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Why We Shouldn't Reject Conflicts: A Critique of Tadros

Abstract

Victor Tadros thinks the idea that in a conflict both sides may permissibly use force should (typically) be rejected. Thus, he thinks that two shipwrecked persons should not fight for the only available flotsam (which can only carry one person) but instead toss a coin, and that a bomber justifiably attacking an ammunition factory must not be counterattacked by the innocent bystanders he endangers. I shall argue that Tadros's claim rests on unwarranted assumptions and is also mistaken in the light of the moral reasoning that he himself offers in support of his 'means principle'.

Key words:

agent-relative considerations; conflict; justified attacker; means principle; self-preference; tactical bomber; Tadros, Victor

Justified aggressors are responsible agents who have a moral justification for posing a threat to innocent and initially non-threatening persons. A standard example of a justified aggressor, in a one to one situation, would be the tactical bomber¹ who is about to destroy an ammunition factory in a proportionate, justified military attack, full well knowing that an innocent bystander will also be killed by his attack ('collateral damage').

Intuitively it seems 'hard to believe' that the innocent bystander threatened by the tactical bomber is morally prohibited from killing him in self-defence.² Yet, a small group of philosophers do believe exactly this. One of them is Victor Tadros, whose argument in defence of this belief I shall critically examine here.

Tadros has two arguments for his claim that the civilians may not defend themselves against the justified bomber. He first claims that 'moral principles must be capable of being justified to each person' (205) and that hence moral justifications must be, 'at a fundamental level, agent neutral' (206), and he then suggests that a principle that makes it 'permissible for me to bomb the munitions plant *only on condition that [the civilians] are permitted to defend themselves against the threat*' (205) cannot be agent-neutral at such a fundamental level. The reason for this seems to be that such a principle would involve 'agent-relative considerations', an appeal to which, allegedly, comes 'close to undermining morality altogether' (206). This is his first argument.

In reply, first, while Tadros claims that moral principles must be capable of being justified to each person and insists that this 'is true for *any* plausible moral view', he

¹ Tadros talks somewhat misleadingly of the '*Strategic Bomber*'. See Tadros 2011 (page numbers in brackets refer to this text): 202. I will use the term 'tactical bomber' here.

² McMahan 1994: 275; see also McMahan 2005: 388-89. Meanwhile McMahan has changed his mind, see his 'Self-Defense Against Justified Threateners' (Draft of Feb. 2013), unpublished ms., on file with author, and available at jeffersonmcmahan.com.

gives no justification for this claim at all. He just offers a reference to a page in Scanlon's *What We Owe to Each Other* (205, fn. 8).³ However, Scanlon only apodictically states there that an 'act is right if and only if it can be justified to others' (and it is clear from the context that he means *all* others) but, like Tadros, fails to provide an argument in support of this statement.⁴ (He merely muses that utilitarians will 'presumably also believe that an act is justifiable to others just in case it satisfies [the] utilitarian formula' – yet, what we should actually 'presume' is that utilitarians like Peter Singer who think that animals have to be taken into account in the utilitarian formula do *not* thereby suggest that moral principles have to be justified to tapeworms. Ironically, Tadros points out this problem himself when at the beginning of his book he actually argues *against* 'Scanlon's test' [5].) Scanlon offers another reference, though, this time to Judith Jarvis Thomson who – of course again without argument and only in a note⁵ – pronounces that the claim in question 'is arguably a necessary truth'.⁶ Thus, instead of being offered an argument, we get served with a regress of references where one author is referring to the dogmatic declaration of another author in order to 'back up' his own dogmatic declaration. This scholastic method is disappointing.

