

INTERNATIONAL CONFERENCE/WORKSHOP ON PUNISHMENT
AND J. S. MILL: THEMES FROM C. L. TEN

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Abstracts

Peter Chau

“Ten on Hart’s Mixed Theory of Punishment”

In this paper, I will assess Ten’s critique of Hart in his recent paper, “Fairness and the Justifying Aim of Punishment”. Ten claims that Hart is wrong to exclude non-utilitarian considerations from the justifying aim of punishment. This is because, according to Ten, the non-utilitarian idea of fairness, which Hart accepts as grounding constraints on punishment, can, on closer inspection, provide positive reasons to punish: fairness can justify the normative asymmetry between offenders and potential victims of crime and, accordingly, can explain why we should divert harm from the latter to the former even when doing so does not increase aggregate utility.

I cast doubt on Ten’s critique by discussing a case where the potential victim can be said to have had a fair opportunity to avoid being the victim of a crime. The case suggests that fairness may not be a relevant consideration in accounting for the normative asymmetry between offenders and potential victims. Thus, Hart may be right in maintaining that while fairness helps to account for constraints on punishment, it does not help to justify punishment.

Hon-Lam Li

“Punishment and Self-Defense”

Insofar as Prof. C. L. Ten appears to think that mitigation on grounds of provocation is the approach to take in “battered wives” cases, I argue that self-defense (as a legal defense) is the first thing a Defense Counsel should consider. I proceed to consider self-defense as grounds for punishment. Although I do not think that self-defense can ground a general theory of punishment, the idea of self-defense provides an appealing way to view punishment in cases that involve “enemies of the people” (or “enemies of society”).

Alexandre Erler

“Neuro-interventions and Criminal Offending: Defending the Primacy of Bodily Integrity”

A rich ethical debate is currently under way about the prospect of using direct interventions into the brain (“neuro-interventions” or NIs) to facilitate the rehabilitation of criminal offenders and preventing recidivism. One key objection to the forcible administration of NIs to serious offenders is that it would violate their right to bodily integrity (RBI). In an important recent paper, Thomas Douglas has challenged this objection. Douglas points out that the traditional alternative to NIs, incarceration, infringes on another important right, the right to freedom of movement and association (RFMA), and he questions whether, intuitively, the RBI is more robust than the RFMA – what he calls the “Robustness Claim”. In the first part of this paper, I argue that Douglas’s challenge to the intuitions underlying the Claim does not succeed. In the second part, I then consider three possible lines of argument for the view that mandatory NIs can be ethically justified in a range of realistic scenarios even if the Robustness Claim is taken to be valid. I argue that none of these is truly compelling, and that the third one actually suggests a consequentialist argument against mandatory NIs that even opponents of the Robustness Claim might accept.

Jack Chun

“John Mill on the Death Penalty”

John Mill’s “Speech in favour of Capital Punishment” is his highly condensed account of the utilitarian arguments for the death penalty. It is a masterpiece interlaced with multiple statements of qualifications and a bundle of intricate arguments. My paper attempts at a systematic reconstruction of Mill’s position by delineating the six necessary and sufficient conditions for the death penalty under the three categories concerning the nature of the crime, the character of the criminal and the context of the crime. I also

untangle Mill's contentions by ordering them into five arguments, that is, arguments from humanity, from efficacy, from the distinction between hardened and potential criminals, from teaching how to respect life and from utilitarianism. I show how Mill dialectically turns the table on his opponents, and skillfully takes the horns of the dilemmas presented to him. In addition, I briefly explore the extent to which Mill is able to answer certain criticisms, including the ones advanced by C. L. Ten and Hon-Lam Li. Finally, one of the recurrent themes of my paper is to point up the sensitivity and adaptability of Mill's utilitarian position that is often neglected by his critics: it is more likely for him to object to the implementation of the death penalty in the countries around the world than one might ever expect, although he is a firm defender of the death penalty.

