JUST RESPONSIBILITY

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Abstract: It is generally assumed that responsibility for one’s deeds should be assessed using a priori legal and moral standards. However, we know no such standards. Therefore, we must use our own man-made standards. Accordingly, the empirical meaning of being responsible is liability under the applicable rules to being held responsible. Responsibility is assigned, not discovered.

Key words: responsibility, free will, law, morality, justice

It is a great and necessary proof of wisdom and sagacity to know what questions might reasonably be asked. Immanuel Kant

Preface

Most readers of this essay will know that one of the standing arguments for free will is that without it there can be no justification for holding people responsible for their conduct. Call this the argument from responsibility. It will be obvious, I hope, that this argument must depend on what is meant by “free will,” by “responsibility,” and by “justification,” all of which are subject to various interpretations. Perhaps it will also be obvious that if the argument from responsibility is not to beg the question these three terms must all be defined independently of each other. Anyhow, that is the assumption on which the present essay proceeds. Its focus is on what it means to hold someone responsible and when doing so can be justified. With one exception, free will is not mentioned again until very near the end, when I notice that it is required for responsibility on some understandings but not all.

The Strawson Hypothesis

Apparently convinced that the question “What does it mean to be responsible?” was too metaphysical to be answered directly, famous Oxford philosopher Peter Strawson once explained why we are nevertheless inclined to hold people responsible (P. Strawson, 2013). We do so, he said, because it is human nature to react with resentment and a desire to retaliate against all who harm us, threaten us, or merely slight and neglect us. Furthermore, these instinctive reactions serve the larger purpose of helping us to preserve the social order by
discouraging unwanted behavior; so are not likely to disappear any time soon. In short, he held that the naturalness and utility of holding people responsible makes doing so inevitable despite the difficulty of saying what it means for them to be responsible. Let us call this the Strawson hypothesis.

This hypothesis is subject to two seemingly opposed but complementary interpretations. One suggested by Peter’s talented son, Galen, is that there is no such condition as “absolute metaphysical responsibility,” there are only practices of holding people responsible. The other interpretation, suggested by commentator Gary Watson, is that our practices of holding each other responsible are “constitutive of” what it means for us to be responsible (Watson, 2013). I believe that these are two ways of saying the same thing—viz., that, since declaring somebody responsible is not stating a determinate fact of the matter, what it means is that, given an agent’s conduct, she is liable (i.e., likely) to be held responsible. In short, to be responsible is to be liable to being held responsible.

If that was Strawson’s hypothesis, however, it is subject to an obvious objection: It appears to overlook or deny the plain fact that people can be wrongly held responsible—in other words, held responsible when they are not in fact responsible. For example, one is wrongly held responsible if, as a result of mistaken identity, one is imprisoned for robbing a bank that somebody else robbed. So far as I know, neither Strawson, pere nor fils, has addressed this important and inevitable objection. It is the central purpose of the present paper to do so. I shall accept and defend the hypothesis that, since no one can make sense of absolute metaphysical responsibility, it must be acknowledged that people are made responsible by being held responsible, somewhat as one is made a slave by being enslaved. In other words, responsibility is not discovered; it is assigned. However, in acknowledgement that one can be unjustly held responsible, I shall offer an addendum or qualification to the Strawson hypothesis—viz., One is justly held responsible if and only it comports with the applicable rules. Thus, imprisoning bank robbers is just for one simple reason: they violate laws that forbid forcibly taking other people’s money.

That is the gist of the idea. What I must do now is try to spell it out. In order to simplify the argument, let me start by limiting the discussion to conduct for which one might be blamed or punished, either justly or unjustly. Also, just to be clear let me acknowledge the fact, much emphasized by Peter Strawson, that we do not always hold an agent responsible for what she has done or caused; nor do we always blame or punish unwanted conduct. Grant that Mary broke the vase. If she did it accidentally while trying to prevent greater damage, most reasonable people will excuse her; and if Mary is an infant, most people will not raise the question of responsibility at all, infants being, as Strawson said, exempt from considerations of responsibility.

