

PART ONE

**DOES THE DARK KNIGHT
ALWAYS DO RIGHT?**

COPYRIGHTED MATERIAL



1

WHY DOESN'T BATMAN KILL THE JOKER?

Mark D. White

Meet the Joker

In the last several decades, the Joker has transformed himself from the Clown Prince of Crime to a heinous murderer without rival. Most notoriously, he killed the second Robin, Jason Todd, beating him to a bloody pulp before blowing him up. He shot and killed Lieutenant Sarah Essen, Commissioner Jim Gordon's second wife—in front of dozens of infants, no less, whom he threatened to kill in order to lure Essen to him. Years earlier, the Joker shot Barbara Gordon—Jim Gordon's adopted daughter and the former Batgirl—in the spine, paralyzing her from the waist down, and then tormented Jim with pictures of her lying prone, naked and bleeding. And let us not forget countless ordinary citizens of Gotham City—the Joker even wiped out all of his own henchmen recently!¹

Every time the Joker breaks out of Arkham Asylum, he commits depraved crimes—the type that philosopher Joel

Feinberg (1926–2004) calls “sick! sick! sick!” or “triple-sick.”² Of course Batman inevitably catches the Joker and puts him back through the “revolving door” at Arkham.³ Batman knows that the Joker will escape, and that he will likely kill again unless the Caped Crusader can prevent it—which, obviously, he can’t always do.

So why doesn’t Batman just kill the Joker? Think of all the lives it would save! Better yet, think of all the lives it would have saved had he done the deed years ago, just among Batman’s closest friends and partners. Commissioner Gordon has contemplated killing the Joker himself on several occasions, and Batman is usually the one to stop him.⁴ In a terrifically revealing scene during the *Hush* storyline, Batman is *this* close to offing the Joker, and it is Jim who stops him. Batman asks Jim, “How many more lives are we going to let him ruin?” to which Jim replies, “I don’t care. I won’t let him ruin yours.”⁵

So though he may have considered it on many occasions, Batman has never killed the Joker, decidedly his most homicidal enemy. Of course, with the exception of his very earliest cases, Batman has refused to kill at all, usually saying that if he kills, it would make him as bad as the criminals he is sworn to fight. But that seems almost selfish—someone could very well say, “Hey—it’s not about you, Bats!” Or . . . is it? Should it be? Usually we think a person is obligated to do something that would benefit many people, but what if that “something” is committing murder? Which is more important, doing good—or not doing wrong? (Ugh—Alfred, we need some aspirin here.)

In this chapter, we’ll consider the ethics of killing to prevent future killings, exactly the problem Batman faces when he balances his personal moral code against the countless lives that he could save. In fact, this issue has been raised many times, very recently by both the villain Hush and Jason Todd himself (returned from the dead), and earlier by Jean-Paul Valley (the “Knightfall” Batman), none of whom have the strict moral code that Batman adheres to.⁶ I’ll do this by introducing some

famous philosophical thought experiments that let us trace through the ethics of a situation by whittling it down to its most basic elements, just like Batman solving a cleverly plotted crime. (Well, not quite, but you have to let a guy dream!)

Is Batman a Utilitarian or Deontologist? (Or None of the Above?)

The argument in favor of killing the Joker is fairly straightforward—if Batman kills the Joker, he would prevent all the murders the Joker would otherwise commit in the future. This rationale is typical of *utilitarianism*, a system of ethics that requires us to maximize the total happiness or well-being resulting from our actions.⁷ Saving many lives at the cost of just one would represent a net increase in well-being or utility, and while it would certainly be a tragic choice, utilitarians would generally endorse it. (We could add more considerations, such as satisfying the quest for vengeance on the part of the families of his past victims, or the unhappiness it brings to some people when *anyone* is killed, but let's keep things simple—for now.)

