

Studies in the History of Ethics

The Morality of *On Liberty*

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Many defenders as well as critics of John Stuart Mill's *On Liberty* (1859)¹ believe that in this work Mill argues against the state enforcing morality by law.² I consider this a mistaken interpretation of Mill's argument. As one of his earliest champions pointed out: "Mr. Mill never says, nor is it at all essential to his doctrine to hold, that a government ought not to have a "standard of moral good and evil which the public at large have an interest in maintaining, and in many instances enforcing""³ Rather, Mill proposes a "standard of moral good and evil", a true morality, and he argues in favor of enforcing this true morality, by public moral disapprobation by society, and by fines, imprisonment, execution, etc., by the state, when it will promote the general welfare: "Some rules of conduct, therefore, must be imposed – by law in the first place, and by opinion on many things which are not fit subjects for the operation of law" (220).⁴ Since, however, the true morality that Mill argues in favor of enforcing in these two ways is much narrower in scope than the false morality that was enforced in his day, Mill devotes most of *On Liberty* to defending, from public moral disapprobation and the law, conduct that the false morality of his day considered immoral – drunkenness, gambling, polygamy, etc. His position is that this conduct is not immoral, and hence, ought not to be publicly

morally condemned or sanctioned by law. Only genuinely immoral conduct – deception, physical assault, neglect of dependents, etc. – ought to be publicly morally disapproved of and sanctioned by law.

My aim in this article is to outline the morality that, according to Mill, is true and ought to be enforced by public moral disapprobation and law. This morality consists of two moral duties.

The first moral duty is the duty to others not to harm others who are not harming ourselves or others. Deception, physical assault, neglect of dependents, etc., is conduct that harms others who are not harming ourselves or others, and is immoral. Drunkenness, gambling, polygamy, etc., however, is conduct that does not harm anyone. Hence, it does not violate this first duty, and is not immoral. To mistakenly publicly morally disapprove of such conduct, or to mistakenly sanction such conduct with fines, imprisonment, execution, etc., is to restrict the liberty of others from engaging in such conduct. To do this is to harm others. It follows that to mistakenly publicly morally disapprove of such conduct, or to mistakenly sanction such conduct with fines, imprisonment, execution, etc., is to harm others who are not harming ourselves or others. It is to violate the first moral duty, and it is immoral.

The second moral duty is the duty to harm others who are harming ourselves or others when we or others are not harming them, when it promotes the general welfare. Deception, physical assault, neglect of dependents, etc., is conduct that harms ourselves or others, when we or others are not harming them. Restricting the liberty of others from engaging in such conduct, by publicly morally disapproving of such conduct, and by sanctioning such conduct by fines, imprisonment, execution, etc., when it will promote

the general welfare, is required by this second moral duty. Failing to restrict the liberty of others from engaging in this conduct, in these two ways, when doing so will promote the general welfare, is a violation of the second duty, and is immoral. Mistaken public moral disapprobation, and mistaken legal sanctioning, like deception, physical assault, and neglect of dependents, is conduct that harms ourselves or others when we or others are not harming them. Restricting the liberty of others to engage in mistaken public moral disapprobation and mistaken legal sanctioning, by publicly morally disapproving of mistaken public moral disapprobation and mistaken legal sanctioning, and by sanctioning mistaken public moral disapprobation and mistaken legal sanctioning by fines, imprisonment, execution, etc., when it will promote the general welfare, is required by the second moral duty. Hence, it is morally obligatory to enforce morality by law when the general welfare is promoted.

These two moral duties lie behind the so-called ‘harm principle’ of *On Liberty*, and correspond to “the two maxims which together form the entire doctrine of this Essay” (292).

No Moral Duties to Oneself

Morality, according to Mill, consists of moral duties and moral virtues. Moral duties are general rules prohibiting or prescribing certain types of conduct, such as *Keep one’s promises*, and particular obligations that stem from these general rules, such as *meet with Ernie Beechwood on Monday*. Moral virtues are dispositions to fulfill moral duties.

All moral duties, according to Mill, are duties to others, either duties to particular other persons or duties to civilized society.⁵ There are no moral duties to oneself. Here it

is important to distinguish between duties to others with respect to oneself, and duties to oneself.⁶ For example, the duty to keep one's promises is a moral duty to others. It is not a moral duty to oneself. If one promises the host of a party that one will not drink at the party, it follows that one has a moral duty to another person not to drink at the party. This is a moral duty with respect to oneself, but it is a moral duty to another. It is not a moral duty to oneself.⁷

Mill is aware that others believe in, and talk in terms of, moral duties to oneself, both in the sense of general rules and particular obligations. Moral duties to oneself are part of common or positive morality. However, he considers the idea of a moral duty to oneself to be a mistake. He repeatedly states that what are called moral duties to oneself are either moral duties to others, or not moral duties at all, but rather rules of prudence or self-development:

What are called duties to ourselves are not socially obligatory, unless circumstances render them at the same time duties to others. The term duty to oneself, when it means anything more than prudence, means self-respect or self-development, and for none of these is anyone accountable to his fellow creatures, because for none of them is it for the good of mankind that he be held accountable to them. (279)

For Mill to hold that that there are no moral duties to oneself, and that all moral duties are duties to others, is for him to be revisionist about morality. To deny that that there are any moral duties to oneself is, as one commentator has put it, "to eliminate a whole chapter

from the doctrine of morals.”⁸ Mill is well aware of his revision of common or positive morality in rejecting moral duties to oneself, however. This is part of the reason why, when he talks about morality, immorality, moral disapprobation, etc., in *On Liberty*, he usually qualifies what he saying by adding “in the proper sense” or “properly”.

Since there are no moral duties to oneself, it follows that no conduct is immoral unless it happens to violate a moral duty to others. It also follows that no conduct is morally obligatory unless it happens to be required by a moral duty to others. All conduct is merely permissible, or optional, unless it happens to be prohibited, or required, by a moral duty to others.⁹ As Mill says:

When, by conduct of this sort, a person is led to violate a distinct and assignable obligation to any other person or persons, the case is taken out of the self-regarding class and becomes amenable to moral disapprobation in the proper sense of the term. (281)

That all moral duties are duties to others is clear from the division of duties in *Utilitarianism* (1861), written two years after *On Liberty*. Here Mill divides all moral duties into duties of justice and duties of beneficence. There are no duties of justice to oneself, and no duties of beneficence to oneself. Duties of justice are duties to others, and duties of beneficence are duties to others.¹⁰ In the case of duties of justice, there are correlative rights to the performance of these duties on the part of particular persons. In the case of duties of beneficence, there are no correlative rights to the performance of these duties on the part of particular persons:

Now it is known that ethical writers divide moral duties into two classes, denoted by the ill-chosen expressions, duties of perfect and of imperfect obligation; the latter being those in which, though the act is obligatory, the particular occasions of performing it are left to our choice; as in the case of charity or beneficence, which we are indeed bound to practise, but not towards any definite person, nor at any prescribed time. In the more precise language of philosophic jurists, duties of perfect obligation are those duties in virtue of which a correlative *right* resides in some person or persons; duties of imperfect obligation are those moral obligations which do not give birth to any right. I think it will be found that this distinction exactly coincides with that which exists between justice and the other obligations of morality. [...] It seems to me that this feature in the case – a right in some person, correlative to the moral obligation – constitutes the specific difference between justice, and generosity or beneficence. Justice implies something which it is not only right to do, and wrong not to do, but which some individual person can claim from us as his moral right. No one has a moral right to our generosity or beneficence, because we are not morally bound to practise those virtues towards any given individual.¹¹

Although, in the case of duties of beneficence, there are no correlative rights on the part of particular persons to the performance of these duties, it is nevertheless true that if a person has a duty to be beneficent, then fulfillment of that duty may be exacted from that

person. That is to say, if a person has a duty to be beneficent, then that person may, at least in principle, be compelled to be beneficent, even if no particular person has a correlative right to the beneficence:

It is a part of the notion of Duty in every one of its forms, that a person may rightfully be compelled to fulfil 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. Reasons of prudence, or the interest of other people, may militate against actually exacting it; but the person himself, it is clearly understood, would not be entitled to complain.¹²

Mill's first significant revision of common or positive morality, therefore, is to reject moral duties to self. It is not his only significant revision of common or positive morality, however.

