the multidimensional principle of utility as 'the foundation of morality' because, for him, there is a moral kind of utility, namely, the feel-

ing of security, which is inseparably associated with the moral sentiments. The ultimate principle of morality, and source of moral obligation, is the principle of maximizing security as a higher kind of pleasant feeling (Sections 4–5). More generally, the utility principle is the ultimate guide for all sorts of actions, including morally right and wrong actions. It is not merely an axiological principle.

Mill does give ‘an explicit and complete formulation of his criteria for the wrongness of actions’, to wit, an action is morally wrong if and only if it deserves to be punished in some way, where feelings of guilt are one way of inflicting punishment or blame (Sections 5–7). A wrong action violates equal rights and duties distributed and sanctioned by an optimal social code which is established by competent majorities seeking to maximize security for all members of the community, impartially considered. By recognizing particular rights, the majority affirms that particular vital personal interests shared by all ought to be protected from damage. Anyone who fails to fulfill his correlative duties deserves punishment for the kind of harm caused to others by his wrongful actions. In addition to primary duties not to harm others’ vital interests, therefore, an optimal code distributes secondary moral duties to inflict punishment in some way on anyone (including oneself) who fails to fulfill his primary duties. Such secondary duties may often be expediently distributed to public officials as legal duties to detect wrongs and employ state coercion as a way to inflict punishment for wrongdoing. But coercion is not always expedient for this purpose. In any case, every individual always has an equal secondary duty to blame himself for his own wrongdoing.

Given that punishment includes guilt, and that the expediency of punishment is necessary and sufficient to mark an action as morally wrong, it is incorrect to think that Mill’s test of immorality ‘requires him to accept the combination of an unacceptably negative utilitarianism and an unacceptably permissive principle of liberty’. Since guilt is the only expedient way of inflicting punishment in some situations, Mill’s theory of moral requirement is not the other face of his theory of liberty, in the sense of freedom from coercion (Section 8). An individual is sometimes expediently left free from coercion to do wrong. Yet this freedom does not imply that his wrongdoing ought to escape punishment. Rather, he ought to blame himself, all things considered.

Moreover, Mill is not logically committed to an overly negative utilitarianism that cannot make room for duties to help others, nor to an overly permissive liberty principle that prescribes that an individual should always be free to refuse to help others avoid harm arising from third parties or natural events. He does not need to stretch unduly the idea of harm to accommodate within his moral theory reasonable duties to give positive assistance to others (Section 9). And he never attempts to map in detail everywhere the individual ought to be free from coercion, all things considered. Rather, his main concern in *On Liberty* is to defend the principle that adults ought to be completely free to choose as they please among purely self-regarding actions (Section 8). Adults in every civil soci-

ety have moral rights to complete self-regarding liberty, in Mill's view, because the individual's complete liberty of doing whatever he pleases within his self-regarding sphere is the *minimum* extent of liberty required by justice to secure his vital interest in self-development or individuality.

Further research into Mill's extraordinary utilitarian art of life is needed. In particular, the ways in which the departments of prudence, morality, and aesthetics are related to the three spheres of, respectively, self-regarding conduct, competitive conduct, and morally right and wrong conduct must be clarified. Also requiring further clarification is Mill's view of the relations between law and morality.

