

The Paradox of Moral Complaint

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When may someone complain, morally? And what, if any, is the relationship between legitimate moral complaint and one's own behaviour? I point out a perplexity about a certain class of moral complaints. Two very different conceptions of moral complaint seem to be operating, and they often have contrary implications. Moreover, both seem intuitively compelling. This is theoretically and practically troubling, but has not been sufficiently noticed. The Paradox of Moral Complaint seems to point to an inherent difficulty in our reflective moral intuitions. Given the legislative nature of moral agency, the plausible limitations upon reasonable moral complaint seem to contradict the inviolability of central moral constraints and the complaints they allow. In the sort of cases under discussion, morality seems at once both to insist upon the possibility of moral complaint, and to deny it.

I want to point out a perplexity about a certain class of moral complaints. The moral issues we shall engage with are as old and familiar as the *lex talionis*, but focusing upon complaints makes it more difficult to take a simple 'absolute constraint' line, and creates a dilemma and a paradox.

It is useful to think about this issue within the context of a view that sees morality as universally prescriptive. Let us assume *L*: *The general 'legislative' nature of morality and moral action*. The moral principles one puts forth apply equally to everyone, in relevantly similar circumstances. And actions count: when one performs morally significant actions, one thereby legislates, in some sense, that according to one's principles it is permissible for relevantly similar others to perform similar actions under similar circumstances.

Hence, for example, when proposing some moral principle, or when proposing to act in ways that morally affect others, one should ask oneself how one would feel, or how one would judge the situation, if others were to treat one in that way in similar circumstances. According to *L*, one should take one's actions very seriously, for they may serve as moral precedents.

Consider the following examples:

- (a) People who enjoy malicious gossip and frequently pass the gossip along to others often complain that those who gossip about them invade their privacy and spread untrue stories.
- (b) Violent criminals and those who sympathize with them often complain about police brutality, the injustice of the courts, and the dehumanizing conditions in prisons.

- (c) Terrorists and their defenders often complain about having no recourse to judicial appeal and about the unfair conditions of their detention, as they also complain when innocent persons they care about are killed.

The problem begins when we think about moral complaint in such cases. Two very different conceptions of moral complaint seem to underlie these cases: each of these conceptions seems applicable. Each has implications that are contrary to those of the other. And both seem intuitively compelling. (Both also seem to be interpretations of *L*. But even if one has doubts about *L*, the intuitive appeal of the following conceptions may be strong.)

N: The non-contradiction condition for complaint: Morally, a person cannot complain when others treat him or her in ways similar to those in which the complainer freely treats others.

U: The unconditional nature of some moral standards: Some moral standards apply unconditionally. These standards allow anyone to hold others to them, and to complain if those others do not act in accordance with those standards.

I want to examine *N* and *U* in more detail, to show how they both can be thought to follow from *L*, and to account for their inherently strong intuitive appeal.

N: The non-contradiction condition for complaint: *L* implies that a person cannot legitimately morally complain about being treated in a way that is similar to the way in which that person freely treats others. If, by regularly spreading tales about the private affairs of others, one affirms one's moral position on the permissibility of gossip, then surely there is a sense in which one cannot complain about being the target of gossip. If, by inflicting pain on people, one implicitly declares one's moral position on violence and cruelty, then one cannot complain about being treated according to the very ways that one implicitly deems morally permissible. Hence criminals who complain, as in (b), have no moral basis for their complaint. Terrorists, who by definition intentionally target innocent victims, cannot complain when they themselves are summarily treated or when subterfuge or violence is aimed at them. Nor can they speak about the sanctity of the lives of innocent civilians, on pain of self-contradiction.

How *can* one morally complain about the very thing that one persists in doing to other people in relevantly similar circumstances? Surely the gossip decrying gossip, the criminal roaring against lawlessness and violence, and the terrorist concerned for the lives of the innocent, stand on extremely dubious ground. Why should we find their protests convincing? What *basis* can they have for moral *indignation*, when they freely and repeatedly contradict their words through their actions?

(I bracket genuine contrition and repentance and, differently, weakness of will.)

Moral complaint occurs when my moral *expectation* is unmet in a way I believe to be unjustified, and which I therefore *resent*. General moral principles that I assume others share (or ought to share) are the basis for moral complaint. But this becomes very problematic when another person's action that harms us is in accordance with our own actualized principles. Recall *L*. How can I morally resent or complain about another's doing to me as I freely do to him (unless unusual circumstances exist)? How can I morally resent or complain about his *applying against me the moral rule that I myself have set*? According to this interpretation of *L*, 'Do not do unto others as you would not want them to do unto you' may turn into 'And if you so do unto others and they so do unto you, you cannot complain'. You condemn yourself to live as you have legislated.¹

The point is not only that it is natural not to feel sympathy for the gossip, criminal, or terrorist, when they complain about the very same sort of actions which they freely and regularly inflict upon others. The *claim* that they have on others, to care morally about the way in which they were treated, loses its footing. When they have been so grossly disrespectful of others, they have thereby lost the basis for complaint at being treated with similar disrespect. They lack the moral good will, as well as the integrity and consistency between their actions and demands from others, required in order to deserve our concern about *their* moral expectations. The wrongdoers have legislated in a way that precludes their own moral complaint, for there is no grounding for their complaint within that legislation.

