

The Moral Crisis: The Responsibility of Managers of Financial Institutions and the Argument from Inevitability¹

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[...] But their jobs often entailed exploiting others or living off the results of such exploitation. There was individualism but no individual responsibility. [...] society cannot function well if people do not take responsibility for the consequences of their actions. ‘I was just doing my job’ cannot be a defense. (Stiglitz, 2010b)

Summary: 1 Introduction: the cognitive and the moral explanations of the financial crisis. 2 The inevitable crisis. 2.1 The target idea: justification from the inevitable. 3 Krishna, Shakespeare and Tuld: from fatalism to rational decision theory. 3.1 Results and considerations of personal responsibility. 3.2 Fatalism and absurdity. 3.3 The Paradox of the Fatalistic Agent. 4 Conclusion.

Abstract: This paper argues, through conceptual analysis, against an objection to the disapproval of banks for the 2007-8 crisis: the idea that they could not have acted otherwise (at least not rationally) and that no one should be blamed for a fact one could not have avoided. If true, it would threaten the justification of corporate social responsibility and the legal responsibility of managers. Identified as the ‘inevitability thesis’, this objection is illustrated by an analysis of the film *Margin Call* (2011) and associated with other investigations on ethics and responsibility. The target thesis stems from a confusion between different notions of responsibility (for a task, for a decision, for causing an event and for repairing it) and leads to an incoherent form of fatalism. Finally, it is suggested that the invocation of ‘inevitability’ may be a way of rationalizing the decision, obscuring reasons to the contrary.

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Introduction: the cognitive and the moral explanations of the financial crisis

Years after the collapse of the Lehman Brothers, there are at least two kinds of narratives about the ‘Great Recession’³, the first major economic crisis of the 21st century. According to the ‘cognitive explanation’, the crisis was caused by an ‘epistemic problem’: executives of financial institutions (besides regulators, auditors and the rest of the market) underestimated incurred risks and the leverage of these institutions. This was aggravated by the lack of public awareness of the amount of off-balance sheet obligations and of systemic risks arising from financial engineering, such as in the securitization of mortgage loans (which supposedly should mitigate risks by diluting them within the market). It would, therefore, be a special case of risk management failure, which could either have been prevented by increased capital requirements, to absorb possible losses; or, in a more pessimistic view, simply could not be prevented any way. After all, economists’ analysis would be unable to cope with what Taleb & Martin⁴ call ‘black swans’ (a class of unpredictable events with devastating consequences)⁵.

On the other hand, according to what we will call ‘moral explanation’, the remuneration structure of executives of financial institutions would have encouraged excessive risk-taking in order to obtain larger bonuses in short term⁶. It is, therefore, a governance failure, and disaster could have been avoided if the organizational structure of these institutions provided greater transparency and effective control over managers’ decisions, or if they had acted more responsibly –such as by adopting more restrictive leverage ratios.

The second line of explanation is quite popular and has been politically exploited since the beginning of the crisis. It exemplifies a usual criticism of political economists that economists and market analysts often ignore moral constraints⁷. It also supports a recent debate in American politics (a rare convergence between the Democrat and

³ (Kling, 2010).

⁴ (Taleb & Martin, 2012).

⁵ This does not mean that Taleb & Martin privilege the cognitive explanation; in reality, this should be complemented by a moral explanation. They state, e.g., that the ‘best risk management rule’ ever written is Hammurabi’s Code prescription of the builder being sentenced to death in case a house falls, killing its tenant (Taleb & Martin, 2012, 50). That is what they call *skin in the game* – i.e., rules ensuring that those responsible for creating and managing a risk bear the consequences of the event.

⁶ (Stiglitz, 2010a).

⁷ See, e.g., Sen (1977), or Delfim Netto (2016, A02).

Republican programs) on the adoption of stricter regulation (such as the division of large banks and the reintroduction of the Glass-Steagall platform) in the financial sector⁸; and, at the international level and in Brazil, it is related to the emphasis on the adoption of principles of corporate governance and social responsibility by financial institutions (e.g., in Resolution No. 4327, dated 4/25/2014, issued by the National Monetary Council).

Nevertheless, some people argue that even if the ‘moral explanation’ is true, this does not justify reprobation directed at financial institutions and their executives. Richard Posner⁹, e.g., comments critically on the public outcry generated by the financial crisis of 2007-8: “Calling bankers greedy for taking advantage of opportunities created by unsound government policies is like calling rich people greedy for Medicare to reimburse their medical bills.” Posner so draws attention (correctly) to the need that government and its officials take moral responsibility - after all, regulators have a duty to set adequate standards (and supervisors, to apply them) in order to avoid, as far as possible, such events. But this author seems to assume that such a duty excludes the accountability of businessmen - who can only be expected to act in order to maximize their own interests and those of their respective shareholders; as long as they observe the law, they can claim that they were just ‘doing their job’.

