

# The Paradox of Moral Complaint: A Reply to Shaham

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In ‘The Paradox of Moral Complaint’ I took up the question whether a person who has wronged others in certain ways may morally complain if other people then harm him illegitimately in similar ways. I argued that there are strong grounds for saying both Yes and No here, and therefore that our considered moral views are paradoxical. In her reply, Talia Shaham disagrees with the No part of my position. She presents two appealing philosophical arguments, and concludes that there is no ‘Paradox of Moral Complaint’, seeking in particular to defend the unconditional moral ‘right’ of wronged wrongdoers to complain, as against my claims. I attempt to defend my position against her arguments.

In ‘The Paradox of Moral Complaint’<sup>1</sup> I took up the question whether a person who has wronged others in certain ways may morally complain if other people then harm him illegitimately in similar ways. I argued that there are strong grounds for saying both Yes and No here, and therefore that our considered moral views seem to be paradoxical. In her reply, Talia Shaham disagrees with the No part of my position.<sup>2</sup> She presents two appealing philosophical arguments, and concludes that there is no ‘Paradox of Moral Complaint’, seeking in particular to defend the unconditional moral ‘right’ of wronged wrongdoers to complain, as against my claims. I attempt to defend my position against her arguments.

Shaham’s first argument is the *Argument from Unjust Double-punishment*:

The argument assumes that complaining wrongdoers have been or are being sanctioned for their immoral actions. The sanction involved may be criminal, social, political or public. Based on this assumption, I claim that to silence the complaining wrongdoers (i.e. to determine that their moral complaint has no moral standing) would be to wrongly punish the wrongdoers a *second* time.<sup>3</sup>

We need to think about a wrongdoer, such as a violent criminal, who was punished justly, according to his deserts, but is then wronged

<sup>1</sup> S. Smilansky, ‘The Paradox of Moral Complaint’, *Utilitas* 18 (2006), pp. 284–90. A revised version of this piece appeared in S. Smilansky, ‘The Paradox of Moral Complaint’, in *Ten Moral Paradoxes* (Malden, MA, 2007), pp. 90–9. The changes are comparatively small and do not affect Shaham’s argument.

<sup>2</sup> T. Shaham, ‘Is there a Paradox of Moral Complaint?’, *Utilitas* 23 (2011), pp. 344–51.

<sup>3</sup> Shaham, ‘Is there . . .’, p. 345.

in a way similar to that by which he wronged others (e.g. is beaten without justification by bored prison guards), and is complaining about it. 'Silencing' his complaint would be morally unacceptable for three reasons:

[i]t is *morally unfair*, given that such a sanction does not apply equally to all the committers of a particular type of wrongdoing (say, violent criminals) ... [it] would also be *irrelevant* to his past misconduct, since it would be activated obliquely upon the occurrence of a separate unrelated event (i.e., the wrongdoing committed toward the transgressor himself) ... Lastly, and most important, a second sanction under these circumstances would typically result in an overall punishment that is *too severe*.<sup>4</sup>

Shaham goes on to say that some of these difficulties would remain even if the wrongdoer has not been previously sanctioned: we would not then have a *second* 'punishment', but the concerns over the inconsistent and irrelevant application of the 'silencing' sanction would still apply.<sup>5</sup>

There are various issues that might be queried here, but I will focus upon the issue of complaint, and here Shaham's claims seem to lose much of their force. The case for saying that the past wrongdoer's complaint is dubious is not based upon the presupposition that he was not wronged unjustifiably (a matter which is not under contention). That case was just that, since he himself wronged others in similar ways, then, even when unrelated third parties now come and wrong him, *he* has no moral basis for complaint. For, after all, they are only treating him as he treated others; they are following the very path that, through his actions, he has, as it were, legislated. Note that both Shaham and I are excluding from consideration cases of repentance and genuine contrition (or, differently, weakness of will). It might seem that the fact that the wrongdoer has been sanctioned for his wrongdoing has the effect of 'cleaning his hands', of placing him back in his original position (prior to his wrongdoing), morally speaking. But my claim here is that the wronged wrongdoer has not shown the *good will* required in order for a person to be in a position to criticize the given sort of wrongdoing, and it is not morally convincing for him suddenly to turn and do so just because, now, he is the victim. He has no basis for moral complaint in a deep sense; for morally *expecting* to be differently treated, nor to *resent* being wronged. The fact that he has already been

<sup>4</sup> Shaham, 'Is there ...', pp. 345–6.