Moreover, it should be noted that the idea that 'moral principles must be capable of being justified to each person' is not plausible at all. They need not be capable of being justified to genocidal dictators, serial killers, or child molesters, for example.⁷ It might be objected here that all that is 'meant' by Scanlon (and hence by Tadros who refers to him) is merely that for a principle to be valid even a genocidal dictator must be incapable of 'reasonably rejecting' it. However, without an *argument* to support this latter claim it would also remain mere dogmatic stipulation. Yet, Scanlon's motivation for his claims about 'reasonable rejectability' is of course precisely the 'idea that an act is right if and only if it can be justified to others' – an idea, again, whose plausibility is undermined by the examples of genocidal dictators etc.⁸ In the end, this whole idea that moral principles have to be justified to everybody (at least to everybody they affect) probably simply rests on a confusion of two senses of justification: justification in the sense of the *speech act* of *giving to* someone a justification for something, and justification in the sense of a proposition's or principle's *property of being justified for* someone, that is, of being legitimately applicable to her, him, or it. However, something can be justified *for* a

³ Tadros's footnote says mistakenly '188', but the relevant page is 189.

⁴ Scanlon 2000: 189.

⁵ Thomson 1990: 20, footnote 15.

⁶ Scanlon 2000: 189, endnote 1 (p. 393).

⁷ See Steinhoff 2009: sect. 2.3.

⁸ No doubt, egalitarians will say that this conclusion of mine is 'far too quick'. My point is that it is actually the egalitarian endorsement of 'universal justifiability' (or 'equal moral worth' or 'equal respect and concern', for that matter) that is far too quick, especially since it is mostly simply taken for granted. Moreover, I have elsewhere provided detailed criticisms of the doctrines in question and detailed analyses of the concept of justification. See Steinhoff 2000; 2009: ch. 2; and forthcoming. Since, however, neither Tadros nor Scanlon have provided any defence of those doctrines or any further analysis of the concept of justification, I need not pursue these issues further here. The ball is in their court.

tapeworm or a genocidal dictator, that is, be legitimately applicable to it or him, without anybody having to (be able to) justify it *to* it or him.⁹

In addition, it should be noted that Tadros himself, as already mentioned, in fact complains at the beginning of his book that ‘Scanlon’s test’ ‘inverts the standard order of explanation between wrongness and justification’. Consequently, Tadros sides with non-contractualists who ‘reject the significance of agreement in determining the shape of moral principles’ (5). However, if agreement is insignificant if it comes to determining the shape of moral principles, then it can hardly be the case that moral principles must be capable of being justified to each person.

Second, it remains entirely unclear in Tadros’s argument why principles that involve ‘agent-relative considerations’ (for example permissions to care more for oneself than for others and to act accordingly) should be incapable of an agent-neutral justification *at a fundamental level*. For instance, people might also – as Tadros himself seems to realize – have reason to object to being expected to die without putting up a fight at the hands of justified bombers. After all, they might ‘think that it will be intolerable for people who are attacked not to defend themselves against being killed in cases like this’ (205). Indeed, and the point can certainly be appreciated from an entirely agent-neutral perspective.

Besides, Tadros himself does allow agent-relative considerations in rescue cases (for example when a father has to decide whether to save his own or a strange child from drowning) (208-213; the drowning child example is on p. 211). There, it seems, they do not undermine morality altogether.

Against this, Tadros replies ‘that the fact that it is permissible to act on agent-relative preferences in rescue cases cannot ground the idea that they have a role to play in action’ (212). (The at first sight strange opposition between ‘rescue’ and ‘action’ is due to the fact that the rescue cases he envisions involve saving one person and *omitting* to save another, as in the drowning child case. Thus, Tadros wants to say that omitting to help someone can be justified by agent-relative considerations while acting to harm him cannot.) That might be correct. However, the fact that it is permissible to act on agent-relative preferences in rescue cases can and does ground the idea that agent-relative preferences do have a role to play in morality. Therefore, conversely, the mistaken contrary claim, namely that appeal to agent-relative preferences ‘comes close to undermining morality altogether’, cannot ground the idea that they do not also have a role to play in action. Thus, Tadros would have to provide a specific argument for the specific claim that they do *not* have such a role to play in action. However, he does not provide such an argument.