Our hypothesis is that this attempt to exempt economic agents from reproach is based on a more general kind of argumentation (let's call it the *argument from inevitability*) about the concept of responsibility: once an agent justifiably believes that a fact will occur and that they cannot avoid it, it is permitted to contribute to this fact in order to reap the corresponding benefits - whence it would be unjustified to hold they accountable for the occurrence of said fact. In a more synthetic way: “If x cannot avoid situation S , x is not responsible for S .”

The solution to this problem is relevant both to a theory of corporate social responsibility and to the theory of individual (civil, or even criminal) liability of managers. After all, if the inevitability thesis were true, it would be morally unjustifiable (even if it constituted an efficient deterrent of unwanted behaviors) to institute legal provisions imposing a culture of *business ethics* and incorporating *skin-in-the-game* heuristics – such as the strict liability of managers of financial institutions for harms and losses, in the event of bankruptcy, in accordance with Article 20 of Act n. 6024/1974, or criminal punishment for reckless management (as in the Article 4th of Act n. 7492 /1986).

⁸ (Weissmann, 2016).

⁹ (Posner, 2010, 111).

In the following section, we will expose the inevitability thesis and try to exemplify it with some scenes extracted from the film *Margin Call* (2011). From there, we draw a parallel with the comments of Amartya Sen¹⁰ on *Ideas of Justice* on the dialogue between Arjuna and Krishna in the religious epic *Baghavad-Gita*. This comparison shows that the inevitability thesis depends on a confusion between different notions of responsibility and on some form of fatalism - as analyzed in sections 3.1 and 3.2. We conclude that an eventual advocate of the inevitability thesis would not intend to accept the consequence of this kind of fatalism: the emptying of the very notion of deliberation.

The inevitable crisis

Two scenes from *Margin Call* (2011) can illustrate what is at stake: at first, executives at a New York investment bank are debating on what to do in the face of the discovery that the volatility of their mortgage securitized derivatives is about to cross historical levels (i.e., the market value of these assets tends to decline soon); due to its leverage, this will lead to bankruptcy. John Tuld (played by Jeremy Irons), the firm's CEO, decides to dispose of all of these securities in a *fire sale*, even if it implies contaminating their customers (and the market in general), and justifies his decision by applying the motto of the movie: *there are three ways to make a living in this business: be first, be smarter, or cheat*.

In another scene, closer to the end, Tuld is confronted by Kevin Rogers (played by Kevin Spacey), chief of traders, who, remorseful for having participated in the sale of assets (which precipitated a financial crisis and caused the ruin of investors who trusted the firm), asks to resign. The CEO replies by minimizing the seriousness of what they have done: it is just the same as they have been doing for years; he also lists several economic crises throughout history, emphasizing their *inevitability* - all they can do is to seize the opportunity:

John Tuld: It's just money; it's made up. Pieces of paper with pictures on it so we do not have to kill each other just to get something to eat. It's not wrong. And it's certainly not different today than it's ever been. 1637, 1797, 1819, 37, 57, 84, 1901, 07, 29, 1937, 1974, 1987 [...], 92, 97, 2000 and whatever we want to

¹⁰ (Sen, 2006).

call this. It's all just the same thing over and over; we cannot help ourselves. And you and I cannot control it, or stop it, or even slow it. Or even ever-so-slightly alter it. We just react. And we make a lot of money if we get it right. And we get left by the side of the road if we get it wrong.

Tuld is not being cynical (at least not completely¹¹); he sees no reason for recrimination - see the emphasis given in the earlier distinction relative to the 'cheater'. The firm would only be acting in accordance with market rules and ethics, doing what was necessary, what any other would do; and if this causes any general misfortune, Tuld is not to blame. John Tuld's thinking is **no** exception; to a large extent, he can be compared to the behavior of Goldman Sachs' executives, who, at the beginning of the 2008 crisis, sold mortgage-backed derivatives to their clients while simultaneously buying *swaps* betting against these derivatives - resulting in a lawsuit filed by the *Securities and Exchange Commission*, concluded by a \$ 550 million settlement¹².

