Justice and the Possibility of Good Moralism in Bioethics

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Abstract: Moralism in bioethics and elsewhere means going beyond accepted moral principles, either by exaggerating good ethical concerns, by applying them to areas where they do not belong, or simply by assuming anything else than concrete physical or mental harm as normative guides. This paper explores the conceptual background of moralism especially in the consequentialist tradition, presents cases of allegedly bad moralism in the light of this exploration, introduces six approaches to justice, and argues that these approaches question our prevailing views on the goodness and badness of moralism in its various forms.

Keywords: justice; moralism; morality; moral principles; ethics; consequentialist tradition; harm principle

The purpose of this article is to reboot the discussion on moralism in bioethics. What does moralism mean? Where are its conceptual roots? What appearances does it take? Is it bad? Is it good? What is its role in bioethics? How does it relate to justice? I will first survey some of the central ideas around moralism, and then launch a systematic investigation into its conceptual roots in nineteenth- and twentieth-century discussions on moral, political, and legal philosophy. I will then portray a set of contemporary instances of moralism in bioethics, and outline a general case against them. After the introduction of six different approaches to justice, however, I will show how these seemingly detrimental practices can be defended, each from their own viewpoint. My conclusion is that instead of relying on the established reading of moralism as a bad excuse for unnecessary restrictions, we would be wise to reconsider it from the angle of diverse interpretations of justice.

Meanings of Moralism

The standard distinction is that morality is good and moralism is bad. According to one view, moralism is the exaggerated claim that there are only duties and prohibitions, nothing in between: indifferent choices and actions do not exist, and a moral "you must" or "you must not" applies to everything that we do.[1] The intuitive possibility of merely permissible choices and supererogation challenges this. Most of us think that in most cases we are not morally obliged to have vanilla-flavored ice cream instead of the strawberry-flavored variety. As for supererogatory acts—going beyond the call of duty—J. O. Urmson seems to have a point when he writes:

> We may imagine a squad of soldiers to be practicing the throwing of live hand grenades; a grenade slips from the hand of one of them and rolls to the ground near the squad; one of them sacrifices his life by throwing

> himself on the grenade and protecting his comrades with his own body. But if the soldier had not thrown himself on the grenade would he have failed in his duty? Though clearly he is superior in some way to his comrades, can we possibly say that they failed in their duty by not trying to be the one who sacrificed himself? If he had not done so, could anyone have said to him, "You ought to have thrown yourself on the grenade?" Could a superior have decently ordered him to do so? The answer to all these questions is plainly negative.[2]

Some strict formulations of classical utilitarianism, Urmson's target of criticism in the passage, disagree with his intuition on a theoretical level. G. E. Moore thought that the aim of moral action is to maximize good.[3] We ought to do what maximizes good, and we ought to omit doing what does not. In the case of two different courses of action having the exact impact in terms of promoting good, we are at liberty to choose either one of them.[4] The proviso concerning acts with precisely similar results may or may not make the choice between ice cream flavors neutral,[5] but in the grenade incident, the soldier with the best chances to save the rest of the squad does have the duty to sacrifice himself. Although I will not limit my examination to this kind of case, utilitarianism will loom large in my considerations.

According to another view, moralism, or bad moralism, occurs whenever we extend otherwise legitimate ethical claims to inappropriate contexts, or exaggerate their significance.[6,7,8] We certainly have a duty to not kill our neighbors for no reason. We probably have a duty to help them out if they are in dire need, if no one else can help them, and we can help them with minimal inconvenience to ourselves. Many philosophers doubt, however, that we have a duty to commit our entire lives to attending to the needs of strangers. Anthony Quinton joined these philosophers by writing:

> Ordinary utilitarianism, along with some other moral theories and a lot of religiously inspired moral stock responses, is utopianly altruistic. It implies that in every situation in which action is possible one should choose that possibility which augments the general welfare. That would rule out as morally wrong not only harmless self-indulgences like sitting in the sun, reading for pleasure and non-strenuous walks in the countryside (since in each case one could be working or begging for Oxfam [an English charity]), it would also override most of the altruistic things we do for people to whom we are bound by ties of affection.[9]

The discussion on the limits of our obligations has been going on for over two hundred years within the utilitarian tradition alone. On the all-importance of impartiality, and the nonimportance of "ties of affection," William Godwin considered the case in which the house of Archbishop Fénelon (an influential and well-known benefactor in his time) is on fire, he is inside with his valet (presumably an inconsequential man in terms of the greater good of humanity), and only one can be rescued. Godwin favored the Archbishop, even in the case of family or other special ties being involved:

> Suppose the valet had been my brother, my father or my benefactor. This would not alter the truth of the proposition. The life of Fénelon would still be more valuable than that of the valet; and justice, pure, unadulterated justice, would still have preferred that which was most

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> valuable. … What magic is there in the pronoun "my", that should jus-
> tify us in overturning the decisions of impartial truth? My brother or my
> father may be a fool or a profligate, malicious, lying, or dishonest. If they
> be, what consequence is it that they are "mine"?[10]

Since Godwin's eighteenth-century contribution, the debate has been ongoing,[11] with notable defenders of wide and impartial responsibility in, for instance, Jonathan Glover[12] and Peter Singer.[13,14]

Yet another accusation of bad moralism faces people who want to judge others by their own moral standards, either on emotional or intellectual grounds.[15,16] The emotional approach means, for its opponents, the elevation of our "Yuck!" reactions into respected moral judgments—a maneuver that they are not themselves willing to condone.[17,18,19] Its defenders see things in a different light, as evidenced by Leon Kass:

> Revulsion is not an argument; and some of yesterday's abhorrences are
> today calmly accepted – not always for the better. In some crucial cases,
> however, repugnance is the emotional expression of deep wisdom, beyond
> reason's power completely to articulate it. Can anyone really give an argu-
> ment fully adequate to the horror that is father-daughter incest (even with
> consent), or bestiality, or the mutilation of a corpse, or the eating of human
> flesh, or the rape or murder of another human being? Would anybody's
> failure to give full rational justification for his revulsion at those practices
> make that revulsion ethically suspect? Not at all. On the contrary, we find
> suspect those who think they can easily rationalize away our horror, say,
> by trying to explain the enormity of incest with arguments about the
> genetic risks of inbreeding.[20]

For emotion-based moralists (good or bad, no judgement here), then, something in our immediate reactions is wiser than our considered rational assessments. I will have more to say on this in the section on the Hart-Devlin debate, further on. Purely intellect-based moralists, in their turn, maintain that we should always follow our reason, even at the expense of our dearly held sentiments and harm encountered by innocent people.[21] Immanuel Kant famously argued that since reason tells us that lying is always wrong, we are not to lie even to a murderer who asks whether her intended victim is in our house.[22]

So the three easily detectable uses for the word "moralism" are, claiming that every choice is morally significant; extending valid moral rules into contexts in which they may lose their appeal; and letting our raw feelings or abstract intellect take precedence in ethical evaluations. All these, but particularly the third brand, form the conceptual background of the following considerations.