Hsin-Wen Lee

"Utilitarianism and the Death Penalty"

In his "Speech in Favor of Capital Punishment," John Stuart Mill argued in favor of the retention of the death penalty for aggravated murders. Mill's view is a general deterrence view. According to him, "[t]o deter by suffering from inflicting suffering... is the very purpose of penal justice." Thus, the more effective a form of punishment deters crime, the better. How do we know which type of punishment deter murder more effectively, the death penalty or life sentence with hard labor? Mill argues that, the more severe the punishment appears to be, the more effective it is in deterring potential murderers. Further, due to concerns of "humanity to the criminal," he favors capital punishment rather than life sentence with hard labor. The former imposes less suffering on the offender. Professor Ten argues that Mill's view is not compelling by criticizing, among other things, Mill's view of death. In this paper, I show that there is some tension between Mill's view here and his view in *On Liberty and Utilitarianism*. While I agree with many of Professor Ten's critiques, I argue that, from a utilitarian point of view, Mill is still right to insist on the retention of the death penalty.

C. L. Ten

"Mill's Legacy"

This paper will defend a certain reading of J. S. Mill, and criticize Benthamite utilitarianism, as well as reject Rawls's critique of Mill.

Yong Huang

Professor Huang will comment on Professor Ten's paper, "Mill's Legacy."

Derek Baker

“Mill, Freedom from Sanction, and Freedom to Sanction”

Mill's position on freedom of expression is attractive when understood as a position on freedom from legal restrictions on speech. However, Mill claims that it is more: it is a principle limiting justifiable social restrictions on speech, as well. Unfortunately, Mill's position on freedom of expression is counterintuitive once we include freedom from informal social sanctions. More importantly, the Harm Principle cannot be used as the norm for governing when moral censure of speech is and is not appropriate. Moral censure itself is a form of speech, and so requiring that we limit its use according to the Harm Principle will result in inconsistent verdicts about whether certain instances of expression are permissible.

Jonathan Jacobs

“Relations Between the Texture of Liberty and the Justification of Sanction in the Work of C.L. Ten”

This paper focuses on some of the main interpretive issues concerning Mill's conception of liberty and it also connects those with some fundamental considerations concerning the aims and justification of punishment. Mill's political thought has sometimes been accused of a kind of elitism, as though the wise should guide society rather than persons finding their own way. Professor Ten's work is more subtle than that and it highlights some of the internal complexity—and plausibility, I would add—of Mill's view of liberty. In fact, Mill's view of a liberal polity offers some important insights concerning the role of moral education in creating a genuinely civil society.

It differs from many of the currently most influential views but not in a way that renders it anachronistic or irrelevant. Similarly, Prof. Ten's work on punishment and the roles of different sorts of considerations in it offers a sophisticated appreciation of the issues in a liberal polity.

Benqun Wei

“Is Revenge So Different from Punishment?”

Most philosophers in the philosophy of punishment believe that punishment and revenge are two different activities, and revenge is in greater need of justification and is less likely to be justifiable than retributive punishment. In particular, Robert Nozick's arguments for the distinctions between punishment and revenge have become the mainstay of the contemporary discussion. In his brilliant book *Crime, Guilt, and Punishment*, Prof. C. L. Ten discussed, with approval, Nozick's five contrasts between punishment and revenge, and added one to them. I, however, am not entirely convinced

by those six contrasts. So I would like to critically examine them and to cast some doubt on the plausibility of them. I try to argue that punishment and revenge are not that easy to distinguish.

Peter Tsu

“Can Nudges Mitigate Moral Blameworthiness?”

Due to the groundbreaking work of Thaler and Sunstein (2008), ‘nudge’ has attracted a lot of attention recently. Much of the hype focuses on how to put ‘nudge’ to good use so as to improve, for instance, people’s health, well-being, or even wealth. However, ‘nudge’ is a double-edged sword that can also be put to bad use; once nudged in a bad way, is a moral agent less blameworthy than otherwise? Relatively little attention has been paid to this question, yet it is a highly significant one in that the answer to it has a lot of implications for our moral and legal practices. In this paper, I aim to take up the slack by arguing that other things being equal, nudges can indeed mitigate moral blameworthiness. I will try to bring this out by comparing Milgram Experiment with a counterfactual scenario. Ten’s relevant views will be discussed in (6.2).