Principle of Not Harming Others

Mill's second significant revision of common or positive morality is to render all moral duties to others – all duties of justice, and all duties of beneficence – as duties not to harm others who are not harming ourselves or others, and duties to harm others (in the form of public moral disapprobation and legal sanctions)¹³ who are harming ourselves or others when we or others are not harming them (when it promotes the general welfare).¹⁴ This is a revision of common or positive morality because the duties that constitute common or positive morality are not all derived from principles of not harming others who are not

harming ourselves others, and of harming others who are harming ourselves or others when we or others are not harming them. Indeed, according to Mill, the duties that constitute common or positive morality are not derived from any principles at all.

According to Mill, the duties of common or positive morality are simply duties not to engage in conduct that is *disliked* by others, and duties to engage in conduct that is *liked* by others:

The practical principle which guides them to their opinions on the regulation of human conduct is the feeling in each person's mind that everybody should be required to act as he, and those with whom he sympathizes, would like them to act. No one, indeed, acknowledges to himself that his standard of judgment is his own liking; but an opinion on a point of conduct, not supported by reasons, can only count as one person's preference; and if the reasons, when given, are a mere appeal to a similar preference felt by other people, it is still only many people's liking instead of one. To an ordinary man, however, his own preference, thus supported, is not only a perfectly satisfactory reason but the only one he generally has for any of his notions of morality, taste, and propriety, which are not expressly written in his religious creed, and his chief guide in the interpretation even of that. (220-1)

What others – more particularly, what “some powerful portion” (222) of others – dislike and like, however, is a subjective basis for morality. The result is that what conduct is

prohibited, merely permitted, and required by common or positive morality varies widely between different societies, and even between the same society at different times:

Men's opinions, accordingly, on what is laudable or blamable are affected by all the multifarious causes which influence their wishes in regard to the conduct of others, and which are as numerous as those which determine their wishes on any other subject. Sometimes their reason; at other times their prejudices or superstitions; often their social affections, not seldom their antisocial ones, their envy or jealousy, their arrogance or contemptuousness; but most commonly their desires or fears for themselves – their legitimate or illegitimate self-interest. Whenever there is an ascendant class, a large portion of the morality of the country emanates from its class interests and its feelings of class superiority. The morality between Spartans and Helots, between planters and Negroes, between princes and subjects, between nobles and roturiers, between men and women has been for the most part the creation of these class interests and feelings; and the sentiments thus generated react in turn upon the moral feelings of the members of the ascendant class, in their relations among themselves. Where, on the other hand, a class, formerly ascendant, has lost its ascendancy, or where its ascendancy is unpopular, the prevailing moral sentiments frequently bear the impress of an impatient dislike of superiority. (221)

Although Mill accepts that reformers have attempted to prevent certain conduct from being prohibited and promoted, by changing what others dislike and like, he holds that

they have continued to accept the dislikings and likings of others as the basis of common or positive morality:

The likings and dislikings of society, or some powerful portion of it, are thus the main thing which has practically determined the rules laid down for general observance, under the penalties of law or opinion. And in general, those who have been in advance of society in thought and feeling have left this condition of things unassailed in principle, however they may have come into conflict with it in some of its details. They have occupied themselves rather in inquiring what things society ought to like or dislike than in questioning whether its likings or dislikings should be a law to individuals. (222)

Another way Mill has of putting this point is to say that there is “no recognized principle” behind common or positive morality, and that as a result “People decide according to their personal preferences” (223) what conduct to prohibit and promote.

In place of this subjective basis for morality, or lack of an objective basis for morality, Mill proposes an objective basis for morality. He advances his own principle of morality:

The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties or the moral coercion of public opinion. (223)

The principle of morality that Mill advances is as follows:

That principle is that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. (223)

Since Mill's two statements of his own principle are compact, it will be necessary to unpack them. To "interfere with the liberty of action of a person" is "to exercise power over that person against her/his will". Interfering with the liberty of action of a person is acting towards that person in a way that is against that person's will. To interfere with the liberty of a person is to restrain a person. However, according to Mill, "all restraint, *quâ* restraint, is an evil" (293). That is, to restrain a person is to harm that person. Therefore, to interfere with the liberty of a person is to harm that person.

For conduct to be "warranted", or for anyone to act "rightfully", is for the conduct to be morally justified. For conduct to be morally justified is for conduct to not be immoral. Hence, Mill is concerned with the "only purpose" that can render restraining others not immoral. The "only purpose" that can render restraining others not immoral is "to prevent harm to others". Since to restrain others is to harm others, it follows that the "only purpose" that can render harming others in this way not immoral is "to prevent harm to others".

By “others” in “to prevent harm to others” is meant any persons other than those who are engaged in harming others. Hence, the “others” who are being saved from harm may be third parties, or they may be the people who are doing the restraining. To act in self-defense is to prevent harm to “others”, that is, persons other than those engaged in the harming, that is, oneself. This explains why Mill uses the expression “self-protection”. Finally, by “harm” is meant, as another commentator has said, “any form of perceptible damage suffered without consent”.¹⁵

Mill’s principle, therefore, is that it is *only* not immoral to harm others, in the form of restricting the liberty of others, when they are harming ourselves or others (when we or others are not harming them). That is, it is *only* not immoral to harm others, in the sense of restricting the liberty of others, when it is in self-defense, or in defense of (non-aggressing) others. According to this principle, it is a necessary condition for its not being immoral to harm others, in the sense of restricting the liberty of others, that they are harming ourselves or others (when we or others are not harming them).

Mill states his principle in terms of the “only purpose” for which it can be not immoral to harm others, in the sense of restricting the liberty of others. However, it is possible to state his principle in terms of when it is immoral to harm others, in the sense of restricting the liberty of others. It is immoral to harm others, in the sense of restricting the liberty of others, when they are not harming ourselves or others. His principle, therefore, is that it is immoral to harm others, in the sense of restricting the liberty of others, who are not harming ourselves or others.

Mill’s principle about the immorality of harming others, in the sense of restricting the liberty of others, is, however, derived from the more general principle of morality that

he holds to, which is that it is immoral to harm others who are not harming ourselves or others. Stated as a moral duty, Mill holds that there is a moral duty *not to harm others who are not harming ourselves or others*. This is the first duty of the morality of *On Liberty*. Although it is the fundamental principle of *On Liberty*, nevertheless, it is only the first of “the two maxims which together form the entire doctrine of this Essay” (292), as will be clear below.

