Should We Prevent Deontological Wrongdoing?

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### Abstract

Is there a reason to prevent deontological wrongdoing – an action that is wrong due to the violation of a decisive deontological constraint (when there is no consequential reason against it)? This question is perplexing. On the one hand, the intuitive response seems to be positive, both when the question is considered in the abstract and when it is considered with regard to paradigmatic cases of deontological wrongdoing such as Bridge and Transplant. On the other hand, common theoretical accounts of deontological wrongdoing do not entail this answer, since not preventing wrongdoing does not necessarily amount to doing harm or intending harm, for example (and, in cases in which the consequences of deontological wrongdoing are good, entail the opposite answer that preventing deontological wrongdoing is wrong). The puzzle is reinforced due to the fact that the intuitive response to other cases seems to be different, namely that there is no reason in favor of preventing deontological wrongdoing. This question is thus interesting in itself. It might also shed light on additional questions such as the “paradox of deontology” and the appropriate response to wrongful actions more generally. Yet, despite its importance, this question is typically overlooked. The paper explores this question.

# 1. Introduction

Consider the following actions:

Bridge: pushing a person in front of a runaway trolley, which is about to run over and kill five people, thereby killing the one but saving the five.

Transplant: taking the organs of a person and allocating them to five people, who would otherwise die, thereby killing the one but saving the five.[[2]](#footnote-2)

The actions in Bridge and Transplant[[3]](#footnote-3) are paradigmatic cases of deontological wrongdoing: while (at least standard) consequentialism implies that these actions are justified, every non-consequentialist believes that these actions are wrong, despite the fact that their consequences are overall optimal (the best possible). Let’s assume that these actions are indeed wrong. Now assume that another person can prevent these actions, in a way that does not involve any bad consequence (that is, any additional bad consequence, apart from the death of the five) and does not violate any deontological constraint (in other words, assumes that all else is equal).[[4]](#footnote-4) Assume, for example, that the secondary agent can offer the primary agent a drink that would cause him to fall asleep and forget all about the incidence. Should she do that? The intuitive answer appears to be positive.

Now consider the question in the abstract – rather than regarding specific cases such as Bridge and Transplant: Is there a *pro tanto* *reason* in favor of preventing deontological wrongdoing?[[5]](#footnote-5) Again, the answer appears to be positive. This reason need not be decisive,[[6]](#footnote-6) and even when it is decisive, it might not trigger a duty.[[7]](#footnote-7) But there does seem to be a reason in favor of preventing wrongdoing, including of the deontological type, and other things being equal – when preventing wrongdoing is possible and costless, and the agent wants to do the right thing (as I assume in what follows) – it appears that she should do so.

Consequentialists would of course deny that we should prevent the actions in Bridge and Transplant, and regard the abstract question as incoherent (since it rests on a false assumption that there are cases of deontological wrongdoing). Yet this is not because they deny that there is a reason to prevent wrongdoing. Rather, this is because they do not consider actions such as Bridge and Transplant, actions whose consequences are overall good, as wrong to begin with. Thus, assuming that deontological wrongdoing is possible, the positive answer seems to be the more attractive and common one.[[8]](#footnote-8) Moreover, the judgment that we should prevent deontological wrongdoing in cases such as Bridge and Transplant, in which the overall consequences of the primary action are good, implies that the reason in favor of prevention is not trivial: it is strong enough to outweigh the *consequential* reason *against* prevention in these cases (saving the five at the expense of one).

However, the positive answer to the prevention question raises a puzzle. For common theoretical accounts of deontological wrongdoing forbid positive agency, for example doing harm or intending harm. Yet *not preventing* harm does not in itself amount to doing or intending harm – it is possible not to prevent harm without doing or intending harm. Therefore, standard deontological accounts *do not entail* a reason in favor of preventing such wrongdoing.

Moreover, such accounts seem to entail the *opposite* conclusion with regard to cases in which the consequences of deontological wrongdoing are good overall, such as Bridge and Transplant: that we should *not* prevent deontological wrongdoing in such cases and indeed that preventing deontological wrongdoing in such cases is *wrong*. For standard deontological theories are not indifferent to consequential considerations. They are in favor of promoting the good (at least) as long as this does not involve a violation of a deontological constraint. To be sure, standard deontological theories do not include a *duty* to bring about the best state of affairs (do not consider it wrong not to do so) in every case even when this does not require the violation of a deontological constraint (and presumably even when this requires only *not* doing something). However, when bringing about the optimal state of affairs not only does not require the violation of a deontological constraint, but also does not involve any cost for the (secondary) agent, it seems that not doing so is wrong even from the perspective of common deontological accounts. Therefore, in cases such as Bridge and Transplant, where the consequences of the primary actions are good overall – so that the consequentialist balance is *against* preventing and in favor of *encouraging* these actions – and not preventing these actions involves neither the violation of a deontological constraint nor a cost for the secondary agent, it seems that standard deontological accounts imply that preventing deontological wrongdoing is *wrong*, all things considered.[[9]](#footnote-9) Thus, intuition and theory seem to diverge in the context of preventing deontological wrongdoing: the intuitive answer that we *should* prevent deontological wrongdoing is not supported by prominent deontological accounts and, indeed, it is incompatible with it.

This puzzle is unique to deontological wrongdoing. With regard to *consequential* *wrongdoing*, there is clearly a (pro tanto) reason in favor of prevention (*not* preventing it would be clearly wrong). For the reason against the primary action is necessarily also a reason in favor of preventing it: the fact that a certain state of affairs is better than another, for example the fact that it is better that a person lives rather than dies. This fact is both a reason against killing and in favor of preventing killing.

The puzzle regarding the prevention of deontological wrongdoing is interesting in itself, in light of the conflict between intuition and theory. Considering this puzzle might also shed light on other issues.[[10]](#footnote-10) First, it might illuminate a central aspect of common deontological accounts: their agent-relative nature (which generates what is sometimes described as the “paradox of deontology”). According to these accounts, an agent should not violate a deontological constraint in order to prevent more violations of the same constraint (by others or even by the agent herself at another occasion). This position is, however, compatible with two options: either there is no reason to prevent future violations, or there is such a reason but the reason against violating the constraint yourself, now, is the decisive one.[[11]](#footnote-11) The first option thus offers a negative answer to the prevention question – there is no reason to prevent deontological wrongdoing – whereas the second option offers a positive one.

