

Introduction

Imagine someone to whom other people are truly, thoroughly unimportant. This person could do things without concern that would horrify most people. To them, the thought of lying, stealing or committing violence would hold no intrinsic repulsion at all. They would see other people either as obstacles in the way of their goals, or else as tools to be pressed into service, through lying, persuasion, manipulation or threats, to achieve those goals. The ordinarily selfish person prioritises their own needs too much and neglects those of others but could perhaps be confronted with their selfishness and persuaded to change their ways. The person we are considering, however, fundamentally cannot understand why the needs of others should concern them at all, and there is nothing you could do to make them understand. It is as though you are trying to describe colours to someone who can only see in black and white.

Now imagine that this person has acquired this way of seeing the world either purely through their genetic inheritance, or as the result of a childhood characterised by trauma and neglect, or as some combination of these two factors. Having reached this state as an adult, they are stuck there, as recalcitrant to therapy as they are to moral persuasion.

You would perhaps be afraid of such a person. You would probably want to avoid their company. But how would you think they should be treated? If they perform criminal acts, should their unusual psychology affect the way they are dealt with by the law? Should they be *blamed* for the harm they cause (and should they be praised for any apparently good acts they perform)? Would you be inclined to remonstrate with them, or resent them, if they did something thoughtless or cruel? The central idea behind all of these questions is that of moral responsibility. Should this kind of person be held morally responsible for their actions, emotions, attitudes or the states of affairs they bring about? Answering this question would be difficult and it would, I think, force you to consider very carefully exactly what it is to be morally responsible.

You might begin by thinking about other cases of mental abnormality where we are more inclined to think of the person as not being morally responsible, and try to draw a conclusion based on these less controversial cases. Take, for example, those mental conditions which are characterised by delusions. Imagine someone, in the grip of a paranoid delusion, who encounters another person whom they believe to be a persecutor – an alien in disguise, perhaps, bent on the destruction of humanity – and harms this person, in what they wrongly believe is self-defence. In this case we would not, I think, be inclined to hold the mentally ill person fully responsible for their act and the harm they cause. Through no fault of their own, this person misunderstands the nature of their own actions, in a way which is clearly relevant to the way we should react to them and treat them. However, the person in our original description is not suffering from a directly analogous case of misunderstanding. They do not think the people they harm are aliens, and they are not mistaken about the nature of their actions – at least not in the same way, through a straightforward, factual delusion. In this sense, at least, they appear to know what they are doing.

Still, another way of looking at this kind of case might offer us somewhere to begin. In addition to the physical facts of their predicament, the person with a paranoid delusion is apparently mistaken about their *reasons for action*. Among other mistaken beliefs, they believe that they have a reason to defend themselves from a hostile extra-terrestrial. Because of this mistaken belief, they are unable to properly respond to the reasons they do have, such as to avoid harming the person in front of them who is in fact innocent. According to the account of moral responsibility, which I will endorse, it is this inability to respond to the reasons bearing on their choice that renders the person not morally responsible for their actions. However, it is not clear, given this account of moral responsibility, whether we should think of psychopaths as being morally responsible. Psychopaths appear pathologically unconcerned, for example, about the harm their actions cause to other people. But a lack of concern cannot in itself be excusing. What we need to know is whether there is something special about the lack of concern shown by psychopaths, perhaps given the way they acquire that lack of concern, which means we should think of them as lacking moral responsibility for some of their actions.

In this book, I will argue that psychopaths, insofar as they lack responsiveness to a certain set of reasons, are not morally responsible for failing to act on those reasons. I am, of course, not the first person to argue that psychopaths lack moral responsibility. There has been a small but

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substantial literature on this question, and philosophers have taken several routes to arrive at the same conclusion. It has been argued variously that psychopaths are not responsible because they lack moral understanding,¹ ‘moral rationality’² or personhood,³ or because they are incapable of fully fledged reactive attitudes.⁴ Within the framework of responsiveness to reasons which I favour, David Shoemaker has argued that psychopaths are not responsible because they are incapable of being motivated to comply with reasons,⁵ and Neil Levy has argued that psychopaths lack both responsiveness to reasons and moral knowledge based on their supposed inability to distinguish between moral and conventional transgressions.⁶

On the other side of the debate, several philosophers have argued that psychopaths are indeed morally responsible, again for various reasons. It has been claimed that psychopaths have the cognitive resources that are necessary for responsibility,⁷ that their volitional and emotional deficits are not enough to render them non-responsible,⁸ that they are capable of forming intentions in a way that justifies ascriptions of responsibility⁹ and that they are capable of moral understanding.¹⁰

My own view is that psychopaths are incapable of responding to some of the reasons that genuinely bear on their actions. However, I do not think this is because of a ‘factual’ delusion about the nature of the world analogous to the delusions often experienced by schizophrenics, nor do I think it is because of the inability to parse different forms of transgression which would appear to be implied by James Blair’s well-known experiments into the ‘moral/conventional distinction’.¹¹ As I argue in Chapter 3, I do not believe these experiments are firm enough ground on which to build an argument of this kind.

