Contents

VOLUME FOUR: HARMLESS WRONGDOING

Explanation of the Title and Caution to the Reader, xxvii

28. Legal Moralism and Non-grievance Evils, 3

- 1. Broad and narrow (strict) conceptions of legal moralism, 3
- 2. Pure and impure legal moralism, 8
- 3. Moralism and harm to others, 10
- 4. Moralism and offense to others, 15
- 5. Moralism and harm to self, 16
- 6. A taxonomy of evils, 17
- 7. Candidates for free-floating evils, 20
- 8. Welfare-connected non-grievance evils, 25
- 9. A note on public and collective harms, 33
- 10. Summary and transition, 37

29. Moral Conservatism: Preserving a Way of Life, 39

- 1. Focus on free-floating social change evils, 39
- 2. The conservative thesis, 43
- 3. Impure moral conservatism: arguments for the conservative thesis based on fairness, 50
- 4. Impure moral conservatism: arguments for the conservative thesis based on harm to interests, 55
- Pure moral conservatism: arguments for the conservative thesis based on the need to prevent free-floating social-change evils, 64

xxiv contents

- 6. Some second-thought conservative grievances, 68
- 7. Cultural change as a free-floating evil: some misleading models, 71
- 8. The concept of a "way of life," 76
- 9. Summary: grievance and non-grievance morality, 79

29A. Autonomy and Community, 81

- 1. Apparent conflicts, 81
- 2. The social nature of man, 83
- 3. Tradition, 90
- 4. Alienation, 98
- 5. What communities are, 101
- 6. Overlapping memberships, 105
- 7. The idea of a liberal community, 108
- 8. Remaining tensions between community and autonomy, 113
- 9. Summary, 120

30. Strict Moralism: Enforcing True Morality, 124

- 1. Critical versus conventional morality, 124
- 2. Pure moralism in the strict sense, 126
- 3. Impure strict moralism: Devlin's social disintegration thesis, 133
- 4. What are we to mean by "morality"?, 140
- Devlin's counterattack: the argument from the moral gradation of punishments, 144
- 6. Stephen's original argument, 155
- 7. "Retribution" for wrongs without victims, 159
- 8. Consent as a defense in criminal law, 165
- 9. Summary, 173

31. Exploitation With and Without Harm, 176

- 1. The concept of exploitation, 176
- 2. The elements of exploitation (A): ways of using the other person, 179
- The elements of exploitation (B): exploitable traits and circumstances, 181
- 4. The elements of exploitation (C): redistribution of gains and losses, 192
- 5. Fairness and unfairness, 199
- 6. Summary: the main categories of exploitation, 204

32. The Exploitation Principle: Preventing Wrongful Gain, 211

- 1. Legal enforcement, 211
- 2. Harm principle rationales for exploitational crimes: insider trading and next-of-kin organ sales, 220
- 3. Commercial fortunetelling, 224

CONTENTS XXV

- 4. Ticket scalping, 231
- 5. The paradox of blackmail, 238
- 6. The varieties of blackmail threats: a paradox lost, 240
- 7. The varieties of blackmail demands: justified blackmail, 258
- 8. Summary, 274

33. Legal Perfectionism and the Benefit Principles, 277

- 1. The concept of character, 277
- 2. Coercion to virtue, 281
- 3. Automatic goodness: Skinner versus Mill, 287
- 4. The educative function of law, 294
- 5. A note on the moral education theory of punishment, 300
- 6. A red herring across the trail: ethical relativism, 305
- 7. Harm and nonbenefit again, 311
- 8. Conditional acceptance of a coercive rule: a brief note on collective goods, 316

Conclusion, 318

- 1. Making the strongest case for liberalism, 318
- 2. Belated redefinitions, 320
- 3. Stubborn counterexamples (A): Parfit's misconceived baby, 325
- 4. Stubborn counterexamples (B): Kristol's gladiatorial contest, 328
- 5. Confusions about what is to count as a counterexample, 331
- 6. Liberalism and dogmatism, 333

Notes, 339 Index, 371