Considering the prevention question might also provide a novel yardstick for evaluating competing deontological accounts. For if one account resolves the prevention puzzle better than another, it is more appealing in an important respect. And if no (otherwise) plausible deontological account provides a satisfactory answer to the prevention question, this might be the basis for an argument against the validity of deontological constraints in general. For if there is no reasonable answer to the prevention question, perhaps the premise on which the question rests – that there are cases of deontological wrongdoing – is mistaken.

Finally, the prevention question has interesting implications regarding the law as a means of preventing wrongful actions.[[12]](#footnote-12) Consider, for example, the seemingly plausible and common view that there is a reason (not necessarily a decisive one) in favor of imposing criminal liability due to wrongful actions. According to this view, there is a reason in favor of imposing criminal liability (and thus against allowing a criminal defense) due to the primary actions in cases such as Bridge and Transplant. This makes sense as far as *retribution* is concerned (namely if the goal of criminal liability is retribution), assuming a deontological perspective.[[13]](#footnote-13) However, as far as *prevention* is concerned (for instance by way of deterrence), considering the overall moral status of the action (its justification or wrongness) is misguided, even from a deontological perspective, if there is no reason in favor of preventing deontological wrongdoing. In this case, we should not be concerned with the overall moral status of the action, taking account of both consequentialist and deontological considerations, but rather merely with its *consequential* status. If this is so, there is no reason to impose criminal liability due to actions that are deontologically wrong but whose consequence are overall good, such as the primary actions in Bridge and Transplant. Imposing criminal liability (denying a defense) in such cases,[[14]](#footnote-14) is thus misguided, as far as the goal is preventive rather than retributive, even assuming a deontological outlook.

Another example is that of an efficient breach of a promise (that constitutes a valid legal contract). A conclusion that there is no reason in favor of preventing deontological wrongdoing entails that, as far as prevention (as opposed to retribution) is concerned, the law should not impose liability due to breaking a promise that is (deontologically) wrong but its consequences are overall good – there should be an efficient breach defense – even assuming that deontology is the correct moral theory.

The conclusion that the law should not aim at preventing deontological wrongdoing is especially important for two reasons. One is the doubts concerning the questions whether retribution is a valid consideration and, if it is, whether it is important enough to justify the cost of legal regulation. Second, even if retribution is a valid goal that might justify legal liability, the law might have also preventive effects and therefore its value (or disvalue) should be evaluated in this respect too, particularly in cases such as Bridge and Transplant in which the primary action has good consequences on balance so that the effects of prevention are unwelcome.

A related implication concerns the proper legal status of the response of an *individual* to deontological wrongdoing whose consequences are good overall – that is, the legal status of the secondary action. If there is no reason to prevent deontological wrongdoing, there is no reason to impose a legal duty to prevent such an action – to rescue its victim (as opposed to a legal duty to prevent bad consequences). And when there is a consequential consideration against prevention, and especially when prevention is wrong, there is a reason in favor of imposing criminal or civil liability on an agent who prevents such an action.

More generally, the prevention question is related to the controversy regarding the proper target of the (criminal) law: harmful actions or wrongful actions: if there is no reason to prevent harmless deontological wrongdoing, this suggests that the law should be limited to the prevention of consequential (harmful) wrongdoing, whereas if there is a reason to prevent deontological wrongdoing, this reason might apply to the law as well.[[15]](#footnote-15)

Therefore, the prevention question might also determine the appropriate individual and legal response to the violations of deontological constraints whose consequences are good, for example (deontologically) disproportionate but effective punishment or security measures.

Yet, despite its puzzling nature and its significance, the question of whether we should prevent deontological wrongdoing is neglected. Although many believe that some actions are wrong due to deontological reasons, the question whether we should prevent *others* from performing such actions, and the perplexity that it raises, is typically overlooked. My aim in this paper is to highlight and explore the prevention puzzle.

Before proceeding, two clarifications should be noted. First, the interesting question is whether there is a *non-instrumental* reason in favor of preventing deontological wrongdoing. Clearly, there might be instrumental reasons for doing so, for example if preventing deontological wrongdoing deters agents from performing *consequential* wrongdoing. Second, the interesting question is whether there is a *pro tanto* reason to prevent deontological wrongdoing. This reason might not be decisive, since there might be a clashing consideration, against prevention, as is the case in Bridge and Transplant. More accurately, the question is whether there is a pro tanto reason to prevent the action as opposed to its consequences. For example, in Bridge and Transplant, there is obviously a pro tanto reason to save the one, so the question is whether there is a reason to prevent the action regardless of (or given) its (positive) overall consequential balance.

The paper proceeds as follows. I begin by explaining the puzzle regarding the prevention question: first the theoretical puzzle of the clash of intuitions and theories (Section 2) and then an additional, intuitive puzzle: the intuition that we should prevent the primary action in Bridge and Transplant does not seem to hold with regard to other cases of deontological wrongdoing (Section 3). I then consider possible solutions to the puzzle (Section 4), and conclude (Section 5).

# 2. The Theoretical Puzzle

Common deontological accounts generalize (and in this sense explain and, if the general principle is appealing in itself, justify) the intuitions that some actions, such as Bridge and Transplant, are wrong despite their good consequences. The puzzle is due to the fact that these accounts do not necessarily entail that *not preventing* such actions is also (even pro tanto) wrong and thus do not support (not even explain, let alone justify) the intuition that we should prevent paradigmatic cases of deontological wrongdoing. I demonstrate this by considering three influential deontological accounts: those that focus on doing harm, intending harm and using a person as a means. While these are not the only possible versions of deontological constraints, they are influential examples that illustrate the problem.