U: The unconditional nature of some moral standards: We feel that there are moral standards that apply 'no matter what', and these allow even the most irresponsible gossip or the most sordid criminal or terrorist to hold us to them, and to complain if we do not. The fact that those who are morally bad do wrong does not permit us to do wrong. This *also* follows from *L*: if A wrongly harms B, it is not permissible for the relevantly similar C to harm wrongly the relevantly similar D (even if D is A). Since morality is legislative, and actions count, to harm A wrongly would be to condone A's harm to B. Admittedly, what it would be permissible (or even morally required) to do to gossips, criminals, or terrorists might change as a result of what they have done; namely, they might deserve condemnation or punishment. But there are still

¹ Those who sympathize with the criminals or terrorists similarly cannot complain about the unwarranted bad that falls upon those criminals or terrorists, for the supporters have, as it were, 'co-signed' and approved of the actions of the criminals or terrorists.

things that it would be impermissible to do to them, and if such things are done, they *can* complain.

There must be some limits to the derogatory remarks we can make about gossips. We can neither acquiesce in sex-offenders being raped in prison, nor in random, cruel, or unusual punishments being inflicted upon violent offenders. Likewise, when governments counter terrorist activity by actions that involve the loss (even if unintended) of innocent lives, this is a source for moral worry. The view that there are no limits on what we may say about gossips, or that everything is permitted in the struggle against crime or terrorism, is not morally acceptable. If such principles and constraints are breached, moral complaint is justified.

Moreover, something further, beyond the ubiquity of principles and constraint, is going on here and makes wronging gossips, criminals and terrorists unacceptable. Consider a criminal who is put in prison as a result of persistent severely violent behaviour, and is then severely beaten by some prison guards, without justification. We saw that it is very dubious for the prisoner to feel that he can morally complain, but this is not our present concern. This is that despite the dubiousness of complaint, it nevertheless seems that the prison guards should not behave as they have. Note that, according to *L*, by doing so *they* would legitimize unjust severe violence.

We have, then, two contradictory views of complaint (and interpretations of *L*), both with considerable intuitive support. Prescriptive universal moral legislation invites two contradictory but compelling interpretations with respect to complaint: namely, that wrongdoers cannot complain when treated as they have legislated, and that wrongdoers can complain if wronged according to universal moral standards. Note that we could not easily solve the problem by rejecting *L*. *L* is an intuitively very strong principle. Moreover, as we have seen, even if we bracket *L*, both *U* and *N* are intuitively compelling in themselves. The contradiction remains. What are we to make of this?

One option is to attempt to reject one of the interpretations. 'Die-hard' absolutists can insist upon such a strong notion of human rights that it would automatically triumph over the dubiousness of complaint by any wrongdoer, and this dubiousness would be shrugged off. Or, by contrast, positing the question of complaint as elementary, one could deny gossips, criminals, or terrorists any opening because they would be said to have forfeited any basis for complaint, however they might be treated. But I think that the intuitive salience of *both* intuitions – roughly, that what you do matters greatly to your right to complain, and that certain standards seem to allow universal complaint – should be respected, and both easy ways out of the dilemma should be resisted. Our close focus upon complaint is strong enough to

endanger absolutism, without being sufficiently strong to make every sort of treatment acceptable.

A different option is to acknowledge that some gossips, criminals, or terrorists attempt to put forward *particular* claims without self-contradiction. Because of their unusual or deprived childhood, their gossiping or criminal behaviour needs to be excused. Or particular and very extreme conditions are in place, which merit the taking of innocent lives by the terrorists, while harm to innocent people as a consequence of counterterrorist activity lacks such justification. Such 'special pleading' is much more difficult to defend in a way that will seem reasonable to the impartial (let alone to the victims), in contrast to following a wide general rule that is assumed to apply to everyone. The chances of being convincing would usually be similar to those of a person who complains about the recent infidelity of his or her spouse, which follows upon his or her own longtime infidelity, but says that 'this is different'.

But, in any case, gossips, criminals, or terrorists do not typically argue in this way. Gossips feel unjustly persecuted by those who talk about them behind their back, criminals call upon the police to restrain themselves and to follow the law, and terrorists demand that counterterrorist forces follow international law and respect the sanctity of the moral innocence of civilians, all as a matter of principle. Such people typically make these complaints in wide and general terms, basing them upon universal moral and legal principles.