notes

1. D.G. Brown, 'Mill's Moral Theory: Ongoing Revisionism' (in this issue).
2. John Skorupski, *Why Read Mill Today?* (London: Routledge, 2006), pp. 24, 101. The term 'philosophical utilitarianism' was introduced by T.M. Scanlon, 'Contractualism and Utilitarianism', in *Utilitarianism and Beyond*, edited by Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982), pp. 103–28. According to Scanlon, "philosophical utilitarianism" is a particular philosophical thesis about the subject matter of morality, namely, the thesis that the only fundamental moral facts are facts about individual well-being'. See Scanlon, 'Contractualism and Utilitarianism', p. 108. He adds that 'moral principles must be impartially acceptable'. See Scanlon, 'Contractualism and Utilitarianism', pp. 121–2.
3. Brown, 'Mill's Moral Theory' (in this issue), p. 18.
4. *Ibid.*, p. 29.
5. *Ibid.*
6. *Ibid.*
7. *Ibid.*, p. 28. It should be noted that some traditional maximizing utilitarians have argued that there is considerable overlap between common-sense moral principles and the utilitarian maximizing criterion. See, for instance, Henry Sidgwick, *The Methods of Ethics*, 7th edn. (London: Macmillan, 1907) and Richard M. Hare, *Moral Thinking: Its Method, Levels, and Point* (Oxford: Clarendon Press, 1981).
8. Brown, 'Mill's Moral Theory' (in this issue), p. 32.
9. *Ibid.*, quoting from David Lyons, 'The Moral Opacity of Utilitarianism', in *Morality, Rules, and Consequences*, edited by Brad Hooker, Elinor Mason and Dale E. Miller (Edinburgh: Edinburgh University Press, 2000), p. 119, original emphasis.
10. Skorupski, *Why Read Mill Today?*
11. Similar points can be made with respect to non-hedonistic conceptions of utility, which are far more likely to be adopted by mainstream utilitarians today. For example, utility may be conceived as a single kind of desire satisfaction, including satisfaction of higher-order desires to avoid frustrating lower-order desires. Alternatively, it may be conceived as a single kind of disposition to make choices, including the disposition to refuse to avoid making choices, without reference to underlying motives.
12. Brown, 'Mill's Moral Theory' (in this issue), p. 31. The supreme principle of utility

may be meant to establish relative priorities among the ends of the various arts (including the art of morality) that are components of the general art of life, Brown suggests, but Mill supposedly does not know or care exactly how the ends and principles of any component art arise from the utility principle.

- 13, *Ibid.*, p. 25.
14. Brown apparently finds it inconceivable that the ends and principles of the art of morality, and the courses of action judged to be right in light of those ends and principles, could ever ultimately be justified in terms of 'a single principle'. See *ibid.*, pp. 31–32. But the Millian principle of utility is itself complex because it makes room for different kinds of pleasures as components of happiness, and builds in a proper order of precedence among them such that the kind of pleasant feeling inseparably associated with the moral sentiments always takes priority over other kinds of pleasures in cases of conflict because of its higher intrinsic quality.
15. J.S. Mill, *Utilitarianism*, in *Collected Works of John Stuart Mill*, edited by J.M. Robson (London and Toronto: Routledge and University of Toronto Press, 1963–91), Vol. X, p. 205 (Ch. I, para. 4). Henceforth *Collected Works of John Stuart Mill* are referred to as *CW*.
16. The process of development or education legitimately involves social coercion of young people for their own good, that is, to help them develop the capacities to think for themselves and to make choices for themselves with a reasonable understanding of the consequences for their own happiness and that of others. In particular, society legitimately forces children to attend school and to listen to their teachers, parents, and other adults in the attempt to transmit moral values and encourage individuals to develop a strong desire to do right. Such coercion is compatible with Mill's doctrine of individual liberty as presented in *On Liberty* because children are explicitly excluded from the rights of liberty and individuality. Once an individual has attained adulthood, however, coercive interference solely for the purpose of his self-development becomes illegitimate. By implication, if the individual has not developed a conscience by the time he is an adult, then society cannot count on feelings of guilt to deter him from wrongdoing. That way of punishing him is not feasible. Yet it will not always be expedient to use coercion to condemn and deter wrongdoing by adults. So society's failure suitably to educate individuals in their youth leaves a permanent blemish because it means that wrongdoing will go unpunished in some situations. The failure to punish wrongdoing is itself unjust and inexpedient.
17. I say theory of liberty understood as negative liberty to distinguish it from the doctrine of the rights of liberty and individuality which is Mill's main concern in *On Liberty*. Mill's primary purpose in that famous essay is to defend a moral right of adults in every civil society to do whatever they please with respect to their so-called purely self-regarding conduct, which is conduct that exists in fact, he thinks, whether or not society recognizes it (the self-regarding domain is not constructed by society). He is not trying to spell out in detail the entire realm where the individual is expediently left free from coercion, a daunting task whose sheer complexity is obviously at odds with his stated purpose to 'assert one very simple principle'. See J.S. Mill, *On Liberty*, in *CW*, edited by J.M. Robson (London and Toronto: Routledge and University of Toronto Press, 1963–91), Vol. XVIII, p. 223 (Ch. I, para. 9). In any case, the realm where the individual ought to be free from coercion