## I. Doing

The first deontological account is based on the distinction between doing harm and allowing harm. According to this account, doing harm violates a deontological constraint, while allowing harm does not.[[16]](#footnote-16) The distinction between doing and allowing is not completely settled (and accordingly there are some controversial cases), but its core is quite clear. For example, in Bridge, pushing the man is clearly a case of doing harm, while not helping him get out of the tracks, if he is there, is a case of allowing harm. This account is a natural explanation of some paradigmatic cases of deontological wrongdoing, including Bridge and Transplant. However, it is controversial. Particularly, some of its implications are widely considered to be implausible, for example that the following action is wrong:

Trolley: turning a runaway trolley that would otherwise kill five people onto a sidetrack where it will kill one person.[[17]](#footnote-17)

While the primary actions in Bridge and Transplant are wrong, according to the constraint on doing harm, this constraint does not imply that not preventing these primary actions is (even pro tanto) wrong. Not preventing harm is clearly not a case of doing harm but rather of allowing harm. While some secondary actions might amount to a violation of the constraint on doing harm – for example, certain forms of aiding or encouraging the primary agent – not preventing the primary action in itself is not a violation of the constraint on doing harm. Therefore, this account does not explain the intuitive response to the abstract question of whether we should prevent deontological wrongdoing and to specific cases such as Bridge and Transplant.

## II. Intending

Another influential deontological account is based on the distinction between intending harm, as an end or as a means, and foreseeing harm (as a byproduct). According to this account, intending harm violates a deontological constraint, while merely foreseeing harm does not. This distinction is also not completely settled,[[18]](#footnote-18) but its core is nevertheless quite clear. This account too is influential but controversial. One general objection is that the agent’s intention does not affect the moral status of her action but rather merely her culpability. Another objection is that some of the implications of this account are implausible, for example that the following action is wrong:

Loop: turning a runaway trolley that would otherwise kill five people onto a sidetrack where it will kill one person when the sidetrack is connected to the main track so that killing the one is a means of stopping the trolley and thus saving the five.

Like the constraint on doing harm, the constraint on intending harm implies that the primary actions in Bridge and Transplant are wrong – they involve intending harm, as a means of saving the five. The analysis of the implications of the constraint on intending harm concerning the secondary agent is, however, more complex. The answer to the question of whether the secondary action violates the constraint on intending harm depends on how this constraint is understood and varies with the intention of the secondary agent.

First, there is an interpretive question concerning the constraint on intending harm. One option is that it forbids intending harm only when it is accompanied by doing harm, namely that it forbids only *doing* harm intentionally. Another is that it forbids also *allowing* harm intentionally.

If the constraint is limited to *doing* harm intentionally, the secondary agent does not violate it in Bridge and Transplant, since not preventing the primary action in these cases does not involve doing harm but rather only allowing harm. Thus, this interpretation does not support the intuitive response to the abstract question of whether we should prevent deontological wrongdoing and to Bridge and Transplant.

If, by contrast, the constraint is also on *allowing* harm *intentionally*, the answer is more complex – it depends on the specific intention of the secondary agent. For example, if the secondary agent does not prevent the primary action in Bridge or Transplant *in order* to prevent the greater harm, she violates the constraint, since she intends that the one would be harmed as a means of saving the five. However, the secondary agent does not violate this constraint in Bridge and Transplant if she does not prevent the primary action because she does not care, or does not care enough (to overcome her laziness, for instance), about preventing the greater harm – about what will happen to the five (and the one).

This version of the constraint on intentional harm thus entails a reason in favor of prevention when the secondary agent is acting with a praiseworthy intention: preventing the greater harm. In this respect, it accounts for the intuition in favor of prevention to some degree. However, this version involves several difficulties.

First, it assumes that there is a deontological constraint on allowing harm intentionally, whereas the more common interpretation seems to be that there is only a deontological constraint on doing harm intentionally.[[19]](#footnote-19) General depictions of the constraint on intending harm typically refer to doing harm intentionally and the standard examples of actions that violate the constraint – including Bridge and Transplant – are all cases of this kind. Moreover, a constraint on allowing harm intentionally might be too wide. Consider, for example, the following action:

Tracks: not saving a man on the tracks thereby allowing a runaway trolley to kill him and thus save five people who are ahead on the tracks and would otherwise (if he is saved) be killed by the trolley.

It might seem that not saving the man in Tracks does not constitute a violation of a deontological constraint,[[20]](#footnote-20) in contrast to the implication of a constraint on allowing harm intentionally.

Second, the implication of this version with regard to the prevention question is odd: it implies that a secondary agent who does not prevent the primary action in Bridge and Transplant acts wrongly when her intention is benevolent but not when she is indifferent or worse.

Finally, this version does not explain the intuition in favor of prevention in an important respect. For the intuitive response to the abstract question of whether we should prevent deontological wrongdoing and to Bridge and Transplant does not seem to be sensitive to differences in the intention of the secondary agent.

## III. Using

Another influential deontological constraint proscribes using a person – his body or effort, for example – as a means, without his consent.[[21]](#footnote-21) This constraint too considers the primary actions in Bridge and Transplant as wrong. As to the secondary agent, if the constraint requires a positive action, namely using that involves doing, although not necessarily doing harm,[[22]](#footnote-22) then not preventing the primary action in Bridge and Transplant does not violate the constraint. If, however, the constraint on using persons does not require a positive action,[[23]](#footnote-23) but rather only not saving a person when the latter is a means of saving others, the secondary action in Bridge and Transplant does violate it. This conclusion is in line with the intuitive response to the prevention question in its abstract form and to the intuitions regarding Bridge and Transplant. However, this version of the constraint is very wide, arguably implausibly so. It implies that not saving the person in Tracks, for example, is wrong. Moreover, it is doubtful if we should consider not saving a person (including not preventing another from harming a person) as *using* him in the relevant sense. Finally, this version seems unorthodox in that it is unclear if it is agent-relative, for it applies to every agent that can prevent the primary action.[[24]](#footnote-24)

## IV. Conclusion

There is thus no obvious solution to the prevention puzzle. Some prominent versions of deontological wrongdoing – including every version that includes a doing condition – do not support the intuition in favor of prevention, specifically in the paradigmatic cases of Bridge and Transplant. Other versions do entail a reason to prevent deontological wrongdoing, at least in some cases, but these versions seem to be less common and arguably less plausible. This result is noteworthy: not every deontological account leads to the same conclusion in this regard and the ones that explain the intuition regarding prevention better are less common and arguably less plausible in other respects.[[25]](#footnote-25)

# 3. The Intuitive Puzzle

I now turn to a related puzzle. While there seems to be a robust intuition in favor of preventing deontological wrongdoing in some cases, such as Bridge and Transplant, the intuition regarding other cases seems to be different – less clear or even leaning towards the opposite conclusion. Each of these cases might be controversial: in some cases, the wrongful nature of the primary action might be disputed (even from a deontological perspective) and in other cases the intuition regarding the secondary action is not clear or controversial. Still, I think that together these cases raise another puzzle regarding the prevention question.