Superheroes, however, generally are not utilitarians. Sure, they like happiness and well-being as much as the ordinary person, but there are certain things they will not do to achieve them. Of course, criminals know this and use it to their advantage: after all, why do you think criminals take innocent people as hostages? Superheroes—just like police in the real world—normally won't risk innocent lives to apprehend a villain, even if it means preventing the villain from killing more people later. More generally, most superheroes will not kill, even to save many other lives.⁸

But why do they refuse to kill in these instances? The utilitarian would not understand such talk. “You're allowing many more people to die because *you* don't want to kill one?” In fact, that's almost exactly what Jason Todd and Hush recently said to Batman. Hush asked, “How many lives do you think you've

cost, how many families have you ruined, by allowing the Joker to live? . . . And why? Because of your duty? Your sense of justice?” Jason Todd put a more personal spin on it (of course): “Bruce, I forgive you for not saving me. But why . . . why on God’s Earth—is he still alive? . . . Ignoring what he’s done in the past. Blindly, stupidly, disregarding the entire graveyards he’s filled, the thousands who have suffered, . . . the friends he’s crippled, . . . I thought . . . I thought killing me—that I’d be the last person you’d ever let him hurt.”⁹ Batman’s standard response has always been that if he ever kills, it will make him as bad as the criminals he fights, or that he will be crossing a line from which he would never return—though he is very open about his strong desire to kill the Joker.¹⁰

While utilitarians would generally endorse killing one person to prevent killing more, members of the school of ethics known as *deontology* would not.¹¹ Deontologists judge the morality of an act based on features intrinsic to the act itself, regardless of the consequences stemming from the act. To deontologists, the ends never justify the means, but rather the means must be justifiable on their own merits. So the fact that the killing would prevent future killings is irrelevant—the only relevant factor is that killing is wrong, period. But even for the strictest deontologist, there are exceptions—for instance, killing in self-defense would generally be allowed by deontologists. So killing is fine, but only for the right reasons? Might killing a homicidal maniac be just one of those reasons? We’ll see, but first we have to take a ride on a trolley. . . .

To the Bat-Trolley, Professor Thomson!

One of many classic moral dilemmas debated by philosophers is the “trolley problem,” introduced by Philippa Foot and elaborated upon by Judith Jarvis Thomson.¹² Imagine that a trolley car is going down a track. Further down the track are five people who do not hear the trolley and who will not be

able to get out of the way. Unfortunately, there isn't enough time to stop the trolley before it hits and kills them. The only way to avoid killing these five people is to switch the trolley to another track. But, unfortunately, there is one person standing on that track, also too close for the trolley to stop before killing him. Now imagine that there is a bystander standing by the track switch who must make a choice: do nothing, which leads to the death of the five people on the current track, or act to divert the trolley to the other track, which leads to the death of the single person.

Let's call the person in control Bruce. Is Bruce morally allowed to divert the trolley to the second track or not? If he is, can we also say that in fact he is *required* to do it? Thomson takes the middle road here, concluding that Bruce is permitted—but not required—to divert the trolley. A typical utilitarian would require Bruce to throw the switch and save more lives, while a deontologist would have problems with Bruce's acting to take a life (rather than allowing five to die through inaction). Thomson's answer seems to combine the concerns of both utilitarianism and deontology. Bruce is allowed (maybe even encouraged) to divert the train and kill one person rather than five, but it's valid also for Bruce to have problems with doing this himself.

One way to state the difference between the utilitarian and the deontological approaches is to look at the types of rules they both prescribe. Utilitarianism results in *agent-neutral* rules, such as "Maximize well-being," and utilitarians couldn't care less who it is that will be following the rule. Everybody has to act so as to maximize well-being, and there is no reason or excuse for any one person to say "I don't want to." By contrast, deontology deals with *agent-specific* rules—when deontologists say "Do not kill," they mean "*You* do not kill," even if there are other reasons that make it look like a good idea. This is simply a different way of contrasting the utilitarian's emphasis on good outcomes with the deontologist's focus on right action.

While throwing the switch to kill the one rather than five may be good, it may not be right (because of what that specific person has to do).¹³

Hush Will Love This Next Story . . .

Thomson likes to compare the trolley situation with a story involving a surgeon with five patients, each of whom is dying from failure of a different organ and could be saved by a transplant. Since there are no organs available through normal channels, the surgeon considers drugging one of his (healthy) colleagues and removing his organs to use for the transplants.¹⁴ By doing so, he would kill his colleague, but he would save his five patients.

