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REPLY

A Second-Personal Solution to the Paradox of Moral Complaint

Adam Piovarchy

The University of Sydney
E-mail: adam.piovarchy@sydney.edu.au

Abstract

Smilansky (2006) notes that wrongdoers seem to lack any entitlement to complain about being treated in the ways that they have treated others. However, it also seems impermissible to treat agents in certain ways, and this impermissibility would give wrongdoers who are themselves wronged grounds for complaint. This article solves this apparent paradox by arguing that what is at issue is not the right simply to make complaints, but the right to have one's demands respected. Agents must accept the authority of others to make second-personal demands on them before they can expect others to treat their own demands (or complaints) as legitimate. Wrongdoers' previous wrongdoing shows they do not treat others' demands as authoritative. However, as they are still beings with dignity, which acts as a source of moral reasons for others, wronging them remains impermissible.

1. Moral Complaint

In 'The Paradox of Moral Complaint', Smilansky (2006) notes that we seem committed to two compelling but contradictory attitudes regarding moral complaint: that 'wrongdoers cannot complain when treated as they have legislated, and that wrongdoers can complain if wronged according to universal moral standards' (287). For example, it seems to be a regular feature of our moral practices that thieves cannot complain if they are robbed by others. However, it also seems to be a regular feature of our moral practices that actions such as stealing are downright impermissible. And the impermissibility of such actions seems to ground a legitimate complaint against suffering those wrongs, regardless of one's prior actions. Solving the paradox of moral complaint requires reconciling our commitment to these two thoughts, which both seem to be a part of our moral practices.

Smilansky notes that a few attempts at solving this paradox will not succeed. We could maintain that thieves actually can complain about being robbed. But this seems to leave us without any explanation for why their complaint really does seem to have lost its normal basis. We could interpret the complaints of the wrongdoers-turned-victims as 'special pleading', taking their own wrongdoing to have some relevant difference from the wrongdoing they are complaining about (e.g. 'I had a bad upbringing and thus am excused, but he is not'). If we think that morality is legislative, as Smilansky takes it to be, then this could mean that the

wrongdoers have not actually legislated by their prior wrongdoing in such a way that is now inconsistent with their complaint. But not only is this unlikely to be convincing to their victims, the complaints of wrongdoers-turned-victims are typically put forward in very general terms appealing to universal principles. We could argue that the complaints of wrongdoers-turned-victims are not genuine, and these people are simply pretending to complain out of self-interest. But it seems implausible that such agents are not really complaining, or that they do not care morally about how they are being treated.

One option, which Smilansky finds appealing, is to disconnect moral complaint from moral constraint.[1] That is, we could maintain that thieves cannot complain if they are robbed, but it is still impermissible for others to rob them. We only have to give up the common intuition that if one is wronged, then one can complain about being wronged. The worry with this approach is that it entails that while it is impermissible to treat someone in a certain way, if they are treated that way, then they cannot complain. It also has the result that third parties can still complain about the wrongdoer-turned-victim's treatment. This seems odd because any factor we could point to as grounding a third party's complaint (e.g. that the treatment is wrong) seems to be just as available to the wrongdoer-turned-victim too.

I believe it is possible to resolve the paradox of moral complaint and provide a more complete explanation for why moral complaint can be separated from moral constraint. The solution relies on some insights from the recent literature examining hypocrisy and standing to blame.

2. Hypocrisy

Blame can be inappropriate or objectionable in a number of ways. For example, blame seems to be objectionable when the target of blame has been blamed enough, when they have atoned and been forgiven, or when they have not committed wrongdoing at all. However, it also seems that blame can be objectionable not in virtue of some fact about the target of blame, but in virtue of facts about the blam*er*. In particular, it is commonly thought that someone's blame can be objectionable if it is hypocritical, that is, if the blamer has previously committed a relevantly similar wrong to the blamed, and not atoned or apologised for doing so.

Philosophers have recently begun to examine a number of questions regarding hypocritical blame, including whether hypocrites in fact lack the standing to blame, what things they lack the standing to blame others for, and how they can regain their standing to blame (Duff 2010; Friedman 2013; Fritz and Miller 2018; Isserow and Klein 2017; Todd 2019). One particular challenge has been to explain why hypocritical blame can be inappropriate, given that it does correctly represent its target as a culpable wrongdoer, and given that all of the ordinary reasons in favour of blaming (e.g. giving a deserved treatment, protesting wrongdoing, communicating disapproval) seem to remain equally in place as they would were the blamer not hypocritical (Bell 2013). Call this challenge 'the puzzle of hypocritical blame'.