It is possible, of course, that the answer to the prevention question is not general, namely that there is a reason to prevent deontological wrongdoing in some cases but not in others. Perhaps, more specifically, the answer depends on the specific nature of the deontological wrong. To the extent that this is the case, common deontological accounts, which seem to be general, do not track the intuitions regarding specific cases.

In order to consider the question of whether there is a reason for preventing deontological wrongdoing, I assume (as I assumed regarding Bridge and Transplant) that these cases involve no other morally significant factor, apart from the facts due to which the primary action is deontologically wrong. Specifically, I stipulate that there is no *consequential* reason in favor of prevention, namely that the overall consequences of the primary actions are either good or neutral and that the secondary action involves no other consequences apart of frustrating those of the primary action. Thus, an intuition regarding the all things considered question of whether the secondary agent should prevent the action is also an intuition regarding the question of whether there is a (pro tanto) reason to prevent the action.

1. Consider first the following case:

Enemy: turning a runaway trolley that would otherwise kill five people onto a sidetrack where it will kill one person because the agent wants to kill this person (and not in order to save the five).

Enemy, which is based on Trolley with the addition of the evil intention, is not a clear case of deontological wrongdoing: even some deontologists believe that the action in this case is permissible and the evil intention affects only the (primary) agent’s moral status and not the moral status of the action: the agent is praiseworthy in Trolley and blameworthy in Enemy. Still, some think that the intention of the agent does affect the moral status of the action too and it is therefore wrongful in Enemy.

Assuming that this is the case, the intuitive response to the prevention question seems to be different with regard to Enemy, compared to Bridge and Transplant: there doesn't seem to be a reason to prevent the action in Enemy. Or, at least, if there is such a reason, it seems to be weaker than the reason to prevent the action in Bridge and Transplant so that it is defeated by the clashing consequential reason (that is not strong enough to defeat the reason in favor of prevention in Bridge and Transplant). This intuition is sometimes expressed explicitly. Thus, Alec Walen says that while there is a “strong but defeasible presumption against encouraging the performance of impermissible actions”, this presumption is defeated when the action is wrong merely due to the intention of the agent.[[26]](#footnote-26) The point here seems to be not just that there is no *decisive* reason for preventing the action in Enemy, but rather that there is no pro tanto reason for doing so.

This view might be controversial. Victor Tadros, who considers a related question – whether we should *replace* the primary agent in Enemy with an agent who would divert the trolley in her stead with the right intention (saving the five rather than killing the one) – argues that there is a reason for doing so, albeit a weak one.[[27]](#footnote-27) This question – the replacement question – assumes that the action will be performed by another agent, whereas my question – the prevention question – assumes that no one else will perform the action instead of the primary agent. But it seems that the view that there is a reason to replace the primary agent implies that there is a reason to prevent the primary action, even if that means that the five would not be saved (for example since there is no available alternative agent). This is because the most plausible explanation as to why there is a reason to replace the primary agent is that there is a reason to prevent her action. Indeed, the replacement question is a variant of the prevention question, since it refers to the option of preventing the action with the added stipulation that another agent would divert the trolley. This difference more plausibly affects the reason *against* preventing the action of the original primary agent (its good consequences) – a reason that does not exist if someone else saves the five instead of the original agent – rather than the reason *for* preventing this action.

Overall, however, the more prevalent intuitive response to Enemy seems to be that there is no reason to prevent the primary action. And, even when this is disputed, the suggestion that there is a reason to prevent this action is accompanied by the observation that this reason is weak.

This intuition is in line with common general accounts of deontological wrongdoing: not preventing the action in Enemy does not violate the constraints on doing harm, intending harm (assuming the secondary agent does not have an evil intention too) and using a person as a means.

2. Consider next a different type of case, one in which the primary action, which violates the decisive deontological constraint, has no morally significant consequences at all – good or bad – and thus there is no (decisive) consequential reason in its favor.[[28]](#footnote-28) Here are two examples:

Lying: telling a harmless lie (which does not have any good consequences either).

Promise: breaking a promise in a way that has no good or bad consequences.

While Lying and Promise, like Enemy, are not clear cases of deontological wrongdoing, some believe that the primary actions in these cases violate a deontological constraint. The intuitive response to the prevention question concerning these cases appears to be less certain than regarding the previous cases. But it seems at least doubtful that there is a reason to prevent the primary action in these cases, and, even assuming that there is, this reason does not seem to be as strong as in Bridge and Transplant. We can confirm this by considering a variant of Lying and Promise in which the prevention has some morally significant cost, for example harm to another person. It does not seem reasonable to pay a moral price, especially a significant one, in order to prevent the actions in Lying or Promise. Rather, it seems that we should prevent the harm and not the (harmless) wrongdoing. This seems to be so even if the harm is not very serious. This indicates that there is no intuition in favor of preventing the wrongdoing in this type of case, at least no intuition that is comparable to the one regarding Bridge and Transplant.

This intuition too is in line with common general accounts of deontological wrongdoing: not preventing the actions in in Lying and Promise does not violate the constraints on doing harm, intending harm (unless the secondary agent has some evil intention or plan) and using a person as a means.

3. Consider now a different sort of case. Recall Tracks: there is a person on the tracks in front of a runaway trolley and not saving him would save five people ahead on the tracks. Here there does not seem to be an intuition in favor of saving this person. And even if there is one, it is not as confident and strong as in Bridge and Transplant.