- overlaps with the sphere of morality and law, not only because the individual ought to be free to do right by fulfilling his duties, but also because he is sometimes expediently left alone to do wrong even though he should always be punished for violating his duties. See Jonathan Riley, *Mill on Liberty* (London: Routledge, 1998) and Jonathan Riley, *Mill's Radical Liberalism* (London: Routledge, 2010).
18. A person does do wrong, however, if he escapes, or attempts to escape, from legal quarantine and thereby displays a blameworthy disregard for the health of others. This just illustrates the legitimate power of lawmakers to create and enforce moral duties to obey duly made laws. More needs to be said about such legal authority, but I must leave that discussion for another occasion.
 19. The distinction between punishment and coercion explains why it is incorrect to suggest that Mill may need a different theory of morality in the context of barbaric or uncivilized societies whose members are, by assumption, incapable of rational persuasion. When he says that coercion of barbarians is legitimate, he is not saying that they deserve to be punished for doing wrong. Rather, his point is that they are justifiably forced for their own good to comply with reasonable policies and rules established by some competent and benevolent authority such as Akbar or the East India Company. The ultimate purpose of the coercion is to make the people capable of rational persuasion so that the majority can rule in democratic fashion without unduly harming others by violating equal rights. Whatever we may think of this use of coercion, it is consistent with Mill's stated doctrine of liberty and does not alter his theory of moral requirement. The latter must be put into practice in this context by the civil authorities who are, by assumption, capable of rational persuasion, not by the barbarian subjects.
 20. Scanlon, 'Contractualism and Utilitarianism', p. 109. He recognizes that maximizing utilitarianism might be endorsed as a first-order moral theory even by those who reject philosophical utilitarianism. His main concern is to show that philosophical contractualism as he understands it (an alternative to philosophical utilitarianism) does not lead to any form of maximizing utilitarianism.
 21. *Ibid.*, p. 110, original emphasis. Scanlon does not consider the 'further question' of whether this maximizing standard 'is to be applied to the criticism of individual actions, or to the selection of rules or policies, or to the inculcation of habits and dispositions to act'. See *ibid.* Nor does he consider the appeal of hedonism.
 22. Scanlon is led to the sum-total criterion, I think, because he takes for granted that maximizing utilitarianism by definition conceives of individual utility, or well-being, as cardinally measurable, interpersonally comparable, and homogenous in quality, independently of its sources or objects. That traditional utilitarian view of well-being seems to be implicit in his statement that '*all that matters* in the case of each individual is the *degree* [or amount] to which his or her well-being is affected'. See *ibid.*, p. 110, emphasis added. But maximizing utilitarianism is not necessarily tied to such a traditional view of utility. If this is right, then Scanlon, despite his intentions, does not fully leave open 'the question of how "well-being" itself is to be understood'. See *ibid.* Rather, he shuts the door against any unorthodox view, such as that suggested by Mill, according to which utility is not cardinally measurable, not interpersonally comparable, and not homogeneous in quality. But Scanlon does leave open the question of whether utility should be conceived in terms of pleasure, desire fulfillment, choice behavior, dispositions, or whatever.

