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Preface

The Madison Philosophical Society is pleased to present the first-ever issue of *Agora*, our undergraduate philosophy journal. Contained herein are four sterling papers covering important (and presently applicable) philosophical issues.

Noah Kubiak will give a convincing account of the ethical concerns plaguing the use of autonomous vehicles, coming soon to a city near you! How ought we to program our nascent overlords?

Mark Stanley will eviscerate the ethical bona fides of one Jimmy Donaldson, popular and controversial internet celebrity-turned-philanthropist.

Esther Rolfe will apply two competing legal theories to the incredibly complicated matter of the genetic-selective abortion, placing our notions of individual and community rights in tension.

Harold Windsor will summarily reject the notion that punishment's principal aim is retribution against the punished; he will persuasively argue for a rehabilitative model of justice.

Each of these papers presents ample opportunity for reflection upon our intuitions and existing beliefs. I appreciate you, reader, taking the time to carefully consider each argument, that it may bring you closer to enlightenment (or, at the very least, consistency).

Sincerely,

Thomas Erwin

Editor-in-Chief

Ethical Considerations for Autonomous Vehicles

Noah Kubiak

1. What's the issue?

I.I Introduction

In June 2016, a team at MIT released a website called the “Moral Machine”. The goal of the project was outlined as such: “From self-driving cars on public roads to self-piloting reusable rockets landing on self-sailing ships, machine intelligence is supporting or entirely taking over ever more complex human activities at an ever-increasing pace. The greater autonomy given machine intelligence in these roles can result in situations where they have to make autonomous choices involving human life and limb. This calls for not just a clearer understanding of how humans make such choices, but also a clearer understanding of how humans perceive machine intelligence making such choices” [3, 6]. The project aimed to gather data on how a large population of users from all over the world responded to different scenarios involving autonomous vehicles.¹

The scenarios all have the same basic outline. An AV with sudden brake failure must choose between two options: either continue through a pedestrian crossing, killing one group or swerve out of the way, killing another (assume that the velocity of the AV is such that death is certain). The Moral Machine includes over 26 million such scenarios, filling in the details as to the number of each person in either group, the number of passengers in the AV, whether the pedestrians were following the law, and the demographics of all people involved.

I.II Autonomy vs. Human

I think it is first important to distinguish why it is suddenly so important to discuss these kinds of scenarios with AVs, when human drivers have been on the road for decades. I believe the reason is quite simple. If a human driver were placed into the scenarios described by the Moral Machine, we would ordinarily not associate any blame or responsibility on them (assuming that the driver was otherwise following all the applicable laws at the time of the decision). That is because a human driver has only moments to come to a decision, and as such does not have the time for much, if any moral reasoning.. In fact, it is barely appropriate to call what the human driver does a decision; it is much more apt to call it a reaction. This is why we have come to call such scenarios “accidents” when they involve human drivers.

However, AVs are works of engineering. Any and all decisions that an AV will make are products of a specific design implemented by its programmers. If we ever use autonomous vehicles, engineers will have to account for these kinds of scenarios and decide the outcome of them before they ever happen.² It will not be enough to have AVs simply always adhere to traffic laws; as the Moral Machine showcases, there are serious ethical concerns that must be addressed. This paper will explore some of these considerations and some possible answers.

¹ For the purposes of this paper, I will abbreviate “autonomous vehicle” to AV. This will also be equivalent to a “self-driving” or “driverless” vehicle. Non-autonomous vehicles will be specifically mentioned.

² It should be noted that I make no claim as to whether or not the engineers are therefore responsible for what the AV does.

I.III An Early Objection

Many may be quick to point out that we shouldn't worry about AVs facing these kinds of scenarios at all. Perhaps by the time that we reach the level of full autonomy, the vehicle would have full awareness of all of its systems and parts, so a total brake failure would never happen. Another possibility is that we avoid having the AV ever make such an ethical decision, and if it found itself in these scenarios, it would simply pass control over to the passenger.

In either case, I still believe it is necessary for the AV to have the capability to make decisions for these sorts of ethical dilemmas. To address the latter concern, we still need to account for the possibilities of an AV driving with no passengers. We can already see this happening today, with services like Google's Waymo offering driverless taxis in select cities [8].

The Moral Machine also includes many scenarios with no passengers in the AV. It is certain, then, that we must account for the possibility of an AV not being able to hand over control to a human agent. As for the former case, I agree that this could be a very real possibility. In fact, I think it would be an incredibly smart design choice if an AV refused to drive if it detected some possible malfunctioning of its parts. However, I believe it necessary to still prepare for even the slightest possibility of these scenarios actually happening. In other words, I am considering Murphy's Law: "anything that can go wrong will go wrong. I do not believe that the possibility of these scenarios never happening is grounds not to address them at all.

II. What should matter?

II.I Demographics

The individuals presented in the Moral Machine vary wildly. There are the more obvious differences such as sex or age. Individuals can differ in careers ranging from criminal to executive to doctor, to athlete. Women can be pregnant. Individuals can be homeless. Interestingly, you can choose between "men" and "women" or "large men" and "large women". The Moral Machine also includes animals. However, we will for now only consider humans. Notably, no scenarios make mention of demographics such as race, ethnicity, or sexuality. The question is whether demographics should count at all. If some do, should some be weighed more heavily than others? I believe that the answers to both questions will be a sound no.

By way of demonstration, I will highlight one particular scenario. Take the case where the AV has no passengers and must choose between an elderly woman or a young boy. Intuitively, we may immediately jump to the side of saving the young boy. Your reasoning is likely to follow something along the lines of how he has much to live for: an entire life full of experiences ahead of him. In contrast, the elderly woman has lived a full and long life. Although it may be a bit morbid, it's true that she may not have long left to live anyway. It seems as though we have more reason to save the young boy. However, creating an algorithm that would make decisions in this way raises an issue; one that will be common for many such dilemmas. By considering the age of the two pedestrians, the AV is now crash-targeting [5]. An inherent decision to prefer one sort of person over the other is essentially targeting them when they otherwise wouldn't be targeted. It is neither fair nor right that the AV decides who gets to live or die simply because they belong to a certain group. I believe this holds true for all demographics.

This attitude is respected by many engineering and computing societies. The Association for Computing Machinery (ACM), an international learned society of over 110,000 members, has written in their code of ethics "Computing professionals should foster fair participation of all

people, including those of underrepresented groups. Prejudicial discrimination on the basis of age, color, disability, ethnicity, family status, gender identity, labor union membership, military status, nationality, race, religion or belief, sex, sexual orientation, or any other inappropriate factor is an explicit violation of the Code” [1]. Another similar organization, the Institute of Electrical and Electronics Engineers (IEEE) in their code of ethics states that their members must “treat all persons fairly and with respect, and to not engage in discrimination based on characteristics such as race, religion, gender, disability, age, national origin, sexual orientation, gender identity, or gender expression” [4]. To create AVs that make decisions based on demographics would be a direct violation of these pledges. From this, I believe it is clear that consideration of demographics would be unethical in these scenarios.

II.II Legality

The Moral Machine also asks us to consider whether it matters if pedestrians are following the law³. Imagine a scenario where a passenger-less AV must decide between hitting two groups of pedestrians; one group is walking through the crossing legally and the other group is crossing illegally (i.e. jaywalking). I find it difficult to discern whether this should matter to the AV. As of such, I will not give any definite conclusions for this particular scenario and will opt for a more general discussion instead.

Intuition may lead us to prefer hitting the group who is breaking the law, and I think, for good reason. By walking through a pedestrian crossing when it is not allowed, you inherently accept any consequences that may come from your doing so. You consciously take a risk. In this way, it seems acceptable for the AV to take this into consideration when deciding who to save. The other group is one of law-abiding citizens; why should we hit them when they have done no wrong, whereas the other group (legally speaking) has?