Hahn Hsu

“Mill, Sanctions and the Normativity of Morality”

In chapter 3 of Utilitarianism, John Stuart Mill addresses the issue of ‘the ultimate sanction of the principle of utility’ or sanctions of morality in general. Let me quote him to provide textual basis for further discussion:

THE QUESTION is often asked, and properly so, in regard to any proposed moral standard – What is its sanction? What are the motives to obey it? or more specifically, what is the source of its obligation? whence does it derive its binding force? It is the necessary part of moral philosophy to provide an answer to this question... (U, 3, 1; original emphasis)

Mill’s question and the following expositions of the sanction of the utilitarian principle in particular and moral norms in general, as is pointed out by Roger Crisp, is not much discussed by scholars. In a few occasion, Mill’s view of sanctions of morality is seen as a version of motivation externalism. I intend to explore a possible alternative view that Mill’s view can be seen not just about moral motivation, but about the normativity of morality. Mill’s view of sanctions of morality is seen as inadequate, if not wrongly headed, by many. I think otherwise. The alternative view, which is not exactly Mill’s but is better seen as Millian, addresses not just issues about sanctions of moral motivation, but also sanctions of moral conduct. According to this Millian view, a proper understanding of the normativity of morality cannot be achieved without an account of moral conduct. In

light of this Millian view, the normativity of morality can be more properly understood and explained.

Jimmy Hsu

“Responsibility, Punishment, and Free Will: Revisiting the Two-standpoint Account of Free Will”

In this paper, I explore the “two-standpoint account” of free will, which seeks to reconcile compatibilism and incompatibilism. Despite its critics, I argue that once adequately restructured the two standpoints account is a viable approach. The restructuring requires three steps. First, I take a naturalistic turn in the vein of P.F. Strawson’s approach in “Freedom and Resentment”. I argue that the two standpoints account is the best interpretation of our moral practice of responsibility. Second, I argue that Strawson’s reactive attitude theory is deficient because responsibility is composed not only of reactive attitude but also of accountability and reward/sanction. The two standpoints have impact on different elements of the responsibility system on different occasions. The reduction of responsibility to any single element creates confusion. Third, I argue that the traditional Principle of Alternative Possibility (PAP) regarding freedom and responsibility should not be universally applied to all morally significant actions but should be asymmetrically applied to morally questionable actions only. This theoretical move entails that the theorization of our internal moral experience cannot be flattened to any single standpoint. Finally, I will explore what the theory means to criminal punishment.

Stephen Palmquist

“A Kantian Perspective on Civil Disobedience: Guiding Principles for Deciding When to Punish Acts of Resistance”

Kant’s theory of civil disobedience and other types of justifiable resistance to authority seems self-conflicted. Despite arguing that citizens never have the right to revolt against their government (and must cooperate even with war), he privately praised the American and French revolutions; yet when the king censored his writings on religion, Kant failed to resist the (arguably unjust) authority. I reconcile such conflicting claims by appealing to three key distinctions: the role of authority in “public” and “private” contexts; the four faculties of the Prussian university; and moral versus historical modes of assessment. In private (i.e., in contexts governed by contractual policies or laws) resistance is forbidden; in contexts governed by the public use of reason (e.g., in moral decision-making or philosophical dialogue), freedom of conscience sometimes requires resistance, especially if one person inappropriately usurps authority over another person’s moral choices. Kant argues that universities must promote healthy, public “conflict” between philosophers

and the “higher” faculties (i.e., doctors, lawyers, priests), where private reason guides their professions. Finally, although acts of civil disobedience are morally wrong, they may promote historical progress if they oppose regimes that have forbidden genuine (public) philosophical resistance. Accordingly, only civil disobedience that fails should be punished.

Terence Hua Tai

“Kant, Respect for Persons, and the Justification of Punishment”