My own view is that the primary capacity lacked by psychopaths which is necessary for moral responsibility is the capacity to see others as valuable. Understanding this capacity, and what shapes it, allows us to bridge the apparent disconnect between the deficits experienced by psychopaths, which I will argue, are primarily emotional in nature, and the unresponsiveness to certain reasons which accounts for their lack of moral responsibility.

¹ Duff (1977), Fine and Kennett (2004).

² Morse (2008). Morse is concerned with criminal responsibility rather than moral responsibility.

³ Murphy (1972). ⁴ Benn (1999). ⁵ Shoemaker (2009), Shoemaker (2011a).

⁶ Levy (2008). In a later paper, Levy (2014) has also argued that psychopaths are not responsible because, lacking an understanding both of what it means to cause harm or distress to others and of the nature of personhood, they are incapable of performing actions with the necessary type of content.

⁷ Zavalny (2008). ⁸ Glannon (1997), Glannon (2008). ⁹ Greenspan (2003).

¹⁰ Maibom (2005), Maibom (2008). ¹¹ Blair (1995), Blair (1997).

This kind of analysis is needed partly because it is not clear what our pre-theoretical intuitions should be about the moral responsibility of psychopaths. This is a point that has been missed by a surprising number of philosophers. For example, R. Jay Wallace includes psychopaths in his list of ‘accepted exemptions’ from moral responsibility,¹² before going on to try to explain, in the context of his overall theory, why this should be so. My own experience is that it is precisely the difficulty of saying whether psychopaths are morally responsible that makes this an interesting question. I have trouble locating my own intuitions on the subject, and my experience of speaking to people about this suggests that my difficulty is widely shared.

The difficulty of knowing how we should react to, and treat psychopaths, is reflected in a lack of clarity in the criminal law surrounding psychopaths and responsibility, which I explore in detail in Chapter 6. Psychopathy is traditionally excluded from the range of conditions which can form the basis of a successful insanity defence,¹³ and personality traits related to psychopathy, such as a lack of remorse, may be taken as evidence of bad character and therefore lead to harsher sentencing. This is perhaps surprising, given the way excuses from responsibility are frequently expressed in criminal tests. For example, the M’Naghton standard refers to ‘a defect of reason, from disease of the mind’ which leads the person ‘not to know the nature and quality of the act he was doing; or that if he did know it, that he did not know he was doing what was wrong’.¹⁴ A strong case could be made that psychopaths suffer from either of the conditions described by the disjuncts of this principle. However, psychopaths are excluded as a result of particular interpretations of the phrases ‘defect of reason’ and ‘he did not know he was doing what was wrong’, which may stem more from expediency than from a desire for conceptual clarity.

Perhaps partly because of a wish to justify the existing practice in the criminal law of holding psychopaths fully responsible, the early philosophical literature on psychopathy and responsibility was dominated by a debate about whether the question could be settled a priori, without any reference to the empirical facts about psychopaths. Barbara Wootton¹⁵ was the originator of this view. She claimed that any argument against the responsibility of the psychopath must be circular since the diagnosis of psychopathy itself will be based on facts about criminal wrongdoing, in which case the diagnosis cannot be taken to be an excuse for wrongdoing.

¹² Wallace (1994), p. 166. ¹³ Bartlett (2010).

¹⁴ M’Naghton case, quoted in Bartlett (2010), p. 35. ¹⁵ Wootton (1959).

Vinit Haksar¹⁶ took the contrary view, on the grounds that psychopathy is a clinical diagnosis which can be made independently, based on facts not connected to criminal wrongdoing.¹⁷

Wootton's view was perhaps understandable given the unavailability at the time of robust empirical accounts of psychopathy that were not simply based on records of criminal activities. However, following the establishment of clinical tools such as Robert Hare's Psychopathy Checklist (which I will discuss in detail in Chapter 2) the existence of psychopathy as a syndrome of personality, quite separate from any criminal activity in which it might issue, is now quite well established. Many 'successful' psychopaths never come into conflict with the law at all,¹⁸ and Hare's checklist does not depend upon facts about the subject's criminal history for its application. Furthermore, neuroscience is now making significant advances towards identifying an independent neurological basis for psychopathy (see Chapter 2). This raises the possibility of a further means of diagnosis which is independent of any criminal history the subject may have.