Tuld is not even a free-market ideologue –moreover, he has a pessimistic opinion concerning the business cycle. He could be like the hedge-fund manager (and philanthropist) George Soros, who draws a distinction between his acting as a market agent and as a citizen. As an agent in international financial markets, competing against others to maximize his earnings, Soros is a well-known speculator, famous for having profited from at least two financial crises with international consequences - the 'black Wednesday' of the Pound in 1992 and the Asian financial crisis in 1997¹³. If he had acted otherwise, he would have been supplanted by the other agents¹⁴. However, as a citizen and intellectual, Soros criticizes 'market fundamentalism' and argues that the state should regulate and supervise the financial system, and should also have instruments to prevent individual greed from leading to disastrous situations - what he currently considers as the greatest threat to democracy¹⁵. His position, therefore, partially reflects Posner's argument, set forth in the Introduction above.

¹¹ However, we are omitting a scene in which Tuld argues with two subordinate executives and reveals that they actually knew the risk of those assets. This does not alter the core of Tuld's position (i.e., the excuse that he did not violate any market rule), it only excludes a possible allegation of ignorance.

¹² (Solomon and Morrison, Wilhelm Jr., 2012).

¹³ As he comments in Soros (2000, 208-9).

¹⁴ Investors act under a form of evolutionary pressure: "stockbrokers who do less well than competitors go bust. The rules-of-thumb that stockbrokers use are therefore subject to the same kind of evolutionary pressures as the genes of fish or insects." (Binmore, 2007, 16-17).

¹⁵ (Soros, 2008, xi-xii).

Both Tuld and Soros are ‘throwing out the blame’: as long as they act according to the rules of the game, they do not consider themselves responsible for its results - in particular, because if they fail to take advantage of it, others will do it (as John Tuld says, *be the first*), therefore abstention would have no practical effect. That is, it is not that they are merely exposing an argument to be weighed against other reasons to the contrary, as in a usual practical deliberation; in fact, these other reasons¹⁶ are not even considered, whence the very moral conflict and remorse that the character of Sam Rogers claims to experience would have no reason to be.

In this respect we may be tempted to associate Tuld with the character of Thrasymachus, the 'great villain' of Book I in Plato's *Republic*, for whom justice would be only the interest of the strongest¹⁷:

[...] the just is always a loser in comparison with the unjust. First of all, in private contracts: wherever the unjust is the partner of the just you will find that, when the partnership is dissolved, the unjust man has always more and the just less. Secondly, in their dealings with the State: when there is an income tax, the just man will pay more and the unjust less on the same amount of income [...]. And thus, as I have shown, Socrates, injustice, when on a sufficient scale, has more strength and freedom and mastery than justice; and, as I said at first, justice is the interest of the stronger, whereas injustice is a man's own profit and interest.

Clearly Thrasymachus defends something a little more perfidious than Tuld, who refuses to cheat. But they are both similar when, at the heart of their respective arguments, they present the situation that is morally evaluated as a definitive scenario: it is a **fact**, for John Tuld, that there will be crises, and that the first (who precipitates them) will reap the rewards; it is also a fact, says Thrasymachus, that the unjust do far better than the righteous. That is why Simon Blackburn identifies Thrasymachus as the ancestor of a pernicious way of thinking:

¹⁶ From the perspective of this agent, they are not even recognized as reasons, since it has no function in the deliberation. The ‘meta-ethical’ counterpart of this discussion is precisely whether we can only call reasons what the agent takes as such (or that he would take, in his perfect judgment) - i.e. subjectivism and internalism - or if there are reasons depend on this recognition by the agent - i.e., an objectivist theory.

¹⁷ (Plato, I, 343e-344c).

In Plato's drama, Thrasymachus is in effect the spokesman for the Athenian envoys¹⁸. They represent the Machiavellian men of realpolitik, knowing they live in a dog-eat-dog world and adapting themselves to it. They and their successors leave a long red stain on human history. They are the direct ancestors of blitzkrieg, terrorism, the worship of the free market, and the ethics of the business school. They are also the direct ancestors of American 'neo-conservatism' [...].

In the nineteenth century Thrasymachus got a boost from the arrival of Darwinism, which was often interpreted as showing that a dog-eat-dog world was not only morally justifiable, but somehow inevitable, so that it was useless to try to moderate it or make any attempt to ease its harsh effects¹⁹.

The target thesis: the argument from the inevitable

The general idea now attacked is the following: given the factual situation *S* (the capital market, the advantage of the unjust, warlike conflict, state of nature, etc.), the result or state of affairs *R* inevitably follows. Therefore, *since R* is (in relation to the agent) unavoidable, *R* is (morally or practically) justified - or, alternatively, it is justified (or 'correct', 'better', 'a natural right', 'permitted', 'obligatory': any normatively charged term) to contribute to or act in accordance with *R* -so that any possible reasons to the contrary are irrelevant²⁰.