23. Ibid., pp. 108, 121–2, emphasis added.
24. Doctrines that give equal negative weight, or equal zero weight, to equal amounts of utility are conceivable, yet hardly appealing from a utilitarian perspective. Maximizing utilitarianism is the only doctrine that always gives equal *positive* weight to equal amounts of utility.
25. For further discussion of the leximin procedure, including its formal axiomatization and its relation to the well-known maximin principle of John Rawls, see Kenneth J. Arrow, 'Some Ordinalist-Utilitarian Notes on Rawls's Theory of Justice', *Journal of Philosophy* 70 (1973): 245–80; Amartya Sen, 'On Weights and Measures: Informational Constraints in Social Welfare Analysis', in *Choice, Welfare and Measurement* (Oxford: Blackwell, 1982), pp. 226–63.
26. Strictly speaking, a precise statement of the welfarism and anonymity conditions depends on how rich the given utility information is assumed to be. But such complications do not affect the point at issue.
27. Sen, 'On Weights and Measures', pp. 248–51.
28. Even leading social choice theorists sometimes leave the impression that welfarism excludes *all* non-utility information as irrelevant. But this is not quite true, or so I argue. Rather, welfarism only excludes all non-utility information about the possible outcomes. It permits norms besides utility values, impartially considered, to be built into the form of the moral choice rule, without reference to the possible outcomes. Factual information about these non-utility norms is thereby permitted to influence moral outputs, even though the choice rule only takes account of utility information with respect to the outcomes.
29. Sen, 'On Weights and Measures', pp. 234, 242–3.
30. Mill, *Utilitarianism*, CW, Vol. X, p. 258 (Ch. V, para. 36).
31. Indeed, Mill makes clear that he believes the principle of impartiality between persons *is implied* by the principle of utility, which, as he understands it, must count equal amounts of utility equally. Given that utility is the sole basic value, it is merely a 'truth of arithmetic' that equal quantities of utility must be counted equally, whether experienced by the same person or by different persons. See *ibid.*, CW, Vol. X, p. 258 n. (Ch. V, para. 36).
32. See, for instance, Jonathan Riley, 'The Interpretation of Maximizing Utilitarianism', *Social Philosophy and Policy* 26 (2009): 286–325; Jonathan Riley, 'Millian Qualitative Superiorities and Utilitarianism, Part 1', *Utilitas* 20 (2008): 257–78; Jonathan Riley, 'Millian Qualitative Superiorities and Utilitarianism, Part 2', *Utilitas* 21 (2009): 127–43; Jonathan Riley, 'Classical Ordinal Utilitarianism', working paper (unpublished); Jonathan Riley, 'Millian Qualitative Superiorities and Rational Agency', working paper (unpublished); Jonathan Riley, 'Justice as Higher Pleasure', in *John Stuart Mill: Thought and Influence: A Bicentennial Reappraisal*, edited by Paul J. Kelly and Georgios Varouxakis (London: Routledge, forthcoming); Jonathan Riley, 'Optimal Moral Rules and Supererogatory Acts', in *John Stuart Mill and the Art of Life*, edited by Ben Eggleston, Dale Miller and David Weinstein (Oxford: Oxford University Press, forthcoming).
33. Mill, *Utilitarianism*, CW, Vol. X, p. 214 (Ch. II, para. 10).
34. Mill's hedonistic conception of utility must not be conflated with the purely formal conception of utility embraced by most economists and decision theorists ever since the so-called ordinalist revolution of the 1930s and 1940s. Under hedonism, the