However, I worry that crash-targeting in this way could be some sort of punishment towards the jaywalking group. By choosing to hit them, the AV has recognized that some wrong has occurred and is now taking responsibility in retribution. This may violate the principle of proportionality, where the severity of the punishment should be proportional to the seriousness of the crime. I think there may be a difference between a jaywalker accepting the potential risk of harm by committing this crime and saying that, by jaywalking, they deserve the punishment of death. It may be useful to compare the AV to a human driver. If a human driver hits a jaywalker, I do not think we ordinarily say that the jaywalker was punished, certainly in a legal sense, when they were hit. The human driver did not have time to make a rational decision. The jaywalker in this sense accepts the consequences of their actions, rather than being punished. The AV, however, makes a decision using its crash-targeting algorithm. In a way, the AV is the judge, jury, and executioner. For these reasons, I do not think we should be so quick to prefer those who follow the law. However, I recognize that the case for intuition is also quite strong, and I believe that this factor in decision making requires much further discussion.

II.III Numbers

Arguably one of the most interesting aspects of these scenarios is the number of people involved. I have purposely thus far only given scenarios where the amount of people in any group has been equal so that scenarios with differing amounts can be discussed at length here. When analyzing these scenarios and implementing a decision-making model into an AV, I believe that the number of people in any group (whether this be the number of passengers or pedestrians) should

³ We can assume that the AV would always be following the law prior to the scenario.

not be considered. If an AV were to take into account the numbers, this would be another case of *crash-targeting*.

First, let's examine a simple case, where a passenger-less AV must make the decision between hitting one or five pedestrians. Intuition may lead us to say that the AV should prefer hitting the one person. In a utilitarian sense, saving five lives is certainly more valuable than saving one. However, I think we should approach this problem like philosopher John Taurek does in his paper *Should the Numbers Count?*. In scenarios such as these, I think it is incredibly important to take into consideration the viewpoint of the one. We tend to value our own lives much more than those of an x-number group of strangers. As Taurek would say, "It is a far worse thing for me that I should die than that they should. I allow that for each of them [the five strangers] it would be a worse thing were they all to die while I continue to live than it would be were I to die and they continue to live. Indeed I wouldn't ask, now would I expect any one of them to give up his life so that I, a perfect stranger, might continue to live mine. But why should you, or any one of them, expect me to give up my life so that each of them might continue to live his?" [7].

I also stated that preferring to hit the smaller number would be an instance of crash-targeting. The one pedestrian happens to be alone, while the five just so happen to be in a group. It would be absurd to try and convince the one stranger that, because they just so happen to be by themselves, that they must die so that others might live. I'd imagine they would defend themselves similarly to Taurek. So, how can we possibly justify targeting a smaller group based on the pure coincidence of said group happening to be that way? I would like to clarify here that I am in no way saying that an AV should instead prefer the smaller group instead. I do not believe that it is morally permissible for an AV to take numbers into account whatsoever in its decision making design.

III What do we do?

III.I Utilitarian AVs

A utilitarian stance seems initially plausible. A utilitarian might program an AV thusly: "An AV should always act in such a way that minimizes harm to all parties involved." However, I believe we have already discussed many reasons why this will not be a valid solution. In order to minimize harm, a utilitarian AV would have to consider all relevant factors; demographics, numbers, legality, and more, such as what kind of harm it is causing (is it death or injury?). As has been discussed, taking some of these factors into account may lead to morally questionable or outright wrong decisions. If we design an AV to prefer one type of group over another, it crash-targets. The group that suffers based on this decision is pre-determined to die for reasons that are out of their control. I do not see how this can be fair or right.

III.II Deontological AVs

I find a deontological solution more convincing. If we can agree on a set of rules and their implementation, then it does not matter who the groups are or how they are made up. This solution will more closely resemble a social contract, where if we can all agree on the best set of rules, then we will be avoiding committing any sort of wrong⁴. Obviously, the issue lies in what

⁴ In his paper *Bribery*, Kendall D'Andrade actually argues against this definition of bribery, it is rather a proposed definition that he later refutes. There are some more nuanced details in the term bribery that Kendall validly points out, but I will not be adopting the three-party definition that Kendall pushes forward. For all intents and purposes, the definition we use will suffice.

this set of rules should be. I will offer some of my ideas, although none are conclusive and require more lengthy discussion.

For one, I think we ought to, whenever possible, save pedestrians or otherwise not involve anyone not already immediately involved in the situation. In many Moral Machine scenarios, you either choose between sacrificing the passengers or the pedestrians; say that the AV could choose to swerve into a concrete barrier in the other lane, in order to stop. In choosing this, we are avoiding involving another party in the situation. In my view, this is the best possible option. Pedestrians should not bear the consequences of a situation they had no part in creating. In addition, this sort of guideline vastly reduces the number of ethical considerations we have to make. If we can avoid ever needing to consider who the pedestrians are, we can avoid all of the issues discussed earlier. We also discussed many scenarios involving no passengers and two groups of pedestrians. What then? I think we can still use a very similar idea. In this case, the AV would continue on its path. In doing this, we are again not involving the group who would otherwise not be involved. I do not think it is permissible to allow some outside party to bear the consequences of the situation.

III.III A case for intuition

I still think there are some pretty glaring issues that present a lot of problems for what has been said thus far. Should we really always ignore demographics and numbers? Is it always the best case scenario to not involve other parties? If five children lie on the AVs direct path and one elderly person on the other, does it really follow that the AV should decide to kill five children? I think many of our common intuitions lead us to saying that the AV should save the five children. I think it is important that we do not shrug off these intuitions. It is also why I believe that these issues are so important to consider in the first place. AVs will be the direct cause for life and death on the road. Their decisions will directly impact the lives of passengers and pedestrians alike.

IV. Further issues and conclusion

There are many aspects of these kinds of scenarios that I did not examine. For one, the Moral Machine project also includes animals into their scenarios. This alone provides interesting discussion on the value of animal lives and how they should be handled. Something that I also did not touch on was responsibility. When these situations happen, it is not obvious who we ought to hold accountable. We normally would blame whomever made the decision, which in these cases would be the AV itself. However, the AV is not responsible for how it makes decisions: that responsibility lies with the programmers and engineers who implemented the design. But even they may not be the final layer, for, it is the higher management and leaders of the companies of these AV manufacturers who must instruct these engineers how to design them. In any case, there is clearly a lot to consider.

This technology is still in its infancy. It is new and exciting and certainly has many benefits to offer. With a machine behind the wheel, it is certain that the number of accidents resulting from human error will drastically decrease. AVs will be safer, smarter, and more reliable. Yet, their moral obligations cannot be ignored. However unlikely these situations may be, it will still be necessary to ensure an AV is properly equipped to handle them. Just how it does that depends on us. There will come a time when you are the passenger or the pedestrian. And in that case, it will be your life on the line.

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The Ethics of Mister Beast

Mark Stanley

I. Introduction to the Beast

MrBeast (Jimmy Donaldson) is one of the most popular contemporary online content creators to hit pop culture. His main YouTube channel has amassed a whopping 382 million subscribers, and he has gone on the record saying his company brings in an estimated 700 million dollars a year. His gimmick is simple--he uses a lot of money to produce videos with extreme content, typically giving a certain amount of money to a winner of a game or spending lots of money on different experiences and making content out of it. Looking at his most popular videos, we can see a trend: *\$456,000 Squid Game In Real Life!*, *Last To Leave Circle Wins \$500,000*, *\$1 vs \$500,000 Plane Ticket!*, *I Spent 50 Hours Buried Alive*. These titles describe exactly what he does, and he has over 800 videos with similar premises. Along with 17 other channels across various subjects, he also has a philanthropy channel called "Beast Philanthropy."

Jimmy has been in quite a few controversies this past year, including hosting crypto scams, having poor company working conditions, protecting former co-owner Ava Tyson on her own slew of inappropriate controversies, rigging contests, running illegal lotteries, distributing child-marketed snack kit Lunchly with health issues, and providing poor conditions for participants in Beast Games, a Prime Video original pushing the MrBeast-style video to the greater-extremes. These have recently given Donaldson a bad reputation, but it is unclear if it has significantly affected his overall popularity. We will only be touching on a few of these issues, but they all warrant investigation.