Formalizing this reasoning, one can prove that the inevitability thesis leads to the radical conclusion that no one is responsible for an event unless its action is a necessary condition of it:

¹⁸ Blackburn, referring to the 'Athenian envoys', is mentioning the Conference of Melos, as told by Thucydides (1874) in Chapter XVII of the *History of the Peloponnesian War*, where the Athenian envoys made an 'offer one can't refuse' to Melos (a small harmless Mediterranean island): unconditional surrender or the destruction of the city. The Melians resisted, and the Athenians fulfill the threat, killing all adult men and enslaving women and children.

¹⁹ (Blackburn, 2006, 42-3).

²⁰ This does not, of course, deny that the agent has a motivation to produce *R*; the point is whether there is another rational alternative. In this line, Thrasymachus's argument is more complete than Tuld's, for he explicitly assumes the premise that self-interest is the sole motivation of the rational agent - and Socrates will attack it by showing that either this theory of motivation is factually incorrect (giving the example of the physician, whose art serves the patient well), or that the selfish conception of self-interest is (normatively) incorrect - which gives the subject of the rest of the dialogue, after Thrasymachus leaves: the superiority of the righteous man's life.

- (i) If *S* could occur without agent *x*, *x* is not responsible for *S*.
[*inevitability*]
- (ii) If *S* could occur without agent *x*, it would also occur without a subsequent agent *y*²¹; [i.e., no individual is a necessary condition for *S*]
- (iii) *S* could occur without agent *x*. [i.e., *S* is inevitable]
- (iv) *Conclusion*: no one is responsible for *S* [from (i), (ii) and (iii)].

The conclusion in (iv) is a valid consequence of the premises; however, it is unacceptable: there are several situations in which an event arises from actions of a set of agents, without any of them being particularly essential for it to occur. What the inevitability thesis entails is that we treat these situations in a similar way to natural events: no one is responsible for them. Imagine someone justifying involvement in a lynching: “It was not my fault; the guy would have died anyway.” Therefore, we have to deny one of the premises - and the most plausible candidate is the conditional in (i).

It is not just the ‘villains’ of our intellectual history, enumerated by Blackburn, who think according to such a reasoning; some ‘heroes’ of moral philosophy accept the argument, but allege that in some relevant situation, the premise (iii) is not true – i.e., the agent can and should do something to prevent *S*. An example in the contractualist tradition is Thomas Hobbes (who, having translated Thucydides before writing his political works, was aware of the argument of the Athenians at the Melos Conference). In Chapter XIV of the *Elements of Law*, he infers that in the state of nature everyone has a ‘right to all things’ and that the strong has the right to subdue the weak, using as premise the notion of ‘necessity of nature’²² and an analysis in the style of game theory²³. This way, the state of nature would lead to something that Hobbes²⁴ calls a ‘contradiction’: since the ‘right of all to everything’ puts men in conflict, leaving everyone worse off, whoever wishes to live in such a state would be in contradiction—implying one must do whatever necessary to get to the civil government.

²¹ Note how this ‘inductive step’ equals ‘*S* could occur without *x*, or without *y*, or without *z*...’ - i.e., no particular agent is a necessary condition for *S*. It is not, therefore, the universal generalization ‘*S* could occur without *x*, and without *y*, and without *z*...’ - which would imply ‘*S* could occur without anyone’.

²² (Hobbes, 2002, 94-97).

²³ No wonder, game theorists have dubbed some belligerent situations in which agents attack out of fear of being attacked (*Schelling dilemmas*) as *Hobbesian traps* (see Baliga & Sjöström, 2012).

²⁴ (Hobbes, 2002, 96).

Krishna, Shakespeare and Tuld: from fatalism to rational decision theory

Results and considerations of personal responsibility

We can best illustrate our argument by drawing a parallel between the debate between Sam Rogers and John Tuld with the dialogue between General Arjuna, who hesitates to take sides in the war between Pandavas and Kauravas, and his counselor Lord Krishna (in fact, the avatar of the god *Vishnu*), as narrated in the *Bhagavad-Gita*²⁵ - part of the Hindu religious epic *Mahabharata*. Perhaps it might be necessary to warn: we are not interested, of course, in an exegesis of Hinduism or Eastern philosophy (moreover because it is not within our competence), nor do we suggest that lawyers, economists or other social scientists should do so in order to understand or criticize the acts of financial institutions. Our analogy only aims to compare the formal properties of both discussions.