Summary of the Argument

If we are to answer the question of whether psychopaths are morally responsible, then we must develop a clear picture of the psychological features necessary for moral responsibility, and of the psychological features which define psychopathy as a type of personality. My overall aim is to show that psychopaths lack some of the features that are necessary for them to be morally responsible. My argument can be summarised as follows:

1. Persons cannot be held responsible for failing to act on reasons that they are unable to recognise as reasons.
2. Psychopaths are unable to recognise reasons for action stemming from the interests, needs and concerns of others.
3. Hence, they are not responsible for failing to act on them.

The aim of Chapter 1 is to defend the first premise of the aforementioned argument, on the basis that moral responsibility is a matter of being responsive to the reasons that bear on one's choices. The literature on

¹⁶ Haksar (1965).

¹⁷ In another paper, Haksar (1964) suggests that psychopaths may not be 'choosing agents' – they can recognise moral values but are unable to choose them – and are therefore not responsible.

¹⁸ Hare (1995).

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moral responsibility has been dominated by the debate over whether or not moral responsibility is compatible with causal determinism, and providing an answer to this question may not require one to develop a fully fledged theory of moral responsibility. Such theories are, for this reason, quite thin on the ground. There is, however, a strand of theorising within the literature which, unlike other arguments within that debate, purports to explain and justify moral responsibility as a whole. These theories therefore deserve to be considered on their merits as attempts to do this, independent of their success in defeating the challenge from incompatibilism. The strand I have in mind originates with P. F. Strawson. Strawson's discussion of the reactive attitudes is very helpful in displaying the social nature of moral responsibility, and the way it is inherent in a wide variety of attitudes and emotions, not just the Aristotelian notions of praise and blame. Strawson also offers a robust justification of the practices, attitudes and emotions involved in holding people morally responsible. However, in my view Strawson is unable to offer a complete analysis of when it is right to apply, or withhold, judgements of moral responsibility. At the end of the chapter, I argue that an analysis of this kind can be found in the work of philosophers such as R. Jay Wallace, who build on Strawson's work by linking moral responsibility to the idea of responsiveness to reasons.

Chapters 2 to 5 then defend the second premise aforementioned in a number of steps.

In Chapter 2, I develop a picture of the psychopathic personality-type based on the empirical literature. Psychopathy is a complex diagnosis, and there are some controversies about what elements of personality should be considered central to it. Using sources from psychiatry, psychology and neuroscience, I gather evidence of the peculiar deficiencies exhibited by psychopaths, concluding that these are primarily emotional in nature.

In Chapter 3, I consider various interpretations of these deficiencies in terms of moral responsibility, offering as the best interpretation that psychopaths do not recognise reasons stemming from the rights, interests and concerns of other people, due to their inability to recognise sources of value other than themselves.

In Chapters 4 and 5, I seek to bolster and support this interpretation by explaining it in the light of the peculiar emotional reactions of psychopaths that I noted in Chapter 2. In Chapter 4, I draw on literature from the philosophy of the emotions to make the case that psychopaths' emotional deficiencies interfere with their ability to engage evaluatively with the world. In Chapter 5, I argue that empathy has a specific role to play in the development of the ability to see others as valuable.

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Finally, in Chapter 6, I begin to explore the implications of my view for the criminal law. The conclusion that some psychopaths are not responsible for some of their acts still leaves unanswered the question of how they should be treated by society. If a psychopath commits a crime, should they be punished for it, and if so, should they be punished in exactly the same way as a non-psychopath should be punished? I also survey some of the controversies that have surrounded this question in the philosophy of law, and argue that current legal practices are on somewhat shaky ground when it comes to the criminal responsibility of psychopaths.

CHAPTER I

*Moral Responsibility***1.1 Introduction**

The word ‘responsibility’ in English is used in several different ways. For example, its meaning in the sentence, ‘Nigel is a pretty responsible sort of guy’ is clearly different from its meaning in the sentence, ‘Anastasia is responsible for the death of my rabbit’ or ‘Hurricane Sandy was responsible for millions of dollars’ worth of damage’. On the other hand, while the word has several distinct meanings, it is not merely by coincidence that we use the same word in each of the sentences, or in others in which its meaning is different again. These meanings are related, though distinct. If we are to make enquiries into the nature of responsibility, we would do well first to clarify exactly what sense (or senses) of responsibility we are interested in.

In this initial section, I will try to put the idea of responsibility into focus by examining some of the different ways in which it is used and exploring the relationship between these. This groundwork will be helpful later on because it will allow me to separate out and begin to explicate the idea of *moral* responsibility, which is my primary focus. By the end of this chapter, I will have set out what I believe to be the best available account of moral responsibility. I will then be able to begin to answer the question of whether it is an account which applies to the case of the psychopath.