In *On Liberty* Mill renders all moral duties to others as duties to others not to harm others who are not harming ourselves or others, and, as will be clear below, duties to harm others (in the form of public moral disapprobation and legal sanctions) who are harming ourselves or others when we or others are not harming them (when it promotes the general welfare). All duties of justice, according to Mill, are duties to others not to harm others who are not harming ourselves or others, or duties to harm others who are harming ourselves or others when we or others are not harming them (when it will promote the general welfare):

Acts injurious to others require a totally different treatment. Encroachment on their rights; infliction on them of any loss or damage not justified by his own rights; falsehood or duplicity in dealing with them; unfair or ungenerous use of advantages over them [...] these are fit objects of moral reprobation and, in grave cases, of moral retribution and punishment. (279)

All duties of beneficence, according to Mill, are only duties to others not to harm others who are not harming ourselves or others. This needs to be explained.

To fail to fulfill duties to be beneficent is to harm others who are not harming ourselves or others. If there is a duty of beneficence to save a person from drowning in a shallow river, and if one fails to fulfill that duty, and lets the person drown, then one causes evil to that person, or harms that person, who is not harming oneself or others: “A person may cause evil to others not only by his actions but by his inaction” (225). If there is a duty of beneficence to stop a group teenagers from beating up a tramp, and if one fails to fulfill that duty, and lets the person get beaten up, then one causes evil to that person, or harms that person, who is not harming oneself or others. Since to fail to fulfill duties to be beneficent is to harm others who are not harming ourselves or others, it follows that all duties of beneficence are duties not to harm others who are not harming ourselves or others:

There are also many positive acts for the benefit of others which he may rightfully be compelled to perform, such as to give evidence in a court of justice, to bear his fair share in the common defense or in any other joint work necessary to the interest of the society of which he enjoys the protection, and to perform certain acts of individual beneficence, such as saving a fellow creature’s life or interposing to protect the defenseless against ill usage – things which whenever it is obviously a man’s duty to do he may rightfully be made responsible to society for not doing. A person may cause evil to others not only by his actions but by his inaction, and in either case he is justly accountable to them for his injury. (224-5)

By rendering duties of beneficence as duties not to harm others who are not harming ourselves or others, Mill significantly expands the scope of duties to others not to harm others who are not harming ourselves or others:

Mill implies here a rough identification of harming, injury, and causing evil, and uses the notion of causing evil by inaction to argue that these terms have a wider extension than one might think. He seems to imply both that not preventing evil can in some circumstances be causing evil by in action (certainly it is not always so), and that it is the only way of causing evil by inaction.¹⁶

As was already stated, moral virtues, according to Mill, are dispositions to fulfill moral duties. Since all moral duties are duties to others, all moral virtues are dispositions to fulfill duties to others. Since all moral duties to others are either duties of justice or duties of beneficence, all moral virtues are dispositions to fulfill either duties of justice or duties of beneficence. Since Mill renders all duties of justice, and all duties of beneficence, as duties not to harm others who are not harming ourselves or others, or duties to harm others (in the form of public moral disapprobation and legal sanctions) who are harming ourselves or others when we or others are not harming them (when it promotes the general welfare), it follows that all moral virtues are dispositions to fulfill duties not to harm others who are not harming ourselves or others and duties to harm others who are harming ourselves or others when we or others are not harming them. All moral vices, therefore, are dispositions to violate such duties. That is, all moral vices are dispositions to harm others who are not harming ourselves or others, or dispositions not

to harm others (in the form of public moral disapprobation and legal sanctions) who are harming ourselves or others when we or others are not harming them (when it promotes the general welfare):

And not only these acts, but the dispositions which lead to them, are properly immoral and fit subjects of disapprobation which may rise to abhorrence. Cruelty of disposition; malice and ill-nature; that most antisocial and odious of all passions, envy; dissimulation and insincerity, irascibility on insufficient cause, and resentment disproportioned to the provocation; the love of domineering over others; the desire to engross more than one's share of advantages (the *πλεονεξία* of the Greeks); the pride which derives gratification from the abasement of others; the egotism which thinks self and its concerns more important than everything else, and decides all doubtful questions in its own favor – these are moral vices and constitute a bad and odious character (279).

The result of Mill's rendering all duties of justice and all duties of beneficence as duties not to harm others who are not harming ourselves or others, or duties to harm others who are harming ourselves or others when we or others are not harming them, and of rendering all moral virtues as dispositions to fulfill these duties, and all moral vices as dispositions to violate these duties, is that morality consists in not harming others who are not harming ourselves or others, and harming others (in the form of public moral

disapprobation and legal sanctions) who are harming ourselves or others when we or others are not harming them (when it promotes the general welfare):

Whenever, in short, there is a definite damage, or definite risk of damage, either to an individual or to the public, the case is taken out of the province of liberty and placed in that of morality or law. (282)

Private Moral Disapprobation and Harmless to Others

In both *On Liberty* and *Utilitarianism* Mill says that whenever a person engages in conduct that is wrong – that is, acts immorally, that is, harms others who are not harming herself/himself or others, or fails to harm others (in the form of public moral disapprobation and legal sanctions) who are harming herself/himself¹⁷ or others when she/he herself/himself or others are not harming them (when it promotes the general welfare) – then the person ought to be punished by her/his private moral disapprobation, or conscience:

When such reasons as these preclude the enforcement of responsibility, the conscience of the agent himself should step into the vacant judgment 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 judgment of his fellow creatures. (225)

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, then by the opinion of his fellow creatures; if not by opinion, by the reproaches of his own conscience. This seems the real turning point of the distinction between morality and simple expediency.¹⁸

In *Utilitarianism* Mill describes this punishment by private moral disapprobation or conscience as an “inner sanction”, specifically, a “pain”, which stops or checks the person from engaging in the conduct in question, and the prospect of which, in virtuous persons, makes the person “shrink[] from” engaging in the conduct:

The internal sanction of duty, whatever our standard of duty may be, is one and the same – a feeling in our own mind; a pain, more or less intense, attendant on violation of duty, which in properly-cultivated moral natures rises, in the more serious cases, into shrinking from it as an impossibility. This feeling, when disinterested, and connecting itself with the pure idea of duty, and not with some particular form of it, or with any of the merely accessory circumstances, is the essence of Conscience¹⁹

The sanction of conscience is self-punishment. It is self-restraint. Since restraint is an evil or harm, it follows that the sanction of conscience is self-harming. It is an instance of perceptible damage suffered without consent.²⁰ According to Mill, a person who is acting

immorally morally ought to be harmed by her/his conscience, that is, morally ought to self-harm.

Importantly, Mill does not hold that if a person is acting immorally then the person morally ought *prima facie* to self-harm. There is no qualification of this moral imperative. If a person harms others who are not harming herself/himself or others, or fails to harm others who are harming herself/himself when herself/himself is not harming them or others, then that person is acting immorally, and that person morally ought to self-harm. As Mill might have put it: We do not call anything wrong, unless we mean to imply that a person ought to be punished by the reproaches of her/his own conscience, if not also by public moral disapprobation, and if not also by law.

The minimum amount of harm that is morally obligatory for a person who acts immorally, therefore, is the harm of conscience. As he says, “Acts injurious to others [...] are fit objects of moral reprobation and, in grave cases, of moral retribution and punishment” (279). By “moral reprobation”, as distinct from “moral retribution and punishment”, is meant the harm of conscience. Mill’s position, therefore, is that immoral conduct is conduct that morally deserves self-harm, whatever else it morally deserves. When he says that, in the case of immoral conduct, the “conscience of the agent himself should step into the vacant judgment seat and protect those interests of others which have no external protection”, and “a person ought to be punished... by the reproaches of his own conscience”, the “should” and “ought” here are the “should” and “ought” of moral obligation.