The classic interpretation of that work is that it is a confrontation between a consequentialist conception of morality, professed by Arjuna (who regrets the suffering that war will bring), and the duty ethics advocated by Krishna. But this traditional exegesis of Krishna as ‘the maximal deontologist’, focused only on duty, and of Arjuna as a ‘typical consequentialist’, would constitute a very narrow interpretation, according to Sen²⁶ –insofar as it obscures Arjuna’s considerations on the idea that one should take special responsibility for the consequences of one’s actions:

The issue of responsibility is central to the debate between Arjuna and Krishna, though the two present quite different interpretations of how Arjuna's responsibilities should be seen. Arjuna argues that the results of one's choices and actions must matter in deciding what one should do, whereas Krishna insists that one must do one's duty no matter what happens, and that the nature of one's duty can be determined, as in this case, without having to examine the consequences of the chosen actions²⁷.

For Krishna, since the duty of an agent is fully determined by his role and his destiny, the responsibility of that agent can be defined simply by the fulfillment of that duty. It is first analyzed whether the agent observes the due behavior; if so, he cannot be

²⁵ Since this is a classic text, we will indicate the reference to the *Baghavat-Gita* by BG, followed by the information of the chapter and its verses.

²⁶ (Sen, 2009, 216)

²⁷ (Sen, 2009, 213).

blamed for the ensuing consequences (which do not play a direct role in determining that duty).

This is a notion of responsibility. According to Dworkin²⁸, there are at least four distinct (but compatible) notions of the responsibility of an agent – *causal* responsibility (for causing an event), *judgmental* (i.e., the responsibility that every person assumes for making a decision), *assignment* responsibility (the one in charge of a task) and *liability* (for repairing a state of affairs):

A person is causally responsible for an event, we say, if some act of his figures (or figures substantially) in the best causal explanation of that event. I would be causally responsible for an injury to a blind beggar if I shoved him to steal his money or collided with him absentmindedly or while drunk or deranged or even just accidentally. But not when someone else has pushed me into him, because then no act of mine has contributed to the injury. (My body is part of the causal chain, but I am not.) Someone has assignment responsibility for some matter if it is his duty to attend to or look after it. The last person to leave a room, we say, is responsible for turning off the lights, and the sergeant is responsible for his platoon. Someone has liability responsibility for an event when he is required to repair, compensate for, or absorb any damage flowing from the event. I have liability responsibility for the damage I cause by my careless driving; an employer may have liability responsibility for any damage his employees cause. Causal, assignment, and liability responsibility are all, finally, to be distinguished from judgmental responsibility. Someone has judgmental responsibility for some act if it is appropriate to rank his act on some scale of praise or criticism. I have judgmental responsibility for walking past the beggar, giving him nothing, but not for the harm when someone else pushes me into him. These different senses of relational responsibility are conceptually independent: an employer may have liability responsibility for damage caused by his employees'

²⁸ (Dworkin, 2011).

negligence even though he is neither causally nor judgmentally responsible for that damage²⁹.

Arjuna is referring to what we might call 'causal responsibility' - the causal relationship between the agent and the event³⁰; whereas Krishna favors a notion of responsibility as *assignment* - the idea that analyzing an agent's moral responsibility means assessing whether a given role has been fulfilled (which is independent of the consequences and antecedents of his action).

The tension between these two points of view is only finally resolved in Book XI, when Krishna, after impacting Arjuna with supernatural revelations (of the universe as a whole), shows his fearsome and destructive aspect of *Vishvarupa* (the famous 'universal form with multiple arms') devouring the soldiers who will fight the war³¹, and demands the general to submit to his destiny:

Lord Krishna: I am death, the mighty destroyer of the world. I have come here to destroy all these people. Even without your participation in the war, all the warriors standing arrayed in the opposing armies shall cease to exist.

Therefore, get up and attain glory. Conquer your enemies, and enjoy a prosperous kingdom. I have already destroyed all these warriors. You are a mere instrument, O Arjuna³².

Absurd Fatalism

Now we may better explain the analogy between Arjuna and Sam Rogers: both of them, concerned by their participation as protagonists of disasters, question the apparent lack of sense of their actions and refuse to take part in such events. While both Tuld and Krishna, holders of privileged information³³, respond with fatalism and an instigation to

²⁹ (Dworkin, 2011, 103).

³⁰ This notion of causal responsibility is not problem-free neither, especially when one takes into account the difference between factors increasing the relative risk of an event ('processed meat causes cancer'), factors accelerating its occurrence (catalysts or hasteners), factors precipitating it (the 'last straw that breaks the camel's back'). This does not concern us, however, since, in the examples used, the agent is in a paradigmatic case of causal responsibility.