In this paper, we will explore the actions of MrBeast. I will show that, because of some of the videos MrBeast puts out, he acts especially unethically compared to other millionaires or YouTubers. I will do this by analyzing the ethics of his main channel, arguing why his competition videos are unethical.⁵

II. Main Channel Ethics

A. The Ethics of Competition and Completion Challenges

Let's first analyze the ethics of his main channel: MrBeast. For the most part, Jimmy's content does not come across as clearly unethical. He has many types of videos, like his videos where he puts himself in entertaining situations, such as on a deserted island or underground. Or the videos where he spends lots of money on different experiences, like showing the differences between a \$1 to a \$100k house. My greatest grievance with Jimmy's content is his competition or completion challenges: for example, keeping someone in a circle for 100 days, surviving dangerous traps, keeping someone in a prison for a month, keeping two people in a white padded room for 100 days, and keeping two people in a nuclear bunker for 100 days.

Consider the video *\$10,000 Every Day You Survive In A Grocery Store*, in which MrBeast challenges a person to live in the grocery store for as long as he can while also needing

⁵ I will not be adopting any specific values or moral theory. All arguments will be based on people's intuitions. If one does not hold such intuitions, the argument fails. Though, I might be a little worried about hanging around such people.

to “sell” \$10,000 worth of groceries in that store each day to get his daily compensation (presumably so he can’t live there forever). The man is named Alex (though Jimmy introduces him as some “random guy”), and he has a wife and children. The first few days are easy. Alex ate well, the Beast crew visited frequently, and Alex built a cool fort. Because no shower was provided in the store, Alex needed to build a makeshift shower to get clean for the first time in more than a week. By just day 12, the Beast crew left to film another video for an entire week. This limited Alex’s human interaction to a single worker who wheeled him his \$10,000 while remaining silent. After an entire month, Jimmy generously allowed Alex to see his wife and children. Yet just a day later, Jimmy realized that this challenge may be too easy, so he decided to *cut power to the entire building*, leaving Alex in the dark for what was intended to be the rest of the challenge. However, a crew member eventually gave him light back. Almost 3 weeks later, Alex accidentally flooded the building and was left understandably defeated. On day 44, Alex awaited his money to be wheeled in, his only human interaction of the day. But, instead of a person wheeling it in, MrBeast had a robot do it. Alex is *disappointed*, after just getting wheeled \$10,000. It’s not because he’s unreasonable or ungrateful. Alex was pushed to his limits, and this was the cherry on top. “I would feel bad for him, but he’s won \$450,000, and he can leave whenever he wants” Jimmy proclaims. Donaldson acknowledges that he knows what he is doing is having real negative effects on Alex, he can’t pretend to be ignorant of the suffering he is causing.

In *Survive 100 Days Trapped, Win \$500,000* Jimmy creates an isolation chamber, fit for solitary confinement, and tells two strangers that they can both earn half a million dollars if they can last 100 days in the chamber. Bailey and Suzie are the names of the “strangers” he demands to stay in the room. The bright lights make it almost impossible for them to sleep, which he generously mitigates 90 days in. Jimmy clearly has no moral issues with what he did in this video—it is still viewable on YouTube and has likely made him quite a lot of money. Funnily, he also made a video in which he spent 7 days in solitary confinement. He has consistently described that video as the most challenging video he has ever made. He spent less than 10% of the time he made Bailey and Suize spend in that room. Sure, they had company and got paid, but if Jimmy thought he was suffering immensely, you would think he would be empathetic.

Subjecting others to such conditions intuitively seems immoral. Jimmy even starts thinking the same thing. However, he and his defenders believe that the compensation absolves him of moral culpability. I will argue that compensation is no justification. It is important to note that I don’t think *all* challenge videos are immoral; I only believe they are immoral if the individual participating in it would not have partaken in the absence of the monetary incentive. For example, his video entitled *World’s Deadliest Laser Maze!* has contestants simply play through a laser maze. This is morally permissible (It looks like fun!). I believe that MrBeast is acting especially immorally when he holds the aforementioned grueling competitions. I wish to promote the following argument, that we will justify:

Beast Argument:

1. Bribing someone into doing something they wouldn’t do normally and that doesn’t have comparable or greater practical use in society is immoral
2. In his challenge videos, MrBeast frequently bribes people into doing something they wouldn’t do normally and that doesn’t have comparable or greater practical use in society
3. MrBeast frequently acts immorally when producing his challenge videos

Let us define an exchange as “a transaction between two people with one offering money (or other goods) to a second in order to induce that person to commit an act” (D’Andrade, 239). Additionally, bribery will be defined as “soliciting someone to commit an immoral act”; an exchange with an immoral act.[2] Though not explicitly stated, it is also important to note that the immorality of the bribed action, increases the immorality of the bribe itself: bribing someone to jaywalk is more moral than bribing someone to rob a bank.

With these definitions, the first premise may seem overkill. It would seem that any bribe is immoral if bribery is just soliciting someone to do something immoral. However, dissenters may have some counterexamples. First, suppose some action that may be seen as immoral provides some greater purpose in society. Say, I want to bribe a person to trip a man, but in tripping that man I ensure that he doesn’t continue his walk under the trajectory of a falling piano. Some may say that the action of tripping him would be immoral, thus making it a bribe, but not want to say that that bribe is unethical. This is why we add the stipulation that the bribe does not have equal or greater important use in society. If someone, rather, thinks that because the justification for the tripping makes it moral, we can simply remove that stipulation from the first and second premise and it is still valid. The provided argument makes a *stronger* claim.

In the first premise, we add “wouldn’t do normally” to highlight the types of actions we are interested in—it isn’t strictly necessary for the argument. What we mean is that under normal circumstances, the bribed would not willingly do such action. The key idea is as follows: if a person does not want to do something, forcing them to do such a thing would cause them unnecessary suffering. An objection to this idea may be that there are plenty of examples in which we attempt to convince our friends to do something that we genuinely think they would enjoy doing, and after the convincing, they have fun in such an activity. I argue, though, that these are things they *would* normally do. If I can easily convince a peer to partake in an event, they likely were already on the fence about such an activity or just needed greater information to participate. Most people cannot normally be convinced to spend 3 months in a white padded room. MrBeast does not have this excuse.

B. Bribery Objection

A simple objection appears: MrBeast is *not* bribing his contestants. It is clear from our definitions that MrBeast is involved in an *exchange*. For his actions to be a bribe, we just must argue that the actions he demands are immoral. We will need to defend the claim that a person who causes mental or physical harm to themselves is committing an immoral act. Let us first list examples of exchanges that we think are bribery (D’Andrade, 239):

- B1. Paying a person to put a hit on another’s kneecaps.
- B2. Paying a cop, say; to let you out of a speeding ticket.
- B3. Paying a voter, usually to vote for your candidate for governmental office.

What makes these situations immoral? (B1) is quite clear: popping kneecaps is oftentimes unethical. (B2) also seems clear: not giving someone a punishment for the crime they committed is typically not moral. (B3) is a little tricky. How is casting a vote immoral? Suppose you did your due diligence researching your candidates, investigated their policies, and through their reason alone decided to vote for a candidate. People would hardly say this is an immoral act.

Suppose on the other hand that I pay the voter to vote for the same candidate. We intuit this as a bribe and reprimand such an action.

I argue the reason we think (B3) is still a bribe is that it *is* an immoral act to cast such a vote. The briber isn't simply requesting they vote, but rather that they should cast a vote based on poor reasoning. If someone went to the polls and voted for the person whose name they thought sounded more interesting, they would be making an immoral decision. A vote ought to be cast with good reasoning, providing support for the candidate that one thinks is best for their political policies and ideas, not based on reasons that have nothing to do with their candidacy. When someone tries to exchange money for a vote, they are asking the voter to cast their vote on reasons that have nothing to do with candidacy and thus asking them to do something immoral.

Regardless of what the person being bribed does, the action of the person bribing them at all is immoral: bribery is immoral regardless of whether the bribed accepts it. Clearly, accepting the bribe and committing an immoral act is unethical on its own, but proposing a bribe is not moral⁶. But, for the morality of the briber, we ought only to consider what they are demanding from the bribed, regardless of whether the bribed accepts.

If such reasoning is true, I wish to provide you with some hypothetical examples that show immoral bribery:

- C1. MrBeast threatening a person's life to destroy the art of their children
- C2. MrBeast offering a person large compensation for destroying the art of their children
- C3. MrBeast offering a person large compensation for destroying their own art

Imagine the large compensation is life-changing, and many rational people would commit the act. Also assume that neither the children, nor the person, want their artwork destroyed, and will be very emotionally damaged by such destruction. It seems like Jimmy, in (C1), is obviously acting unethically. In (C2), Jimmy is acting immorally, which still shouldn't be controversial if one thinks (B1-3) are immoral. Destroying children's artwork causes them suffering, just as destroying one's own artwork could cause them suffering.