This seems to be the case regardless of the cause or the reason due to which the person is on the tracks, and specifically even if he is there because he was pushed from a bridge earlier by a wrongdoer, rather than, for example, since he fell to the tracks (without the intervention of another) or decided to sit there for some reason.[[29]](#footnote-29) Given that we cannot prevent this action anymore, there does not seem to be a reason to distinguish these cases.

Now assume, with regard to the alternative that involves a pushing, that the secondary agent can save the man at a stage in which it is unclear (to the secondary agent) if the action of pushing has been (just) completed or is still taking place (so that saving the man would also prevent its completion). Does it matter, with respect to her decision whether to save the person? If she should prevent the action in Bridge, but not save the man in Tracks, this difference is crucial. And yet it is not obvious that it really matters if the action is just over or is still taking place. The important point is not that the intuition in this case is not as firm as in Bridge – this could be explained by the uncertainty, namely the possibility that the action has been completed. Rather, what is noteworthy is that it is not obvious that this uncertainty matters.

4. Another type of case – Wrongdoing/Misfortune – involves a comparison: the secondary agent can prevent either *deontological wrongdoing* or a *bad state of affairs* that is not the result of an action, and the consequences are identical in both cases. In one variation, it is possible to prevent either an action that seriously harms a person for no good reason or an identical serious harm to another person that is not the result of an action. In another, it is possible to prevent either an action that seriously harms a person but also prevents a more serious harm, such as the actions in Bridge and Transplant, or to save the man in Tracks. In these cases, the identical consequences provide the same consequential consideration in favor of both options – preventing the wrongful action or the misfortune – and the question is whether there is an additional reason for preventing the wrongful action, apart from its consequences.[[30]](#footnote-30)

The intuition regarding Wrongdoing/Misfortune seems to be controversial. Some think that there is a reason to prefer preventing the wrongdoing while others do not. However, the intuition that there is such a reason might be due to instrumental considerations: wrongdoing is often more harmful that a misfortune with the same direct consequences, due to its indirect effects, for example the fact that crime causes more anxiety than misfortune (this might justify the practice of investing more resources in preventing crimes compared to misfortunes). Moreover, even to the extent that there is an intuition in favor of prevention in Wrongdoing/Misfortune, it seems to be less robust than in Bridge and Transplant. One way to confirm this is by considering a variant of Wrongdoing/Misfortune in which the harm that would come about due to the misfortune is slightly greater than the harm that would come about as a result of the wrongdoing (for example the victim would lose an arm due to the wrongdoing or an arm and a finger due to the misfortune). Here it seems that we should prevent the greater harm rather than the wrongful action. This confirms the hypothesis that there is no firm intuition in favor of preventing the wrongdoing itself in this type of case, or, at least, that the intuition is not that there is a strong reason for preventing the wrongdoing rather than the misfortune.

5. Another interesting question is whether we should prevent a person from *not preventing* deontological wrongdoing. Assume that one person can prevent the primary action in Bridge or Transplant, but has no intention of doing so, while a different person can make her do so, in some way that does not involve any other effect or a violation of a deontological constraint. Is there a reason in favor of doing so? Note that there are two possible reasons here: in favor of preventing the primary action (indirectly) and in favor of preventing the secondary inaction of the person who decides not to prevent the primary action. It seems that the intuition in favor of a positive answer to this question is less certain.

6. Finally, intuitions concerning the prevention question seem to be influenced by the *way* in which the action is prevented, namely the nature of the secondary action that prevents the wrongful (primary) action. The main distinction in this respect is between *physical* prevention, namely making it physicallyimpossible for the primary agent to perform the wrongful action, and *rational* prevention, namely persuading the primary agent not to perform the wrongful action in light of the reasons against doing so. These could be *moral* reasons, namely the wrongness of the action, or *prudential* reasons, such as the prospect of (formal or informal) punishment.

Generally, it seems that rational prevention is more appealing than physical prevention. More specifically, it seems that rational prevention based on *moral* reasons is more appealing than rational prevention based on prudential reasons. The distinction between ways of prevention appears to affect the degree to which the intuition regarding the existence of a reason to prevent deontological wrongdoing is firm and the degree to which this reason is assumed to be strong.[[31]](#footnote-31) These differences in degree seem to be present regardless of whether the intuition is in favor or prevention or not and regardless of whether the intuition is more or less robust.

When the intuition is unclear, the distinction between ways of prevention might affect the conclusion as to whether there is a reason for prevention: there might be an intuition that there is a reason in favor of rational, especially moral, persuasion, but not in favor of physical prevention. Consider, for example, Lying, Promise and Enemy: it seems more plausible that there is a reason to prevent the actions in these cases by rational means, especially by persuading the agent that the action is morally wrong, than by physical means.

When the intuition is clearly in favor of prevention, the distinction between means of prevention seems to affect the weight of the reason for prevention. This seems to be the case, for instance, regarding Bridge. The reason to convince the primary agent not to push the man on the bridge by pointing out that this action is immoral, seems stronger than the reason to prevent the primary action by making it physically impossible for the primary agent to perform it.

The intuitions that distinguish modes of prevention might be unreliable due to the influence of distorting factors. Specifically, some modes of prevention might be more appealing than others because they are (thought to be) valuable for reasons that are unrelated to the prevention of wrongdoing. For instance, if rational deliberation or moral knowledge are valuable in themselves, regardless of their effects on the way that people behave, there is a reason to distinguish between rational and physical prevention, and this reason might affect our intuitions although it is not relevant to the prevention question. The question is therefore whether there is a distinction between different ways of prevention *that relates to the question of preventing deontological wrongdoing*, as opposed to other possible morally significant differences between ways of prevention (such as the value of rational deliberation, which is irrelevant in this respect). Still, it seems that even when the focus is (only) on the prevention aspect, the intuitive distinction between rational and physical prevention is quite robust.