- individual's preference ranking may be assumed to reveal his expected utilities from the sources, where utility means pleasant feeling. Apart from this, if we assume that the individual's ranking is an ordering, that is, a complete reflexive and transitive ranking of the sources, then the ordering may be represented by a purely formal utility function, where utility is *not* pleasure, but merely a numerical representation of the preference ordering without reference to what motivates it.
35. Mill, *Utilitarianism*, CW, Vol. X, p. 211 (Ch. II, para. 5). Mill goes on to draw an important distinction between happiness and contentment in the next paragraph.
 36. *Ibid.*, CW, Vol. X, p. 211 (Ch. II, para. 4).
 37. For further discussion of the form of representative democracy which Mill recommends as best for any civil society, see Jonathan Riley, 'Mill's Neo-Athenian Model of Liberal Democracy', in *J.S. Mill's Political Thought: A Bicentennial Reassessment*, edited by N. Urbinati and A. Zakaras (Cambridge and New York: Cambridge University Press, 2007), pp. 221–49.
 38. If every competent person prefers x to y , then it is obvious that x is reasonably expected to yield a greater total amount of the relevant kind of pleasure than y is, because there is no conflict about which outcome yields more pleasure. Even if individual rankings conflict, however, the majority's ranking of x above y indicates that greater total pleasure may reasonably be expected from x than from y , given the assumption of purely ordinal information about pleasures: more individuals expect greater pleasure from x as opposed to y , fewer individuals expect greater pleasure from y as opposed to x , the individual rankings are the sole measures of the amounts of pleasure expected from the outcomes, and each person's ranking must be given equal positive weight. It does not matter in this context precisely how much actual pleasure will arise from x as compared to y according to any person's estimates.
 39. On the general problem of preference cycles to which majority rule is subject, see Kenneth J. Arrow, *Social Choice and Individual Values*, 2nd edn. (New Haven, CT: Yale University Press, 1963). I do not mean to imply that Mill is unaware of this problem, because he is familiar with the work of Condorcet and Borda. But, obviously, he is unaware of Arrow's work.
 40. This view of the principle of utility seems to introduce an element of the type of meta-ethical theory that Simon Blackburn calls 'projectivism' and Allan Gibbard calls 'expressivism'. See, for example, Simon Blackburn, *Essays in Quasi-Realism* (New York: Oxford University Press, 1993); Simon Blackburn, *Ruling Passions* (Oxford: Clarendon Press, 1998); Allan Gibbard, *Wise Choices, Apt Feelings* (Cambridge, MA: Harvard University Press, 1990); Allan Gibbard, *How Should We Live?* (Cambridge, MA: Harvard University Press, 2003). Despite its possible attractions as a way of achieving the utilitarian aim of impartially counting everyone for one and only one, however, the scoring approach does occasionally fail to choose Condorcet winners when they exist; that is, it may fail to select an outcome that is majority preferred to every other outcome in a series of binary contests. In any case, I shall henceforth assume that some such scoring procedure is used to remove any inconsistencies otherwise associated with majority voting. For recent critical surveys of the vast literature relating to scoring rules, including Borda count, see Steven J. Brams and Peter C. Fishburn, 'Voting Procedures', in *Handbook of Social Choice and Welfare*, Vol. 1, edited by K.J. Arrow, A.K. Sen and K. Suzumura