We can argue that (C3) is still immoral, as one ought not cause unnecessary or unjustified harm to themselves⁷. The only assumption we need for this claim is that "unnecessary or unjustified suffering is immoral." This can validly be refuted. However, I find it to be one of the clearest assumptions to make and is common among many value and moral theories. If anything is immoral, it ought to be the unjustified suffering of sentient beings. If we accept such a claim, MrBeast is clearly demanding that someone engage in a practice that harms themselves, which is ultimately an immoral practice. Therefore, MrBeast is bribing his contestants when he makes them partake in his games.

Finally, one may disagree that this has no greater practical use in society. They may argue that it provides a great societal use (viz. joy among the viewers). However, watching

⁶ Blameworthiness of a bribe would depend on whether the briber thinks/knows that the action they are exchanging for is immoral. If someone thinks that it is standard practice to provide early ticket money to a cop, an exchange such as (B2) does not seem blameworthy.

⁷ This may seem to make some sort of claim that "People who engage in self-harm are acting immorally." which is a very tricky line to walk. I think the important intuition behind this is that we all believe people doing such activities should stop, which is a value claim: "People ought not harm themselves." And, given some sort of mental illness, they are not even responsible for their actions, and thus not blameworthy. Rather, we ought to help them by providing sufficient resources.

people get harmed is hardly of practical use. Some utilitarian perspectives may argue that the joy of the millions of viewers far surpasses the grueling circumstances the contestants go through, but in that vein, the normalization of doing such things to fellow humans pretty clearly has worse consequences than the loss of the viewers' short-lived joy while watching the videos.

C. The Geochemist Objection

A fan of MrBeast or a viewer of the Beast Reacts video *World's Most Dangerous Jobs!* may object to the first premise of the **Beast Argument** with the following argument: "People take dangerous jobs all the time, it is normal for people to be paid for many circumstances. Consider geochemists, they take on dangerous jobs for compensation. You can see them taking samples from active volcanos, and frequently running away from dangerous lava. Sure, some of them may do it willed by passion or thrill, but most of them likely would never even consider it if it weren't for the compensation. Do you think *this* is immoral?" Notably, we cannot use the geochemist as a counter-example to the first premise of the **Beast Argument**, as a geochemist is societally beneficial. Despite this, a formalized argument through analogy can be formulated as such:

Geochemist Objection

1. Compensating geochemists for working in dangerous conditions that cause them suffering is not seen as immoral
2. MrBeast compensating people for engaging in isolating or dangerous conditions is reasonably analogous to the geochemists
3. Therefore, MrBeast compensating people for engaging in isolating or dangerous conditions is not immoral

I find this argument unsound, and I will do so by pointing out the disanalogy between the geochemist and MrBeast's challengers. We *need* people to do the work of geochemists significantly more than we need people to be put in isolation for three months. Geochemists give us more knowledge about how the world works, the specific geochemists that MrBeast reacted to likely gave us a vastly greater understanding of volcanoes, possibly enabling us to save many lives. Donaldson, regrettably, does not have this excuse. Watching people live in isolating conditions is not *necessary* for the improvement of our society. Sure, it provides entertainment for viewers, but MrBeast can get comparable content without forcing people to do stuff they wouldn't have done without monetary compensation. Again, most of his videos don't suffer the same issues as some of these challenge videos and typically outperform such challenge videos. Consider again the laser maze game. Such things, for many people, would normally be participated in. The extra monetary incentive would add to the fun. These are the types of games that Donaldson should do more of. He decides what type of content he puts out, and a challenger doesn't need to be mentally tortured.

III. The Argument from Decisions and Supervillains

Even if one does not agree with my earlier arguments, I wish to provide the most damning argument against Jimmy. A die-hard Beaster may still be on the fence about the immorality of some of his videos. The following is the Argument from Decisions.

Argument from Decisions

1. Given a decision between two options that are roughly equivalent, with roughly equal outcomes, but with one causing more suffering, it is immoral to pick the option with more suffering.
2. When MrBeast puts people in some challenge videos, he chooses the option with more suffering among other roughly equivalent options that cause less suffering.
3. It is immoral for MrBeast to put people in some of his challenge videos.

It is clear that putting people in a padded room for 100 days causes more suffering than putting people in a laser maze. The first premise is intuitive. Consider the following case: John is an unfunny yet wealthy man who is approached by a supervillain. The supervillain declares to John: “You must make me laugh. The two things I find funniest are knock-knock jokes and the amputation of limbs. If you fail to do so, I will blow up the city.” John, knowing he will fail to make the supervillain laugh, quickly finds the funniest comedian in the world. After describing the situation, John decides to omit the option of the knock-knock joke and tells the comedian she needs to amputate her leg to save the city. But she will be handsomely rewarded for her heroic actions with a sum of one million dollars.

It seems that regardless of if the comedian was compensated well for her actions and even if the benefit of her amputation heavily outweighed her sacrifice, John failing to give the comedian the option that demands less suffering is an immoral thing to do: any rational person would choose less suffering. This, I argue, is the exact same thing that MrBeast does. Sure, two people in a white padded room may cause happiness for the viewers, and they may be compensated well, but Donaldson can simply decide to make these people run through a laser maze instead. Donaldson is making an unjustifiable decision to cause more suffering for no obvious benefit, and he is therefore acting immorally⁸.

V. Conclusion

I have presented an argument on why MrBeast’s making of content in which he monetarily compensates people for suffering unnecessarily is immoral. I have done so by providing an argument that shows that this is bribery, which is immoral. Even if someone still believes that the actions are not inherently immoral, I have provided an argument to show that Jimmy does not need to cause such extreme suffering, can make much more fun videos that don’t involve such significant suffering and acts especially immorally when he decides against the route with less suffering. Jimmy can still easily learn from his mistakes and make more sensible videos.

⁸ Some may be hesitant with the first premise, as it may seem to necessitate utilitarian conclusions. But, the “roughly equivalent” portion of the premise attempts to cover that. Consider a deontological perspective, in which we ought not use someone as a means to an end. Premise 1 could not be used as a counterargument to such deontological conclusions, as choosing between saving lives, and using someone as a means to an end are clearly not equivalent decisions.

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Applying Legal Theories of Dworkin and Finnis to the Genetic-Selective Abortion Controversy

Esther Rolfe

The termination of a pregnancy based solely on the fetus' disability or genetic abnormality is known as genetic-selective abortion (GSA) (Roesner et. al 187). While at face value this practice is simply a private healthcare decision that a woman makes in consultation with her physician, the legislation and advocacy surrounding this issue inadvertently puts women's rights at odds with the rights of the disability community. Proponents of GSA emphasize the woman's right to accept or decline the challenge of raising a child with a disability, a decision they recognize as deeply personal and based on a myriad of factors. They contend that genetic-selective abortion bans violate a Constitutional right to privacy and procreative autonomy. Those opposing GSA claim the practice discriminates against fetuses with disabilities and perpetuates a long history of stigmatization (Roesner et al. 190). They find that permissive legislation allowing GSA carries eugenic undertones as it openly approves of the destruction of fetuses based solely on their disability status.

These two reactions find sympathetic arguments in the legal theories of constructivist Ronald Dworkin (1931-2013) and new natural law theorist John Finnis (1940). Both theorists gave considerable attention to the topics of legislating abortion and euthanasia and were concerned with issues of autonomy and the intrinsic worth of human life.

Finnis and Dworkin both challenged legal positivism, the theory that there is no necessary connection between law and morality and that law's validity is merely based on a legitimate, legislative process (Drefcinski). They fervently agreed that morality does, and must, play a role in judicial decisions. However, their commonality stops there. Finnis and Dworkin fundamentally disagree on how morality is identified. Finnis argues that law is built upon objective moral principles that exist independently from personal interests or judgments. Discovered through practical reason, moral actions pursue the integral human fulfillment of individuals and communities through the attainment of basic human goods (White and Patterson 195). Dworkin rejects the idea of objective principles, instead reasoning that law is built from "intuitions of justice not as clues to the existence of independent principles, but rather as stipulated features of a general theory to be constructed" (White and Patterson 79). Different intuitions or judgments must fit together into a coherent set of moral principles. To do this, we compromise back and forth between judgments and principles, "tinkering first with one side and then the other" (White and Patterson 78). The end result is a constructed model that best represents a community's convictions (White and Patterson 82).