Conceptual Roots in the Nineteenth Century: Mill and Stephen

The movement against moralism in legislation and morals within the liberal and utilitarian traditions started with John Stuart Mill's *On Liberty*.[23] In the seminal passage, he wrote:

> 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. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. 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. To justify that, the conduct from which it is desired to deter him, must be calculated to produce evil to some one else. 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, over his own body and mind, the individual is sovereign.[24]

Although the paragraph conveys at least half a dozen pretty complex principles instead of the promised one, the message is reasonably clear. Potential harm inflicted on others justifies the use of force and coercion on an individual against the individual's will. Nothing else does. That the person's "own good … is not a sufficient warrant" means that Mill does not, as a rule, condone coercive paternalism.[25,26] His statement against moralism, the topic of this article, is that an individual "cannot rightfully be compelled to do or forbear because … in the opinions of others, to do so would be wise, or even right." In other words, society cannot, by laws or moral pressure, legitimately force or coerce us to conform to prevailing attitudes, views, or philosophies. That would go against our freedom, autonomy, and self-chosen way of life, dent our creativity and individuality, and in the end, prevent the flourishing of our state and nation.[27,28]

Mill's liberal view did not go uncriticized even within the utilitarian tradition. James Fitzjames Stephen took issue with it in his book *Liberty, Equality, Fraternity*, published at the time of Mill's death.[29] Stephen perceived himself as defending the classical, original formulation of utilitarianism that Jeremy Bentham had presented[30] and Mill adhered to in his earlier work,[31,32] just to modify it later.[33,34,35,36] Stephen's main concern was what he saw as Mill's overconfidence in the wisdom of the "members of a civilized community." He began by noting that, according to Mill,

> in all the countries which we are accustomed to call civilized the mass of adults are so well acquainted with their own interests and so much disposed to pursue them that no compulsion or restraint put upon any of them by any others for the purpose of promoting their interests can really promote them.[37]

Stephen questioned Mills assertion that citizens of even "civilized countries" are the best decision makers for themselves:

> Before he affirmed that in Western Europe and America the compulsion of adults for their own good is unjustifiable, Mr Mill ought to have proved that there are among us no considerable differences in point of wisdom,

> or that if there are, the wiser part of the community does not wish for the welfare of the less wise.[38]

Stephen himself was convinced that some people are wiser, and that Mill agreed with him, although their normative conclusions were different:

> The real difference between Mr Mill's doctrine and mine is this. We agree that the minority are wise and the majority foolish, but Mr Mill denies that the wise minority are ever justified in coercing the foolish majority for their own good, whereas I affirm that under circumstances they may be justified in doing so. [In] my opinion the wise minority are the rightful masters of the foolish majority.[39]

The legitimation Stephen used was on the surface straightforwardly utilitarian. Since good lawgivers and captains of industry know what makes citizens and workers happy in a good way, they are rightfully the ones to make important decisions even when these decisions go against the views of the citizens and workers themselves.[40,41]

The refutation of Mill so far seems to be paternalistic (the rulers know best how to achieve everybody's happiness) rather than moralistic (the rulers have a superior morality to back up their commands and prohibitions). In the definition of "good happiness," however, Stephen deviates from the simple calculation of pleasure and pain, which is the hallmark of most secular utilitarianism, and brings in the idea of an afterlife, best known to the wisest in the population. He does not embrace traditional Christian teachings on life after death, but comes close when he writes:

> [Though] we have no knowledge on the subject, we have some grounds for rational conjecture. If there is a future state, it is natural to suppose that that which survives death will be that which is most permanent in life, and which is least affected by the changes of life. That is to say, mind, self-consciousness, conscience or our opinion of ourselves, and generally those powers and feelings which, as far as we can judge, are independent of the constantly flowing stream of matter which makes up our bodies.[42]

The idea that our permanent core is our mind is then linked with the ideas of morality and character:

> The immense importance which men attach to their character, to their honour, to the consciousness of having led an honourable, upright life, is based upon the belief that questions of right and wrong, good and evil, go down to the very man himself and concern him in all that is most intimately, most essentially, himself.[43]

A wise person would not, according to Stephen, practice vices or neglect duties, because conscience is our constituent element as spiritual creatures:

> To tamper with it, therefore, to try to destroy it, is of all conceivable courses of conduct the most dangerous, and may prepare the way to a wakening, a self-assertion, of conscience fearful to think of.[44]

By postulating a nontraditional, nonreligious, personal heaven-and-hell scenario, Stephen could then justify the rule of the wisest in terms of our ultimate moral well-being:

> Virtue, that is to say, the habit of acting upon principles fitted to promote the happiness of men in general, and especially those forms of happiness which have reference to the permanent element in men, is connected with, and will, in the long run, contribute to the individual happiness of those who practice it, and especially to that part of their happiness which is connected with the permanent elements of their nature. The converse is true of vice.[45]

The conclusion, then, is that a competent adult citizen of a civilized country can

> 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 … right.[46]

In Mill's framework, this makes Stephen's view both paternalistic and moralistic. Notably, the theory also creates a link between theological utilitarianism, one of the original formulations of the British creed that Mill adhered to in its secular form,[47,48,49] and modern legal moralism, that makes social stability the cornerstone of legislation.

Conceptual Roots in the Twentieth Century: Devlin and Hart

Modern legal moralism came to the fore in the twentieth-century discussion known as the Hart-Devlin debate.[50,51,52] In 1957, a Committee chaired by John Wolfenden published their report on the need to review laws concerning prostitution and homosexuality in England.[53] The normative starting point for the Committee's work was Mill's distinction[54] between private and public spheres of morality, or "self-regarding" and "other-regarding" actions. The Wolfenden Committee reported:

> [The] function of the criminal law […] is to preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are specially vulnerable because they are young, weak in body or mind, inexperienced, or in a state of special physical, official or economic dependence.[55]

For the sake of "public order and decency,"[56] the Committee proposed that law should not allow prostitution out in the streets. In the other cases they reviewed, however, they assumed a more lenient view. Since "private immorality should not be the concern of the criminal law,"[57] it is not, according to the Committee,

> the function of the law to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behaviour, further than is necessary to carry out the purposes … outlined.[58]

In practical terms, then, the Wolfenden Committee concluded that it was not the law's business to interfere with unobtrusive, nonexploitative forms of prostitution,

nor with secluded sexual dealings between consenting adult men (English law did not regulate sexual dealings between women to begin with).[59]

Patrick Devlin, a renowned English jurisprudent of the time, strongly objected to the Wolfenden Committee's conclusions.[60] He believed that the law can legitimately intervene with some acts of "private immorality," and he held that the idea of crime should remain connected to the idea of sin, or to "transgression against divine law or the principles of morality."[61] He wrote:

> As a judge who administers the criminal law […] I should feel handicapped in my task if I thought that I was addressing an audience which had no sense of sin or which thought of crime as something quite different.[62]

To show that the English legal system was on his side, he cited several matters that were "private" yet strictly controlled: voluntary euthanasia, suicide, attempted suicide, suicide pacts, duelling, abortion, and incest between brother and sister.[63] If the only point of criminal legislation were to protect individuals, Devlin argued, these laws would not have existed. The only way to justify them is by reference to a moral principle.

Devlin's appeal to the idea of sin was not religious but social and cultural. In secularized nations, we can find "transgressions against … the principles of morality" by observing outraged feelings and by studying their significance in our particular social and historical setting. Devlin argued that we are at liberty to ethically condemn and even legally ban controversial practices that provoke strong negative feelings. He did not claim that any immediate reaction by the person in the street would justify legal restrictions. His argument was that feelings can guide legislation, but only when certain conditions are met. The feelings in questions must (also) be felt by individuals who are calm and understand the demands of reason and common sense; and even then only if these feelings reflect the true basis of social life in a nation. Devlin's analysis proceeded in three stages.