With the possible exception of our bandaged and demented Dr. Hush, few people would endorse such a drastic plan (least of all Dr. Thomas Wayne, bless his soul). You can see where I'm going with this (Batman fans are so smart)—“What is the difference between the bystander in the trolley case and the surgeon in the transplant case?” In both cases a person can do nothing, and let five people die, or take an action that kills one but saves the five. Thomson, and many philosophers after her, have struggled with these questions, and there is no definitive answer. Most people will agree that throwing the trolley switch is justified, and also that the surgeon's actions are not, but we have a very difficult time saying precisely *why* we feel that way—and that includes philosophers!

Top Ten Reasons the Batmobile Is Not a Trolley . . .

How does Batman's situation compare to the trolley story (or the transplant story)? What factors relevant to Batman and the Joker are missing from the two classic philosophical dilemmas? And what does Batman's refusal to “do the deed” say about him?

One obvious difference between the two cases described by Thomson and the case of Batman and the Joker is that in Thomson's cases, the five people who will be killed if the trolley is not diverted, and the one person who will be killed if it is, are assumed to be morally equivalent. In other words, there is no moral difference between any of these people in terms of how they should be treated, what rights they have, and so on. All the people on the tracks in the trolley case are moral "innocents," as are the patients and the colleague in the transplant case.

Does this matter? Thomson introduces several modifications to suggest that it does. What if the five people on the main track collapsed there drunk early that morning, and the one person on the other track is a repairman performing track maintenance for the railroad? The repairman has a right to be there, while the five drunkards do not. Would this make us more comfortable about pulling the switch? What if the five transplant patients were in their desperate condition because of their own negligence regarding their health, and the colleague was very careful to take care of himself? We might say that in both of these cases the five persons are in their predicament due to their own (bad) choices, and they must take full responsibility for the consequences. And furthermore, their lives should not be saved at the expense of the one person in both situations who has taken responsibility for himself.

But the Joker case is precisely the opposite: he is the single man on the alternate track or the operating table, and his victims (presumably innocent) are the other five people. So following the logic above, there would be a presumption in *favor* of killing the Joker. After all, why should his victims sacrifice their lives so that *he* should live—especially if he lives to kill innocent people?

This case is different from the original philosophical cases in another way that involves moral differences between the parties. Unlike the classic trolley and transplant cases, the Joker actually *puts* the others in danger. In terms of the trolley case, it

would be as if the Joker tied the five people to the main track, then stood on the other track to see what Batman would do! (Talk about a game of chicken!) If we were inclined to kill one to save five, that inclination would only be strengthened by knowing that the five were in danger *because* of the one!

We might say that the one person on the alternate track has the *right* not to be killed, even to save the other five. While it would be noble for him to make this sacrifice, most philosophers (aside from utilitarians) would deny that he has such an obligation. This is even clearer in the transplant case. The surgeon could certainly ask his colleague if he would be willing to give up his organs (and his life) to save the five patients, but we could hardly tell him that he *had* to. Once again, the difference with the Joker is that he put the others in danger, and it would be absurd—in other words, appropriate for one such as the Joker—to say, “Sure I’m going to kill these people, but *I* should not be killed to save *them*!”

The recognition of the Joker’s role in creating the situation also casts light on the responsibility Batman faces. If we said to the Caped Crusader, as many have, “If you don’t kill the Joker, the deaths of all his future victims will be on your hands,” he could very well answer, “No, the deaths that the Joker causes are his responsibility and his responsibility alone. I am responsible only for the deaths I cause.”¹⁵ This is another way to look at the agent-centered rule we discussed earlier: the bystander in the trolley example could very well say, “I did not cause the trolley to endanger the five lives, but I would be causing the death of one if I diverted the trolley.”¹⁶

“I Want My Lawyer! Oh, That’s Right, I Killed Him Too”

What the surgeon does in the transplant case is clearly illegal. However, if the bystander switches the trolley from its track, knowingly causing one person’s death to save five others, the

legality of his action is not clear. Of course, the legalities of the Batman/Joker case are a bit simpler. Let's assume (for the time being) that Batman has the same legal rights and obligations as a police officer. Under what circumstances would a police officer be allowed to kill the Joker (aside from self-defense)? If the Joker was just about to murder someone, then the police officer would be justified—legally—in killing him (if mere incapacitation is impossible and deadly force is the only effective choice). So if Batman came upon the Joker about to kill an innocent person, and the only way to save the person was to kill the Joker, Batman would be justified in doing that. (Knowing Batman, though, I imagine he would still find another way.)