- (Amsterdam: Elsevier, 2002), pp. 173–206 and Prasanta K. Pattanaik, 'Positional Rules of Collective Decision-Making', in *Handbook of Social Choice and Welfare*, Vol. 1, edited by K.J. Arrow, A.K. Sen and K. Suzumura (Amsterdam: Elsevier, 2002), pp. 361–94. Needless to say, Bentham and Mill never discuss such a scoring procedure, but it is arguably in the spirit of utilitarianism as they conceive it. For further discussion, see Jonathan Riley, 'Classical Ordinal Utilitarianism', working paper (unpublished).
41. Mill, *Utilitarianism*, CW, Vol. X, p. 214 (Ch. II, para. 10), emphasis added.
 42. Ibid., CW, Vol. X, p. 251 (Ch. V, para. 25).
 43. Ibid., CW, Vol. X, p. 250 (Ch. V, para. 24), emphasis added.
 44. Ibid., CW, Vol. X, p. 251 (Ch. V, para. 25).
 45. Ibid., emphasis added.
 46. Given the simplifying assumption, any suitably competent individual who accepts legal rules as reasons for action also by definition accepts them as moral reasons. This necessary connection between law and morality ceases to exist, however, when the simplifying assumption is relaxed, as it must be. So I do not mean to reject (or endorse) Hart's influential version of legal positivism. See H.L.A. Hart, *The Concept of Law*, 2nd edn. (Oxford: Oxford University Press, 1994 [1961]) and H.L.A. Hart, *Essays on Bentham* (Oxford: Clarendon Press, 1982).
 47. This sort of fair-minded behavior contrary to narrow selfishness is sometimes called 'strong reciprocity' in the literature. See Herbert Gintis et al. (editors), *Moral Sentiments and Material Interests: The Foundation of Cooperation in Economic Life* (Cambridge, MA: MIT Press, 2005).
 48. This does not imply that any person's equal rights can guarantee *perfect* security for his vital concerns. The uncertainty of human affairs renders such absolute security impossible.
 49. Mill explains in *On Liberty* what he means when he says that an individual assumes infallibility. See, Mill, *On Liberty*, CW, Vol. XVIII, p. 234 (Ch. II, para. 11).
 50. For further discussion of this point, see Riley, 'Optimal Moral Rules and Supererogatory Acts'.
 51. Mill, *Utilitarianism*, CW, Vol. X, p. 257 (Ch. V, para. 36).
 52. Ibid., emphasis added.
 53. Ibid., CW, Vol. X, p. 214 (Ch. II, para. 9), emphasis added; *ibid.*, CW, Vol. X, p. 257 (Ch. V, para. 36).
 54. Ibid., CW, Vol. X, p. 214 (Ch. II, para. 10), emphasis added.
 55. Ibid., CW, Vol. X, p. 246 (Ch. V, para. 14).
 56. Ibid.
 57. Brown, 'Mill's Moral Theory' (in this issue), p. 25, emphasis added.
 58. Ibid., pp. 24–25.
 59. Ibid., p. 29.
 60. Ibid., pp. 28, 31.
 61. Mill, *On Liberty*, CW, Vol. XVIII, p. 293 (Ch. V, para. 3).
 62. Brown is convinced that Mill's moral theory is literally 'restricted to an extremely negative form' because of its exclusive concern to prevent wrongful harms. See Brown, 'Mill's Moral Theory' (in this issue), p. 34. But the complaint is implausible, given that Mill's theory of justice admits duties to assist positively others who would otherwise suffer grave injuries that the duty-holder can easily

prevent. Moreover, in addition to duties of justice, which are said to be perfect because they must be performed whenever the right-holder demands their performance, Mill's moral theory admits imperfect duties of beneficence and charity, which do not correlate to rights, and are said to be imperfect because, although they must be performed, the duty-holder has some discretion as to the particular occasions of their performance. His utilitarian art of life also prescribes supererogatory acts of self-sacrifice on behalf of others, which are classified as beautiful or sublime even though they are not morally required. For further discussion of these positive features of Mill's philosophy, see Riley, 'Optimal Moral Rules and Supererogatory Acts'.