1.2 Senses of Responsibility

Let me start, then, by identifying some different senses of the word ‘responsibility’.

As in the example of Nigel, who is ‘a pretty responsible sort of guy’, the word ‘responsible’ is sometimes used to refer to someone who has a particular virtue which manifests in a tendency to be trustworthy, consistent and so on. They are ‘a responsible sort of person’; they take

their responsibilities seriously; they do not act *irresponsibly*. To describe someone as having responsibility in this sense – *virtue responsibility* – is to praise their character.

There is a very different sense of responsibility which is purely about causation; it has no moral dimension at all. A claim of *causal responsibility* is a claim about the causal history of an event or a state of affairs. The Hurricane Sandy example is an example of mere causal responsibility: it makes no sense to speak of holding a hurricane morally responsible for the damage it causes. Similarly, if a computer virus wipes my hard drive and destroys the only copy of my book manuscript, I might say that the virus was responsible for this destruction, but not in a sense that implied any moral assessment of the virus itself (any moral assessment of the people who created the virus would be additional to this immediate judgement of causal responsibility).

This contrasts with the sense in which the word ‘responsibility’ is employed in sentences such as ‘I hold you responsible for the damage you caused’ or ‘through his negligence in not holding on to the lead properly, Eric was responsible for the damage caused by his dog’. If a person is responsible in this sense for an action, then the person is liable for various moral repercussions arising from the action. For example, it might be that the person can be either blamed or praised for the action. It might also legitimise other attitudes and emotions, including resentment and indignation. In some cases, it might mean that social sanctions, such as shunning, are appropriate. It might also lead to expressions of disapproval (or approval), remonstrations with the person or ‘taking them to task’. All of these crucial elements of our social interactions rely on a judgement, whether implicit or explicit, about the person at whom they are directed: that they are *morally* responsible for some relevant action or state of affairs.

This sense of responsibility is what philosophers generally have in mind when they write about *moral responsibility*, and I will hold on to this term for convenience, although it is, of course, not the only sense of responsibility with a moral dimension (consider, for example, the aforementioned ‘virtue responsibility’).

Moral responsibility has a legal parallel in the idea of criminal responsibility. To say that someone meets the criteria of criminal responsibility in relation to a particular crime is to say that they should answer to the law in respect of that crime. It may be that someone who is causally responsible for a crime may yet not be criminally responsible, for example, because they are too young or because they have a mental illness which exempts them from criminal responsibility (the ‘insanity plea’). It is also possible

that someone might be criminally responsible without being causally responsible, as in cases of ‘strict liability’. It may also be that criminal responsibility and moral responsibility come apart in at least some cases of strict liability.¹

Nicole Vincent, from whose paper, ‘A Structured Taxonomy of Responsibility Concepts’, I have taken these labels, also identifies a concept, separate from moral responsibility, which she calls ‘capacity responsibility’. This has to do with the capacities people may or may not have which would make them candidates for judgements of moral responsibility. A judgement of capacity responsibility is a judgement of the entity as a whole, not in relation to any particular act or state of affairs. Clearly, there are some entities that are *never* capable of moral responsibility. We might say, for example, that a stone, or a baby, lacks capacity responsibility, in the sense that there is nothing for which the stone or baby is morally responsible. In this sense, the stone or baby lacks whatever capacities allow an entity to be ‘in the game’ for attributions of moral responsibility in the first place.²

However, there are also cases in which people can lack moral responsibility for some things, or types of thing, but not others, because of certain capacities that they lack. The parallel concept of ‘capacity’ in medical ethics is illuminating here. Judgements about people’s medical capacity are, in practice, always judgements about their capacity to do something in particular, for example, to consent to a medical intervention. In many cases, it is likely that moral responsibility operates in the same way. If someone suffers from paranoid delusions, it would not be appropriate to hold them morally responsible for insulting me if I know that one of their delusions has convinced them that I am a persecutor. If, on the other hand, none of their delusions apply to me at all, a judgement of responsibility does seem appropriate. They might, after all, simply not like me. Capacities, then, enter into judgements of moral responsibility for individual acts, as well as judgements of ‘capacity responsibility’ in Vincent’s sense.

Finally, there is a sense of ‘responsibility’ which is roughly equivalent to ‘duty’ or ‘obligation’ – what we might call an ‘*obligation* responsibility’. To

¹ See Chapter 6 for further discussion of the relationship between moral responsibility and criminal responsibility.

² There are also controversial cases in this area. For example, there is an ongoing debate within business ethics about whether an organisation is the kind of entity that can ever be morally responsible, that is, which has capacity responsibility in this sense (see French (1979, 1984), Werhane (1985), List and Pettit (2011), Rønnegard (2015)).