It seems, however, relatively simple to provide a counter-argument, that is, to show that agent-relative considerations do have a role to play in action. Consider this example: You are driving down a road. Through no fault of yours you are losing (full) control of your car. You will, if you do nothing and just ‘freeze’, kill ten innocent children playing on the street. If you do something (steer to the left or to the right), you will kill one of two children playing on the left and on the right, respectively. One of these two children is a stranger, the other your daughter. Do you really have to throw a coin here (which seems to be Tadros’s favourite decision method in such conflict situations [203])? Or imagine

⁹ Steinhoff 2009: sect. 2.1.

you are a soldier who can stop the approaching *génocidaires* in a way that will kill one of two innocent children as a side-effect of your proportionate and necessary attack on the *génocidaires*. Again, one child is a stranger, the other your daughter. It seems clear that you are permitted to be guided by your agent-relative considerations here, and opt for killing the strange child instead of your own. Tadros might of course simply deny that, but I doubt that many would share his intuitions. And, again, the fact remains that Tadros has not provided an *argument* for his claim that agent-relative considerations do not have a role to play in action.¹⁰

Third, and finally, it is worth anticipating already here that *exactly the same reasons* (namely the reasons underlying the ‘means principle’) that according to Tadros allow agent-relative considerations in rescue cases *also* allow them in cases like the tactical bomber or cases where two people compete for scarce, life-saving resources. Thus, his distinction between rescue and action is fictitious. I will demonstrate this below, since the point can be better discussed in the context of Tadros’s second argument.

This second argument is that ‘it is normally unjust to permit people to resolve conflicts between them by the use of force. It is unjust because it favours the strong over the weak, and the weak will have reason to object to this’ (213). However, it should be noted that there is not some group of weak persons w_{1-n} and of strong persons s_{1-x} so that whenever a person from the first group is pitted in a contest against a person from the second group the person from the first group will lose. Rather, some people who will win in fist fights will lose in gunfights, and some people who will win if wrestling with someone on land will lose if they try the same in the water. Still other people will in some situations be able to enlist the help of others and win, and in other situations they will not be able to do so and lose. Thus, there is no such group as ‘the weak’ on the one hand and ‘the strong’ on the other, and consequently, ‘to permit people to resolve conflicts between them by the use of force’ does not clearly favour anybody *ex ante*.

Moreover, the mere fact that certain principles ‘favour’ some people is not yet a reason to reject them. They would have to favour them *unjustly*. A principle for hiring concert pianists that makes such hiring decisions dependent on the virtuosity of the applicant certainly favours excellent applicants over mediocre ones, but there is nothing unjust about this. Thus, even if it *were* true that a principle that permits people to resolve conflicts between them by the use of force favours the strong over the weak, rejecting such a principle only because of that would be question-begging. One would have to provide an argument that such ‘favouring’ is unjust. In fact, however, Tadros himself actually *permits* contingent factors like strength or speed to decide over life and death, as for example in the *Bear* case: you and I are running away from a hungry bear, who will eat the first person he gets. Thus, none of us has to outrun the bear, it is sufficient to

¹⁰ Tadros (personal communication) notes that these examples are compatible with his own views since the reason why you don’t have to kill your child here is that this would require you to use your own resources as a means to prevent something very bad from happening, and this would violate the means principle. However, my point here is simply that agent-relative preferences do play a role in action; and if they do play this role precisely on the basis of Tadros’s very own means principle, then this is even *worse* for his position as far as coherence is concerned. See also the next paragraph and the discussion below.

outrun the other. Is the faster one permitted to outrun the slower one? Yes, says Tadros. But this moral permission does of course favour the strong (or fast) in this situation. To be sure, Tadros thinks that the reason for this is the means principle: if ‘morality required me to toss a coin in *Bear*’ it would ‘require me, were I to lose, to sacrifice myself to save you’ (211). But it does not matter *why* morality may sometimes favour the strong; the fact is that it sometimes does, and therefore Tadros’s cannot rely on the claim that ‘favouring the strong’ is ‘unjust’.