However, this does not mean that there is a third moral duty to others, namely, the duty to others to harm oneself (in the form of the pain of conscience) when one is

harming others who are not harming oneself or others, or failing to harm others (in the form of public moral disapprobation and legal sanctions) who are harming oneself or others when oneself or others are not harming them (when it promotes the general welfare). To say that a person who is acting immorally morally ought to be harmed by her/his conscience, that is, morally ought to self-harm, is to say that the person morally ought to be restrained from so acting by herself/himself, which is to say that the person morally ought not to act immorally. It is to say that the person morally ought not to violate the two moral duties to others – not to harm others who are not harming ourselves or others, and to harm others who are harming ourselves or others when we or others are not harming them.

It has been argued that Mill rejects moral duties to oneself because, in addition to believing that all violations of all moral duties ought to be punished in some way, he believes that the fulfillment of all moral duties may be exacted, and the fulfillment of moral duties to oneself cannot be exacted: “Mill by this point seems to have confused exacting the performance of a duty with the punishment to which a previously and culpably unfulfilled duty is subject”.²¹ It has been argued that if he were to give up the belief that fulfillment of all moral duties may be exacted, he could continue to believe that all violations of all moral duties ought to be punished in some way, and not reject moral duties to oneself, since violations of moral duties to oneself may be punished by conscience:

If, however, one is convinced that there are moral duties to oneself (or at least does not wish to insist that there are no such duties), one can retain Mill’s view

that any real breach of duty ought (*ceteris paribus*) to be punished and yet avoid the apparently quiet illiberal view that breaches of moral duties to oneself ought to be punishable by law or by public expressions of unfavorable moral opinion. For there remains the possibility that such breaches of duty should be punished (as indeed they usually are punished) by self-reproach alone. Of course, it might be objected that only punishment by law or by public moral condemnation is, properly speaking, punishment at all; but whether or not that objection could be sustained, at least it is clear that it could not even be offered by Mill, who quite explicitly lists self-reproach as a form of punishment²²

What this argument fails to appreciate is that Mill believes that a person is not acting immorally, and hence, ought not to be punished in any way, unless she/he is harming others who are not harming herself/himself or others, or not harming others who are harming herself/himself or others when herself/himself or others are not harming them. Since moral duties to oneself are not duties *to oneself* not to harm others who are not harming ourselves or others, or duties to oneself to harm others who are harming oneself or others when we or others are not harming them (which would make them extremely peculiar, as well as redundant, given the existence of moral duties to others), moral duties to oneself are not duties not to harm others who are not harming ourselves or others, or duties to oneself to harm others who are harming oneself or others when we or others are not harming them. That is, moral duties to oneself are not duties not to be immoral. However, this is just to say that there are no moral duties to oneself. As Mill might have put it: We do not call anything wrong, unless we mean to imply that it involves harming

others who are not harming ourselves or others, or failing to harm others who are harming ourselves or others when we or others are not harming them, and we do not say that we ought to punish anyone, unless we mean to imply that the person has done something wrong.

One's private moral disapprobation of one's own immoral conduct is an act of self-harming. The self-harming of conscience appears to be unique, since it is self-administered, and yet it is against the will of the person who is administering it. When one engages in it one is not harming others who are not harming oneself or others, and one is not failing to harm others who are harming oneself or others when oneself or others are not harming them. Hence, it cannot be immoral to engage in it.

However, one's mistaken private moral disapprobation of one's own non-immoral conduct – one's mistaken private moral disapproval of one's own merely permissible or morally obligatory conduct – cannot be immoral, either. When one engages in it, one is not harming others who are not harming oneself or others, nor is one failing to harm others who are harming oneself or others when oneself or others are not harming them. For example, if one mistakenly privately morally disapproves of one's keeping a permissible promise to help someone, then that mistaken private moral disapproval is not itself immoral.

One's private moral disapprobation of others' immoral conduct cannot be immoral, either. Since it is private, it does not harm anyone – not even oneself. One does not harm others or oneself by privately judging that others ought to self-harm because of their immoral conduct. When one engages in it, one is not harming others who are not

harming oneself or others, and one is not failing to harm others who are harming oneself or others when oneself or others are not harming them.

Finally, one's mistaken private moral disapprobation of others' non-immoral conduct cannot be immoral, either. Since it does not harm anyone, when one engages in it, one is not harming others who are not harming oneself or others. Nor is one failing to harm others who are harming oneself or others. For example, if one mistakenly privately morally disapproves of others' fornication, then that mistaken private moral disapproval is not itself immoral.

Since private moral disapprobation (either of oneself or others) is never immoral, and since mistaken private moral disapprobation (either of oneself or others) is never immoral, the self-harming of conscience, and the self-harming of mistaken conscience, is not something from which others must be protected. This is why Mill does not include it in the two kinds of harm to others – “physical force in the form of legal penalties or the moral coercion of public opinion” (223) – that must be justified. Public moral disapprobation, however, as well as the sanctions of law – fines, imprisonment, execution, etc. – are harms to others. For this reason, Mill treats them differently. They need to be justified.

Public Moral Disapprobation and the Principle of Harming Others

The liberty that Mill seeks to protect in *On Liberty* is the freedom of an adult person, “with the full use of the reflecting faculty” (294), in a civilized society, to freely, voluntarily, and knowingly engage in conduct (either acts of commission or omission),

where this includes “thought and feeling” (225), that only directly affects herself/himself, or that only directly affects others with their free, voluntary and undeceived consent:

there is a sphere of action in which society... has, if any, only an indirect interest: comprehending all that portion of a person’s life and conduct which affects only himself or, if it also affects others, only with their free, voluntary, and undeceived consent and participation... This, then, is the appropriate region of human liberty. (225)

The liberty to engage in this conduct must be protected from “compulsion and control, whether the means used be physical force in the form of legal penalties or the moral coercion of public opinion” (223). Importantly, Mill seeks to protect this conduct not merely from the legal sanctions of fines, imprisonment, execution, etc., but also from “public opinion”. When Mill talks about “public opinion”, he means public moral disapprobation, or moral disapprobation addressed to others. Public moral disapprobation is an other-regarding action. It is either direct, when it is made to the person who is engaging in the conduct – for example, “You ought not to slap your children!” (note that direct public moral disapprobation can be self-referential, that is, a person can publicly morally disapprove of her own conduct – “I ought not to slap my children!”), or indirect, when it is made to a person other than the person who is engaging in the conduct (for example – “People ought not to slap their children!”). Since it is public, or addressed to others, the effect of public moral disapprobation of conduct (even self-referential public moral disapprobation) is to interfere with the liberty of others from engaging in this

conduct – to stop them, or at least check them. Hence, public moral disapprobation of conduct is an act of “compulsion and control” of others, of restraint:

All that makes existence valuable to anyone depends on the enforcement of restraints upon the actions of other people. Some rules of conduct, therefore, must be imposed – by law in the first place, and by opinion on many things which are not fit subjects for the operation of law. (220)

Since public moral disapprobation of conduct is a form of restraint, it is a harm. In contrast to private moral disapprobation of conduct, public moral disapprobation of conduct is a harm to others. My public moral disapprobation of another person’s conduct is a harm to that other person, since it restrains that other person from engaging in that conduct. My public moral disapprobation of my own conduct is also a harm to others, since it also restrains others from engaging in that conduct.