Let's make the case a bit tougher—say Batman finds the Joker just *after* he's killed someone. Batman (or a police officer) couldn't do anything to save that person, but if he kills the Joker, he'll save untold others whom the Joker will probably kill. *Probably?* Well, let's be fair now—we don't *know* that the Joker will kill any more people. "This is my last one, Batty, I promise!" The Joker has certainly claimed to have reformed in the past; maybe this time it's for real. Or maybe the Joker will die by natural causes tomorrow, never to kill again. The fact is, we can't be sure that he will kill again, so we can't be sure we will be saving *any* lives by taking his.

Given this fact, it's as if we changed the trolley example like so: a dense fog is obscuring the view on the main track, but we can see the sole person on the other track. We don't know if anyone is in danger on the main track, but we know that *sometimes* there are people there. What do we do? Or, to modify the transplant case, the surgeon doesn't have any patients who need organs right now, but he guesses that there will be some tomorrow, by which time his healthy colleague will be on vacation. Should he still sacrifice his colleague today?

I imagine that none of us would be comfortable, in either case, choosing to kill the one to avoid the *chance* of killing others. It's one thing to hold the Joker accountable for the

people he has killed, and this may include the death penalty (if he weren't the poster boy for the insanity defense), but another thing entirely when we consider the people he might kill in the future. Admittedly, he has a well-established pattern, and he may even say he's going to kill more in the future. What if we have every reason—as Batman clearly does—to believe him? Can we deal with him *before* he kills again?

Punishing people before they commit crimes has been called *prepunishment* by philosophers, and the concept was made famous by Philip K. Dick's 1956 short story "The Minority Report," more recently a movie directed by Steven Spielberg and starring Tom Cruise.¹⁷ While Batman killing the Joker would not literally be punishment—since he has no legal authority to impose such a sentence—we can still consider whether or not prepunishment is morally acceptable, especially in this case. Some would say that if the Joker intends to kill again, and makes clear statements to that effect, then there is no moral difficulty with prepunishing him. (There may, however, be an informational or *epistemic* problem—why would he confess to his future crime if he knew he would be killed before he had a chance to commit it?) But others say that even if he says he will kill again, he still has the choice to change his mind, and it is out of respect for this capacity to make ethical choices that we should not prepunish people.¹⁸ Prepunishment may trigger the panic button in all of us, but in an age in which very many can be killed very easily by very few, we may be facing this issue before long.¹⁹

So, Case Closed—Right?

So then, we're all convinced that Batman was right not to have killed the Joker.

What? We're not?

Well, *of course* not. Look at it this way—I consider myself a strict deontologist, and even I have to admit that maybe Batman should have killed the Joker. (I hope none of my

colleagues in the North American Kant Society reads this—I'll be on punch-and-pretzels duty for a year!) As much as we deontologists say the right always comes before the good, an incredible amount of good would have been done if the Joker's life had been ended years ago. Compare this issue with the recent torture debates—even those who are wholeheartedly opposed to the use of torture under any circumstances must have some reservations when thousands or millions of innocent lives are at stake.

Luckily, literature—and by “literature” I mean comic books—provides us a way to discuss issues like these without having to experience them. We don't have to trick people into standing in front of a runaway trolley, and we don't have to have a real-life Batman and Joker. That's what thought experiments are for—they let us play through an imaginary scenario and imagine what we should or shouldn't do. Unfortunately for Batman, but luckily for Batman fans, the Joker is not imaginary to him, and I'm sure he will struggle with this issue for many years to come.