³¹ (BG, 11: 26-27).

³² (BG 11: 32-33). This passage is a particularly well known quotation of J. Robert Oppenheimer (who, versed in Sanskrit, claimed to have been highly influenced by the text) in an interview, where he spoke about the feeling of witnessing the first nuclear test. Available at: <www.youtube.com/watch?v=lb13ynu3lac>, seen on August 18, 2016.

³³ In another passage, Tuld mentions that it is precisely by 'guessing' before the others what is to occur that he is the CEO of the company:

glory - or, in Tuld's case, to profit. For this executive, investors' harm is already a reality - just as, for Krishna, is the death of the warriors³⁴.

Metaphysicians often object to fatalism on the grounds of unacceptability of determinism. However, that is irrelevant to our discussion; what concerns us is the moral thesis that fatalism deflates the notion that an agent's actions has some special relation to the result (*you are a mere instrument*, according to Krishna), since it is unavoidable. An action's value becomes completely dependent, in reality, on how it is embedded in a 'cosmic vision', in some conception of how the world 'really is' -whatever that means. Without this vision, the conclusion is *nihilism*: the agent finds himself in a situation similar to that of King Macbeth on the news of his wife's death: "she would have died hereafter. [...] Life [...] is a tale told by an idiot, full of sound and fury, signifying nothing"³⁵.

This special relationship between agent and result is captured by notions of causal and *judgmental* responsibility. It allows us to understand, e.g., Othello's tragedy; the fact that he is responsible for the homicide of Desdemona gives him a different perspective from that of any other agent³⁶. He does not only mourn the death of his wife, or having performed a reprehensible action, but mainly for being the author of such a fact. Discovering Iago's fault is as incapable of dismissing that responsibility as would have been finding out that Desdemona would have a short life anyway (because of an untreatable disease, or because she would be killed by Iago in another way). Othello cannot say, like Macbeth, "she would have died hereafter," for though he had been an instrument of Iago, who had foreseen exactly how the 'Moor' would react, crucial decisions and actions still belong to Othello. We can reprove him insofar as they express flaws in his character (i.e., traits of personality that are amenable to moral evaluation, such as virtues and vices - Michelon Jr., 2006, 49).

John Tuld: "I'm here for one reason and one reason alone. I'm here to guess what the music might be from a week, a month, a year from now. That's it. Nothing more. And standing here tonight, I'm afraid that I do not hear - a - thing. Just...silence."

³⁴ Of course, the fundamental difference is that while Krishna claims that we are all instruments of a divine will, living in an illusory cycle of birth and death (*samsara*), Tuld presents us as being delivered to the whims of the business cycle, (something analogous to the *samsara*), in a world where losers are left in the gutter. Although the 'cosmic vision' (and what Tuld may not realize is that his pessimism, if it is not a 'cosmic vision', has the same function) of reality is different in each case, the form of the two arguments is identical, as well as the consequence - extinguishing the notion of personal responsibility.

³⁵ (Shakespeare, Act V, Scene 5, verses 15-25).

³⁶ (Sen, 2009, 220)

Fatalism and blindness

A fatalist may try to escape this notion of judgmental responsibility; imagine that Tuld argued that the decision itself was inevitable: it was the only consistent possibility, according to game theory (or to other decision theory), since it maximized his expected utility – or of the shareholders, or of other managers and employees, or even of the firm itself, to the extent that it best satisfied those agents' preferences.

At best, such a claim would be circular; after all, in game theory, 'preference' is a technical term: according to the theory of revealed preference, choice behavior is primitive; i.e., the choice reveals an agent's preference ordering (it is therefore a logical relationship, rather than causal³⁷). It is only assumed that this ordering is consistent and, assuming these preferences are (in some way) comparable, acting consistently can be described as maximizing a formal property called utility³⁸. To say 'I will act in such a way because it maximizes utility' is therefore circular - it amounts to saying "I will act in such a way because that is what I decide to do.'

This suggests that a decision theory should not pretend to be both normative and predictive (or descriptive) simultaneously; in particular, it cannot model such a deliberation - at least not one that contains some form of dilemma, where the question 'what should I do?' needs to be answered after 'what do I want, or what must I want to do?' Or, as Blackburn argues:

[...] in game theory as it is now being conceived, nothing can be translated into advice. For suppose we are 'advised' to follow the dominant strategy. This is null advice, equivalent to: behave so that a tautology is true of you. So if we don't follow the advice, then our choice reveals that it wasn't that game. But if it wasn't that game then the advice was inapplicable, and if the advice was inapplicable, then there was no point in following it in any event, for the game theorist had failed to model the situation properly. As Wittgenstein might have said, anything could accord with the advice, and that means that no advice was given. The economists' slogan "Maximize!" turns out to be no injunction at all, for nothing could count as failing to follow it.³⁹

³⁷ (Blackburn, 2010, 12).