Notice that common general deontological accounts, for example on doing harm, intending harm, and using a person as a means, do not entail this distinction between ways of prevention. While physical prevention might violate some constraints more often than rational prevention – since it is more likely to do harm or to intend harm as a means, for example – this is not necessarily the case. This is noteworthy: these accounts do not seem to entail a reason to prevent deontological wrongdoing even by way of *convincing* the primary agent not to perform the primary action because it is *morally* *wrong* and thus even by way of *teaching* the primary agent about the content of deontological constraints – teaching, that is, what should and should not be done.[[32]](#footnote-32)

# 4. Solutions

I turn now to consider some solutions to the puzzle regarding the prevention of deontological wrongdoing (both its theoretical aspect and its intuitive aspect). My discussion in this respect too is not exhaustive. Its aim is rather to point out that every plausible resolution of the puzzle is interesting.

## I. Agent Neutrality

One solution to the prevention puzzle is an agent-neutral version of deontology, specifically a deontological account that includes a general requirement to minimize – and thus prevent – violations of deontological constraints, including by others.[[33]](#footnote-33) This version offers a positive answer to the theoretical question regarding preventing deontological wrongdoing. It does not address the intuitive puzzle because it does not explain why it seems that there is no reason to prevent deontological wrongdoing in some cases. Most importantly, an agent-neutral version is a radical solution to the prevention problem, since the much more common deontological version is agent-relative.

## II. Patient-Focus

Another attempt to solve the prevention puzzle is based on the idea that deontological constraints are patient-centered, namely based on the rights or interests of the victim (mainly not to be harmed in order to further the goal of another) – the person who is influenced by the action – rather than agent-centered, namely based on the action, duty or character of the agent.[[34]](#footnote-34) In light of this distinction, it might be argued that there is a reason to prevent deontological wrongdoing if the wrong is patient-centered, as opposed to agent-centered. More specifically, it might be argued that the rationale of prevention is the interests of the patient or his right not to be wronged. This right, it might be argued, is not only a negative right against a primary action that harms the patient, for example, but also a positive right that requires one person to protect the patient from wrongdoing by another. It might also be suggested that this right does not only permit the patient to prevent wrongdoing to herself but also requires others to help the patient prevent the wrongdoing (especially, although not necessarily only, when the patient cannot prevent the wrongdoing by herself).

The suggestion that the focus should be on the patient, rather than the agent, is plausible, but its contribution to the resolution of the prevention puzzle is doubtful. Terms such as “patient” and “right” describe the puzzle or the intuition in favor of prevention in a distinct way, for example as the question of whether the patient has a positive right that another person would prevent a third party from wronging him. Such a new description might be helpful. It might illuminate, for example, a significant feature of the prevention puzzle. However, the new description itself does not solve the puzzle. To the extent that it highlights a novel aspect of the problem, we need to consider the significance of this aspect. The questions are therefore what does the focus on the patient mean, whether it is justified and what are its implications in terms of the prevention question.

For example, with respect to the meaning of the distinction between agent-centered and patient-centered accounts, it seems that a constraint on intending harm is agent-centered since its focus is the mental state of the agent, whereas the constraint on using a person as a means is patient-centered.[[35]](#footnote-35) But it is unclear how to classify the constraint on doing harm: Is it based on the right not to be harmed or on the duty not to harm?[[36]](#footnote-36)

In terms of the implication of this distinction with respect to the prevention puzzle, even if a person has a right to defend himself against wrongdoing, it does not follow that he has a right that another person would prevent the wrongdoing (especially when there is a consequential reason against doing so). It is not only logically possible but also normatively plausible to distinguish the victim and the secondary agent in this respect. For natural rationales for the victim’s right to resist wrongdoing do not apply to another person. These include the idea that the victim is excused (as opposed to justified) when he resists wrongdoing whose overall consequences are good and the idea that the victim has an agent-relative permission not to do what is morally best when this involves a significant personal sacrifice. These options are irrelevant when considering what another person – the secondary agent – should do.

## III. Moral Record

Another suggestion is that we should care about the moral record of agents, not only our own, but also others; and that, therefore, we have a reason to improve the moral record of others by preventing them from acting wrongly. This suggestion might also explain why rational prevention is more attractive than physical prevention and, more specifically, why moral persuasion is more attractive than prudential persuasion: moral persuasion – when an agent does not perform a wrongful action due to moral reasons – because the agent comes to see that it is wrong or that its wrongness is a (decisive) reason against it – clearly improves her moral record. In contrast, it is less clear if a decision not to perform a wrongful action because of prudential reasons, such as the fear of punishment, improves the agent’s moral record, and even if it does, it clearly improves it to a lesser degree than a decision that is based on moral reasons. Finally, when an agent does not perform a wrongful action just because it is impossible, namely her plan to do wrong fails due to a factor that is beyond her control, it is even less plausible that this improves her moral record and, if it does, it does not improve it to the same degree as moral persuasion or even rational persuasion.

Yet the argument from moral record is doubtful. One doubt concerns the assumption that we should be concerned with protecting the moral record of agents, and especially that there is a concern of this sort that entails a reason to prevent the wrongful actions of others for the sake of their moral record.[[37]](#footnote-37) The moral record of people might be morally significant in some ways, for example with regard to the question of what they deserve (for instance, whether they deserve punishment for their wrongful actions). But this does not mean that there is a reason to protect it, especially in a way that is relevant to the prevention question.[[38]](#footnote-38)

More specifically, we might need to refine the assumption that acting wrongly affects (negatively) the moral record of the agent. Perhaps this happens only if, or to the degree to which, the agent is responsible for her action,for example the degree to which she knows that the action is wrongful and the degree to which her action is free in an appropriate sense. But in terms of the prevention question, the important features seem to be the wrongness of the action and its consequences rather than the responsibility of the agent. Indeed, the intuition in favor of prevention in the paradigmatic cases of deontological wrongdoing, such as Bridge and Transplant, does not seem to depend on the responsibility of the primary agent: it seems to exist regardless of whether he was, for instance, coerced to perform the primary action. Indeed, in these cases it seems that we should prevent the primary action also by physical means. This reinforces the suspicion that the moral record of the agent is not relevant to the prevention question.[[39]](#footnote-39)

# 5. Conclusion

The intuition in favor of preventing deontological wrongdoing poses a challenge since theoretical accounts of deontology do not seem to be compatible with it. Every resolution of this puzzle is interesting.