First, Devlin opined:

> I do not think one can ignore disgust if it is deeply felt and not manufactured. Its presence is a good indication that the bounds of toleration are being reached. Not everything is to be tolerated. No society can do without intolerance, indignation, and disgust; they are the forces behind the moral law […].[64]

In this widely cited passage Devlin does *not* necessarily say, as many commentators have thought, that if a practice is disgusting to a certain percentage of self-righteous citizens, they should feel free to ban it. The message here can be, more moderately, that "intolerance, indignation, and disgust" can be *signs* of something that lawyers, ethicists, and philosophers of law should investigate further. And even this is true only if the feelings in question have not been "manufactured," presumably by self-serving politicians, marketing agencies, and the like (social media would be a contemporary culprit).

Second, Devlin presents a preliminary test for the assessment of actions that give rise to disgust:

> We should ask ourselves in the first instance whether, looking at [the practice in question] calmly and dispassionately, we regard it as a vice so abominable that its mere presence is an offence. If that is the genuine feeling of the society in which we live, I do not see how society can be denied the right to eradicate it.[65]

The expression "the genuine feeling of the society in which we live" points to two directions. Cultures and societies differ, so the laws of one nation may not be applicable in others. We have to scrutinise our true feelings to find the moral guidance needed in our country. Furthermore, we need a more advanced test to detect our "genuine feelings" and to tell them apart from inauthentic outrage.

Third, Devlin went on to explain the moral force of the right kind of intolerance, indignation, and disgust, using an appeal to social stability. According to him, these feelings indicate the boundaries of public morality, which we must not overstep, if we want to keep our society viable. He supported this idea by explaining what the institution of monogamous marriage meant to his own nation:

> In England we believe in the Christian idea of marriage and therefore adopt monogamy as a moral principle. Consequently the Christian institution of marriage has become the basis of family life and so part of the structure of our society. It is there not because it is Christian. It has got there because it is Christian, but it remains there because it is built into the house in which we live and could not be removed without bringing it down.[66]

Devlin's gist seems to be that the idea of polygamy was disgusting to the English mind of the late 1950s, because people somehow instinctively knew that its acceptance would have signaled the end of British society as they knew it. The feeling was a sign, and the sign alone would not have justified regulations. Since, however, the British people had the right to defend their cultural heritage and their traditional way of life against detrimental influences, they could not have been "denied the right to eradicate" the offensive practice.

In a sense, Devlin was probably right. Since his time, legislators in his country have condoned new practices, and British society is not what it used to be. Tolerance has brought about changes, just as Devlin in fact predicted.

Liberal and utilitarian philosophers of law were quick to come to the Wolfenden Committee's rescue. In his account, Devlin had stated that the true lawgiver should be the reasonable (as opposed to the abstractly rational) man, or, in terms used by English jurisprudents of his time, "the man on the Clapham omnibus."[67] The use of this expression prompted two reactions, which quickly became authoritative in liberal circles. In an early criticism, H. L. A. Hart, while initially commending the democratic appeal of the "reasonable man" approach, wrote:

> [I]t is fatally easy to confuse the democratic principle that power should be in the hands of the majority with the utterly different claim that the majority with power in their hands need respect no limits. Certainly there is a special risk in a democracy that the majority may dictate how all should live. [...] But loyalty to democratic principles does not require us to maximize this risk: yet this is what we shall do if we mount the man in the street on the top of the Clapham omnibus and tell him that if only

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> he feels sick enough about what other people do in private to demand its
> suppression by law no theoretical criticism can be made of his demand.[68]

Ronald Dworkin joined Hart in complaining how Devlin,

> without offering evidence that homosexuality presents any danger at all
> to society's existence, [...] concludes that if our society hates homosexu-
> ality enough it is justified in outlawing it, [...] because of the danger the
> practice presents to society's existence.[69]

These contributions carved in stone the reading that Devlin wanted to ban all practices
that disgust the "moral majority." If my three-stage analysis of Devlin's actual thinking
is correct, this criticism misses its target almost completely. The true justification for
banning distasteful activities is that they somehow damage the structure of society.

In a later examination of Devlin's principles, Hart distinguished between two
separate theses concerning immorality and the law.[70] According to the extreme
thesis, law must protect "morality as such" whenever righteous citizens feel that
they are threatened by a disgusting practice. This is the "Clapham omnibus"
approach, with its probable flaws. A more moderate reading of Devlin's views also
offered itself to Hart. Shortly after the passage stating, "intolerance, indignation
and disgust are the forces behind the moral law," Devlin wrote:

> It is the power of common sense and not the power of reason that is
> behind the judgements of society. But before a society can put a practice
> beyond the limits of tolerance there must be a deliberate judgement that
> the practice is injurious to society.[71]

Passages like this made Hart see that Devlin's model can also have its foundation
in the harm or injury that befalls society if legislators recklessly alter its laws.
According to the moderate thesis, laws can legitimately uphold morality if its col-
lapse would be injurious or harmful.

Hart argued, however, that the distinction between the two theses reveals a
dilemma that faces Devlin's model. If we safeguard "morality as such" for its own
sake, mob rule follows. But if, instead, we protect morality because failing to do so
would be harmful, Devlin's view becomes indistinguishable from the Millian the-
ory he set out to refute. The debate went on for a while, with added twists and
turns,[72] but these considerations are sufficient for now. I have identified the utili-
tarian and liberal roots of accusations of moralism, the expression "morality as
such" has entered the scene, and it is time to introduce two further theories that
contribute to the basis of the discussion on moralism and its alternatives.

Conceptual Roots in Utilitarian and Liberal Theories: Sidgwick and Feinberg

Cambridge moral philosopher Henry Sidgwick presented at the turn of the twen-
tieth century a systematic defense of utilitarianism, or universal hedonism, as he
called it, which is useful in locating moralism among theories of ethics.[73,74,75]

Sidgwick's starting point was that valid moral doctrines must conform to three
clear and self-evident intuitions, or principles, that form a coherent whole and are
acceptable to all human beings who are capable of combining "adequate intellec-
tual enlightenment with a serious concern for morality."[76] These intuitions, or

principles, are justice, prudence, and the universality of goodness. According to the principle of *justice*,

> whatever action any of us judges to be right for himself, he implicitly judges to be right for all similar persons in similar circumstances.[77]

This, then, is what the Christian tradition knows as the Golden Rule and Immanuel Kant's teaching names the Categorical Imperative,[78] and what now bears the tongue-twisting name "universalizability."[79] The principle of *prudence*, in its turn, asserts that

> one ought to have impartial concern for all parts of one's conscious life.[80]

A prudential individual does not prefer a smaller immediate good to a greater future good – a very important, if controversial, tenet in debates concerning inter-generational justice. The *universality of goodness* requires us to pursue general, instead of particular, good. In Sidgwick's words,

> the good of any one individual is of no more importance from the point of view of the universe than the good of any other.[81]

Armed with these principles, Sidgwick proceeded to evaluate three main "methods of ethics," or moral theories: dogmatic intuitionism, universal hedonism, and ethical egoism.[82]

Dogmatic intuitionism states that actions are morally right if they conform to our everyday ideas concerning right and wrong, good and evil. In Sidgwick's view, this approach is problematic. The common-sense intuitions of virtue, right, and duty often fail to pass the test of coherence, which is a background require-ment of successful theories of ethics alongside the principles (coherent intuitions) of justice, prudence, and the universality of goodness.[83]

Universal hedonism demands that we always aim at promoting the general good. Unlike dogmatic intuitionism, this theory does form a coherent whole, and it does conform to all the required basic principles. This alone, however, does not prove universal hedonism to be the best theory of ethics. Ethical egoism, according to Sidgwick, also satisfies the central demands of ethics, albeit in its own way, although it is incompatible with universal hedonism.