There is, as my colleague, Norvin Richards, has reminded me, such a thing in morals and law as strict, no fault, liability. Thus, employers are sometimes held responsible for harms suffered or caused by their employees even though measures were taken to keep both safe. Similarly, parents are held responsible for harms done or suffered by their children despite having exercised due caution. In such
cases, responsibility is assigned before the fact—by rules warning of the legal and moral risks you take when you hire workers or have children. Thus, if you negligently let your child break someone’s very expensive vase, the fact that you did not break it yourself might not excuse you from being charged for it. However, there is no need for us to get further into such details here. Nobody has said that assigning responsibility is a simple and easily accomplished task. On the contrary, if you do it right, you do it responsibly, with due care.

That noted, however, the central truth of the Strawson hypothesis is still intact: *It is we human beings who hold each other responsible using our own standards; not God who holds us responsible using His.*

**Absolute Metaphysical Responsibility**

Obvious as this platitude might seem once it is stated, it runs against an old belief preached by St. Augustine, 5th century AD Bishop of Hippo and the most influential of Christian theologians. Augustine was perhaps the first person to maintain that there is such a thing as absolute metaphysical responsibility—viz. responsibility assigned by God. Roughly stated, Augustine’s idea was that *you deserve blame and punishment if you knowingly or fecklessly contravene the moral law*, a set of commands, precepts, and principles laid down by God for the guidance of human beings everywhere. Having in Augustine’s opinion given every human being the freedom of will that is needed to conform to God’s law, God is justified when He punishes all who abuse His gift by disobeying or ignoring this law. How could He not be (Augustine, 1962)?

It is, I think, fair to say that, having been taught throughout Christendom for nearly two millennia, this mode of thought has defined and dominated Western ideas about responsibility ever since. Furthermore, it continues to do so even in an age that becomes increasingly secular and irreligious by the day. Thus, not only did the devout Catholic and 20th century Cambridge philosopher Elizabeth Anscombe famously declare “Ours is a law conception of morality,” but the French atheist and existentialist Jean-Paul Sartre contemporaneously observed that Anscombe’s atheist and agnostic colleagues “continue to believe in a God-given law; they just no longer believe in the God who gave it.”

If Anscombe’s colleagues were as conflicted as Sartre thought, it was perhaps because Augustine’s theological conception of responsibility faces an enormous, perhaps an insuperable, difficulty: As many theologians have argued, the will of an infinite God is inscrutable to finite human intellects like ours. Augustine himself confessed as much when he advised that you must, “Believe that you might understand!” This advice implies that belief in the reality of supposedly God-made law is an act of unverified and unverifiable faith, not knowledge properly so-called. Of course, Augustine did think that he and the other prelates of the Roman Catholic Church enjoyed special and privileged revelations of God’s will in scripture and during prayer. On those occasions, God gave them a peek into His mind. However, while this was certainly something they claimed and believed, it was not something they could prove.
And for a good reason: the plain if rarely admitted truth of the matter is that we know how to discover the man-made, so variable and imperfect, laws and morals that happen to exist in particular societies at particular times, but we have no demonstrably reliable way to discover the rules that supposedly constitute a divinely made and universally binding moral law. We can discover the rules of particular societies by observing the words and deeds of their members, but this method can hardly be used to discover the rules that exist only in God’s mind or in a perfect society; for there is no assured way to read God’s mind, and no perfect society actually exists.

Recognizing the difficulty, theologians and theologically minded philosophers have followed Plato and the Stoics in claiming that there is no need for empirical observation of actual practices. Since God (or Nature) implants knowledge of the moral law in every human soul and conscience at birth, its details can be worked out as mathematicians have worked out the self-evident truths of geometry and arithmetic, just by thinking about them. Thus, St. Thomas Aquinas recommended using our God-given faculty of Reason-guided consciences to “Do good and avoid evil,” as if it is always evident which is which. Similarly, the Protestant philosopher Immanuel Kant purported to deduce the Categorical Imperative, his version of the Golden Rule of Christian morality, from the logical principle of non-contradiction by using his God-given faculty of Pure Practical Reason.

More recently, 19th century Cambridge moral philosopher, Henry Sidgwick urged that there are precepts of reason that can be known by intuition, direct and unreflective insight; and 20th century Oxford moral philosopher WD Ross declared that the intuitions of “suitably educated” persons (but not necessarily you or I) must be counted as “the data [i.e., the givens] of ethics.” If these famous British philosophers were right, we do not need empirical information about or experience with actual practices in order to know how we ought to behave. It can be known a priori by using our God-given faculty for reasoning. However, although this idea has dominated Western thought for millennia, it is noteworthy that neither Plato’s, Aquinas’s, nor Kant’s reason, and neither Sidgwick’s nor Ross’s intuition, has yielded a body of truths that are in any way comparable in self-evidence and indisputability to the truths we all know about numbers and geometrical shapes.