In that context, it is peculiar that Tadros never considers the question whether not perhaps *the strong* would have reason to object if a principle asked them to risk death by tossing a coin, as in his *Flotsam* case, where only one of two shipwrecked persons can survive since the only available flotsam can carry only one of them (203). While Tadros relies on the Scanlonian idea of what people could reasonably reject, he never mentions (not even in a footnote) Scanlon’s own treatment of the flotsam case (in Scanlon’s example the flotsam is replaced by a life jacket). To wit, Scanlon seems to tentatively support a ‘principle permitting each to struggle for the jacket’ since the alternative of drawing lots (or tossing coins) appears to be so ‘unrealistic’.¹¹ The reason why it is so unrealistic is certainly that none of the two shipwrecked people have any reason to assume that the other will actually honour the outcome – which makes the whole procedure pointless.

However, for Tadros the problem is even bigger. *Requiring* people to toss a coin in the first place and to then abide by the outcome violates Tadros’s own means principle, which is allegedly grounded in our ‘right to set ends for ourselves’ (127). After all, Tadros states that ‘if your child and my child are drowning and I can save only one, I am permitted to save my child rather than tossing a coin. The reason why is that were I required to toss a coin our moral principles would expect me to sacrifice a 50 per cent chance of saving my child for the sake of yours. And in that way my ability to set ends for myself would be greatly compromised’ (211).¹² However, it would seem that if the stronger of the two persons in *Flotsam* is required to toss a coin this would then also expect him to sacrifice a significant chance of saving his own life for the sake of the heightened survival chances of someone else. And this would greatly undermine his ability to set ends for himself.

Of course, one might go on to insist that there is a decisive difference between requiring someone not to harm other people and requiring someone to save other people, so that the first requirement is compatible with the means principle while the latter is not (if it involves significant costs for the person who would have to do the saving). As noted in footnote 10, Tadros might claim that if you are required to save another person you are required to use yourself as a means (it is *you* who is saving the person), while your abstaining from harming someone does not amount to using yourself as a means for the benefit of the other (you are not a means to not harming since for not harming it would be sufficient for you not to exist in the first place; in contrast, you can hardly save somebody

¹¹ Scanlon 2000: 196.

¹² Actually, I sacrifice (nearly) a 100 per cent probability to save my child. Tossing a coin still leaves me with a 50 per cent probability of saving my child. After the coin is tossed, I either have (if I do what the tossing of the coin requires) a 0 per cent or a 100 per cent probability to save my child.

if you do not exist). However, there are two problems with this line of defence. First, it is counter-intuitive. To demonstrate this, let us vary the drowning child case. In the varied case father A is close to drowning with his child at point x in the ocean at night while father B is close to drowning with his child at point y. The coast guard ship approaches, and father A knows that the ship can only save one of the two families and will in fact save the one whose father screams “Help” the loudest; he (a famous tenor) also knows that that would be him. Both fathers scream. I submit that it is entirely implausible to claim that father A is required to decide the life or death of him and his son by tossing a coin. He is justified – in fact, even *obliged* on grounds of his special responsibility towards his son – to use his superior voice to save his son (whether the other father has “reason to object” or not). By screaming, however, he will *harm* the other father and child, he will cause them to drown.¹³ To be sure, Tadros might simply bite the bullet and claim that the father *is* required to let the coin-toss decide. However, again, I doubt that many would follow him here, and, also again, he has most certainly not provided any *argument* that could support such a claim.

Moreover, in the relevant quote two paragraphs ago, Tadros rejected the idea of tossing a coin in the drowning child case for the official reason that the person would then be required to *sacrifice* his interests for someone else. Yet, it is obvious that one can sacrifice one’s interests not just by *acts* but also by *omissions*. Tadros, in contrast, tends to overemphasize the difference.

