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Criminal Responsibility

This entry discusses the concept and attribution of criminal responsibility, the differences between criminal responsibility and moral responsibility, theoretical skepticism about the fairness of holding people responsible for their criminal behavior, and excuses in criminal law.

Murder, Manslaughter, Justification, and Excuse

Assume that your next-door neighbor, 25-year-old Bonnie, has been found dead. The police rule out suicide because there are multiple bullet wounds to Bonnie's head and chest. Somebody clearly killed her. Even if Bonnie was a bad person, most people think that whoever killed her needs to be punished. But why do they think this? And what, if anything, might change their minds?

Consider two further assumptions: Clyde was Bonnie's boyfriend, and an hour after arriving at her house, Clyde pulled out his gun, which he legally possessed, fired at Bonnie several times, and fled. Given these two additional assumptions, there are eight scenarios that might fill the gap between Clyde's arrival at Bonnie's house and the shooting.

Scenario 1: Bonnie broke up with Clyde, which enraged him.

Scenario 2: After drinking a lot of vodka, Bonnie and Clyde got into a heated political argument.

Scenario 3: After drinking a lot of vodka, Bonnie and Clyde got into a heated political argument. Clyde got so drunk that he blacked out. He genuinely does not remember either shooting Bonnie or fleeing her house.

Scenario 4: Clyde was a serial murderer. Bonnie was his 10th victim.

Scenario 5: Clyde found his conversation with Bonnie to be more boring than usual, so he decided that she no longer deserved to live.

Scenario 6: Clyde really did not want to kill Bonnie, but after a heated political argument, she pointed a gun at him. While she was firing at him, Clyde, trembling with fear, fired back.

Scenario 7: For the past year, Clyde periodically experienced paranoid delusions. At the time that Clyde shot Bonnie, he thought that she was an evil demon from another solar system who was planning to kill and eat little children.

Scenario 8: Clyde did not realize that death is permanent. He thought that Bonnie would—like Phil in the movie *Groundhog Day*—simply return from the dead the next day.

These scenarios can be grouped into five categories:

1. *Murder:* Scenario 1 (rage), Scenario 2 (drunken rage), Scenario 4 (psychopathic malice), and Scenario 5 (psychopathic indifference)
2. *Manslaughter:* Scenario 3 (blackout)
3. *Justified:* Scenario 6 (self-defense)
4. *Excused on the basis of insanity:* Scenario 7 (paranoid delusion)
5. *Excused on the basis of severe intellectual disability:* Scenario 8 (ignorance about death)

All five categories warrant different results. Category 1 warrants the highest sentencing range (long-term imprisonment or, in some states, the death penalty), Category 2 warrants a lower sentencing range, Category 3 warrants acquittal followed by release, and Categories 4 and 5 warrant acquittal followed by civil commitment.

Clyde is clearly *causally* responsible in all eight situations. But the fundamental question is whether he is *criminally* responsible. This latter kind of responsibility determination depends on *why* Clyde shot Bonnie, the psychological and external circumstances surrounding the shooting.

Responsibility Skepticism

The discussion so far has concerned only criminal responsibility, not moral responsibility. While the two kinds of responsibility are similar, they are not identical. A person (*P*) is morally responsible

for his or her action (*A*) when four conditions or elements are satisfied:

> *Element 1: P* knew, or had a threshold capacity to know, both *A*'s nature (what he or she was doing) and *A*'s moral status (whether it was right or wrong).
>
> *Element 2: P* had control, or a threshold capacity for control, over his or her *A*-ing.
>
> *Element 3: P* could have refrained from *A*-ing.
>
> *Element 4:* There is an absence of circumstances excusing *P* for *A*-ing—that is, an absence of circumstances making it unreasonable to expect *P* to have refrained from *A*-ing.

All four elements are satisfied in Scenarios 1–6 and therefore Categories 1, 2, and 3. (In Scenario 6, Clyde satisfied all four elements and is therefore *morally* responsible for killing Bonnie, but he is not *criminally* responsible because his action was justified under the circumstances.)

While most people accept the reality of moral responsibility—that is, they believe that Clyde is not only criminally responsible but also morally blameworthy for Bonnie's death in Categories 1 and 2—some philosophers, the *responsibility skeptics*, reject it. According to responsibility skeptics, moral responsibility is nothing more than a seductive, widespread illusion.