Kant distinguishes between “natural punishment” in the context of the “state of nature” on the one hand, and “punishment by a court” in the context of a society where “conditions of right [Recht]” are in place on the other. He also distinguishes between “the law of punishment” that requires that someone be punishable “only because”, or simply on the ground that, he or she has done something wrong or illegal on the one hand, and “the law of retribution” (lex taliones) that requires that the “harm” to be inflicted on the wrong-doer or criminal in the name of justice be “equal” or proportionate to the “harm” he or she has inflicted on the victim(s). Now, in the case of natural punishment, Kant holds only that “vice punishes itself”, without saying anything about who is in a position to punish the wrong-doer, let alone how the law of retribution is to apply in the state of nature. I will argue that, for him, the law of punishment holds, but that of retribution which is to accompany it is unfortunately inapplicable, in the case of natural punishment, so that natural punishment is retributivist in principle but not in practice. On the other hand, I will argue that, for Kant, the law of punishment holds, and that of retribution can be applied (by the court), in the case of legal punishment under “conditions of Recht”. However, according to him, “All punishment by authority [i.e., the court] are deterrent, either to deter the transgressor himself or to warn others by his example”. This he calls “exemplary punishment” (poenae exemplares), along with “corrective punishment” (poenae correctivae), which aims at improving the punished (except, of course, those sentenced to death). So it seems that, in the case of legal punishment, Kant would take his retributivism about punishability in accordance with the law of punishment to be compatible with, or even require, consequentialist considerations about how to punish the (retributively) punishable. I will argue that Kant can consistently maintain that, while legal punishment is retributivist in principle, it is both retributivist and consequentialist in the practice of a court.

Speakers’ Biographical Sketches

Derek Baker

Derek Baker is an associate professor in the Lingnan University Philosophy Department, where he teaches, among other things, ethics, political philosophy, and a class on Schopenhauer and Nietzsche. His research focuses on metaethics and questions relating to agency. He has published papers in *Ethics*, *Philosophy and Phenomenological Research*, and *Oxford Studies in Metaethics*. He also serves as an associate editor for *Australasian Journal of Philosophy*.

Peter Chau

Peter Chau is an Assistant Professor of Law at the University of Hong Kong. He works on legal, moral, and political philosophy.

Jack Chun

Jack Chun obtained his Ph.D. from the University of Toronto as Canadian Commonwealth Scholar, and Post-Doctoral Fellowship in the Department of Philosophy of the University of Hong Kong, before moving to the Hong Kong Polytechnic University, where he is currently Interim Director of the General Education Centre. His research areas are comparative philosophy and applied ethics. His writings have been published by McGraw-Hill, Routledge, Springer and Oxford University Press. He is currently co-editing an anthology with Heiner Roetz on leadership and integrity. He is also interested in the pedagogies of philosophy, having developed an award-winning MOOC (Massive Online Open Course) on life and death on the edX and a mobile app for teaching and learning ethics across the faculties of the university.

Alexandre Erler

Alexandre Erler is a philosopher studying the ethical implications of new technologies with the potential to significantly transform society and the human condition, including but not limited to genetic interventions and direct interventions into the brain. He completed a doctorate in Philosophy at the University of Oxford in 2013, under the supervision of Roger Crisp, Julian Savulescu and Guy Kahane. Between 2013 and 2017 he was a postdoctoral researcher at the University of Montreal, and then at the American College of Thessaloniki. He is now a Research Assistant Professor in Philosophy and Bioethics at the Chinese University of Hong Kong. He has written on various issues within the ethics of « human enhancement », including its potential impact on human identity and authenticity. He has also addressed ethical issues surrounding mental disorders like ADHD. His work has been published in journals such as *Bioethics*, *AJOB Neuroscience*, the *American Journal of Bioethics*, *Neuroethics*, the *Journal of Medical Ethics* and the *Journal of Applied Philosophy*. Besides his broad interests in biomedical

ethics, he is also interested in political philosophy (including questions of distributive justice and desert), normative ethics, and philosophical pessimism.

Hahn Hsu

M.A. from National Taiwan University, Taiwan, 1987

Ph.D. in philosophy from the Ohio State University, U.S.A., 1998

Lecturer at the Ohio State University, 1995-1997

Assistant Professor, Philosophy dept., National Chung Cheng University, Taiwan, 1998-2003

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Areas of Research: ethics (normative and metaethical theories: Kantian ethics, Mill's utilitarianism, contemporary virtue ethics, moral objectivity, moral normativity, issues concerning methodologies of ethics, principlism-particularism debates, issues concerning practical reason, David Hume, John Mill), social-political philosophy (classical and contemporary contract theories, liberalism, John Rawls, theories of rights and human rights, issues of justice, issues of political legitimacy, issues concerning value pluralism and a reasonable well-ordered society)