Let us have a closer look at this. Tadros provides the following example (let us call it *Bear 2*):

I could save you from a bear that is chasing you by creating an explosion. But the explosion would start a landslide that would crush my arm. It seems implausible to suppose that I am required to rescue you by creating the explosion. And that is so even though ... I am only harmed as a side effect of the action which rescues you. ... A principle that prevents me from intentionally harming others prevents me from setting the harm of others as my end. I am not entitled to treat others as an object in this way. A principle that requires me to save others, even at great cost to myself, makes me an object of their end. It would require me to bring about my own downfall. (212)

A first thing to note is that of course we are in certain situations entitled to set the harms of others as our ends, for example in cases of self-defence. This is not even controversial between Tadros and me. Controversial, rather, is whether the civilians in the tactical bomber example may defend themselves against the bomber and whether the *Flotsam* case is a case where *both* sailors are allowed to use force to save their lives. This question, however, cannot be decided under an appeal to a principle prohibiting setting the harm of others as our end. As self-defence (and necessity) justifications show, such a principle is either wrong or does not apply to certain self-defence or necessity cases. (Note, by the way, that if the *Flotsam* case is really strictly symmetrical, then there are only two options: either *both* sailors are attacking – violating the rights of – the other by

¹³ Tadros gives the example of his “rival company” that “causes your business to go under” and notes that it “is natural to say that my business harmed you.” Tadros 2011, p. 215. However, if making your business go under counts as harming you, then making *you* go under *literally* should of course also count as harming you.

using force to secure the flotsam for themselves, or *both* are *not* attacking the other by using force to secure the flotsam for themselves. In the former case it would be mysterious why then both of them should not be justified in defending themselves against the attack of the opponent – and Tadros does not provide any explanation. In the latter case, in contrast, we would be dealing with a case of mere *competition*, and competitive behaviour – for example in a market economy – can be justified even if it harms another person, as Tadros himself admits.¹⁴ Tadros might of course think that this is different if the competitive behaviour makes use of *force*, but if so, he would again have to provide an argument for such a claim, which he does not. To say that the “weak” would have “reason to object” does not suffice, since it is unclear why the economically weak – or those with a thin voice – do not also have “reason to object” if their competitors outbid or outshout them.)

Second, as one can sacrifice oneself not only by actions but also by omissions, one can also bring about one’s own downfall by omissions, not only by actions. To illustrate this, let us vary Tadros’s example from the last quote. Again the bear is chasing you. In the new scenario (*Bear 3*), however, not me, but my father can save your life and as a consequence crush my arm by creating an explosion. He indeed would do exactly that unless he saw me standing where I am in fact standing. If I keep still, he will not see me. If I wave my arms, he will see me. Yet, here no less than in the original case it seems implausible to suppose that I am required to stand still; it does, however, seem very plausible to say that a moral principle that indeed required me to stand still would require me to sacrifice myself and bring about my own (partial) downfall. It would, it seems, require me to adopt the other person’s end of survival as my own.

But if the impermissibility (extreme circumstances aside) of requiring a person to adopt the ends of strangers as her own even at a great cost to herself is, as it indeed seems to be on Tadros’s account (127 and 212), the underlying reason that makes it wrong to use people as means, then this reason is also operative in our latest version of the bear case – although I do not use myself *literally* as a means for the rescue of the other person.¹⁵

This line of reasoning can be applied to the tactical bomber example and answer a question Tadros poses to authors who claim that the civilians may fight back. To see this, consider Tadros’s following statement:

Where a person is harmed as a side effect of the pursuit of the good, the person harmed is not compelled to take the good as her end. ... She is not required to

¹⁴ Ibid.: 214-215.