The paradox of moral complaint bears some similarities to the puzzle of hypocritical blame, in that both centre on how we may respond to wrongdoers, and both concern an intuition that wrongdoing can cause perpetrators to lose certain entitlements. However,

[1]Another more radical option from Smilansky (2020) is to argue for an alternative account of morality entirely. I'll set this possibility aside.

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they are distinct problems. The paradox of moral complaint concerns whether wrongdoers can object to their *being treated* in ways similar to how they have treated others, and whether such treatment is *permissible*, whereas the literature on hypocrisy has focused on whether wrongdoers can *blame* others who commit wrongs similar to those they have themselves committed. This is further evidenced by the fact that proposed solutions to the puzzle of hypocrisy don't generate obvious solutions to the paradox of moral complaint. For example, suppose we accepted Wallace's (2010) argument that blaming carries with it a commitment to self-scrutiny, and that hypocritical blame is objectionable because it implicitly rejects the equality of persons. We would still not have an answer for whether it is permissible to treat wrongdoers in the same way as they treat others, or whether they are entitled to complain about such treatment. If we adopted Todd's (2019) account of hypocrisy, which says that our right to blame someone for wrongdoing requires being sufficiently committed to the values which would condemn that wrongdoing, we would still lack an answer to the question whether it is permissible to treat wrongdoers in ways that they have treated others, and whether they can complain about such treatment. Fritz and Miller (2018) argue that our right to blame others is grounded in our acceptance of the moral equality of persons, and that hypocrites implicitly reject this in virtue of possessing a disposition to unfairly blame others for certain norm violations, which then forfeits their right to blame others for those norm violations. Again, this doesn't obviously answer the question whether it is permissible to treat wrongdoers in ways that they have treated others.

I believe that there is a solution to the puzzle of hypocritical blame that has the added benefit of helping solve the paradox of moral complaint. But first, to understand the connection between the two questions, let me clarify some features of the kinds of cases Smilansky uses to formulate the paradox. While Smilansky describes the paradox in terms of 'complaint', I take the paradox to concern something more particular. If we interpret 'complaint' as simply whining, in the way that one complains about the heat, or traffic, then no paradox seems to arise. There doesn't seem to be anything 'off' about wrongdoers complaining that being treated negatively in the same way that they have treated others is merely unpleasant. Instead, Smilansky clearly has in mind a *moral* complaint, something which ought to be taken seriously by the rest of the moral community. He notes that he is concerned with whether wrongdoers can *expect* to not be treated in ways that they have treated others, and whether they can *resent* others for treating them in those ways (Smilansky 2013: 278). I take this understanding of expectation not simply to be in a predictive sense; we still wrong someone even if they were warned and perfectly aware that we were going to wrong them.

If we reflect on the nature of our complaints against people treating us negatively, and what is involved in our expectation that others treat us in certain ways, it seems that what we are doing is making a claim or a demand. In expecting that people will not treat us in certain ways, we are making a claim on them, or a demand that they not treat us in certain ways, and violations of such demands are what we resent them for.

This interpretation is notable, because demands also play a central role in a proposed type of solution to the puzzle of hypocritical blame which I have defended (Piovarchy forthcoming). This account argues that demands have an important role in our moral responsibility practices, and hypocrites lack the standing to blame because their prior wrongdoing undermines their authority to make certain demands of other agents.[2]

[2]Herstein (2017; 2020) takes a somewhat similar approach, arguing that we can *permissibly deflect* the reasons that hypocrites give us in making requests or demands, rather than taking their authority to

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By using Darwall's (2006) influential account of second-personal demands and showing how it can solve the puzzle of hypocritical blame, I believe we can simultaneously solve the paradox of moral complaint.

3. Second-personal demands

Suppose that you are standing on my gouty toe, hurting me. Darwall (2006) argues that there are two different kinds of moral reasons you could have to remove your foot, which I can make you aware of in two different ways. The first approach is to simply try to point to existing moral reasons that you have to remove your foot, such as getting you to feel sympathy for me, or drawing your attention to the utility that will be created by your removing your foot. By such methods, the reasons I refer to could be pointed out by anyone in a position to inform you of them, and they would only be addressed to you in the same way that they would be addressed to anyone who is in a position to decrease the amount of pain in the world. This kind of interaction is possible, but it is not the main way in which we give people reasons to remove their feet from ours.