Ethical egoism says that I must always aim at maximizing my own happiness. This does not necessarily violate the principle of justice, because nothing prevents ethical egoists from universalizing their view. It is my duty to maximize my hap-piness, but it is nobody else's duty to share this task with me. All human beings have an obligation to promote their own happiness. Similar thinking applies to the universality of good. From the point of view of the universe, my good is no more important than the good of others, but from my own personal point of view, it is. We can all consistently hold that our happiness trumps the happiness of others.

In the end, Sidgwick could not convince himself of the superiority of utilitarian-ism, or universal hedonism. He thought that proof of the existence of God and an afterlife and post-mortem rewards and punishments could settle the issue in favor of his preferred doctrine, and founded in 1882 the Society for Psychical Research[84] to seek evidence of these. A few decades later, however, he had to admit that the effort did not bear the desired fruit.[85,86]

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For my purposes here, the important detail in Sidgwick's construction is that he lumped together all nonconsequentialist and nonhedonistic moral views under the pejorative heading "dogmatic intuitionism." As I shall indicate in the sections on justice below, this opens the door for seeing all rivals to utilitarianism and ethical egoism as a shapeless collection of incoherent moralism. Since the collection includes many respected theories of individual and political morality, Sidgwick's judgement may have been slightly premature. Interestingly, however, it reflects later twentieth-century views on the matter, including those of the notable American jurisprudent Joel Feinberg.

In his colossal four-part *The Moral Limits of the Criminal Law*,[87,88,89,90] Feinberg dissected the liberal instinct reflected in Mill's "one very simple principle." According to Mill's principle, the threat of other-regarding harm is the only legitimate reason to coerce citizens, and to curtail their freedom. For the purposes of his own analysis, Feinberg considered the role of criminal law in checking four general types of unpleasantness. Is it legitimate, he asked, to restrict the liberty of citizens if the aim is to prevent *harm* to others, *hurt* to others, *offenses* to others, and *other kinds of unpleasantness* to others? In the ensuing examinations, Feinberg introduced countless variations of each type of violation or experience, much in the way Jeremy Bentham had done two centuries earlier.[91]

Feinberg defined "being harmed" in a twofold way that removes it from simply having been put or left in a harmful condition and extends it to the realm of positive, existing law. We are harmed when our vital interests are frustrated *and* we are wronged, that is to say, our rights are violated.[92] The exclusion of the more Millian sense of being harmed makes it difficult for Feinberg to justify legal obligations to help people in need. He manages it, and barely so, by a complex narrative involving bad Samaritan statutes and an intricate model of indirect wronging in these particular cases.[93] The appeal to vital interests and their frustration makes it easier to distinguish between trivial and nontrivial "harms" in a more colloquial sense. Some harm may befall me if my colleague has put salt in the sugar shaker I use for my porridge, but this is hardly a matter for law or morality. It is better to concentrate on instances that are more serious, perhaps ones that we can say involve violations of rights. This, however, changes the focus in an interesting way.

Feinberg finds legitimately protectable legal rights in property and contracts. On private property, he writes:

> One person *wrongs* another when his indefensible (unjustifiable and inexcusable) conduct violates the other's right, and in all but certain very special cases such conduct will also invade the other's interest and thus be harmful […]. Even in those exceptional cases in which a wrong is not a harm on balance to interests, it is likely to be a harm to some extent even if outbalanced by various benefits. For example, so-called harmless trespass on another's land violates the landowner's property rights and thereby "wrongs" him even though it does not harm the land, and even might accidentally improve it. But the law does recognize a proprietary interest in the exclusive possession and enjoyment of one's land, and for whatever it is worth, the trespass did invade *that* interest. It is "harmless" only in the sense that it doesn't harm any *other* interests, and certainly no interest of the "tangible and material kind."[94]

What Feinberg does not take into account here is that property laws differ from jurisdiction to jurisdiction. A harmless trespass may violate the rights of landowners

in the United States, but not the rights of landowners in countries with everyman's rights to move around even in privately possessed territories.[95]

The other significant exception in Feinberg's view concerns voluntary contracts:

> One class of harm (in the sense of set-back of interests) must certainly be excluded from those that are properly called wrongs, namely those to which the victim has consented. These include harms voluntarily inflicted by the actor upon himself, or the risk of which the actor freely assumed, and harms inflicted upon him by the actions of others to which he has freely consented. I have not wronged you if I persuade you, without coercion, exploitation, or fraud to engage in a fair wager with me, and you lose, though of course the transaction will set back your pecuniary interest and thus harm you in that sense. The harm principle will not justify the prohibition of consensual activities even when they are likely to harm the interests of the consenting parties; its aim is to prevent only those harms that are wrongs.[96]

These two specifications to the harm principle move Feinberg from the utilitarianism of Mill, Sidgwick, and Hart to a more deontological (rule-based as opposed to outcome-based) liberalism.[97,98,99] They also indicate, with Feinberg's many other caveats and intermediate principles, that his view is open to an array of traditional ways of thinking when it comes to interpreting the moral foundation and limits of the law. This will lead to interesting findings in the section on justice and its role below.

Feinberg himself eventually concluded that however liberal we might want to be, we may have to extend the scope of criminal law to cover certain particularly unpleasant yet harmless offenses and wrongdoings. For those who want absolute theoretical purity, this means that Feinberg failed in his effort to justify a truly liberal morality of the criminal law. Since the exceptions are rare, we can also conclude that, largely, he created an astonishingly complete antimoralist system with realistic concessions in the face of the complexity of social life.

Instances of Bad Moralism

If we follow Mill, Sidgwick, Hart, and Feinberg, then, we can justifiably coerce free, informed, competent human beings only by appeals to prospective harm inflicted on others without our interference. Everything else is, in one sense or another, moralism.[100] Coercion in this formula has many faces. We can physically confine people's movement, psychologically manipulate or force them, or make them do or omit things by explicit or implicit threats of punishment. Criminal law is one instrument of coercing people, but there are countless others, including everyday emotional blackmail in families and small groups, and the social pressure toward conformity produced in communities, societies, and nations both spontaneously and deliberately. In bioethics, most cases involve healthcare services or medical and related research.[101] Several candidates of moralism, or coercion, that cannot be justified by the harm principle, offer themselves in this context.

Lifestyle and diet seem to have a considerable impact on people's health. Authorities stress that a balanced diet with not too much saturated fat or sugar correlates with a longer and healthier life. Alcohol, drugs, and reckless lifestyles, on the other hand, are associated with shorter life spans and increased morbidity.

With convenient normative background assumptions, these facts provide a basis for moralistic regulations and policy.[102,103,104] If we believe that individuals are primarily responsible for their own health-related choices, and that self-induced ill-health is therefore not the state's concern, we can be reluctant to extend public health services to citizens who have diet- or lifestyle-related health issues. When the state makes this known to the population, the population faces a liberty-restricting threat that is not justified by the harm principle. If citizens do not decide to live in accordance with advice from the health authorities, they cannot expect the medical services delivered to those who comply.

New technologies hold the promise of making us genetically, biologically, and physically stronger and better. Voluntarily chosen treatments and enhancements related to them would not violate the harm principle, because our own choices justify the courses of action and their outcomes. Many believe, however, that we should not embrace all the opportunities offered by emerging technologies.[105,106,107,108,109] Although they could make at least some of us stronger, longer-lived, more intelligent, or more compassionate, they somehow present a danger to our humanity and sociability. Interfering with community structures that we have developed spontaneously and traditionally presents risks that we cannot reduce to simple considerations of harm. Nevertheless, some say, we should ban these technologies based on the wider communal concerns.