Mill does not hold that there is an unqualified moral duty to publicly morally disapprove of conduct that harms ourselves or others when we or others are not harming them. Since public moral disapprobation of such conduct is a harm to others, an unqualified moral duty to publicly morally disapprove of such conduct would be an unqualified moral duty to harm others – albeit those who are harming ourselves or others when we or others are not harming them. However, Mill does not hold that there is an unqualified moral duty to harm those who are harming ourselves or others when we or others are not harming them. Hence, Mill does not hold that there is an unqualified moral

duty to publicly morally disapprove of conduct that harms ourselves or others when we or others are not harming them.

It can be said that Mill holds that there is a *prima facie* moral duty to publicly morally disapprove of conduct that harms ourselves or others when we or others are not harming them. This is because it can be said that Mill holds that there is a *prima facie* moral duty to harm others who are harming ourselves or others when we or others are not harming them:

If anyone does an act hurtful to others, there is a *prima facie* case for punishing him by law or, where legal penalties are not safely applicable, by general disapprobation. (224)

The duty to harm others who are harming ourselves or others when we or others are not harming them is only a *prima facie* duty because this harm, even to those who are harming ourselves or others when we or others are not harming them, is something that must be taken into consideration and weighed against the harm that they are inflicting on ourselves or others when we or others are not harming them. That others are harming ourselves or others when we or others are not harming them is therefore only a necessary condition for harming them, and is not a sufficient condition:

it must by no means be supposed, because damage, or probability of damage, to the interests of others can alone justify the interference of society, that therefore it always does justify such interference. (292)

For the harm to those who are harming ourselves or others to be justified, it must also be the case that the general welfare is promoted by such harming:

As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question whether the general welfare will or will not be promoted by interfering with it becomes open to discussion. (276)

As another commentator has said – talking about the “intervention” of public moral disapprobation and law – the fact that others are harming ourselves or others when we or others are not harming them is merely a “threshold”:

After all, the fact that one's conduct harms another is, on Mill's account, only a necessary not a sufficient justification for invention; once harm is established, everything then depends on a calculation of the costs and the benefits of preventing it. The point of the Harm Principle is to establish a threshold which must be crossed before utilitarian calculations of that sort are even in order²³

Mill says little about how it is to be determined that the general welfare will or will not be promoted by such harming of others who are harming ourselves or others when we or others are not harming them. He appears to hold that, in some cases, it will lead to them engaging in more immoral conduct, or will lead to them acting even more immorally, or

both. He also appears to hold that, in some cases, it will lead to other harms to others. In these types of cases, the general welfare is promoted by *not* harming others who are harming ourselves or others when we or others are not harming them:

There are often good reasons for not holding him to the responsibility; but these reasons must arise from the special expediences of the case: 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. When such reasons as these preclude the enforcement of responsibility, the conscience of the agent should step into the vacant judgment seat and protect the those interests of others which have no external protection (225)

Of course, even if, for these reasons, the general welfare is promoted by not harming others who are harming ourselves or others when we or others are not harming them, it remains true that those who are engaged in harming ourselves or others when we or others are not harming them morally ought to privately morally disapprove of their conduct, that is, morally ought to self-harm in the form of the pain of conscience.

If, however, the general welfare *is* promoted by harming others who are harming ourselves or others when we or others are not harming them, then others morally *ought* to be publicly morally disapproved of for conduct that harms ourselves or others when we or others are not harming them, when doing so will promote the general welfare.

Furthermore, others morally *ought* to be sanctioned by fines, imprisonment, execution, etc., for conduct that harms ourselves or others when we or others are not harming them.

Mill can be said to hold, therefore, that there is a moral duty *to harm others who are harming ourselves or others when we or others are not harming them, when the general welfare is promoted by such harming*. This is the second moral duty of the morality of *On Liberty*.

More specifically, Mill can be said to hold that there is a moral duty to publicly morally disapprove (but to do no more than this) of others' conduct that harms ourselves or others when we or others are not harming them, when the welfare of others is promoted by such public moral disapprobation, but is not promoted by doing any more than this. (For example, publicly morally disapproving of someone for jumping a queue in a grocery store). Mill can also be said to hold that there is a moral duty to morally publicly disapprove *and* sanction with fines, imprisonment, execution, etc., others' conduct that harms ourselves or others when we or others are not harming them, when the welfare of others is promoted by such legal sanctions as well as public moral disapprobation. (For example, a prison sentence for assault.) As another commentator, talking about both public moral disapprobation and legal sanctions, has put it, "Conduct which is harmful to others ought to be interfered with if and only if it is better for the general interest to do so."²⁴

It appears that Mill holds that conduct that does not violate the constituted rights of others – conduct that does not violate duties of justice – but that only violate duties of beneficence (for example, not helping someone who has fallen into a ditch and who cannot get out) is such that the general welfare is promoted by publicly morally

disapproving of such conduct, but doing no more than this (that is, not legal sanctioning the conduct). Conduct that does violate the constituted rights of others – conduct that does violate duties of justice – is such that the general welfare is promoted by, in addition to publicly morally disapproving of such conduct, sanctioning such conduct with fines, imprisonment, execution, etc.:

The acts of an individual may be hurtful to others or wanting in due consideration for their welfare, without going to the length of violating any of their constituted rights. The offender may then be justly punished by opinion, though not by law. (276)

Mill says that “the two maxims which together form the entire doctrine of this Essay” are the following:

The maxims are, first, that the individual is not accountable to society for his actions, in so far as these concern the interests of no person but himself. Advice, instruction, persuasion, and avoidance by other people if thought necessary by them for their own good, are the only measures by which society can justifiably express its dislike or disapprobation of his conduct. Secondly, that for such actions as are prejudicial to the interests of others, the individual is accountable, and may be subjected either to social or legal punishment, if society is of the opinion that the one or the other is requisite for its protection. (292)

The two duties of the morality of *On Liberty* lie behind these two maxims. Behind the maxim that restricting the liberty of a person engaged in self-regarding conduct is not justified, is the moral duty to others not to harm others who are not harming ourselves or others. Behind the maxim that a person whose actions are “prejudicial to the interests of others” may be subjected to social or legal punishment if society is of the opinion that the one or the other is requisite for its protection, is the moral duty to others to harm others who are harming ourselves or others when we or others are not harming them when the general welfare is promoted by harming them.

Mistaken public moral disapprobation is disapprobation of conduct that does not harm others who are not harming ourselves or others, or that does harm others who are harming ourselves or others. Since public moral disapprobation is a harm to others, it follows that mistaken public moral disapprobation is harming others who are not harming ourselves or others, or harming others who are harming others who are harming ourselves or others. Therefore, mistaken public moral disapprobation is immoral. The same is true of mistaken legal sanctioning of conduct. It is harming others who are not harming ourselves or others, or harming others who are harming others who are harming ourselves or others. Mistaken legal sanctioning is therefore also immoral.

The two most common targets of mistaken public moral disapprobation and mistaken legal sanctioning are self-regarding conduct, such as drunkenness, and consensual other-regarding conduct, such as gambling and polygamy.

Self-Regarding Conduct

Some commentators hold that, for Mill, self-regarding conduct is an adult person's free, voluntary and undeceived conduct that only directly affects herself/himself, or only directly affects others with their free, voluntary and undeceived consent (or their consent, for short).²⁵ This is to equate self-regarding conduct with what Mill calls the "appropriate region of human liberty" (225). That is, 'self-regarding conduct' is 'conduct that a person should have the liberty to engage in'. On this interpretation, a person's 'self-regarding' conduct includes all of a person's merely permissible conduct, including all of a person's conduct that only directly affects her/him (since all such conduct is merely permissible), and all of a person's merely permissible conduct that directly affects others with their consent, as well as some morally obligatory conduct, namely, morally obligatory conduct that directly affects others with their consent. However, it does not include morally obligatory conduct that directly affects others without their consent – that is, restraining others.