Responsibility skeptics deny the metaphysical possibility of moral responsibility on the basis of the powerful four-part *skeptical argument*. Part 1 of the skeptical argument says that there are only two logically possible alternatives: determinism and indeterminism. *Determinism* is the theory that the laws of nature plus initial conditions of the universe have necessitated every event, including every human's action. Conversely, *indeterminism* is the negation of determinism. If the world is indeterministic, then there are at least some events that are not determined; either they have no cause at all or they have a cause that does not necessitate—that is, *uniquely* determine or guarantee—them.

Part 2 says that determinism is incompatible with moral responsibility because it is incompatible with two conditions that are required for the latter: (a) the ability to do otherwise (i.e., the ability to have performed a different action) and (b) ultimate self-causation (i.e., being the first or ultimate uncaused cause of one's actions). If determinism is true, then, despite appearances, individuals must always choose, decide, or act as they do, and they are never the ultimate—uncaused—causes of their actions. Instead, they are nothing more than *puppets* on the *strings* of whatever created the universe, whether the Big Bang or an eternal deity.

Part 3 says that indeterminism is equally incompatible with moral responsibility because indeterminism is not *self*-determinism. An *un*determined choice, decision, or action is not a *self*-determined choice, decision, or action.

Part 4 wraps up the skeptical argument. Because determinism and indeterminism are the only two logically possible options, and because neither is compatible with moral responsibility, moral responsibility is logically impossible.

While one may have a strong intuition that Clyde *is* genuinely morally responsible in Scenarios 1–6—and genuinely morally *blameworthy* in Scenarios 1–5—the skeptical argument suggests that this intuition is simply wrong. Again, genuine moral responsibility or blameworthiness is equally incompatible with the only two logical possibilities, determinism and indeterminism.

What implications, then, for *criminal* responsibility? If Clyde is not genuinely *morally* responsible for killing Bonnie, then it seems grossly unfair to hold him *criminally* responsible—that is, to blame and punish him—in *any* scenario. Clyde is just as nonresponsible—and therefore should be just as immune from blame and punishment—in Scenarios 1–5 as he is in Scenarios 7 and 8.

This last point explains why some responsibility skeptics repudiate criminal punishment altogether. In place of *retributive justice* (i.e., intentionally inflicting suffering, hardship, or deprivation in response to prior criminal misconduct), they argue that the aim should be only for *restorative justice* (i.e., compensation by criminals to their victims, or victims' families, for the harms that they inflicted upon them). Their reason is that in addition to being more humane, restorative justice does not, like retributive justice, presuppose the highly contested concept of genuine moral responsibility. Instead, it assumes only causal responsibility plus an absence of force, coercion, or fraud.

Other responsibility skeptics, however, support *consequentialist* and *expressivist* justifications of criminal punishment. They suggest that the unfairness of pretending that criminals genuinely deserve blame and punishment is outweighed by society's need both to protect itself from them—through incapacitation, specific deterrence, and general deterrence—and to express its values through censure and stigmatization.

Social Causation

As noted earlier, discussions of moral responsibility and criminal responsibility tend to focus on the individual and his or her choices. For example, in evaluating Clyde, most would first determine which of the eight scenarios occurred, dig deeper into the circumstances and Clyde's psychology, and use this knowledge to arrive at a judgment about the extent, if any, to which Clyde was blameworthy for Bonnie's death.

What these analyses typically leave out are the external, mostly social, factors that (a) helped shape Clyde's psychology generally and (b) combined with this psychology to cause Clyde's violent behavior. Nobody lives in a vacuum; who we are—especially how we think and act—is largely, if not primarily, determined by environmental factors, including upbringing and culture (i.e., education, peers, social media, entertainment, and current events). The self is not an atom. It may have started that way (at conception or birth), but it increasingly and inexorably becomes part of a much larger molecule. While it retains its own distinct identity, personality, and life trajectory, these cannot be separated from the society into which this self was born. Each feeds into the other from birth to death. If any given person had been born into a different society, at least many of his or her beliefs, attitudes, values, decisions, and actions would be correspondingly different.

The idea that the self is partly determined and constituted by external factors arguably supplements the skeptical argument with yet another ground of universal exculpation. Now, Clyde can argue that society made him do it and that it was not really he, but rather society, who killed Bonnie.

There are, however, two assumptions underlying this argument, and both turn out to be false.

> *Assumption 1:* Moral responsibility is a zero-sum game. If Clyde is morally responsible, then nobody else is; conversely, if society—the set of external influences on Clyde's beliefs, attitudes, values, decisions, and actions—is morally responsible, then Clyde is not.