NOTES

1. Jason Todd was killed in *A Death in the Family* (1988); Lieutenant Essen was killed in *No Man's Land Vol. 5* (2001); Barbara Gordon was shot in *The Killing Joke* (1988); and most of the Joker's henchmen were killed in *Batman #663* (April 2007).
2. Joel Feinberg, “Evil,” in *Problems at the Roots of Law* (Oxford: Oxford Univ. Press, 2003), 125–192.
3. The Joker is the poster child for the insanity defense, so he never receives the death penalty.
4. For instance, after Lieutenant Essen was killed at the end of *No Man's Land*.
5. *Batman #614* (June 2003), included in *Hush Volume Two* (2003). Unfortunately, I don't have room in this chapter to quote from Batman's internal dialogue from this issue as much as I would like, but it's brilliant writing, courtesy of Jeph Loeb.
6. See Hush in *Gotham Knights #74* (April 2006), Jason Todd in *Batman #650* (April 2006), and Jean-Paul Valley in *Robin #7* (June 1994).
7. Utilitarianism is usually traced back to Jeremy Bentham's *The Principles of Morals and Legislation* (1781; Buffalo, NY: Prometheus Books edition, 1988).
8. Wonder Woman's recent execution of Max Lord in the *Sacrifice* storyline, in order to end his psychic hold on Superman, is a significant exception and was treated as such in

the stories that followed. (See *Wonder Woman* #219, September 2005, also collected in *Superman: Sacrifice*, 2006.)

9. See note 6 for sources.

10. In the scene with Jason Todd he explains that “all I have ever wanted to do is kill him. . . . I want him dead—maybe more than I’ve ever wanted anything.” In *The Man Who Laughed* (2005), as he holds the Joker over the poisoned Gotham City reservoir, Batman thinks to himself, “This water is filled with enough poison to kill thousands. It would be so easy to just let him fall into it. So many are already dead because of this man . . . [but] I can’t.”

11. The most famous deontologist is Immanuel Kant, whose seminal ethical work is his *Grounding for the Metaphysics of Morals* (1785; Indianapolis, IN: Hackett Publishing Company, 1993).

12. For Foot’s original treatment, see her essay “The Problem of Abortion and the Doctrine of the Double Effect,” in her book *Virtues and Vices* (Oxford: Clarendon Press, 2002), 19–32. For Thomson’s version, see “The Trolley Problem,” reprinted in her book *Rights, Restitution, & Risk*, edited by William Parent (Cambridge: Harvard Univ. Press, 1986), 94–116; and also chapter 7 in *The Realm of Rights* (Cambridge: Harvard Univ. Press, 1990).

13. For an excellent treatment of agent-relative rules, see Samuel Scheffler’s *The Rejection of Consequentialism*, rev. ed. (Oxford: Oxford Univ. Press: 1990).

14. Never mind the astronomical odds against one of his colleagues being a donor match for all five patients!

15. In *Batman* #614, he thinks, “I cannot . . . I will not . . . accept any responsibility . . . for the Joker.” But then he adds, “except that I should have killed him long ago.” And finally, after contemplating that the Joker may kill someone close to him again, “he dies tonight by my hand,” engaging in a graphic fantasy of several ways he could kill him. Makes you wonder what would have happened if Jim had not been there to stop him. . . .

16. This also brings in the controversial ethical distinction between causing a death through action and causing a death through inaction. Merely allowing a death is usually considered less problematic than directly causing a death—consider Nightwing’s choice not to stop Tarantula from killing his archnemesis, Blockbuster, who also happened to pledge to kill many more people in the future (*Nightwing* #93, July 2004). Interestingly, Dick actually did kill the Joker once, although Batman revived him (*Joker: Last Laugh* #6, January 2002).

17. You can find the short story in Philip K. Dick’s collection *The Minority Report* (New York: Citadel, 2002). Tom Cruise, in case you don’t know, is mainly known for being married to actress Katie Holmes from *Batman Begins*. (To my knowledge, he’s done nothing else worth mentioning.)

18. Christopher New argues for prepunishment in “Time and Punishment,” *Analysis* 52, no. 1 (1992): 35–40, and Saul Smilansky argues against it (and New) in “The Time to Punish,” *Analysis* 54, no. 1 (1994): 50–53. New responds to Smilansky in “Punishing Times: A Reply to Smilansky,” *Analysis* 55 no. 1 (1995): 60–62.

19. Of course, Wonder Woman already faced this question with regard to Max Lord, who promised to force Superman to kill, and she came to the opposite conclusion. (Apparently she had read New’s papers.) But ironically, it was she who stopped Batman from killing Alex Luthor (who nearly killed Nightwing) in *Infinite Crisis* #7 (June 2006). Even more ironically, who eventually killed Alex at the end of the same issue? The Joker.