On this interpretation, if one (freely, etc.) practices kicking a football against a wall alone in one's back yard, then one's conduct is self-regarding (so long as one is not thereby failing to fulfill any moral duties to others, e.g., neglecting one's dependents). If one plays a game of football with someone else in the park, then one's conduct is also self-regarding (so long as one is not, etc.). If one promises to catch another person if the person starts to slip, and the other person accepts the promise, and the other person starts to slip, and one catches the other person, then one's conduct is self-regarding. However, if one steals the other person's football, then one's conduct is other-regarding. If the other

person moral disapproves of your theft, then the other person's conduct is other-regarding.

There are passages in *On Liberty* in which Mill can be read as saying that self-regarding conduct includes conduct that directly affects others with their consent, and that it is only conduct that directly affects others without their consent that is other-regarding, or "social", conduct:

When, by conduct of this sort, a person is led to violate a distinct and assignable obligation to any other person or persons, the case is taken out of the self-regarding class and becomes amenable to moral disapprobation in the proper sense of the term. (281)

However, I do not hold that, for Mill, self-regarding conduct is to be equated with the "appropriate region of human liberty". I hold that, for Mill, self-regarding conduct is a person's conduct that only directly affects herself/himself. This means that 'self-regarding' is a purely descriptive category. Further, it means that infants, insane adults, deceived adults, intoxicated adults, and so forth, may engage in self-regarding conduct, although society and the state may restrain their self-regarding conduct, since their self-regarding conduct is not included in the liberty that Mill seeks to protect.

In passages in which Mill talks about putatively self-regarding conduct, or conduct that appears to only directly affect the person herself/himself, but that in fact directly affects others without their consent, this purely descriptive meaning is suggested:

In like manner, when a person disables himself, by conduct purely self-regarding, from the performance of some definite duty incumbent on him to the public, he is guilty of a social offense. (281-2)

According to Mill, a person's self-regarding conduct cannot be immoral. Since it is conduct that does not directly affect others at all, it is not conduct that harms ourselves or others when we or others are not harming her/him.

Nevertheless, not all self-regarding conduct is included in the "appropriate region of human liberty", and hence, not all self-regarding conduct is protected. Only self-regarding conduct that is engaged in by an adult person who is "free, voluntary, and undeceived" (that is, who is not under duress, and who is not ignorant or in error about what she/he is doing), with the "full use of the reflecting faculty" (that is, who is not intoxicated, or drugged, or in a depressed state, or in the grip of a violent passion, etc.), in a civilized society, is included in the liberty that Mill seeks to protect.

A person who crosses an unsafe bridge over a river may be engaging in self-regarding conduct (assuming she/he does not fail to fulfill moral duties to others by getting injured). Hence, the person may be doing nothing immoral in crossing the unsafe bridge. Nevertheless, such a person's self-regarding conduct is not included in the liberty Mill seeks to protect, if the person does not cross an unsafe bridge knowingly:

If either a public officer or anyone else saw a person attempting to cross a bridge which had been ascertained to be unsafe, and there was no time to warn him of his danger, they might seize him and turn him back, without any real

infringement of his liberty; for liberty consists in doing what one desires, and he does not desire to fall into the river. (294)

Even if such a person's crossing an unsafe bridge is not immoral, nevertheless it is merely permissible, if not morally obligatory, for others – and, in the case of public officers, it is morally obligatory – to prevent a person from doing so, when they know that the person mistakenly believes that the bridge is safe and does not want to fall into the river. In this case they know that the person “does not desire” to fall into the river, but instead, wants to avoid this perceptible damage to herself/himself. Hence, it is not a “real infringement” of the person's liberty for others to prevent her/him from crossing the river, since the others are only assisting him in doing what they know he wants to do.

Immediately after the sentence quoted above, Mill says that if the person intends to engage in conduct where there is “not a certainty” of some perceptible damage to the person, but only “a danger” of perceptible damage to her/him, and the person knows this, and is an adult, and has “full use of the reflecting faculty”, and her/his conduct is “free, voluntary, and undeceived”, and she/he is not violating any moral duties to others by engaging in this conduct, then it is *immoral* for others to prevent the person from engaging in such conduct, that is, to restrain the person. The person has the liberty to engage in such conduct, although others ought to warn the person of the risk of perceptible damage:

Nevertheless, when there is not a certainty, but only a danger of mischief, no one but the person himself can judge of the sufficiency of the motive which may

prompt him to incur the risk; in this case, therefore (unless he is a child, or delirious, or in some state of excitement or absorption incompatible with the full use of the reflecting faculty), he ought, I conceive, to be only warned of the danger; not forcibly prevented from exposing himself to it. (294)

One possible implication of this statement is that if there is a *certainty* of perceptible damage to the person as a result of her/his conduct, then, *even if* the person knows this and hence is “undeceived”, and is an adult, and has “full use of the reflecting faculty”, and her/his conduct is “free” and “voluntary”, and she/he is not violating any moral duties to others by engaging in this conduct, it is *not immoral* for others to prevent the person from engaging in such conduct, that is, to restrain the person. If the person who desires to cross the unsafe bridge and fall into the river is an adult, and has “full use of the reflecting faculty,” and her/his crossing the unsafe bridge is “free, voluntary, and undeceived”, and she/he is not violating any moral duties to others by engaging in this conduct, then nevertheless it is *not immoral* to prevent the person from knowingly crossing the unsafe bridge and falling to the river below. Indeed, perhaps, it is morally obligatory to prevent the person from knowingly crossing the unsafe bridge and falling into the river, at least in the case of the public officer. A person in such circumstances does *not* have the liberty to cross the bridge.

This possible implication is extremely problematic, since it seems to justify paternalism. Mill grants no such permission to intervene in the case of the (presumably) fully reflective, undeceived, freely and voluntarily acting adult person who cannot “restrain himself from hurtful indulgences” (that are self-regarding). In general, Mill’s

position is that self-regarding conduct, by a fully reflective adult person, who is acting freely and voluntarily, and who knows what she/he is doing, is such that the person “cannot rightfully be compelled to forbear” from the conduct that involves perceptible damage to her/him, “because it will be better for him” if she/he does forbear:

He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. [...] The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, his own body and mind, the individual is sovereign. (223-4)

When Mill argues that “mischief which a person does to himself” becomes “amenable to moral disapprobation in the proper sense of the term”, only when the person “is led to violate a distinct and assignable obligation to any other person or persons” (281), such that “the case is taken out of the province of liberty and placed in that of morality or law” (282), he does so in reply to an objection premised on “seriously or permanently hurtful” (280) self-regarding conduct. Hence, in the case of adult persons, who know what they are doing, and who have “full use of the reflecting faculty”, and who are acting freely and voluntarily, and who are not violating any moral duties to

others, it is *immoral* to prevent them from engaging in “seriously or permanently hurtful” self-regarding conduct:

The distinction here pointed out between the part of a person’s life which concerns only himself and that which concerns others, many persons will refuse to admit. How (it may be asked) can any part of the conduct of a member of society be a matter of indifference to the other members? No person is entirely an isolated being; it is impossible for a person to do anything seriously or permanently hurtful to himself without mischief reaching at least to his near connections, and often far beyond them. [...] And even (it will be added) if the consequences of misconduct could be confined to the vicious or thoughtless individual, ought to society to abandon to their own guidance those who are manifestly unfit for it? If protection against themselves is confessedly due to children and persons under age, is not society equally bound to afford it to persons of mature years who are equally incapable of self-government? (280)