As genetic testing advances, hereditary disorders become detectable in embryos even before they are implanted and pregnancy begins. This offers a harmless method of selecting human offspring, if we do not count arresting embryonic development *in vitro* at the blastocyst level as a harm in a morally and legally relevant sense. Disability scholars as well as minority and difference ethicists, however, have levelled strong criticisms against such selective practices.[110,111] They argue that the biological and physical differences that medicine tries to eliminate are not in and by themselves disabilities in need of eradication. Social attitudes and structures can compensate for people's different capabilities, or they can fail to do so. In the latter case, we all jointly create disabilities as social constructs. Genetic selection is therefore futile and dangerous and must not be condoned, let alone encouraged. Harmless in the technical sense as it might be, it is an affront to equality between people and we should harness possibly law, and certainly public opinion, to curb it.

If we build a health care system purely on such principles as equal access and social responsibility, the outcome could be that every citizen in need gets the same public services, and no one can purchase any additional private services.[112] This is not a reality anywhere in the world: social democratic welfare states allow private healthcare,[113] and systems that are more socialist have been vulnerable to under-the-counter payments and other kinds of minor and major corruption. On the level of political morality, however, this is a possibility. Such a system would produce yet another type of restricted harmless activity. Even if individuals could show that they inflict no concrete harm on others by buying extra treatments and care, the state would have to prohibit them from pursuing this option. The justification could be found in the "greater good" introduced by Stephen and Devlin, but the outcome would still be coercion that cannot be straightforwardly based on the harm principle.

People can say that they want procedures, and they may in fact rationally want procedures that are not, all things considered, good. The standard Millian approach to these cases is simple. We can establish that the agents in question are competent,

that they have adequate information, and that no one visibly forces them to make the choice we think suboptimal. Once we have satisfied these requirements, individuals should be free to make their own mistakes. Some theorists and practitioners argue, however, that this is not enough. When individuals refuse a life-saving blood transfusion on religious grounds, or require medical professionals to mutilate their bodies for esthetic or cultural reasons, the choice may not be, in the final analysis, sufficiently genuine. Choices dictated by oppressive cultural or social pressures need not be considered autonomous or authentic, and they need not be respected. The harm principle and voluntariness notwithstanding, we can have in such cases a justification for interfering with inauthentic decisions.

It seems, then, that the harm principle is under threat from many directions. Following the original logic introduced by Mill and Sidgwick, every suggestion in this section is an instance of bad moralism. They all have their supporters, though, and it would seem hasty to dismiss them summarily. Let us see how a classification of approaches to justice can illuminate the matter.

Six Approaches to Justice

Justice means different things to different people. In theory, we all agree that the core ideas of justice include equality, equity, impartiality, and taking into account all those affected by our decisions. Beyond this, however, disagreement reigns. Whose equality? What kind of equity? The equality and equity of exactly what? How should we take people or other entities into account? What is the criterion of "being affected" by our decisions? Answers to questions like these expose several partly-conflicting ideologies, or political moralities.[114] I outline here six of them, each with its distinct background suppositions and normative conclusions.[115]

Libertarianism emphasizes the rights and responsibilities of individuals. The most important of our rights protect our life and physical integrity, and enable us to make tenable contracts and to possess private property. Only active, detrimental interventions by other individuals count as violations against these. If your natural ability to survive and get along is limited, no one else is to blame. If the social order prevents you from having a good life, no one else is responsible, at least not as far as political justice and the role of the state are concerned. We all make our own fortunes, and we alone are answerable for them. If others (intend to) violate our rights, the state protects us, which is why legitimate state functions include the army, the police force, and the justice system. Voluntary contracts between individuals must account for everything else—social security, education, healthcare, and the like. To fund these, the state would have to collect taxes, involuntarily if need be, and thereby violate people's rights to private property.[116]

Socialism is the ideological opposite of libertarianism. Socialists maintain that libertarians promote an economic, social, and political order, capitalism, which has deprived individuals of control over their own lives and presents a threat to their genuine freedom and rights. A moderate formulation argues that at least the responsibilization of the worse-off should stop. The strategy has no rational basis, as individuals can end up being sick, poor, or unemployed for a plethora of historical, cultural, familial, social, political, geographic, and genetic reasons without any fault of their own.[117,118,119] This is why joint social responsibility and a caring welfare state are better options than the libertarian night-watchman state. Formulations that are more radical pave the way for revolutionary ideologies.

The proletariat are alienated from the product of their work, from other people, and even from their own true selves. They have to become aware of themselves as a class and go to war against capitalists in the hope that the resulting dictatorship of the proletariat or the eventual classless and stateless (communist) society will set them free.[120],[121]

Utilitarianism states that every agent—individual, group, community, authority, government—should always impartially aim at the greatest possible good of the population. The "good" in the formula is definable in many ways. It can mean subjectively, objectively, or inter-subjectively perceived wellbeing or need satisfaction, and it can mean economic, evolutionary, or even esthetic flourishing. The greatest good, in its turn, can refer to the number of those enjoying it, to the total amount of enjoyment in the population, or both.[122],[123],[124] Some philosophers, and especially economists, have favored the fulfilment of rational preferences, which they believe we can scientifically measure and compare.[125] Preferences are rational in the sense they mean, when we form them autonomously and deliberately, with adequate information of the consequences, and realistically take into account the contexts in which we form and pursue them. The distinctive feature of utilitarianism is the instrumentalization of all traditional and theoretical values and norms. No rights are protected and no duties are assigned for their own sake. If they promote the greatest good, they are defensible; if not, they are not.[126]

Communitarianism is strongly opposed to the instrumental thinking advocated by utilitarians. According to the creed, historically-shaped communities and their organically-developed traditions and role assignments form the foundation of our life together and provide the best framework for our collaboration at all levels.[127] The key to our beneficial shared solidarity is that we do not try to calculate and master everything, but recognize and admit that our lives contain certain "given" or "gift" elements that are, and always will be, outside our own control.[128],[129],[130] Once we have admitted our limits, we can realize how much we depend on each other and begin to protect the structures that make mutual help possible.[131],[132] Philosophical interpretations of communitarianism tend to be compatible with the principles of liberal democracy, but other readings are also possible. An emphasis on the superiority of "our culture" and the inferiority of "others" can lead to exclusive nationalism and xenophobia.

Capability approaches criticize preference utilitarianism for encouraging suboptimal choices. Capability theorists believe that a choice can be autonomous and rational in its context, yet remain determined by oppressive circumstances, attitudes, and customs. Tradition may dictate that a woman's place is at home with her family, and a woman's expressed preference to stay in her native village instead of seeking work in the city could have been imposed on her by tradition. In such cases, we should not see the externally restricted "adaptive preference" as authentic or authoritative. Instead, we should promote the opportunities, capabilities, and positive freedoms of repressed groups, so that their members can make genuinely autarchic decisions about their lives. Some capability theorists believe that the empowering policies should be adjusted to the circumstances prevailing in different societies without trying to devise universal rules.[133],[134] Others have opted for a list of fundamental capabilities fit for all.[135],[136],[137] Martha Nussbaum has famously argued that the most important things for all human beings are "life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; and control over one's environment."[138]

The ethics of identity and recognition is an alternative to popular liberal theories of justice, and can, as such, be seen as opposed to justice altogether.[139] One of its early formulations is Carol Gilligan's ethics of care, which stresses caring and special relationships between people rather than calculations of utility or theories of rights and obligations.[140] Gilligan concentrated on women's moral development. Lawrence Kohlberg had concluded in his research (studying only boys and men) that moral development reaches its peak in outcome- and duty-based thinking.[141,142] In her own investigations on girls and women, Gilligan found that they progressed further and eventually developed special relationships, the bond between mother and child being the paradigmatic example. This difference, she argued, must be recognized and cherished. The approach was feminist to begin with, but identity theories currently include other positional doctrines with starting points in postcolonialism, sex, gender, and sexual orientation. In social reality, these form the foundation of identity politics.

