

Phil 108, April 3, 2014
Tadros, *The Ends of Harm*, Ch. 6 (skip Sect. II–III), 12 (skip Sub-sect II:ii)

Problem:

- Punishing someone in order to deter others harms her as a means to a greater good.
- So punishment seems to violate the *Means Principle*: It is not permissible to harm someone as a means to achieve a greater good.

Tadros's solution is to revise the means principle:

Revised Means Principle: It is permissible to harm a person as a means to an end if and only if she would have had an *enforceable duty* to undergo similar harm in pursuit that end were she able to do so.

Notes:

- In the cases relevant to Tadros's purposes, the duties are to rescue people from harm. Such duties are usually enforceable.
- If one is responsible for a potential or actual harm, then **one** may have an especially demanding duty to prevent or remedy the harm. (Recall Tadros's argument from the earlier lecture, which appeals to something like McMahan's justification of self-defense.)

Only if direction: permissible to impose only if the person would have a duty to bear

Comments:

- In some cases, the **harm** may = 0. (For example, it is impermissible to use someone in a coma for sexual pleasure, even if this costs them nothing, because they would not have a requirement to make themselves available for such use, even if this cost them nothing.)
- The Revised Means Principle permits harming someone as a foreseeable side effect even when they would not have a duty to bear the same costs. For example, we may turn the trolley on the one, as a side effect, even though he would not have been required to jump in front of it. Why? When we harm a person as a side effect in our pursuit of some end, we do not "require" that person "to serve" that end. When we do so as a means, we do "require" him "to serve" that end. So it had better be the case that morality would require him to serve that end, by giving him a duty to serve it.

Argument for the only if direction(?): Suppose a person would not have been *morally required* to bear a cost for an end. Then morality has said, in effect: it is too much to have a person to bear that cost for that end. In that case, how can it be that others are *morally permitted* to impose that cost on that person for that end? After all, morality has already said: it is too much to have a person to bear that cost for that end.

- *Questionable*: Suppose that you can either give life-sustaining medical attention to yourself or to five others. It isn't obvious that you are morally required to suffer loss of life in order to give medical attention to the others. However, third parties are permitted—perhaps even required—to give that attention to others and so bring it about that you suffer that loss.

If direction: if the person would have a duty to bear, then permissible to impose

Argument for the if direction(?): Suppose a person would have been *morally required* to bear a cost for an end. Then morality has said, in effect: it is *not* too much to have a person to bear that cost for that end. In that case, how can it be that others are *not morally permitted* to impose that cost on that person for that end? After all, morality has already said: it is *not* too much to have a person to bear that cost for that end.

- *Example:* Permissible to push someone into a bus, bruising her, to save another from death. Why? Because she would be required to do this, from a duty to rescue.
- *Questionable:* Suppose I have promised to give you my kidney. I can't complain that morality asks too much of me in requiring me to give it up. But are you permitted to take my kidney by force?

It is in order to avoid kidney-type examples that the Revised Means Principle requires that the duties be "*enforceable*." This means that that it must be permissible for others to *coerce* the person to fulfill the duty (if only by insincere threats).

Questionable:

- Why assume that if it is permissible to coerce, then permissible to impose? Perhaps I may (at least bluffingly) threaten not to follow through on my independent promise to you to give you my life-sustaining bone marrow if you don't follow through on your independent promise to give me your kidney.
- Why think that the *duty* explains why it is permissible impose costs, rather than the factors (whatever they are) that would make such a duty *enforceable*?

How does punishment differ from self-defense?

Most accept that self-defense is an exception to the Means Principle. Can someone claim that self-defense is an exception to the Means Principle, but punishment is not? Tadros doubts this. Consider the relevant differences between self-defense and punishment:

1. Self-defense involves (what Quinn called) eliminative harming, whereas punishment involves (what Quinn called) manipulative harming (as a means to eliminate an independent threat).
 - But manipulative harming sometimes permissible in self-defense:
Hit Man: I hire a hit man to kill you, a complete innocent. The only way for you to avert the threat is to pull me in front of you, using me as a shield.
This is explained by the Revised Means Principle. Because I have created the threat, I have an especially stringent duty to avert it. So I may be used as a means.
2. Self-defense harms the person to avert a threat for which *he* is responsible, but punishment harm the person to avert a threat for which *others* are responsible
 - Quinn *tried* to overcome this problem: to say that punishment is somehow justified not by the good of *future deterrence* of others, but instead by the value of the *past defense* against this action.
 - Tadros suggests that we should reject the idea that we may manipulatively harm someone *only* to avert threats for which that person is responsible.
Double Hit Man 2: Evelyn hires a hit man to kill Wayne. Fred has also hired a hit man to kill Wayne. Both hit men arrive at the same time. Because of where they

are standing, Wayne can only use Fred as a shield against Evelyn's hit man and Evelyn as a shield against Fred's hit man. He manages to do that, resulting in the deaths of Evelyn and Fred.

Fred and Evelyn would have a duty to agree to protect Wayne by fulfilling each other's duties to avert the threat that they are responsible for creating. So Wayne may use them as shield.

3. In self-defense, the duty is to *prevent* the harm. In punishment, the duty is to *remedy* harm already done.
 - But, so long as duties to *remedy* the harm are stringent enough, punishment may be permissible.

The Duty View of Punishment:

Given the Revised Means Principle, it is permissible to harm offenders as a means to the good of deterrence, as a result of the duties that they incur by offending.

What are these duties?

In general, if we have a duty, and we fail in it, we have a duty to do the next best thing.

- *Example:* If I promise you to do some work on Tuesday and I don't turn up, I ought to get someone else to do the work just as well as I would have on Tuesday. If I can't do that, I ought to do the work on Wednesday.
- What is the next best thing to fulfilling a duty against assault? Preventing a future assault?
- Why isn't providing goods other than protection from harm—such as compensation—to the victim the next best thing?

Why is providing protection from harm to *others* than the victim the next best thing?

- Like *Double Hit-man 2*: If punishing each wrongdoer can protect other victims of crime from future offending each wrongdoer ought to accept that he must be punished. Each wrongdoer ought to accept this because he ought to form an agreement with other wrongdoers to ensure that all victims of crime are protected. As part of the agreement to accept that he must be punished, each wrongdoer will do his best to ensure that his duty to protect his victim is fulfilled by someone.

But this only applies to those who are *already* victims of crime. Perhaps victims can pass on their entitlements to protection to their loved ones?

- What if they don't have loved ones? Perhaps victims are required to pass it on to other citizens?

Duties not limited to *compensation*. Punishment may be meted out to an offender, rendering him worse off, even if this renders the victim and others better off than they would have been had the original wrongdoing not been perpetrated.

Review Questions:

1. How might the Revised Means Principle explain why it is permissible to use defensive force against Thomson's "villainous aggressor"?

2. Why is punishment more like Transplant than like Trolley? Is it permissible, in Tadros's opinion, to turn the trolley, even though the one would not have a duty to turn it on himself?