Jimmy Hsu

Jimmy Chia-Shin Hsu is Associate Research Professor of Institutum Iurisprudentiae, Academia Sinica, Taiwan. He received his LL.B. from National Taiwan University, LL.M. from National Chengchi University, LL.M. and J.S.D. from the University of Chicago Law School. His research interests include legal philosophy, constitutional theory, comparative constitutional law, and philosophy of punishment. He has published in such journals as Australian Journal of Asian Law, Criminal Law and Philosophy, *Opinio Juris in Comparatione*, the Chinese Journal of Comparative Law, Academia Sinica Law Journal (in Chinese), and Chengchi Law Review (in Chinese). He was the Asia Law Institute Visiting Fellow of National University of Singapore Law Faculty in early 2016, and the Visiting Scholar of Harvard Yenching Institute 2016-2017. He is working on an edited volume on "Human Dignity in Asia" and a project that explores the cultural dimension of the right to life in East Asia.

Yong Huang

Yong Huang, Ph.D in Philosophy (Fudan University) and Th.D in Religious Studies (Harvard University), had taught at Kutztown University of Pennsylvania since 1996 before he moved to the Chinese University of Hong Kong in 2013. His research focus

has been on moral (both ethical and political) issues from an interdisciplinary and comparative perspective.

Professor Huang inaugurated a book series, ACPA Series in Chinese and Comparative Philosophy, and a journal, *Dao: A Journal of Comparative Philosophy*. He has been the chief editor of the latter since the very beginning. More recently Dr. Huang has initiated a new book series, *Dao Companions to Chinese Philosophy*, also published by Springer. Prof. Huang has published extensively in the area of Chinese and comparative philosophy, ethics, political philosophy, and philosophy of religion, including two edited volumes in English, three collected essays in Chinese, and three monographs in English, in addition to over 70 journal articles and book chapters each in Chinese and English.

Jonathan Jacobs

Jonathan Jacobs is Professor of Philosophy and Chair of the Department of Philosophy at John Jay College of Criminal Justice/CUNY. He is also a member of the doctoral faculty of Philosophy and the doctoral faculty of Criminal Justice at the CUNY Graduate Center. He received his PhD from the University of Pennsylvania in 1983. He is the author of nine books and editor of three others, and more than one hundred articles. He has received grants and fellowships from the National Endowment for the Humanities, the Fulbright Foundation, the Earhart Foundation, the Littauer Foundation and has been a Visiting scholar or Visiting Professor at several universities in the U.K. in Israel, and in Hong Kong.

Hsin-Wen Lee

Hsin-Wen Lee is an Assistant Professor of Philosophy at the University of Delaware. Her research topics include nationalism as well as the philosophy of criminal punishment. Her recent publications include “The Instrumental Value Argument for National Self-Determination (Dialogue—Canadian Philosophical Review),” “A New Societal Self-Defense Theory of Punishment—The Rights-Protection Theory (Philosophia—Philosophical Quarterly of Israel),” and “Taking Deterrence Seriously—The Wide-Scope Deterrence Theory of Punishment (Criminal Justice Ethics).

Hon-Lam Li

Hon-Lam Li received his B.A. in philosophy from Princeton, M.A. in jurisprudence from Oxford, and his Ph.D. in philosophy from Cornell. He had practiced law as a barrister-at-law in Hong Kong before teaching philosophy at the Colorado College. He is currently Professor in the Department of Philosophy, and Deputy Director of the Centre for Bioethics, Chinese University of Hong Kong. During 2010-11, he was Fulbright Senior Visiting Researcher in the Department of Philosophy, Harvard University. He has

published works in moral, political, and legal philosophy. Recently, he has been particularly interested in the interface between theoretical and practical ethics, such as “contractualism and practical ethics,” as well as “public reason and bioethics.”