A third option would be to interpret such moral complaints in a way that does not imply that the complainers accept the moral principles that ground the complaint. It *is*, after all, open to anyone to argue against a person that that person is not living up to his or her *own* standards. But such a claim of moral laxity, or of hypocrisy, still does not enable us to overcome the difficulty with the sort of moral complaint I am discussing, which must assume common moral ground. The complaints of the gossips, criminals, and terrorists assume that they have a moral *claim* based upon principles they agree with. The difficulty arises precisely because they themselves manifestly *do not* follow those principles.

Another option 'unmasks' the complainers: gossips, criminals, terrorists, and their possible supporters do not really believe in the standards of privacy, justice, fairness, innocence, and the sanctity of life, but rather employ these notions as mere empty rhetorical posturing. No doubt much of that also goes on. After all, it is clearly in the interests of gossips, criminals, and terrorists that they, and those they care about, *not* be treated in the same way that they are treating others. And yet it does not seem plausible to attribute to mere self-serving cynicism all complaint that appeals to such principles.

To the extent that each of these four options is an attempt to blur the otherwise conflicting implications that we have drawn from *N* and *U*, each of them fails because we are still left with the matter that is primary for us: whether, and how, such complaints can be justified. Once we set aside these four options, the contradiction between *N* and *U* still confronts us as compelling but alternative ways of viewing such complaints.

We can either:

- (1) Conclude that our intuitive views about moral complaint (*N* and *U*) are deeply contradictory, *or*
- (2) Disconnect moral complaint from moral constraint.

(2) would allow us to integrate the insights of both *N* and *U*: namely, to say that wrongdoers cannot complain if they are treated in the ways that they have normatively supported through their actions, but that nevertheless there are constraints on how anyone may be treated. In this new option the 'right' to complain may be curtailed, even when people become the target of morally wrong acts, but the general constraints on what it would be morally permitted to do to other people would remain in force. The commonsense assumption, that if wronged one can complain (and that if one cannot complain about an act done to one, then presumably that act may be done to one), is abandoned.

(1) is of course theoretically and practically disconcerting. But (2) would involve the rejection of *T*:

T: *The principle of the transfer of complaint*: If it is morally impermissible to treat *E* in a certain way, then *E* has grounds for complaint if anyone treats *E* in that way.

(2) therefore is also clearly unattractive, since rejecting *T* would mean that it may be impermissible to treat *E* in a certain way, but if this is done he nevertheless cannot complain! Moreover, certain people would be able to complain about a certain morally wrong act while others would not be able to complain about the very same act. Consider a situation in which *E* is a terrorist. He is captured, and he and his family are then severely beaten in a way that is clearly morally illegitimate. Assume that *E*'s family opposes his terrorist ways. Then they could morally complain about the morally wrong way in which both he and they were treated, while *E* could complain of neither. Which, beyond its distinct oddness, again would put us in tension with the universal moral intuitions lying behind *L*.²

² In certain examples the 'compromise' position that involves the rejection of *T* does seem intuitively possible. Consider a thief who complains when his house is broken into and some of his property stolen. If we take his complaint to be moral complaint of the sort

In light of the contradiction between *U* and *N* on complaint, we might be attracted by the rejection of *T*. But *T* as well is a strongly intuitive principle. Even if it does not always apply, to reject it systematically would be very unattractive. Its systematic rejection, and what this would imply, seems merely to change the paradoxicality rather than to solve it.

The Paradox of Moral Complaint seems to point to an inherent difficulty in our reflective moral intuitions. Given the legislative nature of moral agency, the plausible limitations upon reasonable moral complaint seem to contradict the inviolability of central moral constraints and the complaints that they allow. In the cases I have discussed, morality seems both to deny the possibility of moral complaint, and to insist upon its necessity.³

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that we have been considering, then we will be inclined to dismiss it, and yet others are not typically permitted to steal from him. I am inclined to interpret this example so that the oddness of the rejection of *T* will not be compromised even here. The conventional nature of property relations, and the thought that we cannot permit lawlessness, seem dominant in this case. It is not a real exception, for I am inclined to think that when we forbid stealing from our thief, we do so not out of concern for him or his rights (as we do when we accept constraints on the treatment of prisoners, say).

³ Versions of this article were read at the colloquium of the department of philosophy at the University of Haifa on 1 November 2004, at David Enoch and Alon Harel's 'Political Philosophy and Law' research seminar in the law faculty of the Hebrew University of Jerusalem on 22 December 2004, at the annual meeting of the Israeli Philosophical Association on 17 February 2005, and at the Joint Session of the Aristotelian Society and the Mind Association, in Manchester, on 9 July 2005; and I am grateful for comments made by participants. I am also very grateful to Iddo Landau, Jeff McMahan, Daniel Statman, and an anonymous reader of *Utilitas*, for comments on drafts of the article.