Figure 1 shows schematically the six approaches to justice, arranged by their shared and clashing background assumptions.[143]

The vertical dimension separates the economic creeds of capitalism and socialism. Horizontally, the theorists on the right believe in the universality of moral norms and values, while those on the left argue that different groups may have different life experiences, and consequently, their own legitimate positional claims and expectations. Universalists, on the right, also tend to stress concrete values related to human wellbeing; and positionalists, on the left, more abstract traditional, spiritual, or political values. Communitarians in the top left corner disagree with utilitarians in the bottom right corner on the benefits of planning and social engineering. In the bottom left corner, identity and recognition ethicists might find the closed lists of human good in the top right corner theoretically suspect, although on the political level these two essentially feminist positions seem to find more common ground than should be expected in purely conceptual terms.

The question of what occupies the center of the figure has no clear answer. One possibility would be to locate there the core ideas of justice—equality, equity, impartiality, and the like. The competing approaches produce, however, conflicting interpretations of them, and it would therefore be misleading to claim that the notions could somehow remain intact in the middle. Another possibility would be
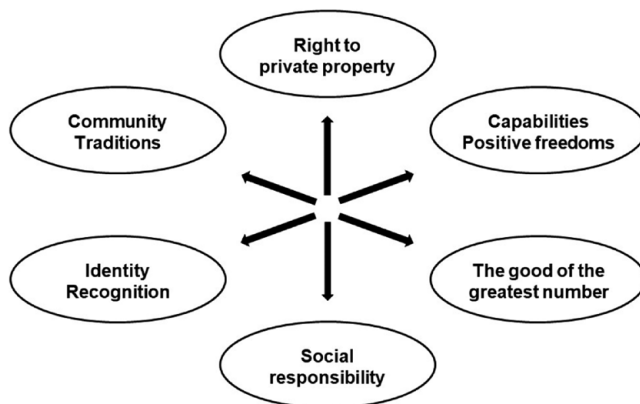

Figure 1. Approaches to justice.

to place in the center some quasi-contractual compromise model such as John Rawls's theory of justice as fairness.[144,145,146] Since Rawls gravitates more toward libertarianism than socialism, he could share the mid-position with, for instance, Jürgen Habermas, who with his doctrines of communicative action and discourse ethics could inhabit the lower middle position.[147,148,149] In political life, compromises between interests and ideologies populate the area.

Do Considerations of Justice Turn Bad Moralism into Good Moralism?

When we match approaches to justice with alleged cases of bad moralism in healthcare policies and biomedical research, the results are interesting. Figure 2 schematically presents the types of moralism presented above, before the section on justice.

In the top left corner of Figure 2, we see an objection, for instance, against the genetic enhancement of human beings. According to our tradition, the objectors say, we can never fully control our destinies, and our solidarity rests on this fundamental realization. Since genetic manipulation would dangerously strengthen our false sense of mastery and weaken our traditional and beneficial commitment to mutual help, we should not condone it.

In the bottom left corner, a similar complaint challenges genetic selection, especially prenatal screening that aims at preventing the birth of babies with serious hereditary disorders. The practice, activists argue, while widely accepted, is an insult to the human worth and dignity of disabled people, sending the message, "It would have been better had you not been born." To safeguard the group identity and to ensure the recognition of disabled people, we need to shun reproductive genetic tests.

In the top middle square of Figure 2, individuals receive more extensive services, if they choose the healthier lifestyles recommended to them by medical and nutritional authorities. The extra services are a reward for taking responsibility for one's own life, and it would be doubly wrong not to employ this system of incentives. It would punish good, responsible citizens. Moreover, it would reward irresponsible citizens, discourage people's personal health efforts, and lead to an unnecessary waste of public funds.

In the bottom middle square, affluent individuals can be denied the opportunity to buy health services that are not available to all through a public system.
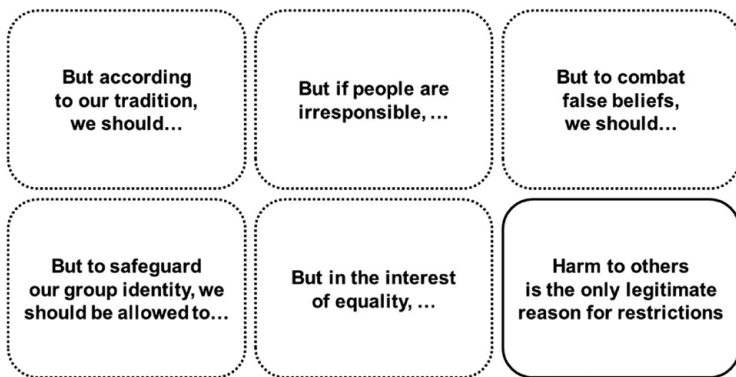

Figure 2. Types of moralism.

It would be, defenders of social responsibility maintain, unfair to have citizens in unequal positions regarding the most important goods—health and well-being—based solely on the amount of money they or their parents or protectors have managed to accumulate. Equality prevails only if we eradicate this possibility.

In the top right corner of Figure 2, beliefs and attitudes produced by oppressive cultures are not allowed to influence people's health choices. Citizens may not refuse life-saving treatments on religious grounds, nor require mutilating procedures for esthetic or cultural reasons. Although voluntary decisions cannot, by definition, harm those making them, pressure from peers and social habits cancels the voluntariness of these choices and makes it our duty to ignore the individual's expressed wishes.

In the bottom right corner, we have, finally, the view that defies all the others. This is the utilitarian position insisting that the liberty of individuals can only be legitimately restricted to prevent harm to others. Mill thought that paternalism, moralism, or some other tainted form of thinking motivates every other policy. Sidgwick followed suit by lumping most other theories together in the category of dogmatic intuitionism. When we revisit the matter in the light of different views on justice, we may have to reconsider the normative force of their classifications.

Figure 3 schematically presents the connections between types of moralism and approaches to justice.

The perfect geographical fit between the selected instances of moralism and chosen theories of justice in Figure 3 is, of course, due to my editorial work—things do not just naturally fall in their places as depicted. This does not matter, however. Although other types and approaches exist, and although the location of views in Figure 3 is not precisely set, the doctrines and opinions presented in it suffice to show the need for careful consideration when we examine ethical suggestions and solutions that do not conform to Mill's liberal utilitarian credo.