63. A more complete discussion must also take account of the fact that an optimal code of justice distributes and sanctions certain 'absolute' duties that do not correlate to any other assignable individual's rights. These absolute duties of justice include the duty to vote, the duty of a judge to sentence duly convicted offenders, and the duty to refrain from cruelty to lower animals. Such duties may be said to be owed to the public at large. As with all moral duties, it is not necessarily expedient for the state to enforce them. See J.S. Mill, 'Austin on Jurisprudence', in *CW*, edited by J.M. Robson (London and Toronto: Routledge and University of Toronto Press, 1963–91), Vol. XX, pp. 178–81.
64. Mill, *Utilitarianism*, *CW*, Vol. X, p. 246 (Ch. V, para. 14).
65. See, for instance, Mill's letter of 1859 to W.G. Ward, which is discussed by Dale Miller in his article in this issue. See J.S. Mill, 'Letter to W.G. Ward', in *CW*, edited by J.M. Robson (London and Toronto: Routledge and University of Toronto Press, 1963–91), Vol. XV, p. 646–50.
66. Brown may have been led to his contrary view by prominent legal philosophers such as H.L.A. Hart. In *The Concept of Law*, Hart places scare quotes around the term 'punishment' when the reference is to guilt (for example, p. 180), suggesting that he thinks guilt is not really punishment, and he argues that 'appeals to conscience' are a 'distinctive form of moral pressure by which moral rules [as opposed to legal rules] are primarily supported' (p. 228). Moreover, in *Punishment and Responsibility*, he suggests that punishment strictly speaking consists of legal sanctions enforced by judges and other officials of the state. See H.L.A. Hart, *Punishment and Responsibility*, 2nd edn. (Oxford: Oxford University Press, 2007 [1968]), pp. 4–5. But this is not how Mill understands punishment. As a result, it is hardly surprising that Hart also misinterprets Mill's moral theory. See H.L.A. Hart, 'Natural Rights: Bentham and John Stuart Mill', in *Essays on Bentham* (Oxford: Clarendon Press, 1982), pp. 79–104.
67. Brown, 'Mill's Moral Theory' (in this issue), p. 21.
68. *Ibid.*
69. *Ibid.*
70. Mill, *On Liberty*, *CW*, Vol. XVIII, p. 278 (Ch. IV, para. 6).
71. *Ibid.*, *CW*, Vol. XVIII, p. 278 (Ch. IV, para. 5).
72. *Ibid.*
73. Mill, *Utilitarianism*, *CW*, Vol. X, p. 241 (Ch. V, para. 2). The whole point of Chapter V of *Utilitarianism* is to explain why the sphere of morality and justice is properly seen as a part of the field of expediency or policy, a part 'guarded' by a distinctive moral kind of pleasant feeling that is intrinsically more valuable

as pleasure than 'the milder feeling' of simple expediency: 'It has always been evident that all cases of justice are also cases of expediency: the difference is in the peculiar sentiment which attaches to the former, as contradistinguished from the latter . . . [The peculiar] sentiment [is] not only different in degree, but also in kind; distinguished from the milder feeling which attaches to the mere idea of promoting human pleasure or convenience, at once by the more definite nature of its commands, and by the sterner character of its sanctions.' See *ibid.*, *CW*, Vol. X, p. 259 (Ch. V, para. 38).

74. For pertinent discussion of so-called strong reciprocity, which includes infliction of punishment on a wrongdoer by a fair-minded individual who does not expect to recover the costs of inflicting the blame, see Gintis et al., *Moral Sentiments and Material Interests*.
75. Mill, *On Liberty*, *CW*, Vol. XVIII, p. 225 (Ch. I, para. 11).
76. *Ibid.*
77. Mill says his 'own belief' is that 'the moral feelings are not innate, but acquired' See Mill, *Utilitarianism*, *CW*, Vol. X, p. 230 (Ch. III, para. 8). Whether or not any element of conscience is innate, a *powerful* desire to do right is clearly not implanted in all people, either by a divine being or by biological evolution.
78. *Ibid.*, *CW*, Vol. X, p. 245 (Ch. V, para. 12).
79. *Ibid.*, *CW*, Vol. X, pp. 228–30 (Ch. III, paras 4–8).
80. Hart, *Punishment and Responsibility*, pp. 1–27, 230–7 especially; C.L. Ten, *Crime, Guilt, and Punishment: A Philosophical Introduction* (Oxford: Clarendon Press, 1987), pp. 7–85 especially.
81. Brown, 'Mill's Moral Theory' (in this issue), p. 17.
82. *Ibid.*
83. *Ibid.*
84. Mill, *On Liberty*, *CW*, Vol. XVIII, p. 226 (Ch. I, para. 13).
85. *Ibid.*, *CW*, Vol. XVIII, p. 276 (Ch. IV, para. 3).
86. See, for example, Riley, *Mill on Liberty*; Jonathan Riley, 'Mill, *On Liberty*', in *Central Works of Philosophy*, Vol. 3, edited by John Shand (London: Acumen Publishing, 2006), pp. 127–57; and Riley, *Mill's Radical Liberalism*.
87. Self-regarding conduct can (indeed, should) affect others' feelings, but it does not perceptibly alter their social circumstances broadly defined to include their bodies, income and wealth, reputations, contracts and informal engagements, and so forth. Harm includes any form of perceptible damage to one's circumstances, whereas benefit includes any form of perceptible improvement to them. Thus, others can (indeed, should) like or dislike an individual's self-regarding conduct, even though it by definition does not cause them any harm or benefit without their consent.
88. Mill, *On Liberty*, *CW*, Vol. XVIII, p. 277 (Ch. IV, para. 4).
89. Unlike his self-regarding conduct, which by definition cannot harm others without their consent and thus cannot violate any rights or duties, the individual's social or other-regarding conduct can harm others without their consent and thus deserves to be exempt from blame only if it does not violate any rights or duties. Moreover, as Mill emphasizes in *On Liberty*, society legitimately *considers* whether to employ coercion against any sort of harmful social conduct, including immoral conduct, but coercion may not be expedient for various reasons, even against immoral conduct. Society cannot legitimately even consider employing coercion against self-regarding