Responsibility, however, is not a zero-sum game. Putting aside the skeptical argument, it seems perfectly possible that Clyde is fully morally responsible for Bonnie's death *and* that society is also at least partly morally responsible. Invisible in Scenarios 1–8 are all the values, norms, information, and experiences that helped to shape Clyde and to make him the kind of person who would carry a gun and kill Bonnie rather than refrain from engaging in such violence.

> *Assumption 2: Tout comprendre, c'est tout pardonner.* (Rough translation: explanation *is* an excuse.) More precisely, the full causal or psychological explanation of a bad act necessarily amounts to a complete negation of moral responsibility for that act. Underlying this assumption are two deeper assumptions:
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> > *Assumption 2a*: Fully explaining Clyde's act of killing Bonnie requires showing that Clyde's personality and circumstances uniquely determined it.
> >
> > *Assumption 2b:* Both of these factors—personality and circumstances—are ultimately outside Clyde's control. He never freely chooses either of them.
>
> From Assumptions 2a and 2b, it follows that
>
> > *Assumption 2c:* A full explanation of Clyde's act entails that Clyde could not have done otherwise; that, under the circumstances, he could not have refrained from killing Bonnie.
>
> When a third assumption is added
>
> > *Assumption 2d:* The ability to do otherwise is necessary for moral responsibility.

one must conclude that Clyde is not morally responsible for killing Bonnie.

While both Assumptions 2b and 2d are seriously disputed by some philosophers, this entry (for the

sake of space) will discuss only the problem with Assumption 2a. Assumption 2a rests on its own deeper assumption that behavioral explanation requires the effect (action) to be uniquely determined by the cause (personality plus circumstances). But this deeper assumption does not reflect current practice. Behavioral explanation typically appeals to some combination of personal history, psychological states (i.e., reasons, beliefs, desires, intentions, plans, motives, attitudes, perceptions, and emotions), neurological conditions, use of mind-altering substances, and external circumstances. Whatever combination of these circumstances is assembled to explain a given action, it is not necessarily thought to *uniquely* determine the agent's behavior.

For example, in Scenario 1, the explanation of Clyde's behavior is that he flew into a rage after Bonnie ended their relationship. The rage explains the killing, and Clyde's personality in combination with Bonnie's ending the relationship helps to explain his rage, but it does not at all follow that these three factors—Clyde's personality, Bonnie's ending the relationship, and Clyde's rage—*uniquely* determined his homicidal response. One can easily hold constant these three factors and still imagine Clyde responding to his rage in different ways—for example, by yelling at Bonnie or storming out of the house. So here a causal explanation succeeds even though there is no demonstration that the cause *uniquely* determined the outcome.

Implications for Criminal Excuses

Applying the concepts of moral responsibility and criminal responsibility is especially difficult when the person is simultaneously a victim and a perpetrator. Consider criminal behavior caused in part by one of the following: (a) the *abuse excuse*: a plea for exculpation or mitigation based on a history of physical or sexual abuse or neglect; (b) post-traumatic stress disorder; (c) indoctrination into a violent ideology; (d) psychopathy, which is a neurological disorder resulting most notably in the inability to feel any compassion or concern for others; or (e) addiction or alcoholism.

Should any of these causes be considered exculpatory or mitigating? There are no easy answers to this question. The main reason for this difficulty is that most people's intuitions about how to regard and treat perpetrators and how to regard and treat victims pull in directly opposite directions.

A secondary reason for this difficulty is that the perpetrator often causes significant harm, a fact that, rightly or wrongly, tends to override or diminish the weight one attaches to (a)–(e). In general, the more harmful the crime, the more sympathetic we are to the victims and the less sympathetic we are to the perpetrator. And the less sympathetic we are to the perpetrator, the less inclined we will be able to view whichever cause is operative as exculpatory or mitigating.

This point about the tension between responsibility attributions on the one hand and harm on the other explains why the excuses—automatism, duress, entrapment, infancy, insanity, involuntary intoxication, mistake of fact, and mistake of law—are often rejected. Each of these excuses says that, sympathetic as the judge or jury may be to the victims, they still cannot justifiably blame the defendant for the harm that he or she inflicted on these victims. This is a tough position for fact finders to be in. As a result, defendants who offer excuses for their criminal behavior are in a tough position as well. They have to persuade judges and juries that the unfairness of blaming or punishing them outweighs the unfairness of the harms that they inflicted on their victims. Given most people's retributivist sentiments—their strong sense that, one way or another, the defendant must pay for what he or she did—this plea is too often a lost cause.

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See also Criminal Culpability; Deterrence; Homicide; Mental Disorders and Violence; Offenders With Mental Illness; Psychopathy; Punishment, Effective Principles of; Restorative Justice

Further Readings

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