³⁸ (Binmore, 2007, 7).

³⁹ (Blackburn, 2010, 20).

Thus, in our example, what John Tuld might say would be a ‘hypothetical imperative’ such as ‘if I wish to survive the crisis, I must do such and such’, but one could not present it with a categorical ‘dress’, as in ‘I must do such and such’. Before deciding, Tuld cannot consider that the premise of the conditional sentence is already true, since his preferences (in the technical sense) are in question as much as his actions - and to evaluate and formulate these preferences is the purpose of moral deliberation. He would recall an example from Cohen⁴⁰ of a kidnapper who said: *Gee, I'm sorry, but the fact is that unless you pay, I will not release your child* - which indicates a strangeness of one’s own intentions.

It would be necessary, therefore, to delve deeper into fatalism, claiming something like ‘I am like this, and could not have acted otherwise’. However, such a proposition has no function in a moral deliberation⁴¹; an agent cannot believe, while deliberating, that his preferences (in the technical sense) are already defined independently of his choices, nor that it is impossible to choose between acting in a certain way or not. In this case, there does not seem to be even the illusion of a deliberation: a subject who tried to act in this way would not properly be *deliberating*, but only trying to *predict* his own actions⁴² - or perhaps it is better to say ‘what will happen to his body’. According to Dworkin⁴³, there is no way for an agent (i.e., one who acts) to behave as if, in fact, he believes it.

This absurd position is *not the* consequence of deterministic metaphysics, but of the incompatibility between conceiving oneself, simultaneously, as an object whose movement can be predicted from an entirely parametric or ‘external’ perspective, and conceiving that same prediction as a reason to act as intended – revealing again a circular reasoning. This is an ancient problem - present, e.g., in the interpretation of Greek tragedies whose characters often act under the aegis of oracles and prophecies:

⁴⁰ (Cohen, 2008, 67).

⁴¹ (Dennett, 1984).

⁴² One can imagine exceptions, in the style of the ‘Ulysses and the Mermaids’ episode in the *Iliad*. For example, a prisoner anticipating that, through torture, he will admit something, even if he does not want to do so. However, in this case, either he is: (a) predicting that torture will make him a ‘screeching animal’ over which he is not able to exercise control, which explains why he views the admission in a detached way, as a ‘objective fact’ (or as the action of a stranger), and not as an action of his own, or (b) he is considering that torture will break his willpower, placing him in the usual situation of *akrasia* - a situation that raises philosophical discussions, but that does not usually cast suspicions on the idea of responsibility. That is, in (a), there is no action that can be attributed to the subject (we could say that personal identity over time has been broken); in (b), there is action, but it is an ordinary case of responsibility.

⁴³ (Dworkin, 2011, 223-224).

Could Eteocles say, "It has been fixed by the gods that I shall do it, so my decision is that I shall do it?" As a decision, surely, this is incoherent. Agamemnon indeed put on the harness of necessity—he could do it, and there was a reason for him to do it. But he could not have put it on for the following reason: that he had seen that he was already wearing it. It is something like this that Eteocles would be doing if we read his last line as at once recognizing an externally imposed necessity and offering it as a reason for his decision⁴⁴.

According to Williams, in tragedies, it is not the prediction contained in prophecy that is a reason to act, but a supernatural obligation of the character to attend to the destiny traced by the gods⁴⁵ - as in the above example of Arjuna. This, however, is confronted with other reasons that the agent may have - which, however, are weaker than this supernatural reason. This is what allows us to see such actions foreseen as true actions.

Analogously, instead of devising Tuld's argument as excluding the possibility of alternative actions, it is simpler to describe it as something similar to what Palazzo, Krings and Hoffrage⁴⁶ call 'ethical blindness': agents rationalize their choice by describing situations in a way that obscures their assessment. Usual examples: businessmen who exaggerate the seriousness of their actions by comparing the market to a war or who, at the other extreme, diminish that seriousness by comparing everything to a game (like Tuld when telling Rogers that it is *just money, it's made-up: just colored notes...*).