The second kind of moral reason I can give you to remove your foot is the kind that is addressed in a *demand*. I, the person being wronged, and a member of the moral community, can make a demand of you, the person who is wronging me. In making *this* demand, I am giving you a second-personal reason, something that concerns your relations to me. I do not want you to remove your foot merely out of fear of retribution, nor do I make this demand because I think saying these words is merely the most effective way to get what I want. Rather, I want you to remove your foot because you recognise that I am a being with inherent dignity, which gives me the authority to demand certain forms of respectful treatment.

Of course, for demands to be legitimate, I must in fact have the authority to make them, and there are limits to what authority our inherent dignity grants us. My having the authority to demand that you move your foot is a 'normative felicity condition' on my address actually giving you an obligation, analogous to the felicity conditions that Austin (1962) argued a speech act needs in order to succeed. In contrast, if I demand that you pay my taxes for me, then while I purport to have the authority to make this demand, because I lack such an authority you are under no new obligation, and no second-personal demand has in fact been created.

What things do I have the authority to demand? An important detail here is that when I demand that you treat me a certain way, and want you do so because I demand it, that is, for that particular reason, I thereby presuppose that you *can* do such a thing. I presuppose that you are a free and rational person, someone who can understand demands, recognise their authority, and direct your will to comply with them. But in doing so, I am thereby presupposing that you too are a kind of being with certain rational capacities, and thus dignity. This entails that you too are a being who has an authority to make demands of other beings with rational capacities, including myself.

In demanding that you, a free and rational agent, freely comply with my demand, I am committed to there being such a thing as demands that free and rational agents can freely and rationally accept. And since I am aware that such demands must also be acceptable by me, I am thereby committed to there being demands which can be accepted by us *qua*

give such directives as undermined altogether. Tognazzini (ms) also defends an account which uses the idea of second-personal demands, albeit in a different manner.

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free and rational agents among other free and rational agents – that is, *among equals*. We are committed to there being shared normative standards in place, which we, as members of the moral community, can hold each other to account for violating.

These commitments of ours are also normative felicity conditions on second-personal address. They are the conditions that must be met in order to count as making a second-personal demand at all, and for such a demand to be legitimate. I simply cannot make this kind of demand if I do not take myself to have a certain authority, or if I do not think that you are the kind of being who can direct your will, or if I am merely trying to coerce you, or if I do not think that there are shared standards in place for which we can hold each other accountable. Most importantly, I cannot make a legitimate second-personal demand, a claim on your will as a being with inherent dignity, if my demand is not the sort of thing that could be accepted by you as an equal.

4. The solution

Here is how thinking about the nature of second-personal demands and their presuppositions helps us solve the paradox of moral complaint. In making a complaint, that is, a demand that others not treat them in certain ways, the wrongdoer-turned-victim makes a demand as a being with dignity and as a member of the moral community. They purport to have the authority to make this demand, and address the other person from the shared normative perspective of the moral community, which others can freely and rationally accept as equals.

However, the wrongdoer-turned-victim is someone who has themselves committed wrongdoing. They have done something which is inconsistent with the very shared normative standards they are purportedly committed to when blaming the wrongdoer. This is notable, because it demonstrates that they did not *accept* or treat those standards as authoritative on them when they committed that wrongdoing. And all else being equal, it remains highly likely that this person does not presently accept those standards as authoritative on themselves either. Thus, when they try to complain about their present treatment, or demand that others cease wronging them, the wrongdoer-turned-victim is someone who tries to make a second-personal demand on others, while failing to accept the authority of others to make that same kind of second-personal demand on them. Their prior wrongdoing is evidence that they do not truly accept others' authority to demand of them what they are presently demanding of others, and this violates the normative felicity conditions for such demands to be legitimate. They thus cannot appropriately resent others for treating them as they have treated others.

The upshot is this: the reason that we cannot be required to accept their demand as legitimate (or to treat their complaint at others violating their demands as legitimate) is because this would require that we accept their authority to make this demand despite their present failure to accept our authority to demand the same of them. In short, if we were to treat the wrongdoer-turned-victim's complaint as addressing a genuine obligation on us, we would be treating them as having an unequal, superior status to us. This explains why they cannot complain in ways that address a demand to us, but they can complain in ways that carry no such implicit demand (e.g. by merely groaning).