Statements like this make it clear that Mill holds that it is immoral to prevent a fully reflective, freely and voluntarily acting adult person from knowingly engaging in conduct that is seriously or permanently hurtful to herself/himself, when it does not violate any moral duty to others. If one wants to commit suicide, and if one is an adult, and knows what one is doing, and has “full use of the reflecting faculty”, and if one is acting freely and voluntarily, and if one is not violating any moral duty to others (if one has no dependents to take care of, no debts to pay, no promises to others that one is thereby

breaking, one has retired from or quit one's job, etc.), then one's committing suicide is not immoral, and one has "absolute" liberty to do this. To publicly morally disapprove of one for committing suicide while one is doing so, that is, to restrain one in this way, is immoral. To impose fines, prison sentences, and execution sentences on people for attempted suicide, is immoral. It is immoral because to do this is to harm someone who is not harming ourselves or others. Since the person committing suicide is not violating any moral duties to others, public moral disapprobation of the person's committing suicide, and legal sanctioning of suicide attempts, is necessarily mistaken public moral disapprobation, and mistaken legal sanctioning. Since this mistaken public moral disapprobation, and mistaken legal sanctioning, harms someone who is not harming ourselves or others, this mistaken public moral disapprobation is immoral.

The possible implication of the statement previously quoted – the implication that the certainty of mischief entails the non-immorality of restraint – must therefore be rejected. Any truly self-regarding conduct, no matter how perceptibly damaging to the person, is not immoral. If it is engaged in by an adult who knows what she/he is doing, who has "full use of the reflecting faculty", and who is acting freely and voluntarily, then it is immoral to mistakenly publicly morally disapprove of it, and it is immoral to mistakenly fine, imprison or execute a person for attempting it or engaging in it.

A person's committing suicide is only immoral, and hence, in principle, "amenable to moral disapprobation in the proper sense of the term", if it is not self-regarding conduct. If by committing suicide a person leaves dependents destitute, or leaves debts unpaid, or breaks a promise to another, or violates the terms of a contract of employment, then by committing suicide a person harms others who are not harming

herself/himself or others, and the person's conduct is not self-regarding. If by committing suicide a person harms others who are not harming oneself or others, then he/she violates the first moral duty. Hence, he/she morally ought to be harmed by conscience, if not also by public moral disapprobation, and if not also by law, for attempting to violate a moral duty to others:

I fully admit that the mischief which a person does to himself may seriously affect, both through their sympathies and their interests, those nearly connected with him and, in a minor degree, society at large. When, by conduct of this sort, a person is led to violate a distinct and assignable obligation to any other person or persons, the case is taken out of the self-regarding class and becomes amenable to moral disapprobation in the proper sense of the term. (281)

Self-regarding conduct that involves willed perceptible damage to the person is normally the kind of conduct that is prohibited by moral duties to oneself. The important implication of Mill's rejection of moral duties to oneself is that no amount of such self-regarding self-destructive conduct is immoral. Mill talks about "vices or follies" (280), or "faults" (279), which are dispositions to engage in self-regarding conduct that involves willed perceptible damage to the person. Such vices, however, are not, and cannot be, "moral vices" (279). The self-regarding self-destructive conduct that is engaged in as a result of such vices is not immoral, that is, does not constitute "wickedness", regardless of what degree or "pitch" they are taken to:

A person who shows rashness, obstinacy, self-conceit – who cannot live within moderate means – who cannot restrain himself from hurtful indulgences – who pursues animal pleasures at the expense of those of feeling and intellect... [these] self-regarding faults previously mentioned, which are not properly immoralities, and to whatever pitch they may be carried, do not constitute wickedness. They may be proofs of any amount of folly, or want of personal dignity and self-respect; but they are only a subject of moral reprobation when they involve a breach of duty to others, for whose sake the individual is bound to have care for himself. (279)

Examples of self-regarding self-destructive conduct include “drunkenness” (280) and “uncleanliness” (280). Examples of dispositions to engage in self-regarding self-destructive conduct include “idleness” (280). It cannot be immoral to be drunk or to be unclean, and it cannot be morally vicious to be idle, since one is not harming others by being so, and *a fortiori*, one is not harming others who are not harming oneself or others. To mistakenly publicly morally disapprove of a person for being drunk or unclean, or for being lazy, is immoral, since it is to harm the person who is not harming ourselves or others. To fine, imprison or execute a person for being drunk or unclean, or for being lazy, is also immoral, since, again, it is to harm a person who is not harming ourselves or others.

Consensual Other-Regarding Conduct

The “appropriate region of human liberty” (225) for Mill includes not just self-regarding conduct, but consensual other-regarding conduct. In addition to defending the liberty “of tastes and pursuits, of framing a plan of our life to suit our own character, of doing as we like, subject to such consequences as may follow, without impediment from our fellow creatures” (226), Mill also defends the following liberty:

from this liberty of each individual follows the liberty, within the same limits, of combination among individuals; of freedom to unite for any purpose not involving harm to others: the persons combining being supposed to be of full age and not forced or deceived. (226)

By “others”, in “any purpose not involving harm to others”, Mill is referring to persons other than the “persons combining”. Hence, there are two sets of others in this case. First, there are those persons who constitute the group. Each person in the group engages in other-regarding conduct with respect to each other person in the group. Second, there are those persons who are outside the group. They are others to the persons in the group, but the persons in the group are not engaging in other-regarding conduct with respect to them. Mill is defending the liberty of the persons in a group, all of whom are adults, all of whom know what they are doing (who are not “deceived”), and all of whom are acting freely and voluntarily (who are not “forced”), to engage in other-regarding conduct with respect to each other, when such conduct does not harm others. As he says:

But there is no room for entertaining any such question [concerning prevention] when a person's conduct affects the interests of no persons besides himself, or needs not affect them unless they like (all the persons concerned being of full age and the ordinary amount of understanding). In all such cases, there should be perfect freedom, legal and social, to do the action and stand the consequences. (276)

Mill accepts that other-regarding consensual conduct is not self-regarding conduct. Nevertheless, he holds that other-regarding consensual conduct can be defended from mistaken public moral disapprobation, and from mistaken legal sanctions, on exactly the same grounds as self-regarding conduct:

The case of a person who solicits another to do an act is not strictly a case of self-regarding conduct. To give advice or offer inducements to anyone is a social act and may, therefore, like actions in general which affect others, be supposed to amenable to control. But a little reflection corrects the first impression, by showing that if the case is not strictly within the definition of individual liberty, yet the reasons on which the principle of individual liberty is grounded are applicable to it. (296)

Self-regarding conduct can be defended from mistaken public moral disapprobation, and from mistaken legal sanctions, for the reason that it does not harm others, and hence, does not harm others who are not harming ourselves or others. Consensual other-regarding

conduct can be defended on the same basis. Consensual other-regarding conduct does not harm others, and hence, does not harm others who are not harming ourselves or others. Since it is consensual, it cannot involve harm to others, or perceptible damage suffered without consent, and *a fortiori*, it cannot involve harming others who are not harming ourselves or others. The “appropriate sphere of liberty” therefore encompasses two spheres of conduct that cannot be immoral (so long as there is no violation of moral duties to others). These two spheres of conduct are self-regarding conduct, and consensual other-regarding conduct:

But there is a sphere of action in which society, as distinguished from the individual, has, if any, only an indirect interest; comprehending all that portion of a person’s life and conduct which affects only himself or, if it also affects others, only with their free, voluntary, and undeceived consent and participation.