Applying the legal theories of Dworkin and Finnis brings into focus key criticisms found in the GSA controversy. For Dworkin, the debate circles around Constitutional interpretation and rights. He maintains that the best approach to interpreting the Constitution is by deriving and applying broad principles rather than limiting its scope to a highly detailed set of rules (Life's Dominion 121). With this interpretive approach, the Constitution casts a shadow of protection over a variety of rights pertaining to autonomy, including the right to GSA. In contrast, Finnis steps outside the jurisdiction of the U.S. Constitution and sees questions pertaining to autonomy and human dignity as universal issues that all societies must reckon with. When examining legislation permitting euthanasia, Finnis calls attention to the legislation's inability to restrain the scope of such a practice, its inadmissible understanding of human dignity, and the resulting

widespread repercussions (Finnis 1123). His argument can be extended to critique the legislation of GSA. Operating on vague definitions of “genetic abnormality” and an aesthetic evaluation of human worth, the underestimated repercussions of GSA involve the destruction of basic goods for individuals with disabilities and their communities. These two conflicting viewpoints force the question: how do we maintain the fundamental rights of privacy and liberty while also taking accountability for wrongs committed against vulnerable populations?

Dworkin and GSA

Compared to legal positivism’s emphasis on law as valid rules, Raymond Wacks explains in his book *Philosophy of Law* that “Dworkin advanced a more radical thesis that law was essentially an interpretive phenomenon” (43). Because interpretation involves evaluation, law is inextricably linked to moral principles (Wacks 45). According to Dworkin, judicial interpretation of the Constitution ought to be guided by two main instruments: moral principles and historical precedent. In his article “Autonomy’s Dominion,” John A. Robertson summarizes Dworkin’s position.

The most coherent understanding of the Constitution is as a set of general principles that later judges must interpret in light of precedent and their own conceptions of what those general concepts mean, rather than as a detailed codebook of rules laid down by the ratifiers... [This view] is essential to protect the fundamental liberties and dignity of citizens on which democracy rests. (461)

The ratifiers of the Constitution could not have anticipated every future moral dilemma; however, the Constitution contains broad, moral principles that are able to guide future legal decisions. Dworkin stressed that the best approach to interpreting the Constitution was as a “Constitution of principle rather than detail” (Robertson 461; Life’s Dominion 119). This “Constitution of principle” is a hermeneutical approach that allows guiding, moral principles to be derived from the Constitution. In contrast, a “Constitution of detail” is an approach that interprets the Constitution as a “set of highly detailed rules,” guaranteeing only the specific freedoms enumerated by the ratifiers (Life’s Dominion 121).

In addition to principles, Dworkin emphasizes that historical precedent also guides Constitutional interpretation. He describes the judicial process like that of writing a chapter in a chain novel; a judge receives the chapters written prior to him and adds his own chapter to the judicial narrative, following the established principles (White and Patterson 88). The judge is both “backward and forward-looking” as he interprets previous judicial decisions while writing his own chapter for future judges to interpret (White and Patterson 86). Dworkin states, “Law’s attitude is constructive: it aims, in the interpretive spirit, to lay principle over practice to show the best route to a better future, keeping the right faith with the past” (White and Patterson 92). As the novel grows, law’s commitment to the guiding principles and judicial heritage overcomes divisions and unites a community in their common aim towards a brighter future.

In *Life’s Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom*, Dworkin demonstrates that this principle-led interpretation of the Constitution demands personal decisions regarding procreative autonomy be left to individual moral conviction, free from State coercion. Dworkin’s argument emphasizes the right to privacy established by the Fourth Amendment, the principle of personal liberty derived from the Fourteenth Amendment, and the historical precedent to apply these provisions to procreation.

Legal precedent for the right to privacy and procreative autonomy begins with a well-known article written in 1890 by Samuel Warren and Louis Brandeis called “The Right to Privacy.” In her article “Banning Abortions,” Alexandra Russo explains that Warren and Brandeis argued for the “right to be let alone” and established that “the right to privacy protects personal decision-making from government intrusion” (686). “Zones of privacy” further developed in jurisprudence and became known as “penumbras of privacy.” This astronomical metaphor describes the way in which the Bill of Rights casts a shadow of protection over many personal rights that are not explicitly referenced in the Constitution (Russo 686).

In *Griswold v. Connecticut* (1965), the zone of privacy was applied to the marital bedroom. The Supreme Court struck down Connecticut’s criminalization of birth control and determined that the intimate relationship between spouses exists in a zone of privacy and cannot be invaded by the government, effectively establishing that married couples have a right to avoid reproduction. Russo states, “Justice William Douglas held that the law was unconstitutional because it violated fundamental principles of liberty and justice.” (687). This case was foundational in establishing a connection between the Constitutional principle of liberty and the right to privacy related to procreation.

The next development in this narrative is *Roe v. Wade* (1973). At the time in Texas, abortion was only permitted if the mother’s life was endangered; however, Jane Doe wanted to receive an abortion even though her life was not at risk. “Justice Blackmun’s opinion in *Roe v. Wade* declared that a pregnant woman has a specific constitutional right to privacy in matters of procreation, and that this general right includes a right to abortion” (*Life’s Dominion* 105). Blackmun supported his position by referring to earlier Supreme Court decisions, especially in the case of *Griswold*, that had established the Constitutional right to make procreative decisions for oneself (*Life’s Dominion* 106).

In *Casey v. Planned Parenthood* (1992), the Supreme Court not only upheld the central decision of *Roe*, but they reinforced their commitment to a Constitution of principle rather than detail, recognizing the unenumerated rights protected therein.

Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education . . . These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. (505 U.S. 851)

The decision to overturn *Roe v. Wade* was in its essence a rejection of the Constitution of principle in favor of a Constitution of detail, a decision that shocked the legal system. In *Dobbs v. Jackson Women’s Health Organization* (2022), the conservative justices claimed that “the Constitution makes no express reference to a right to obtain an abortion, and therefore those who claim that it protects such a right must show that the right is somehow implicit in the constitutional text” (597 U.S. 17). Taking it a step further, Justice Thomas in his concurrence of the *Dobbs* decision wrote, “We should reconsider all of this Court’s substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*. Because any substantive due process decision is ‘demonstrably erroneous’” (597 U.S. 119). Put another way, Justice Thomas is asserting that past rulings that established the right to both birth control and same-sex relationships and marriages be called into question as well.

Since the Supreme Court’s ruling that abortion cannot be considered a Constitutional right, GSA bans have gained traction and been enacted into law by eight states (“Press

Releases”). In these states, a physician performing an abortion with the knowledge that a woman seeks to terminate her pregnancy based on a fetal genetic abnormality can receive criminal, civil, and professional penalties (Roesner et al. 189). These bans prevent a woman from discussing her concerns regarding a fetal diagnosis with her physician because her physician would be required to either deny her an abortion or risk criminal charges. There no longer exists a zone of privacy in the conversation between a woman and her doctor.

Legislation criminalizing GSA is incompatible with Dworkin’s view of the broad principles established in the Constitution. Rights not only to privacy and liberty are curtailed, but also a right to free speech “because a woman cannot freely have an open conversation with her medical provider” (Russo 719). The more foundational issue for Dworkin, however, is the Court’s rejection of a principle-driven interpretation of the Constitution. Dworkin, almost 30 years prior to the overturning of *Roe*, confronted this hermeneutical approach with exasperation.

