Law & Philosophy Workshop / November 28th, 2011

Questions for Peter Vallentyne

1. We were wondering whether you can say a bit more about the kind of cases covered by your suggested principle of enforcement. Does it cover, for example, not only preventive measures by Agent but also ex post rectification measures, e.g. forcing Target to compensate? Does enforcement justify infliction of harm on Target in case Target fails/refuses to compensate for past intrusion, and even if Target is not responsible for the intrusion-harm?

2. We were wondering whether the conditioning of enforcement rights on actual intrusion-harm (harm understood as a setback to Agent’s wellbeing) necessarily captures the grounds of a right to enforce rights. Some unjust infringements of rights may not involve any harm (e.g. some cases of trespass), and in others, though there may be some harm, it’s not clear that the harm fully captures what makes the infringement in need of prevention. In other words, do you assume that rights are only there to protect the wellbeing of the right-holder?

3. On the idea of Target-Admissible Choices, we have two questions:

(a) With respect to (1), we were wondering whether an option of, say, 3* (2,1) would meet the condition? If 3* is available, but 3 is not, would Agent be confined to 3* instead of 2? And what about an option of (8,1)?

(b) With respect to (2) we were wondering why the upper limit of the defensive intrusion is not the amount of expected harm to Agent? (Why the maximum is 13 and not 10 in the numerical example you give? Sounds like double-counting to us.)

4. With respect to your answer to the first objection:

(a). Your argument in favor of Proportionality with respect to cases in which Target is not responsible for the harm seems to be that it forms an intermediary position between two extremes: according to one view, responsibility is irrelevant to the enforcement rights, and according to the other view, responsibility is a condition of enforcement right. We understand that your position is an intermediary one, but we were not sure what is the argument for it?
(b) In your response to the possible objection that enforcement allows inflicting harm on Target even if Target is not acting autonomously, you suggest that the proportionality requirement would impose strict limits. But still, we were wondering about cases in which the only option available is to inflict on Target the same amount of harm Target would inflict on Agent; for example, the only way to save your life is to kill the person who was pushed off the cliff and now is hurtling towards you….Is it permissible for Agent to kill Target under such circumstances? What makes non-autonomous Target different, morally speaking, from a bystander?

5. With respect to your answer to the third objection: you seem to assume that the necessity condition is likely to prevent the obvious counter-examples against enforcement permitting preventive attacks. However, it seems to us that Proportionality may actually encourage preventing attacks, and even more so when the Target is not responsible. Suppose, for example, that there is a very high probability that T will inflict a 10 units amount of intrusion-harm on A in 5 years time. A’s target-admissible choices are either to prevent the right-intrusion by inflicting 3 units of harm on T now, or 9 units just before the expected intrusion. Proportionality would seem to require A to act now if T is not responsible, but it may not require acting now if T is responsible. This seems to us somewhat counter-intuitive.

6. With respect to your answer to the fourth objection: Enforcement on your view allows the infliction of defensive harm on Target in order to prevent or reduce non-just intrusion-harm by others by deterring them, for example, even if Target is not responsible for the intrusion-harm himself. We were not quite sure why Target is not being used merely as means here even if the necessity and proportionality conditions hold. Consider, for example, a case of defensive traps on property, where the innocent intruder is harmed to deter others from trespassing. Even if the harm caused by the trap is necessary and proportional, the use of a non-responsible Target might be problematic here, is it not?

7. With respect to the problem of special vulnerabilities, we were wondering whether your answers would change if the special vulnerability is a result of culpable conduct by Agent or Target? (e.g. lung problems due to smoking)