It turns out that what at first might look like emotion, ideology, or over-confidence in reason is in closer scrutiny an expression of a solid ethical outlook that simply has different presuppositions from the "do no harm" philosophy. Mill and Sidgwick shared a commitment to altruism (the good of others is as important as my own good)
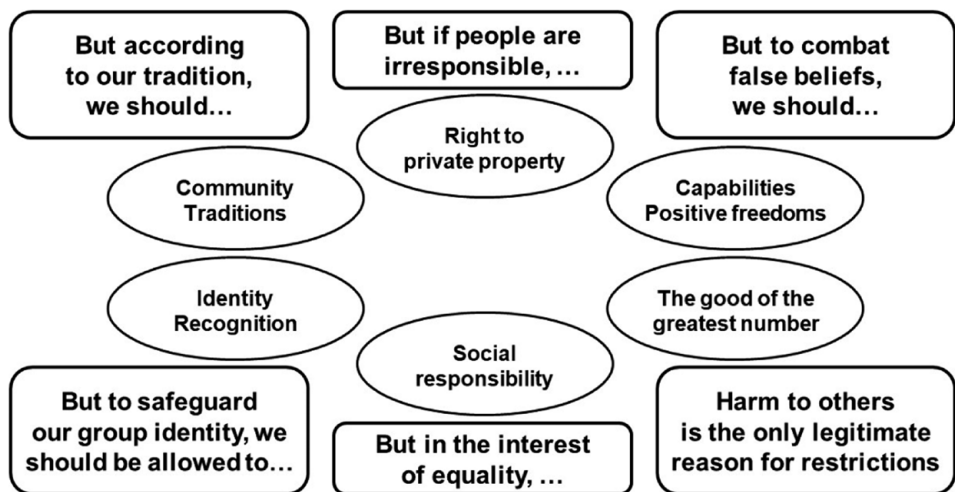

Figure 3. Types of moralism and approaches to justice.

universalism (possibly including cosmopolitanism), individualism (individuals are capable of shaping their lives at will, and this is good), wellbeing (as the only intrinsic value), and utility (as something reliably calculable), as well as an aversion to tradition (as a relic of the past). Change any of these presuppositions, which are up to a point, popular in contemporary healthcare and medicine but by no means carved in stone, and you get a different result in terms of norms and values. What a liberal utilitarian might reject as unenlightened dogmatism then returns as a reasoned conclusion of libertarian, communitarian, socialist, identity, or capability argumentation.

An important point to note is that utilitarianism, too, can be moralistic in the same sense as the other approaches to justice. This stems from two sources: decision making under uncertainty and the definition of fundamental values.

As for uncertainty, we do not know all the consequences of our actions, and we therefore have to choose the range that we deem as relevant for ourselves. One standard option is to choose the relatively short-term, reasonably expected outcomes of our activities.[150] We can calculate these with some accuracy, and they will often provide good grounds for practical decision-making. Other options include, however, pessimistic and optimistic interpretations. Some say that we should avoid doing anything that can feasibly have catastrophic consequences.[151] Others retort that we should endeavor to promote processes that could have fantastically good consequences.[152] Pessimists can say, for instance, that we should not allow blood donations from healthy foreigners in the fear of infectious diseases. Optimists could say that we should allocate the blood service's resources to creating cheap synthetic blood in the future. Both arguments are, in their own way, utilitarian, or pseudo-utilitarian, but they both deviate from the standard view. While the possible but improbable foreign threat can be deflected by the ban on donation, and while synthetic blood might possibly become a success, the person needing the donation here and now will be left without blood and harmed unless we abandon these strategies. Disproportionate fear and hope can make utilitarian, or utilitarian-looking, solutions moralistic, that is to say, make them go against (one version of) the harm principle.

As for the definition of fundamental values, we have already seen how James Fitzjames Stephen managed to turn the utilitarian creed against Mill by understanding human good differently. For Mill, the only intrinsic goods were pleasure and absence of pain, but Stephen wanted to maximize those pleasurable experiences that have a link with our moral character. Stephen's initially utilitarian position then took a moralistic turn when he included semi-theological elements in his theory of value. Henry Sidgwick also had his religion-related issues. He remained hanging between the altruistic or utilitarian, and egoistic or libertarian stances due to his belief that only the proven existence of God and an afterlife could tip the scales toward universal altruism.

Since Mill, Stephen, and Sidgwick's time, various interpretations have been given to what is good, beneficial, and healthy, and what adds to the goodness and quality of our lives.[153] In the health industry, in both private and public sectors, the pursued good is often, and quite naturally, health as a physical and mental condition.[154] This can leave out cultural, social, and ethical considerations that arguably belong to the definition of good as inherently as the absence of disease, illness, and disability.[155,156]

Paradoxically, "health utilitarianism" can then inflict non-health-related harm on individuals and become a form of moralism. Whether or not this is an accusation

or an accolade is, at this time, unclear, but the possibility serves to show that conceptual charges of moralism are impossible to avoid in any view on ethics and justice.

Justice, Moralism, and Approaches to Bioethics

Theories of justice can form alliances, as shown by Sidgwick's egoism-altruism balancing act; and as seen in defenses of unhindered capitalism since Adam Smith.[157,158] Smith's idea was that governments should leave economic transactions untouched (libertarianism) and let the invisible hand of the market produce the greatest wealth for the nation and its inhabitants (the aim of utilitarianism). This combination, also known in the philosophy of economics as the myth of classical liberalism, could serve in bioethics as an attempt to justify the form of moralism claiming that individuals are responsible for the diseases caused by their suboptimal lifestyle choices. To be exact, within libertarian thinking it is our own task to take care of all our needs, including all our health needs. If, however, we have allowed altruistic elements in our healthcare system, as often happens in real life, we can constrain their influence by drawing a line between conditions that we can label self-acquired and those that we cannot, and claim that the freedom to private property redeemed by the maneuver will boost economy and fund more altruism.

The most notable clusters of moralism, morality, and justice in bioethics can, however, be found in the approaches to medical, healthcare, and research ethics sometimes referred to as "American" and "European,"[159,160,161,162] and possibly their overall rival, feminist bioethics. Figure 4 places these schematically on the map of moralism and justice shown in Figure 3.

The "American principles" of autonomy, beneficence, justice, and nonmaleficence find their places easily in the liberal top-and-right half of Figure 4 – the triangle marked AMER. In the Belmont[163] and Georgetown[164] model, justice is understood as universal impartiality with a general ear on local customs and attitudes. Beneficence and nonmaleficence are essentially utilitarian principles, although
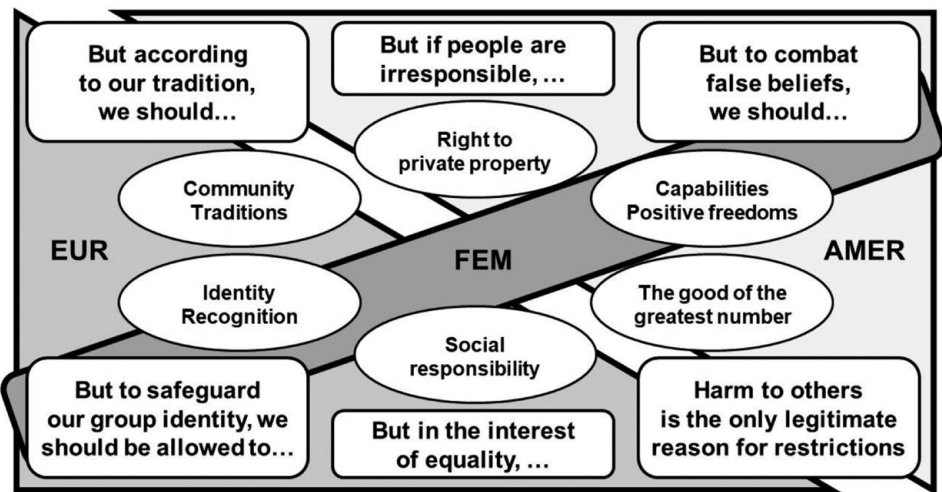
Figure 4. Justice, moralism, and approaches to bioethics.

very few proponents of the model would like to admit it. Respect for autonomy, the cornerstone of the approach,[165,166] takes at least three main forms. It can mean Millian antipaternalism against patronizing medical practices; genuinely equal opportunities and autonomous choices as opposed to cultural and social repression; and economic freedom of contracts and commerce.