Many conservative lawyers, including the four present Supreme Court justices, claim that the Bill of Rights does not mean what it seems to say. They argue that the apparently abstract clauses about free speech and due process and liberty and equality should be treated only as coded messages or shorthand statements of very concrete, detailed historical agreements... [They] hope in that way to turn the abstract, principled Bill of Rights into a document with the texture and tone of an insurance policy or standard-form commercial lease. (*Life’s Dominion* 128)

Dworkin equates judges who insist on originalism to scientists still appealing to phlogiston; their approach strips the Constitution of its power and richness and ought to be publicly rejected as bogus (*Life’s Dominion* 145). For Dworkin, overturning *Roe* would have been profoundly poor adjudication. The current Supreme Court’s rejection of the “chapters” of abortion jurisprudence, written prior to them and embraced by the people, leaves the reproductive landscape fractured and politically charged.

Finnis and GSA

While Dworkin saw abortion as a fundamental right protected by the principles of the Constitution, John Finnis’ legal theory offers a different framework by which we can examine legislation permitting GSA. In his 1998 article “Euthanasia, Morality, and Law,” Finnis responds to Dworkin’s argument in *Life’s Dominion* by highlighting the moral issues surrounding legislation of euthanasia, issues he believes are universal rather than limited to matters of the U.S. Constitution. Based on Finnis’ arguments opposing the legislation of euthanasia, legislators who support GSA similarly fail to create boundaries, employing “an inadmissible conception of human life and dignity” (Finnis 1123). Ultimately, they underestimate the widespread repercussions of their legislation which leads to the destruction of basic goods for individuals with disabilities.

Finnis critiques the legalization of euthanasia, arguing that such legislation lacks specificity, failing to “describe the right [to end one’s life], identify who has [this right], and delineate its boundaries” (Finnis 1123). This concern can be extended to legislation that permits GSA. Despite the intention to prevent suffering, this legislation fails to delineate boundaries or define what is meant by a “genetic abnormality.”

GSA was introduced to prevent hereditary diseases as well as the tragic suffering and loss of a child whose genetic abnormality rendered them unviable. But by the 1970’s, non-hereditary and non-lethal genetic abnormalities, like Down syndrome, became the targets of abortion

(Smith 8). In her article “The Last Children of Down Syndrome,” journalist Sarah Zhang notes that “Down syndrome is frequently called the ‘canary in the coal mine’ for selective reproduction... [I]t remains the most morally troubling because it is among the least severe. It is very much compatible with life – even a long, happy life.” A clear preference to terminate these pregnancies has emerged. In the U.S., abortion rates following a fetal diagnosis of Down syndrome are at 67%, and Iceland has the highest abortion rate at 100% (Zhang; *A World Without Down Syndrome*).

Genetic abnormalities can range from tragic, terminal conditions to undetected anomalies. For example, the chromosomal anomalies of an intersex person present in a variety of untypical patterns. These patterns often have little to no impact on an individual’s day to day life, and many intersex people do not even learn that they have such anomalies until much later in life. Should they be the target of GSA? Such was the case in the 80’s and 90’s when parents aborted fetuses with sex-chromosome anomalies “out of fear that it could lead to homosexuality” (Zhang). Selective abortion has evolved to include other genetic anomalies, not just those responsible for severe suffering and premature death. When permissive laws such as those permitting GSA lack clear definitions and boundaries, they depend on the discretion and interpretation of judges, lawyers, obstetricians, nurses, and genetic counselors. It becomes impossible to enforce vague definitions and constrain the scope of such a practice.

The next critique Finnis directs at legislation permitting euthanasia is that it “proceeds on an inadmissible conception of the nature and value of human life and dignity” (Finnis 1123). Likewise, GSA operates on the implicit judgment that the life of a fetus with a genetic abnormality is not worth living. While at times there is motivation to prevent real suffering from lethal abnormalities, other times, as in the case of Down syndrome, the intellectual and physical limitations of the future child disqualify them from a chance to live. This practice is an act of discrimination and proceeds on the notion that human dignity is based on an aesthetic evaluation of life rather than intrinsic worth.

Terminating these pregnancies uses a very different rationale compared to ending unwanted pregnancies. While the abortion debate typically circles around distinctions of fetal personhood, proponents of GSA move the debate to future personhood, citing the child’s suffering and the burden placed on the mother and society as justification for termination. In the article “Down’s Syndrome, Amniocentesis, and Abortion,” author J. David Smith calls this issue a “special case of discrimination” saying “Down syndrome fetuses are being aborted solely because they have that condition. These are fetuses that would otherwise be valued and allowed to develop to full term” (10). In other words, these are not unwanted pregnancies; these are unwanted fetuses.

Halldóra Jónsdóttir, an activist with Down syndrome, wrote an article in her Icelandic newspaper challenging the country’s 100% abortion rate; “Who is perfect? Who can decide that we who have Down syndrome are worth less? We have lives just like anybody else” (*A World Without Down Syndrome*). For Halldóra, the practice of GSA sends a strong message to the Down syndrome community: Their lives are not worth living (*A World Without Down Syndrome*). Halldóra’s message reveals a dark truth: legislation permitting GSA bases human dignity on aesthetic rather than intrinsic worth. While Dworkin appeals to a Nietzschean argument that human dignity does not come from mere biological existence, but rather from the ability to command one’s own life, Finnis responds by highlighting “Nietzsche’s conception of morality as a kind of aesthetics – . . . a life of noble, authorial power – deeply and pervasively misunderstands morality and thus the very foundations of human rights” (*Life’s Dominion* 212;

Finnis 1140). Individuals have dignity not based on what *kind* of human they are, whether self-directed or dependent, but simply by merit of being a human being. Selective abortion that targets fetuses with disabilities is grounded in this “quasi-Nietzschean aesthetic hatred of dependence and loathing for the spectacle” of a life such as Halldóra Jónsdóttir (Finnis 1141). If the conception of the value of human life and dignity is based on aesthetics, echoing Halldóra, “who gets to decide” which fetuses are aesthetically viable? Might judges, legislators, and physicians – the high achievers of society whose intelligence is central to their identity and success – “be biased on the question of whose lives have value” (Zhang)?

Finally, Finnis argues that those who legislate euthanasia underestimate the widespread repercussions of such a law and are negligent in their responsibility to promote fairness and justice as lawmakers (Finnis 1123). The same argument can be directed towards legislation permitting GSA. The legalization and societal acceptance of GSA has reduced the population of people with genetic disabilities, which impacts the ability of those remaining to attain basic human goods specific to their needs.

For Finnis, law is concerned with the integral human fulfillment of individuals and communities which is made possible through attaining the *basic human goods*. Some of these goods include safety, friendship, life, health, knowledge, play, work, and peace (White and Patterson 184). When discerning moral, legal decisions, the *reasonable* choice is compatible with the basic goods of others, allows for the “fulfillment of actual persons” above specific interests, and may even require limiting one’s own interests to allow other persons to attain the basic goods as well (White and Patterson 195, 197). An *unreasonable* choice is one that is destructive towards the basic human goods. Finnis, in affirming the intermediate principle “Do not do evil that good may come,” creates moral absolutes and rejects consequentialist theories in which the end justifies the means. While moral absolutes “may be a threat to some interests,” this moral standard protects basic human goods for all people (White and Patterson 197).

Some of the basic human goods are elusive and “require the coordination of many people. Goods of this kind cannot exist without law because law is required for resolving . . . coordination problems” (White and Patterson 202). For those with Down syndrome, attaining the basic human goods has not always been possible. Up until the 1970s, those with Down syndrome were involuntarily sterilized, segregated from society, and placed in institutions that were unsanitary and abusive (N. Glover and S. Glover). However, since the efforts of the disability-rights movement, U.S. laws expanded to protect their rights (N. Glover and S. Glover). With the closing of institutions and the introduction of specialized medical care, their life expectancy has more than doubled (Global Down Syndrome; Russo 706). Because of tailored support, individuals with Down syndrome are now able to complete high school, go to college, and work at steady jobs to earn an income. They enjoy meaningful relationships including marriage and can live independently with minimal assistance. These improvements are the result of disability-rights laws coordinating people and services so that individuals with Down syndrome can achieve the basic human goods and experience integral human fulfillment.

Tragically, this is both the best time and worst time for genetic disorders like Down syndrome. With the advancement of noninvasive prenatal testing (NIPT), the rates of GSA have increased, resulting in a rapid decline of the Down syndrome population (Roesner et. al 193). When introducing universal testing in the Netherlands, Dutch Minister of Health, Edith Schippers, was asked how she planned to address the resulting decline of the Down syndrome population. Schipper responded, “If freedom of choice results in a situation that nearly no children with Down syndrome are being born, society should accept that” (“We Are All Equal”).