Something similar occurs when a person presents choices as unavoidable facts. According to Jackall⁴⁷, executives rationalize their decisions in this way: *decisions are only made when they are inevitable*—i.e., when the decision makes itself. Such a statement, in an everyday situation, can be accepted as a figure of speech, as a more dramatic way of saying 'it was the best thing to do'⁴⁸ - but in this case it presupposes a

⁴⁴ (Williams, 1993, 137-138).

⁴⁵ This is illustrated by Orestes's final hesitation in the *Choephoroi* before he killed Clytemnestra to fulfill an *obligation* to the Oracle:

"Orestes hesitates at the last instant before killing his mother and turns to Pylades—"Shall I do it?"; and he, in his one intervention, says, 'Where will the trusty oracles of Loxias be for the rest of time. . . ?' thus linking obedience to the oracle's commands with saving its predictive credibility. There is complexity here, and an obscurity that comes with the very idea of an oracle, but in the *Choephoroi* Aeschylus revolves the elements of prophecy, supernatural plan, human motive, and divine command with an assurance that prevents them from falling together into immediate fatalism." (Williams, 1993, 140).

⁴⁶ (Palazzo, Krings and Hoffrage, 2012)

⁴⁷ (Jackall, 1988, 39).

⁴⁸ As Roger Ebert notes in a movie review, the very lives of his characters become devoid of

choice and the possibility of deliberation (and hence responsibility for the action). This is the main contrast between Tuld and Rogers: the latter questions whether it is better to assume the risk of bankruptcy, or to destroy the market.

Conclusion

Williams notes that:

Napoleon remarked to Goethe that what fate was in the ancient world, politics was in the modern, and in the same spirit Benjamin Constant said that the significance of the supernatural in ancient tragedy could be transferred to the modern theatre only in political terms⁴⁹.

Indeed, Napoleon and Constant, having gone through one of the most turbulent periods of contemporary age, have reasons for such a statement: for them, politics, and not just diplomacy (to paraphrase Clausewitz's aphorism), was the continuation of the war through other means. Nowadays, the role of this 'tragic background' could be attributed to the market, with one advantage: whereas political institutions and communities can be seen as rational agents (at least in theory, or ideally), where one can attribute to them a capacity for reasoning, reflection and public deliberation, the market is seen as an aggregate of individual decisions, unpredictable and devoid of intentionality.

We have argued above that this 'tragic' scenario does not remove moral responsibility from its agents - even supernatural causality cannot exclude heroes of ancient tragedies from responsibility for their decisions. Warriors cannot exonerate themselves from accountability for their acts of war by claiming their inevitability - they may (and this is very different) try to claim they acted under special justifying circumstances (which corresponds, in law, to the state of necessity - circumstances that make an exceptional action *right*) or exculpating (circumstances that preclude blaming bounded human agents - as allegedly would be the case of the 'fog of war'). These are usual distinctions for jurisprudence and moral philosophy.

meaning: "*I think the movie is about how its characters are concerned only by the welfare of their corporations. There is no greater sense of the public good. Corporations are amoral, and exist to survive and succeed, at whatever human cost. [the cast] reflect the enormity of what is happening: their company and their lives are being rendered meaningless.*" Available at <<http://www.rogerebert.com/reviews/margin-call-2011>>, accessed 19. 10. 2011. In fact, the attentive viewer may notice how sometimes in the dialogues the characters mention that they 'had no choice' - although they are referring to paradigmatic cases of rational decision-making.

⁴⁹ (Williams, 1993, 164).

Something similar holds for bankers: even if John Tuld was right in saying that we cannot predict or avoid financial crises, that we can only ‘react’, that would not imply the only way to react is by *being the first*. He and Rogers had reason to do otherwise, and they could have done it; they could have even chosen to fail rather than precipitating the ‘destruction’ of the market.

One last comparison between the film and the Hindu epic: it is not Krishna's fatalistic argument that puts an end to the discussion in the *Baghavat-Gita*, but the acceptance of his supernatural authority by Arjuna (who thus accepts his own role in that ‘cosmic vision’). In a different way, Rogers says goodbye to Tuld remarking that he does not agree with him, that his monologue was not persuasive – instead, he complies and keeps the job just because he needs the money.

Contrary to Posner's initial citation, reprobation of greedy financial investors is justified in that it is a consequence of the recognition that they have made decisions that are open to criticism; this does not mean it is useful: Posner, a self-confessed pragmatist, means, in reality, that the risk of reproach is not enough incentive to avoid greed. However, knowing that this criticism is adequate allows us to defend a culture of corporate ethics, as well as institutions aiming to deter, by coercion or civil responsibility, socially deleterious greedy behavior.

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