What the "American principles" cannot accept is as enlightening as what they can and do. Social responsibility in the sense of socialized medicine, or universal public healthcare, is a pill too bitter for most champions of the principles, although there are exceptions.[167,168] Recognition and identity politics are not usually on the agenda either, although changing cultural attitudes create pressures in this direction. Some traditional and community values are embraced, but full-fledged relativism is frowned upon.[169,170] All in all, the proponents of the approach are confident that an efficient healthcare system that respects the rights of individuals to autonomous decision-making and private property is both beneficial and ethically tenable.

The "European values" of autonomy, dignity, precaution, solidarity, vulnerability, and subsidiarity occupy the antiliberal bottom-and-left half of Figure 4—the triangle marked EUR.[171,172,173] In this approach, autonomy does not just mean negative individual freedom from constraint, but also and primarily the positive freedom of moral agents to do what is good and right.[174,175] Dignity is the inner worth of human beings as rational agents or as socially, culturally, and spiritually constructed persons; solidarity is the recognition of our spontaneous or silently accepted mutual dependence; and regard for vulnerability is a reminder of our need for special relationships in the protection of our integrity and self-respect.[176,177,178] Subsidiarity is a plea for self-determined decision making on local and group levels, against attempts at universal governance where it would be futile or detrimental.[179]

The supporters of the "European values" typically spurn the liberal emphasis on the freedom of individuals to do and be what they like. As members of their reference groups, people are members of communities (communitarianism), special factions (identity politics), or class (socialism) first, and the abstract independent individual is a dangerous illusion. It is not entirely in our own hands to acquire and possess property, although libertarians would have us think so. Family and circumstances play an important role in these. Likewise, it is not always within our own reach to be able to do all the things people in other environments and circumstances can do. Disability and disease make us dependent in ways that cancel this. Last, but not least, it is wrong to think that human happiness and flourishing could be defined and promoted in terms of the pleasure, well-being, or preference satisfaction of individuals, as utilitarians think. These definitions of the good ignore our finer features as social, communal, and spiritual beings, and commitment to them can only lead to shortsighted hedonism.

Feminist bioethics ranges from identity and recognition politics to capability policies, with some elements of socialism in evidence. The square marked FEM in Figure 4 shows its location on the map of views and theories. Like philosophical feminist ethics more generally, this approach has a tense double foundation.[180,181] In the eighteenth and nineteenth centuries, Mary Wollstonecraft and John Stuart Mill believed that women and men are fundamentally capable of the same things—in thinking, feeling, learning, politics, and work alike.[182,183] Against them, however, others argued that women's virtues are different, and better, than men's are. Catherine Beecher held that women are the moral backbone of societies, managing

households, safeguarding the virtues of their family members, and taking on a Christ-like role of self-denying benevolence.[184] Elizabeth Cady Stanton agreed that women do tend to sacrifice themselves for their families, but she also argued that two further advances would be beneficial: women should exercise their virtues also in the public sphere *and* should tend to their own self-development.[185] Charlotte Perkins Gilman created a science fiction image of an all-female world in her novel *Herland* in 1915,[186] and Shulamith Firestone produced a radical Freudo-Marxist version of feminism in her *The Dialectic of Sex* in 1970.[187,188] The important tension, then, is between universalism (sex and gender make no difference in matters of virtue) and positionalism (sex and gender make all the difference).

Feminist bioethics has, accordingly, two strands, exemplified by Carol Gilligan's care ethics and Martha Nussbaum's justice ethics.[189,190,191,192,193] Since these are on different sides of certain crucial divides, criticisms are possible in both directions. Care bioethicists can argue that Nussbaum's attempt to make virtue universal and compatible with all sexes, genders, and sexual orientations ends up perpetuating hegemonic male heteronormative values in a new disguise. Justice bioethicists can claim that in their endeavor to make female virtues distinct and visible, Gilligan-style theorists drift into conceptual unclarity and relativism. Both sides can find redeeming factors in the other, however. For feminist justice bioethicists, the care ethics concentration on women and other marginalized groups is an important reminder of whose capabilities, rights, and opportunities should take priority. For feminist care bioethicists, Nussbaum's presentation of capabilities as thick (as opposed to thin)[194] values should be a welcome move. (Unsurprisingly, ethicists who agree on the idea of thick values, but want to interpret them traditionally[195] or religiously,[196] find much fault in Nussbaum's[197] bioethical views.)

According to this definition, feminist bioethics cannot be communitarian, utilitarian, or libertarian. This appears to present a paradox. The characterization seems plausible (Ayn Rand's[198] take on bioethics would probably be far out of place in a Feminist Approaches to Bioethics[199] conference today), yet women who are involved in bioethics and may consider themselves feminists in some sense can and do come from all schools of thought. Feminists conducting postcolonial and family-based studies can have clear communitarian leanings, and women in bioethics with feminist leanings who support the right to private property or want to promote the greatest happiness of the greatest number are not unheard of.[200,201,202] All that this shows, however, is that people do not always fall neatly into philosophical categories. As I have argued elsewhere, the champions of "American principles" and "European values" do not respect geographical boundaries, either. These are just names given to conceptual and normative clusters on the map of moral attitudes and approaches to justice caught in Figure 4 above.

A final thought on the "gap." In Figure 4, I have left a diagonal top-left-bottom-right border area that belongs neither to the "European" nor to the "American" domain. This is deliberate. The gap marks the polarization between nationalist-populist thinking top left, and cosmopolitan-elitist thinking bottom right. No precisely matching bioethical approaches exist, or at least I have not come across a book of fascist bioethics or coldly calculating, unemotional, and amoral utilitarian bioethics. The former seems to choke in academic discussions due to scholarly commitment to communal solidarity, recognition-related compassion, or a libertarian sense of economic interests. The latter does not blossom in its pure form, because social responsibility and respect for individuals from the neighboring approaches

crossbreed with the logic of utility. Not that we need them, but now that the political world around us may be grouping behind these creeds, bioethicists, too, should keep an eye out on these possible developments. If I am right and the major current approaches to bioethics fall into the places shown in Figure 4, we appear to be blind to this potential gap and polarization.

Notes

1. Nelson L. *System of Ethics*. New Haven, CT: Yale University Press; 1956, at 89.
2. Urmson JO. Saints and heroes. In: Feinberg J, ed. *Moral Concepts*. London: Routledge & Kegan Paul; 1969, at 63.
3. Moore GE. *Principia Ethica*. Cambridge: Cambridge University Press; 1903, at 24–6.
4. Moore GE. *Ethics*. Oxford: Oxford University Press; 1912.
5. Moore seemed to believe that his formulation gives us plenty of choice, when he wrote, "whereas every voluntary action, without exception, must be either right or wrong, it is by no means necessarily true of every voluntary action that it either ought to be done or ought not to be done, – that it either is our duty to do it, or our duty not to do it. This will occur, whenever, among the alternatives open to us, there are two or more, any one of which would be equally right." See note 4, Moore 1912, at 15.
6. Kekes J. On the supposed obligation to relieve famine. *Philosophy* 2002;77:503–17, at 503.
7. Taylor C. Moralism and morally accountable beings. *Journal of Applied Philosophy* 2005;22:153–60.
8. Azevedo MA. On the moral distinction between morality and moralism. 2015; available at ResearchGate DOI: 10.13140/RG.2.1.4584.0240 (last accessed 5 July 2018).
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