As the Down syndrome population declines, those remaining have a more difficult time obtaining the basic human goods. Rosemarie Garland-Thomson, a bioethicist and professor emerita at Emory University cautions that when “fewer people with disabilities are born, it becomes harder for the ones who are born to live a good life. Fewer people with disabilities means fewer services, fewer therapies, fewer resources” (qtd. in Zhang). The successful efforts of the disability-rights movement become eroded, and the basic human goods become unattainable once again for individuals with disabilities.

Reflections

The complexities of the GSA controversy are captured in the legal theories of Dworkin and Finnis. The strength of Dworkin’s framework is the protection it affords personal rights and liberties. Dworkin argues that the most natural interpretation of the Constitution is to derive and apply its principles to current issues. GSA bans require the deconstruction of a principle-led approach to law that has historically provided a shadow of protection around issues relating to personal liberty and privacy, freedoms that both conservatives and progressives have enjoyed. Turning away from a Constitution of principle and towards one of detail reduces the entire Constitution down to a mere relic of historic interest displayed behind a glass case but lacking any real power to protect democracy and restrain judges with personal agendas and political alliances. Dworkin states, “The effort to limit judicial power ends by allowing judges the undisciplined power of the arbitrary. The idea that the Constitution cannot mean what it says ends in the unwelcome conclusion that it means nothing at all” (*Life’s Dominion* 143). Even if one fervently opposes GSA, establishing a precedent that allows the government to invade the private conversation between a woman and her physician is a step away from democratic values towards a government-imposed orthodoxy.

However, constructing a model of law by way of “tinkering” between moral intuitions and principles does not guard against wrongdoings of a society. With only the hope of a better future to guide moral progress, Dworkin’s legal theory is unable to course correct when society has agreed on principles that accommodate harmful actions. Through much of the 20th century, individuals with disabilities were the recipients of unjust treatment that the majority of society supported. Only through the great effort of the disability rights movement across several decades was the law changed to protect the rights of individuals with disabilities.

Because Finnis’s legal theory employs moral absolutes, it can identify when special interests wrongfully eclipse the fulfillment of actual persons and communities. These objective moral principles ground our most fundamental human rights. While his arguments highlight significant moral concerns around the legislation of GSA, criminalizing this practice operates on a Constitutional interpretation that is detrimental to every person.

So where does that leave us? A different approach is necessary, one that exits the examination room and focuses on legislation that supports disability groups themselves. Women often terminate these pregnancies because they are concerned with the future child’s quality of life and finding adequate social and economic support, concerns that are overlooked by proponents of GSA bans (Russo 772; Simmons-Duffin; Roesner et al 192). Conversely, research shows that communities with an improved social safety net for women and young children see abortion rates significantly decrease (Beaty). Identifying the basic goods that continue to be out of reach and using the power of law to resolve “coordination problems” reduces the pressure that leads many women towards GSA.

To be sure, addressing socioeconomic pressure is not an attempt to reconcile the two opposing positions by condoning GSA while at the same time offsetting its effects on the disability community through policy changes. It must be acknowledged that legislation either permitting or criminalizing GSA has significant repercussions. One position deconstructs the Constitution of principle and leads to the erosion of personal rights while the other leads to the erosion of a vulnerable population. However, this analysis is not an invitation to resign ourselves to an ethical stalemate, but an invitation to appeal to practical reason, and in doing so, retain hope.

The issue of GSA is every person's issue. It is misguided to adopt an aesthetic evaluation of human worth that disdains weakness, where the only life worth living is one of self-direction and authorial power. Dependence is a universal experience of every person, first as a newborn before we have any authorial power and then as an aging person when that same power slips away. Dependence is not a spectacle to be loathed; it is what unites us all.

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A New Form of Punishment

Harold Windsor

In this paper, I will argue that Gregg D. Caruso provides insufficient grounds to claim that we ought to abandon retributivist punishment, but concerns about harm do provide those grounds. In the second half of this paper, I will argue that rehabilitation is a form of punishment that avoids those concerns about harm. I will be responding to Caruso's paper "Justice without Retribution: An Epistemic Argument against Retributive Criminal Punishment"⁹. I will begin by summarizing Caruso's argument and presenting my objections to it. I will then provide my own argument against Retributivism and then review possible objections against that. Finally, I will present my argument for rehabilitation, field objections against it, and outline a rehabilitative system. Generally, my argument for the first half of this paper can be summarized as:

1. The justification for retributivism is not undermined by hard determinism.
2. The justification for retributivism is undermined by concerns about harm.
3. If (1) and (2), then retributivism is wrong but not for the reasons Caruso gives.
4. Retributivism is wrong but not for the reasons Caruso gives.

Caruso's Argument

Caruso's argument in valid form:

1. If hard determinism has not been sufficiently proven false, then there is a chance that the harm caused by the retributivist system is wrong.
2. If there is a chance that the harm caused by the retributivist system is wrong, then we ought to abandon the retributivist system.
3. Therefore, if hard determinism has not been sufficiently proven false, then we ought to abandon the retributivist system.
4. Hard determinism has not been sufficiently proven false.
5. Therefore, we ought to abandon the retributivist system.

Caruso's first premise claims that in a world where hard determinism is true, retributivism is causing a great wrong by causing unjustified harm to many people. Retributivism holds that punishment is justified by criminal desert, which means that retributivism holds they are responsible for the harm of their crime in such a way that they deserve to be harmed as punishment for it, or that the best way to remedy criminal harm is to harm the criminal¹⁰.

Therefore, such a punishment is justified and therefore acceptable. Since hard determinism may or may not be true, i.e. it has not been conclusively proven false, there is a chance that the harm involved in retributivism punishment is justified.

⁹ Gregg D. Caruso, "Justice without Retribution: An Epistemic Argument against Retributive Criminal Punishment," *Neuroethics* 13, no. 1 (April 1, 2020): 13–28, <https://doi.org/10.1007/s12152-018-9357-8>.

¹⁰ Zachary Hoskins and Antony Duff, "Legal Punishment," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta and Uri Nodelman, Spring 2024 (Metaphysics Research Lab, Stanford University, 2024), <https://plato.stanford.edu/archives/spr2024/entries/legal-punishment/>.

Caruso takes the precedent set by the 1992 United Nations Framework Convention on Climate Change, which is: “When an activity raises threats of harm [my emphasis] to human health or the environment, precautionary measures should be taken even if some cause-and-effect relationships are not fully established scientifically.”¹¹ Caruso says that such a principle is also applicable in the case of this harm from retributivism. Since his first premise claims that the combination of retributive punishment existing and hard determinism not having been sufficiently proven false constitutes a chance of harm, this second premise allows him to conclude that due to this chance of unjustified harm, we ought to act against it per the UN framework.

My primary objection to the argument is to its first premise. Caruso claims that if hard determinism is true, then we ought not to use retributivism, since that would cause unjustified harm. It is important to note, however, that just as a criminal is not blameworthy in a world where hard determinism is true, neither can the justice system be blamed for causing unjustified harm. That is, in a world where hard determinism is true, there is no such thing as this sort of accountability. If hard determinism is true, moral responsibility cannot be assigned to any party in a way that can justify punishment, so similarly we cannot assign blame, or a guiltiness of a party. We cannot assign desert or accountability, so we cannot blame criminals in a way that justifies retributivist punishment, but we also cannot blame the justice system in a way that necessitates a change to the method of punishment. To clarify, to necessitate a change to the method of punishment, the justice system has to be responsible in the same sort of way as the criminal would need to be punished. Therefore, since there is no motivation for thinking that the justice system can be responsible for this chance of unjustified harm caused by retributivism, there is nothing to necessitate the sort of change Caruso wants.

As for his second premise, I have no objection to it. One possible problem is that that this president from the UN could be referring to something different than what Caruso needs it to, since it does specifically refer to threats of harm to “human health and the environment”, but as this is simply a semantic objection, I will accept Caruso’s reading. Caruso’s argument is valid, following a combination of hypothetical syllogism and modus ponens forms. I also agree with the 4th premise, because while there are some convincing arguments against determinism, none is as convincing as what we would expect for proving guilt in a trial, the standard for criminal punishments. Since these are our generally accepted standards of evidence, Caruso’s premise (4) seems to be justified. Overall, due to my objection to his premise (1), his argument is not sound, and retributivism remains a potentially attractive justification for punishment.