One option is to insist that there is a reason to prevent deontological wrongdoing, in accordance with the intuition in favor of prevention, despite the lack of a plausible theoretical account that supports this intuition. This conclusion is attractive in an important sense, since it is difficult to accept that we should not prevent wrongdoing, especially paradigmatic cases of deontological wrongdoing. But it is unsettling in that it is not supported by a plausible theoretical account, and especially by the common accounts of deontology.

Alternatively, perhaps there is a plausible deontological account, that was not considered, which does entail a reason in favor of prevention. This option is noteworthy, either if such an account is novel or if it is based on a traditional account that has an advantage over competitive accounts in this respect.

An additional option is that there is no reason in favor of preventing even paradigmatic cases of deontological wrongdoing. This conclusion is surprising, and unsettling, in that it is incompatible with the robust intuition in favor of prevention, at least in these cases.

Finally, due to the difficulty of solving the puzzle, we might want to consider more seriously the most radical solution: rejecting the premise on which the discussion is based – that there are cases of deontological wrongdoing. Thus, we can hold on to the plausible assumption that there is a reason to prevent wrongdoing, by discarding the assumption that some actions are wrong due to deontological reasons: we should prevent wrongdoing, since all wrongdoing is of the consequential type. The puzzle could therefore be the basis for an argument for consequentialism.