(225)

As was stated above, self-regarding self-destructive conduct is normally the kind of conduct that is prohibited by moral duties to oneself. However, duties to oneself also prohibit a person’s consensual other-regarding conduct when that conduct involves willed perceptible damage to the person, that is, when consensual other-regarding conduct is self-destructive. Another important implication of Mill’s rejection of moral duties to oneself is that no amount of consensual other-regarding conduct that is self-destructive is immoral. Of course, putative consensual other-regarding conduct may not be consensual

other-regarding conduct. However, if it is consensual other-regarding conduct, then even if it is self-destructive, it is not immoral.

Mill provides, as an example of consensual other-regarding conduct that is self-destructive, gambling with others: “Fornication, for example, must be tolerated, and so must gambling” (296).²⁶ Gambling with others cannot be immoral. Of course, the person who gambles with another must not, as a result of losing her/his money, become unable to pay her/his debts, or unable to look after her/his dependents, and so forth, otherwise her/his gambling is consensual other-regarding conduct, she/he does violate moral duties to others, and her/his conduct is immoral:

If, for example, a man, through intemperance or extravagance, becomes unable to pay his debts, or, having undertaken the moral responsibility of a family, becomes from the same cause incapable of supporting or educating them, he is deservedly reprobated and might be justly punished; but it is for the breach of duty to his family or creditors, not for the extravagance. (281)

Another example that Mill provides of consensual other-regarding conduct that is self-destructive is that of women marrying men, in general, and women marrying men in the Mormon religion, with “its sanction of polygamy” (290) (actually, polygyny), in particular:

Still, it must be remembered that this relation is as much voluntary on the part of the women concerned in it, and who may be deemed the sufferers by it, as is the

case with any other form of the marriage institution; and however surprising this fact may appear, it has its explanation in the common ideas and customs of the world, which, teaching women to think marriage the one thing needful, make it intelligible that many a woman should prefer being one of several wives to not being a wife at all. (290)

It cannot be immoral to fornicate (where ‘fornication’ means sexual relations between unmarried adults), to gamble with others, or to enter into a polygamous marriage, granted that all involved are adults, that the conduct is consensual, that it is engaged in knowingly and voluntarily, and that in so acting no one is not violating any moral duties to others (no one has promised not to fornicate, no one is gambling with stolen money, no one lies about not being previously married, and so forth), even if such conduct involves willed perceptible damage to some or all involved. To mistakenly publicly morally disapprove of fornication, gambling, or polygamy, is immoral, since it is to restrict persons’ liberty, or harm persons, who are not harming ourselves or others. To mistakenly fine, imprison or execute persons for fornication, gambling, or polygamous marriage, is immoral, since, again, it is to restrict the person’s liberty, or harm the person, who is not harming ourselves or others.²⁷

NOTES

¹ All quotations from John Stuart Mill, *On Liberty*, in *Collected Works of John Stuart Mill*, Vol. XVIII: *Essays on Politics and Society*, ed. J. M. Robson (Toronto: University of Toronto Press, 1977), p. 213–310, unless otherwise indicated.

² Defenders of *On Liberty* who believe that in it Mill argues against enforcing morality by law include H. L. A. Hart, *Law, Liberty and Morality* (Oxford: Oxford University Press, 1963). Critics of *On Liberty* who believe that in it Mill argues against enforcing morality by law include Patrick Devlin, “The Enforcement of Morals” (1959), reprinted as “Morals and the Criminal Law” in *The Enforcement of Morals* (Oxford: Oxford University Press, 1965), p. 1-25.

³ John Morley, “Mr. Mill’s Doctrine of Liberty” (1873), quoted in James Fitzjames Stephen, *Liberty, Equality, Fraternity* (2nd. edition, 1873), edited by Stuart D. Warner (Indianapolis, Indiana: Liberty Fund, 1993), p. 101 n. 1.

⁴ D. G. Brown also argues for this conclusion in his “Mill on Liberty and Morality”, *Philosophical Review*, 81 (1972), p. 133-158, especially the section “Enforcing Morality”, p. 146-150.

⁵ Mill nowhere mentions duties to animals or the environment in *On Liberty*.

⁶ See Marcus G. Singer, “On Duties to Oneself”, *Ethics* 69 (1959), p. 204f.

⁷ It is important to note that those who defend duties to oneself hold that there are duties to oneself with respect to others. Kant, for example, holds that one has a duty to oneself not to lie to others (*The Metaphysics of Morals*, in *Practical Ethics*, translated and edited

by Mary J. Gregor (Cambridge, England: Cambridge University Press, 1996), p. 552-554).

⁸ Warner Wick, “More about Duties To Oneself”, *Ethics* 70 (1960), p. 160.

⁹ See my “The Good, the Bad, and the Obligatory”, *The Journal of Value Inquiry* 30 (2007), p. 1-13.

¹⁰ According to utilitarianism, strictly speaking, there are no duties to others, as well as no duties to oneself. There are only duties with respect to others, and duties with respect to oneself. The duty to maximize utility is not a duty to others. A person is not obligated to any person or persons to maximize utility. A person does not owe it to any person or persons to maximize utility. Further discussion of this point, however, is beyond the scope of this article.

¹¹ John Stuart Mill, *Utilitarianism*, in *Collected Works of John Stuart Mill*, Vol. X: *Essays on Ethics, Religion and Society*, ed. J. M. Robson (Toronto: University of Toronto Press, 1969), p. 247.

¹² *Ibid.*, p. 246-7.

¹³ It should be noted that Mill’s limiting the ways in which others may be harmed to public moral disapprobation and legal sanctions suggests that his concern in *On Liberty* is with *punishing* those who are harming ourselves or others when we or others are not harming them. If one holds a view about punishment according to which punishment does not harm, but rather helps, the punishee, then neither public moral disapprobation, nor legal sanctions, are ways of harming at all, but rather are ways of helping. Further discussion of this point, however, is beyond the scope of this article.

¹⁴ For purposes of clarity, I shall omit these two qualifications at times in the article.

¹⁵ Jonathan Riley, “John Stuart Mill: On Liberty”, in John Shand, ed., *Central Works of Philosophy*, Vol. III (London: Acumen, 2005), p. 131.

¹⁶ Brown, *op. cit.*, p. 144-5.

¹⁷ One’s moral duty to harm others (in the form of public moral disapprobation and legal sanctions) who are harming oneself (when it promotes the general welfare) is not a moral duty to oneself. It is a moral duty to others, with respect to oneself.

¹⁸ Mill, *op. cit.*, p. 246.

¹⁹ Mill, *op. cit.*, p. 228.

²⁰ Riley says that “self-harm must be accidental, unintentional or the result of incompetence” (*op. cit.*, p. 136). I remain uncertain if the self-harm of conscience is to be categorized as accidental, unintentional or the result of incompetence, but it is certainly not willed.

²¹ Paul Eisenberg, “Duties to Oneself and the Concept of Morality”, *Inquiry* 11 (1968), p. 149.

²² *Ibid.*, p. 149.

²³ Jeremy Waldron, “Mill and the Value of Moral Distress”, *Political Studies* 35 (1987), p. 412.

²⁴ Brown, *op. cit.*, p. 141.

²⁵ See, for example, Riley, *op. cit.*, p. 132-3, and C. L. Ten, “Mill on Self-Regarding Actions”, *Philosophy* 43 (1968), p. 29-37.

²⁶ I do not assume that Mill holds that fornication is self-destructive.

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