My Argument Against Retributivism

While there are many different types of crime, in this paper I will only address the general cases of crime that cause intermediate harm- the types of things that we normally think of when we think of crimes, like murder and theft. In cases of very minor harm, like illegal parking, or cases

¹¹ “Wingspread Conference on the Precautionary Principle,” The Science and Environmental Health Network, August 5, 2013, <https://www.sehn.org/sehn/wingspread-conference-on-the-precautionary-principle> – Caruso attributes the quote to the UN in his paper, but I could only find what he quotes from the Wingspread Conference, which is what I have cited.

of severe harm, like genocide, there might be things that make other forms of punishment, like deterrence, preferable. However, the types of harm I am discussing in this paper are more moderate harms, or the type of criminal activity that is most often dealt with in the courts. My second premise is “the justification for retributivism is undermined by concerns about harm.”

The argument that supports this premise, or my general argument against retributivism is:

1. All else equal, when one is taking an action, one ought to prefer the action that minimizes harm.
2. If (1), then we ought to abandon retributivism.
3. We therefore ought to abandon retributivism

Before continuing, ‘harm’ needs to be defined. For this paper, ‘harm’ is defined as suffering or the deprivation of some human right, as defined by the UN universal declaration of human rights¹², and ‘good’ is defined as providing these things for someone. I do not claim that this is an exhaustive or even satisfactory definition of harm, but claiming that the deprivation of the things defined as human rights in this proclamation causes someone harm is uncontroversial; this definition can be considered a sort of “bare minimum” definition of harm. A truly exhaustive and proper definition of harm could be (and should be) the subject matter of a paper in-and-of itself. In any case, since this conception of harm is likely less inclusive than an actual definition of harm will be, my arguments will likely be stronger under a more robust definition of harm.

The first premise of this sub-argument is simple. It states that when one has a goal, one ought to take the path that minimizes the harm to satisfy that goal. In the case of criminal punishment, the goal is to provide an “...effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁵, stated in article eight of the Universal Declaration of Human Rights. “Acts violating the fundamental rights...” are taken to include all criminal activity discussed in this paper, and so mentions of “criminal activity” are also mentions of “acts violating the fundamental rights granted [one] by the constitution or law”. Retributivism holds that the best way to provide this good is to fulfill the desert of the criminal, and that the best way to do that is to harm the criminal, whereas another justification may have a different goal. For example, rehabilitation holds that the goal is to remove the harmful attitudes that allowed a criminal to commit a crime and cause harm to other people.

The second premise holds that since retributivism does not minimize harm to achieve the goal of an effective remedy of criminal activity, it is wrong and therefore should be abandoned. Specifically, another form of punishment could fulfill the role of remedy of without causing much of the harm that retributivism does. Most of the action against this argument will probably be against the first premise, because the second premise is straightforward.

An objection to the argument as I have presented it is that it seems unclear why we should care about harm in the way described in my first premise. There are a few ways to think about this. Primarily, a utilitarian viewpoint desires to minimize suffering in the world, and so

¹² United Nations. n.d. “Universal Declaration of Human Rights.” United Nations. United Nations. Accessed March 22, 2025. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

minimizing harm we cause is naturally a part of that. However, this seems incomplete. Utilitarians care about the suffering in the world total, and so it is not clear that our resources would be best dedicated to this specific kind of suffering. That is, it may be expensive and time-consuming to reform our penal system away from simple retributivism, and it seems reasonable that we might be able to decrease suffering in more effective ways with that money (like using the money to purchase malaria nets).

This objection fails to consider that we ought to care more about the harms we cause than the harms that just exist in the world. This is because we are more culpable for the harm we cause than the harm we do not, so we ought to prefer to care about minimizing the harm we cause first. We are responsible for harms we do cause, and we can, far more directly, insure they do not happen. For harms we do not cause, while we can certainly take action against them, the root cause is outside of our responsibility, and therefore much harder for us to control for. Therefore, it is more important to focus on mitigating the harm we are responsible for and much more capable of fixing. Since it is more important to minimize harm we cause than it is to minimize general harm, our resources are better spent on stopping the harm of retributivism rather than the great many harms that exist outside our nation.

An objector to my argument may also say something like this: we ought to be focused about the harms and benefits our actions aim to cause, but the benefit of creating the good of satisfied desert is greater than the good of minimizing harm in the sort of way I propose. This objection is strong, targeting my premise (2). If retributivism is not just causing harm but also creating a good, it seems to satisfy my conditions of not taking actions that are harmful when they are avoidable. This argument can also take two forms: firstly, the standard retributivist argument that satisfying the desert of the criminal serves as the good produced, and secondly, a modified form of retributivism that focuses instead on the desert of those the criminal has harmed, the victim and their family. This modified argument concerns itself with the harms caused by our punishment on people besides the criminal, specifically with the harm caused to the victim by potentially failing to fulfill their desert for some level of suffering of the criminal.

The unrefined retributivist argument has a simple response: the good that we should be concerned about in criminal punishment is the remedying of the harm caused in criminal activity. That is, we should be concerned with the protection of the victim- the remedying of criminal activity- but also with minimizing harm to the criminal, insofar as we provide the good of remedying that criminal activity. There is no good directly from fulfilling the desert of the criminal or the victim, but instead in providing the goods defined in the Universal Declaration of Human Rights, which is consistent with other forms of punishment besides retributivism.

The response to the modified retributivist argument is more interesting. This argument seems to concern itself with all things considered harm (the overall harm our actions cause) because it considers the harm we may cause by failing to fulfill the desert of the victim of the criminal. I will respond to this objection by drawing a distinction between the emotional satisfaction of the victim and remedying the harm which was caused to them, which is what is actually protected in the Universal Declaration of Human Rights.

The largest problem of the modified retributivist argument is that it assigns the victim a desert that they do not have. It is good for the victim to feel and be protected, and to have a

remedy for the criminal harm caused to them, but they do not have a claim to vindictiveness and revenge; they do not have a claim to be emotionally satisfied by the punishment. The modified retributivist argument essentially claims that the government provides a good by fulfilling these feelings, which it does not, because the Universal Declaration of Human Rights only guarantees the remedying of criminal harm, not a positive emotional response on the part of the victim.

This necessarily raises the question of why the victim does not have the desert to emotional satisfaction for punishment. If we desire the emotional satisfaction of victims for punishment, they ought to choose the punishment, because they are the most likely to be able to find the punishment that best achieves their own emotional satisfaction. This, however, is unfair to the criminal, because victims may require punishments that are extremely out of line with the magnitude of the crime in order to feel satisfied or might need a severity of punishment that the government is morally and legally obligated not to carry out (like torture or execution). Further, there is a distinction between the harm to the victim and the criminal through punishment; while the harm to the criminal can be entirely controlled by the justice system, the emotional harm to the victim depends heavily on the type of person the victim is. That is, the harm to the criminal is much more in the control of the justice system, and therefore the justice system is much more accountable for it and so is much more accountable for it.

The emotional condition of the victim should instead be considered in the way it affects the nature of the crime. A crime committed for the sake of causing some benefit to the criminal is less nefarious than a crime committed for the sake of causing some harm to the victim, meaning there is a distinction between the severity of the harm of these respective crimes. Concerns about the severity of crimes and the corresponding punishment can still be addressed, even if the suffering of the criminal is not the end goal of the crime. These concerns should just focus on the actions and intentions of the criminal, which are directly related to the harm caused and can be directly controlled in relation to the harm punishment causes.

I have argued that Caruso's argument is insufficient for motivating a move away from retributivism, since he fails to recognize that there is no such thing as moral responsibility in a deterministic world for any party. Further, I have claimed that the concerns about harms committed by retributivism do motivate such a move, because we ought to avoid causing harm when we can. This means that while we can still fulfill the good of remedying criminal harm, we ought not to view the harm caused to a criminal in the fulfillment of their desert as a good in-and-of itself.

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