conduct. Thus, it seems apt to say that the sphere of self-regarding liberty is rightfully beyond morality and law, whereas the distinct sphere of free competition is properly placed within the interstices of the sphere of morality and law.

90. Riley, 'Optimal Moral Rules and Supererogatory Acts'.
91. Brown, 'Mill's Moral Theory' (in this issue), p. 34.
92. Mill, *On Liberty*, CW, Vol. XVIII, p. 223 (Ch. I, para. 9).
93. I do not mean to suggest that these cases of obvious moral duty are the only cases in which a moral duty to help may exist. An optimal code distributes and sanctions a system of equal rights, some of which take precedence over others in given situations if that is required to maximize security. So an individual may have a duty to help others because their rights to help are weightier than his or anyone else's opposing rights in the circumstances. As Mill illustrates, 'to save a life', a person may have a duty 'to steal, or take by force, the necessary food or medicine, or to kidnap, and compel to officiate, the only qualified medical practitioner'. See Mill, *Utilitarianism*, CW, Vol. X, p. 259 (Ch. V, para. 37). In such cases, we typically say that the opposing rights do not extend to the relevant situations, so 'we are saved from maintaining that there can be laudable injustice'. See *ibid.* With that caveat, we can say that an individual never has a moral duty to help others by sacrificing his equal rights, although he is free to perform supererogatory acts if he wishes to sacrifice his rights. Even so, an optimal code may distribute exceptional duties to sacrifice one's vital interests in rare circumstances where the sacrifice is required to prevent a social catastrophe. To keep up 'the character of indefeasibility attributed to justice', we must say that the opposing rights of any individual called upon to make the sacrifice do not extend to these rare situations. For further discussion of these points, see Riley, 'Optimal Moral Rules and Supererogatory Acts' and Riley, 'Justice as Higher Pleasure'.
94. Brown, 'Mill's Moral Theory' (in this issue), p. 34.
95. The familiar objection that refusals to help cannot be immoral actions because such omissions are not actions at all, is without merit. Roughly, a person's action involves some outcome (or set of probable outcomes) which is brought about by, or would not occur but for, his state of mind. Actions include acts, where the person actively moves his body, makes noises, and so forth, as well as omissions, where the person remains passive and does not engage in such physical activities. Often the same action can be described as an act or an omission, depending on the choice of description. In any case, both acts and omissions are culpable if they violate recognized duties, provided the person's state of mind can be characterized as intentional, reckless, or negligent.
96. For the list of puzzles, see Brown, 'Mill's Moral Theory' (in this issue), p. 6.
97. Mill, *Utilitarianism*, CW, Vol. X, p. 214 (Ch. II, para. 10).

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