¹⁵ Of course, Tadros might not share my intuitions about *Bear 3*. That would be fine. It should be noted, however, that Tadros does not provide any *argument* that would show that my take on *Bear 3* or similar cases is mistaken. Thus, those who do not share his intuitions about the *Flotsam* case or the *Tactical Bomber* case already (and I doubt that many will) have not been offered a reason to change their own intuitions. Rather, his particular way of applying terms like ‘adopting the lives of those who are rescued as one’s own goal’, ‘bringing about one’s own downfall’, or ‘sacrifice’, so that, for example, in *Bear 2* I would sacrifice my arm when I rescue the stranger while in *Bear 3*, allegedly, I would not sacrifice it although I desist from saving it for the stranger’s sake, would appear to be arbitrary and question-begging.

expend her life for the sake of the greater good if she is harmed as a side effect. Although her ability to set goals for herself may equally be eroded through this action she is not compelled to adopt the lives of those who are rescued as her own goal. (136-37)

That is entirely correct. When a person is *harmed or killed as a side-effect* of the bomber's mission to save others by destroying the ammunition factory, the person harmed or killed is not compelled to adopt the lives of those who are rescued as her own goal. However, if the person *is required not to fight back* (that requirement is certainly not a 'side-effect'), she *is* compelled to adopt the lives of those who are rescued as her own goal, she *is* required to expend her life for the sake of the greater good. For *why* should she not fight back? To simply answer that she is not entitled to set the harm of the bombers as her end is, as we already saw above, question-begging and also wrong: it is not correct that in cases of self-defence we must not set the harm of the attackers as our end.¹⁶ So it seems she should not fight back for the sake of those who are rescued. Unless she does adopt the lives of those who are rescued as her own goal (or the lives of the bombers, for that matter), there is no good reason for her not to fight back (as there is no good reason in *Bear 3* for me to not wave my arms). The same is true for the stronger person in the *Flotsam* example, who by the requirement of tossing a coin is required to drastically diminish her own survival chances for the sake of somebody else.

Thus, when Tadros asks: 'What reason do we have to think that your interest in your own life is insufficiently powerful to ground a prohibition on my killing you, but sufficiently powerful to ground a permission on your preventing me from killing you?' (205), the answer suggested by the normative reasoning underlying his very own means principle is: 'By killing me you do not require me to adopt your goals, but by requiring me not to fight back you do.'

(Since I have encountered this misunderstanding, let me clarify that I am certainly not arguing here, nor have I said anything that would imply, that you can *kill*, whether intentionally or as a side-effect, large numbers of innocent and non-threatening people as a means to save your own life. Rather, I argue that the civilians can kill the attacking and thus threatening bombers in self-defence and thereby *prevent* greater numbers of innocent people *from being saved* by the bombers – just as I am allowed in *Bear 3* to prevent my father from saving the stranger at the expense of my arm.)

At this point someone might point out that in Tadros's bomber example the number of innocent people saved is ten times higher than the number of innocent bystanders killed. But while that makes it permissible for the bomber to go through with the bombing, the question is why it should make it impermissible for the civilians to defend themselves. To simply *insist* that the difference in numbers also makes *this* moral difference is simply question-begging, and in trying to explain 'Why We Should (Typically) Reject Conflicts' (202) Tadros himself nowhere appeals in the relevant sense to numbers. His argument is perfectly general, as the one to one situation of the *Flotsam* case shows.

Moreover, Tadros intuitions on *what* numbers allow a violation of the means principle suggest that the means principle as conceived by him is extremely strict: 'I am required to give up my life if that is the only way of saving the lives of one million. Your are

¹⁶ Some doctrine of double effect accounts of self-defence might deny this, of course, but Tadros himself does not express any sympathy for such accounts.

permitted to kill me in order to save one million.’ (211) (By ‘in order’ he clearly means ‘as a means to’, as opposed to ‘as a side-effect of’.) The choice of numbers (‘one million’) suggests that people cannot be required to sacrifice their own life only to save ten other lives. But that is exactly what he does require in the tactical bomber case.

Thus, I conclude that Tadros has not provided any convincing argument against the view that the civilians are not permitted to fight the tactical bomber. In fact, the normative reasoning underlying his very own means principle seems to suggest that they *are* permitted to fight back.¹⁷

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¹⁷ I thank Victor Tadros for helpful written comments on a first draft of this paper.