<sup>5</sup> An added move Shaham makes is to claim that because I emphasize the legislative nature of morality, I would be particularly vulnerable in cases where the wrongdoer has been already sanctioned, since the wrongdoer 'would have a legitimate *expectation* that a similar sanction would be administered to the transgressor who has wronged her. Her legitimate expectations would establish a moral standing for her moral complaint based on the very same principles of fairness and equality implied by Smilansky's argument' (Shaham, 'Is there ...', p. 349).

sanctioned does not change this, as long as the possibility for moral complaint, according to the view that I am here defending, is based upon one's own actions: since he does not come with 'clean hands' to complain, his moral standing has been compromised.

Thus I tentatively suggested what I called the 'separation of constraint from complaint': others may still be morally constrained in their behaviour towards the wrongdoer, but if they wrong him (in similar ways to his own previous wrongdoing), then morally he cannot complain.

Shaham goes on to claim, plausibly, that even if we can separate constraint from complaint,

silencing the complaining wrongdoer should be considered a moral sanction also due to the potential advantages one may acquire via moral complaint, which would be lost upon the deprivation of the right to complain (e.g. the initiation of a dialogue with the wrongdoer or the involvement of third parties should the complaint be addressed to them).<sup>6</sup>

However, if, morally, the would-be complainer has no leg to stand on when he wants to complain, then it is not clear why he would then be wronged by our discounting his complaint. This is not to deny that we might have good reasons to note what he says, because of *our* desire to establish a decent moral order where people (including past wrongdoers) are not wronged. But in so far as we limit ourselves to my 'non-complaint' argument, the *wrongdoer* has no right to expect that. If you may not complain, then you may also not complain about not being 'allowed' to complain.

So, as long as Shaham's argument is understood as an argument about the *moral standing* of the complainer in his complaint about being wronged, or indeed in his complaint about being 'silenced' when he wants to complain about being wronged, the same difficulty persists. However, if we interpret Shaham's argument as being merely about the complaint as a way of 'sounding the alarm' and preventing wrongdoing, which should matter to us in itself (i.e. irrespective of the criminal's right to complain in a deeper sense), then we can find room for her concern. This indeed seems to be her strongest point. If a criminal will in fact not be able to complain about some wrongful act which is done (or is about to be done) to him, then, in circumstances in which there is no one else to point out the wrong, it will likely be carried out. And this will be bad, even if the criminal's complaining about it is dubious. It will be bad not only because it is wrongdoing, but because morally the criminal has already 'paid his dues' through punishment, and does not deserve the further mistreatment. Hence, it is morally important that

<sup>6</sup> Shaham, 'Is there ...', p. 347.

even criminals complain about wrongs done to them (even wrongs of the same kind that they themselves have done in the past). Here, however, the role of the complainer is not held by the presently victimized wrongdoer in light of his moral ability to complain, but rather in a 'technical' and quasi-legal way, as someone who is usefully located so as to help us prevent wrongdoing (wrongdoing which morally he cannot complain about). In other words, his complaint does not follow from a genuine moral right of his, nor does it eliminate my proposed separation of 'complaint' from 'constraint'; it merely serves the latter.

This is not to deny that there may well be a case to be made also for a 'right' to complain *whenever* one is illegitimately harmed (this being the 'pro-complaint' side of the antinomy, which I presented in my original article). My efforts here so far have been limited to defending the 'no complaint' side from Shaham's first argument. And at this point, once we clearly distinguish between constraint and complaint, we see that concern with 'double punishment' and all the other points Shaham makes do not dent the clear moral sense in which the wronged wrongdoer has lost his ability to complain in a deeper sense, *because of his wrongdoing*. The valid concerns with preventing the wrongdoing (now being inflicted on the past wrongdoer) can be reinterpreted, so that they are met, but in a way which does not eliminate the 'no complaint' side.

In her second major argument, the *Argument from Distinct Examples*, Shaham challenges the validity of the alleged paradox,

based on an alternative explanation of the seemingly paradoxical moral results. The central claim of this argument is that a different set of contrasting values and principles is placed on our moral scales in each example. Hence, a different result is obtained in each case, depending on the moral weight we attribute to each of these values and principles, and the severity of impairment thereby created.<sup>7</sup>

And so, if the complainer is a long-standing gossip who then goes on to complain about being gossiped about, then we may dismiss his complaint. However, if, by contrast,

we consider the more extreme example of terrorists who kill innocent civilians and then complain when innocent people whom they care about are killed, matters differ considerably. In this example, the Free Complaint view would rely on the general principle sanctifying the lives of innocent people. As a result, it seems that the general tendency would be to attribute greater significance to the violation of such a principle by the transgressor who harmed the complainer, and to dismiss the values (such as equality and fairness) associated with the Silencing view.<sup>8</sup>

<sup>7</sup> Shaham, 'Is there . . .', p. 349.