This accounts for the first half of the paradox: why wrongdoers often cannot complain about being treated in ways similar to how they treat others. Wrongdoers cannot complain because they do not accept others' authority to demand the same of them, and their demand that we treat their demands as legitimate fails to relate to us as equals while they are also disposed to not treat our demands as legitimate.

The second half of the paradox requires us to account for why it remains impermissible to treat wrongdoers in ways that they have treated others. The simple answer is that they remain beings with dignity, and there are still moral reasons in place which count against engaging in needless wrongdoing. This alone is not enough to grant wrongdoers-turned-victims the authority to make demands of others, since making legitimate demands requires that they accept others' authority to make demands of them. But it is enough to make it impermissible for others to wrong them in certain ways, and for some moral standards to apply, and we, the rest of the moral community, can make such demands on any agents seeking revenge or retribution against wrongdoers. Our demand to others that the wrongdoer-turned-victim not be wronged because they are a being with dignity, or that the person wanting to wrong them not violate the shared normative standards that are in place, carries no implication that anyone has any more authority than anyone else. While denying victims the right to retaliate, we remain committed to the claim that that initial wrongdoing against them should not have taken place, and that the wrongdoer ought to atone and make amends, which affirms the victim's status as a moral equal.

This answer has a number of strengths. First, it is the kind of explanation which separates moral complaint from moral constraint, which was the approach Smilansky found appealing. But in doing so it provides an explanation for why wrongdoers-turned-victims cannot resent others for their treatment, while third parties can, which initially seemed puzzling. Another benefit is that it accords with our intuitions regarding a certain class of cases. In describing the paradox of moral complaint, Smilansky set aside instances in which wrongdoing is the result of weakness of will or contrition, but offered no principled reason for doing so. This account provides an answer to the question why such wrongdoers can characteristically complain: their wrongdoing came about in such a way that is not evidence of a failure to accept others' second-personal authority.

This account also explains why some wrongdoers *do* seem entitled to complain about present mistreatment. If wrongdoers have atoned, and now truly accept others' demands on them, such that they are motivated to regularly comply with those demands, then such wrongdoers are entitled to complain. If someone steals, but then reforms their character, apologises and reconciles with their victims, and is now not disposed to steal precisely because they recognise that stealing is wrong, then this person can complain if someone steals from them.

It is important to note that acceptance of others' demands as authoritative doesn't simply require that one believe those demands are authoritative, or believe that one has moral reasons to avoid wrongdoing. One must *treat* those demands as authoritative, by regularly conforming one's behaviour to those demands out of recognition for those demands, or at least being sufficiently motivated to do so.[3] Someone who truly accepts the authority of others' demands to not steal will not only be motivated to not steal themselves, they will feel saddened or outraged when others steal, encourage others to uphold the norm of not stealing, feel guilt for any acts of stealing they have committed, and be motivated to apologise, atone and compensate anyone they have stolen from. Such changes are unlikely to happen overnight, or as soon as one is wronged in ways that one has wronged others. But in some cases, being wronged might cause

[3]Though it's up for debate what constitutes sufficient motivation, as some (e.g. Fritz and Miller 2019) have noted regarding Todd's (2019) account.

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one to appreciate the effects that one's actions previously had on others, and motivate the agent to atone.

This account also has the curious, but intuitively acceptable, result that some agents can lack the authority to complain without being wrongdoers at all. If, for example, one *would* culpably commit a certain wrong but has simply lacked the opportunity to do so, such an agent plausibly lacks any authority to complain when others wrong them in that particular way.[4] For example, if I want to steal from someone, but simply lack the means to do so, I cannot complain when I am then robbed (Todd 2019). Finally, the account is able to explain what wrongdoers must do in order to have their complaints treated as legitimate again by the rest of the moral community: they must become the kind of person who treats others' second-personal demands as legitimate too.[5]

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[4]This account also accurately explains why wrongdoers-turned-victims seem to have lost their right to complain in virtue of their wrongdoing or present dispositions, not merely in virtue of how silencing their complaint risks compounding the punishment they might receive, as Shaham (2011) has argued. See Smilansky (2013) for objections.

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