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1. \* For helpful discussions of the ideas considered in this paper, I am grateful to Larry Alexander, David Enoch, Naama Goldberg, Miriam Gur-Arye, Alon Harel, Ori Herstein, Doug Husak, Adam Kolber, Ofer Malcai, Jeff McMahan, Ram Rivlin, Alec Walen, Eyal Zamir and the participants in the Faculty of Law Colloquiums at the Hebrew University of Jerusalem and Tel-Aviv University. [↑](#footnote-ref-1)
2. An alternative (and more general) version of these examples is this: harming one person and thus preventing a much (five times) greater harm to another person. This version avoids some unnecessary controversial aspects regarding the badness of death and the moral significance of the number of people harmed. [↑](#footnote-ref-2)
3. I will refer to these actions as the “primary” actions and to the agents who perform them as the “primary” agents. [↑](#footnote-ref-3)
4. I will refer to such preventive actions as the “secondary” actions and to the agents who (can) perform them as the “secondary” agents. [↑](#footnote-ref-4)
5. The abstract question and the question regarding specific cases might be understood to ask the same question at different levels of generality (the former being a more general version of the latter). But the different formulations highlight a difference between two distinct questions (both of which might be asked in the abstract or regarding specific cases). One is whether the normative property of wrongness provides a reason for prevention, while the other is whether non-moral facts, such as the fact that one person is being pushed or killed, provide a reason for prevention. I believe that the puzzle that I discuss is relevant to both of these questions. [↑](#footnote-ref-5)
6. Especially when there is a clashing consideration against prevention, for example when the prevention involves an additional harm to someone, apart from the harm to the five. [↑](#footnote-ref-6)
7. It might be only recommended, for example when the prevention requires a significant sacrifice from the secondary agent. [↑](#footnote-ref-7)
8. Since the prevention question is rarely considered, the positive answer is rarely expressed explicitly. But see Alexander (2015: 24) (“presumably, if we as bystanders see that someone is about to violate MP [a deontological constraint on using persons as means], we have a reason to dissuade him from doing so and to threaten him with punishment”); Thomson (2009: 516) (if an action violates a deontological constraint on intentional killing, we should not want another to perform it; but since, in some cases of euthanasia, we should want the agent to succeed in a suicide attempt, there is no deontological constraint on suicide. While this view is about what we should *want*, rather than *do*, it seems plausible to assume that Thomson would answer the latter question in the same way); Dougherty (2013: 530-531) (the claim that a bystander should prevent deontological wrongdoing is “attractive”). [↑](#footnote-ref-8)
9. This is not the case according to a deontological account that does not count (good) consequences of actions that violate a deontological constraint in favor of these actions – in contrast to what seems to be the common deontological view (according to which such consequences support the relevant actions although they might be defeated by the deontological constraint). This account does not consider not preventing the primary actions in cases such as Bridge and Transplant as wrong and in this respect mitigates the puzzle. However, even this less common account does not resolve the puzzle – the clash between the intuition that there a reason to prevent deontological wrongdoing and the theories that do not entail such a reason. [↑](#footnote-ref-9)
10. Additional related questions concern actions which are deontologically *permissible* but whose consequences are *not optimal* overall (such as not saving an innocent person when this involves a significant cost to the agent or perhaps *not* pushing the man in Bridge). Is there a (deontological) reason to *encourage* such actions? Is there a (deontological) reason to *prevent* such actions? [↑](#footnote-ref-10)
11. The last option raises another question: why is the reason against violating the constraint yourself, now, is (at least typically) decisive when it clashes with the reason against preventing future violations. A related question is why the reason against violating a deontological constraint outweighs a clashing consequential reason in cases such as Bridge and Transplant. [↑](#footnote-ref-11)
12. I assume that while the proper scope of the law might depend on considerations that do not apply to the actions of individuals who are not acting in a legal capacity, it also depend on the answer to the prevention question. The possibility that the considerations that apply to the law are wholly distinct from those that apply to individuals is, I think, implausible. [↑](#footnote-ref-12)
13. At least provided that certain additional conditions are met, for example that the agent is morally responsible for her wrongful action, namely that no excusatory defense applies. [↑](#footnote-ref-13)
14. In this respect, the decision in several legal cases, to deny a defense (of necessity) to actions that seem to violate a deontological constraint but whose overall consequential balance appears to be positive, was mistaken. For such cases, see, for example, *United States v. Holmes* [1 Wall. Jr. 1] 26 Fed. Cas. 360-369 (1842); *The Queen v. Dudley and Stephens* [1884] 14 Q.B. 273-288. [↑](#footnote-ref-14)
15. Note, however, that the controversy regarding the Harm Principle, for example, might be due to other considerations. Specifically, we should distinguish the claim that there is no reason to prevent an action that is morally wrong but harmless and the claim that there is a reason to do so but it is (always or sometimes) defeated by a clashing consideration, for instance relating to personal liberty. [↑](#footnote-ref-15)
16. Another option is that allowing harm violates a less stringent constraint, but it seems that the more common view is that the reason not to allow harm is consequential and therefore does not exist in cases in which allowing harm leads to better consequences overall. See Alexander & Moore (2015: § 2.1). [↑](#footnote-ref-16)
17. But see Thomson (2008). [↑](#footnote-ref-17)
18. For example, due to the “closeness” problem: the fact that some actions that intuitively seem to involve intending harm do not require intention in the strict sense. [↑](#footnote-ref-18)
19. See Moore (2008: 58) (“the objects of agent-relative obligation are not intentions *simpliciter*. They are intentions plus something, presumably something connected to the wrongful actions intentionally done”). [↑](#footnote-ref-19)
20. See Section 3. It should be noted, however, that in some cases allowing harm intentionally does seem to be wrong. An example is Guinea Pig: not treating a patient in order to learn more about the nature of the disease and thus save five other patients. See Quinn (1989: 336). [↑](#footnote-ref-20)
21. This constraint is different than the one on intending harm in two respects: its focus is on the causal relation rather than on the agent’s mental state and it does not necessarily involve harm. [↑](#footnote-ref-21)
22. See Alexander (2015: 4-5, 20). [↑](#footnote-ref-22)
23. See (regarding a similar principle) Walen (2014: 427). [↑](#footnote-ref-23)
24. Perhaps we should therefore qualify this version by adding further conditions, for example that the agent knows the relevant facts. But even when we add this condition, this version might seem too wide. [↑](#footnote-ref-24)
25. There are various possible combinations of some or all of these (and of course other) deontological constraints. One option is to combine more than one constraint as necessary for wrongdoing (such as the prohibition on *doing* harm *intentionally* or on *using* a person as a means in the form of *doing*). Another option considers the violation of several constraints as sufficient for wrongdoing, for example the view that it is wrong to do harm *or* to intend harm (when the latter includes also allowing harm) or to do harm *or* to use a person as a means (also by omission). Since the secondary agent is not doing harm in case such as Bridge and Transplant, the question, according to these views, is whether she violates the constraints on intending harm and on using a person as a means, respectively. Thus, the implications of these views are the same as those of these constraints considered independently. A unique difficulty of a combined account is that it is more likely to be too wide – more than each of the relevant constraints in itself. [↑](#footnote-ref-25)
26. Walen (2004: 341-342, 354). [↑](#footnote-ref-26)
27. Tadros (2011: 162). [↑](#footnote-ref-27)
28. These cases are thus different than Bridge, Transplant and Enemy, in which the relevant actions involve both good and bad consequences, and, since the former are more significant, there is a consequential reason in favor of the primary action. [↑](#footnote-ref-28)
29. I assume throughout that whatever the cause or the reason that led to the state of affairs in which the person is on the tracks, it does not count against him in terms of desert, for example. [↑](#footnote-ref-29)
30. Note that this question is different than another, more familiar question, namely whether we should prefer preventing a *bad state of affairs* that is due to a wrongful action, *without* preventing the action itself, or preventing another *bad* *state of affairs* that is not due to an action (assuming that there is no other difference between these options). [↑](#footnote-ref-30)
31. Accordingly, the point is not that there is always a firm intuition that there is reason in favor of moral persuasion and no reason in favor of physical prevention. For example, Alexander assumes that there is a reason to prevent a person from violating a deontological constraint also by way of a threat of punishment. See Alexander (2015: 24). [↑](#footnote-ref-31)
32. In this respect, deontology is compatible with “Government-House” morality: it does not demand that we make morality public, as far as prevention is concerned. For the common association of secrecy and consequentialism, see, for example, Williams (1985: 108). [↑](#footnote-ref-32)
33. Contrast with the following agent-neutral deontological goal: “each agent should ensure that no one kills to prevent more killing by others”: Dougherty (2013: 531). [↑](#footnote-ref-33)
34. A deontological theory might assume that only a patient-centered or only an agent-centered account is the right one, or that both are: one explaining one part of deontological morality (one moral fault) and the other explaining another. [↑](#footnote-ref-34)
35. See generally Alexander & Moore (2015: § 2.1 & 2.2). [↑](#footnote-ref-35)
36. It is also unclear if a patient-centered perspective addresses the intuitive puzzle, namely the fact that there seem to be an intuition in favor of preventing deontological wrongdoing in some cases but not in others. It might be thought that the latter cases represent the part of the deontology which is agent-centered (this is plausible, for example, regarding Enemy), but, without a clear account of the distinction between patient-centered and agent-centered accounts, in terms of the meaning, the rationale and the implications of each alternative, this is merely a speculation. [↑](#footnote-ref-36)
37. This is especially doubtful given a deontological, agent-relative, perspective. At least one version of this perspective directs agents to focus exclusively on their actions, rather than on the actions of others. This feature of common deontological constraints might be incompatible with the assumption that we should be concerned with the moral record of others. [↑](#footnote-ref-37)
38. There might be cases in which a concern for the moral record of others, even in a way that entails a reason to prevent their wrongful action, is somewhat more plausible. For example, perhaps there is a reason to prevent (deontological) wrongdoing if the secondary agent has some appropriate relation to the primary agent, for example if the secondary agent is the parent or a friend of the primary agent. Elaborating in this regard requires a determination of which types of relationships generate such a reason, for example, considering the relation between public officials (or the state) and citizens in this respect. Exploring this topic is beyond the scope of this paper, which focuses on the case in which there are no special relations. Note that if there is a reason to prevent deontological wrongdoing only if there is a special relation of the right sort, the implication is that when this is not the case, there is no reason to prevent deontological wrongdoing. [↑](#footnote-ref-38)
39. It is also unclear if the moral record argument addresses the intuitive puzzle: why there seems to be an intuition in favor of preventing deontological wrongdoing only in some cases and not in others. [↑](#footnote-ref-39)