<sup>8</sup> Shaham, 'Is there . . .', p. 350.

And so, on Shaham's view 'there is no one *single* real paradox of antinomy here, with two evenly justifiable contradictory results (as Smilansky claimed), but rather *many different*, usually asymmetrical, actual moral dilemmas, which lead us in a different direction in each specific case'.<sup>9</sup>

This is an interesting suggestion. Perhaps expecting to be treated in certain ways and resenting the mistreatment do not make much sense in the light cases, where 'constant' values such as fairness and equality (as between your past behaviour and your current expectations concerning behaviour towards yourself) are sacrificed for the sake of small ills such as those of mild gossip. But, Shaham proposes, when on the other side of the equation stands something like the right to life of the innocent, then other concerns pale in comparison, and the 'silencing' view must lose out.

However, I do not think that we should accept this picture of what is going on here. To me it seems that Shaham's model distorts the moral situation. The severity of the criminal's transgression might even seem, in one way, to justify a stronger silencing, not a weaker one. My view is that basically the two sides grow in severity together. The dubiousness of the gossip's complaint follows from his previous gossiping, while the dubiousness of the terrorist's complaint follows from his terrorism. Being a gossip indeed does not in any significant way harm your case for complaining of being the victim of terrorism, but being a terrorist does make it absurd to complain, full of moral resentment or indignation, when the tables are turned and one, or people one cares about, become victims of terrorism. Doing X, irrespective of the nature of Xing, deprives one of the moral standing to complain, if Xed. One cannot expect not to be Xed (why should one be able to expect to be treated better than one treats others?), nor can one resent it, if one is.

My view seems to be confirmed by common intuitions. Think of a case in which two people are regularly working on consecutive shifts and the first is habitually late in coming to relieve the second, showing no concern at all for his duty to do so on time. If one time the second person happens to come late, the first person's moral standing as a complainer is very weak. There would be something manifestly ridiculous about the first person's sense that he occupies some superior moral ground, from which he can complain about and resent the second's tardiness. Stealing cars is a much more serious offence. Yet it seems that a professional car thief, who, after decades of stealing other people's cars, has his own beloved car stolen, and morally complains about it, is *just as ridiculous*. He may of course be angry, but he is no more in a position

<sup>9</sup> Shaham, 'Is there ...', p. 350.

to expect and resent than the shift worker. And if we then go on to still more serious offences, such as torture or terrorism, the same pattern persists. A captured torturer (whom we have no reason to assume is genuinely repentant) has put himself in the same position with respect to complaining about torture as the car thief who complains when his vehicle is stolen. It would have been morally wrong intentionally to target Bin Laden's family, but if that were done, *his* complaining would, surely, have been quite absurd.

To conclude, the topic of moral complaint is difficult and important, although it has been inexplicably neglected. This importance, difficulty and neglect should all lead us to be hesitant about our judgements and intuitions. I think that Shaham captures some genuine worries. Yet, as I have tried to show, on a closer analysis the 'no complaint' argument survives intact; Shaham does not succeed in eliminating it, and hence the paradox remains. Once we keep in mind the distinctness of the questions about 'constraint' and 'complaint', we see that complaining wrongdoers indeed ought not to be wronged, and we recognize that such wrong is particularly disturbing if they have already been adequately sanctioned. But we also see that this is a different matter, which does not rule out the point I make about moral complaint. Even the 'no complaint' advocate should acknowledge that we need to be concerned if past wrongdoers are wronged, and their calling out if wronged may help to identify and prevent such wrongs. In this 'technical', shallow sense of complaint as 'sounding the alarm' they indeed should not be silenced, whatever their own past deeds. Yet irrespective of these concerns of ours, such wrongdoers themselves nevertheless stand on very dubious moral ground, if they complain about being treated as they habitually and freely treat others. There is a valid moral perspective from which their wrong actions *morally undermine* any complaint they may have over similar actions. In a deeper sense of complaint, then, they have silenced themselves, morally. Moreover, the dubiousness of their complaint *tracks their own* actions, and hence seems to be sustained at any level of offence.<sup>10</sup>

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