Stephen Palmquist

Stephen R. Palmquist is Professor of Religion and Philosophy at Hong Kong Baptist University, where he has taught since earning his doctorate from Oxford University (St. Peter's College) in 1987. His 190+ publications, which have been translated into at least twelve different languages, include 100 refereed articles and book chapters. The following fourteen journals have each published two or more of his articles: *Aretè: International Journal of Philosophy*; *Ethics and Bioethics (in Central Europe)*; *Faith and Philosophy*; *Journal of Chinese Philosophy*; *Kantian Review*; *Kant-Studien*; *Philosophia Christi*; *Philosophia Mathematica*; *Philosophy & Theology*; *Polish Journal of Philosophy*; *Sogang Journal of Philosophy*; *The Heythrop Journal*; *The Journal of Religion*; and *The Review of Metaphysics*. Among his twelve books are *The Tree of Philosophy: A course of introductory lectures for beginning students of philosophy* (Philopscyhy Press, 1992/2000), *Kant's System of Perspectives: An architectonic interpretation of the Critical philosophy* (University Press of America, 1993), *Kant's Critical Religion: Volume Two of Kant's System of Perspectives* (Ashgate, 2000), *Kant and the New Philosophy of Religion* (anthology, co-edited with Chris L. Firestone: Indiana University Press, 2006), *Cultivating Personhood: Kant and Asian Philosophy* (edited anthology: Walter de Gruyter, 2010), *Comprehensive Commentary on Kant's Religion within the Bounds of Bare Reason* (Wiley & Sons, 2016), and *Kant on Intuition: Western and Asian Perspectives on Transcendental Idealism* (edited anthology: Routledge, forthcoming 2018). In 1999 he founded the Hong Kong Philosophy Café, which now has several branches and over 800 members.

Terence Hua Tai

Terence Hua Tai obtained his Ph.D. in philosophy from Cornell University. He specializes in Kant, Philosophy of Mind, Moral and Political Philosophy, and Applied Ethics. He has taught at several universities. He was Distinguished Professor and Director, Cheng Kung University Research Center for Humanities and Social Sciences (2009-2018). He is currently University Professor, Department of Philosophy, Chung Cheng University. His recent publications include “Xunzi on Human Nature” (Chinese), in Tsun-I Lin, ed., *Philosophical Analysis and the Merge of Different Perspectives*, Taiwan University Press; “Kant's Transcendental Strategy in the First Critique”, in Margit Ruffing, Claudio La Rocca, Alfredo Ferrarin, and Stefano Bacin, eds., *Kant und die Philosophie in Weltbürgerlicher Absicht: Akten des XI Kant-Kongresses 2010*;

“Korsgaard on the Nature of Action and Two Kinds of Normativity” (Chinese), in Shih-Ming Shieh, ed., *Turning to Reason: Philosophical Essays on Normativity*, 167-216; “Our Moral Relation to Future Generations: On the Possibility of Intergenerational Justice” (Chinese), *Economic Forecast and Policy in Taiwan*, 46, 159-184.

C. L. Ten

Chin Liew Ten is an internationally famous philosopher. He was born in Malaysia, and attended the University of Malaya in Singapore (which later became National University of Singapore), earning First Class Honours in Philosophy. He obtained his M.A. in Philosophy at the London School of Economics, and later became a Recognised Student of Oxford University and supervised by H. L. A. Hart. Professor Ten was Reader, Monash University. He later became Professor of Philosophy at National University of Singapore, and in 2015 was Emeritus Professor. He has written numerous important papers on J.S. Mill and punishment as well as other topics. He has authored several important and influential books, including *Mill on Liberty* (Oxford: Clarendon Press, 1980), *Crime, Guilt, and Punishment* (Oxford: Clarendon Press, 1987), *Was Mill a Liberal?* (Marshall Cavendish, 2004), and *The Soundest Theory of Law* (Marshall Cavendish, 2004). He is an Elected Fellow, Australian Academy of the Humanities (FAHA) and also Academy of the Social Sciences in Australia (FASSA).

Peter Tsu

Peter Shiu-Hwa Tsu got his PhD from Australian National University in 2011 and is currently an associate professor of philosophy in Chung Cheng University in Taiwan. He was selected by Taiwan's Ministry of Science and Technology as the winner of Da-Yo Wu Award for Outstanding Junior Researcher in 2015. His research has been focusing on particularism in ethics, aesthetics, philosophy of science and legal philosophy, attempting to sort out the role of principles/rules/laws in these areas. He also works on issues to do with free will and moral responsibility. He has published, amongst others, in *Philosophical Studies*, *Erkenntnis*, *Philosophy*, *British Journal of Aesthetics*, and *American Journal of Bioethics*. He is the author of 'Particularism in Ethics' for Oxford Bibliographies Online.

Benqun Wei

Benqun WEI is Assistant Professor of Philosophy at Nankai University, China. He just obtained a PhD degree in Philosophy from The Chinese University of Hong Kong. His research interest lies in moral philosophy.