Perhaps, then, it is time to try a different method—one more like that which sociologists and anthropologists use to discover the laws and morals of particular societies—viz., observation and description of actually existing practices and the reasons for them. As already noted, Peter Strawson tried using such a method, as had John Stuart Mill nearly a century before him (Mill, 1962). To recap: Strawson reminded us that we are so constituted as naturally to feel resentment towards all who threaten, harm, slight, or offend us. Furthermore, Strawson said, these primitive “reactive attitudes” also generally serve to discourage undesired behavior and, we might add, probably evolved by Darwinian means to do so.

Having said as much, Strawson went on to add that we are usually prepared to temper our resentment when we become aware either that the agent acted under coercion or lacked the capacity to do better. Thus, in a case of coercion, we usually
shift blame to the person who coerced her. In the case of the morally incompetent, we take an “objective” or impersonal stance. Instead of treating the incompetent as responsible adults, we treat them like wayward pets or like broken clocks. In other words, we try to correct them or repair them. In extreme cases, I might add, we treat them like cockroaches and destroy them. However, aware that the *lex talionis* can leave us all toothless, we have learned to prefer the rule of civilized law under which personal revenge and retribution give way to justice administered by impartial courts.

Reflection on this last fact has encouraged some progressive moralists—e.g., the behaviorist BF Skinner, the philosopher Bruce Waller, the economist Richard Thaler, and the lawyer Cass Sunstein—to advocate abandoning our primitive reactions altogether in favor of efforts at reform and reeducation managed by scientifically trained experts (Hocutt, 2013, 1992). They want Strawson’s objective stance *all the time and for everybody*. Distinguished neuroscientists such as Stanford’s Joseph Sapolsky have apparently joined them, calling for measures to repair the brains of people who cannot or will not behave as desired, because their clockworks are broken.

The civilizing impulse of these learned men is admirable and correct, but they overlook or ignore two enormous problems. One is discovering and developing the technology, behavioral and physiological, that would be needed to carry out their so far very ill-defined but exceedingly ambitious program of reform. Presumably, that problem will increasingly be solved with the development of behavioral and brain science. The second more formidable problem—viz., choosing whom among us to trust with the powers necessary for reform of the rest of us—will not be so easy to solve. Will the managers of this new social order belong to your tribe or mine? Since the interests of our various tribes do not always coincide, this question is of the first importance and cannot be avoided.

We normally try to resolve this problem with democratic politics, but these insure at most that the interests of the majority tribe, or the interests of a shifting majority of tribes, prevail over the interests of a minority. In an earlier era, this inconvenience was mitigated by priests who knew what was right for everybody and imposed it on everybody whether they liked it or not, as a condition of entering heaven and avoiding hell. However, after an extended test of many centuries, that arrangement fell out of favor and has little to recommend it now. So, we might want to try understanding the world and the people in it before seeking to change either of them. Let us therefore put well intended utopianism aside and return to real practices of the sort described by Strawson and Mill.

**Responsibility as Social Assignment**

As Gary Watson remarks in the commentary already cited, P. Strawson was not describing these practices out of mere sociological interest. His point was philosophical and conceptual. Contrary to conventional wisdom, Strawson evidently believed—though he did not explicitly say—that *responsibility is not a discoverable personal trait but a social assignment contingent on various and
To put it simplistically: You are responsible if you are held responsible. Watson thinks there is truth in this idea, and so do I, but it needs refining, explaining, and defending. In what follows, I try to refine, explain, and defend it.

Let us begin with the word responsible. As etymology suggests, it connotes an ability to respond. But respond how, and to what? Briefly, the answer seems to be that we try to count as responsible all and only agents whom we deem to have the ability and the disposition to respond acceptably and constructively to actual and anticipated measures to condemn and punish or correct and improve their behavior—in short, an ability and disposition to learn (Staddon, 1999). That an agent has this is what we mean by saying that she is a responsible person. That we hold her responsible for having done or caused something unwanted means that we shall condemn or punish her.

As noted earlier, the objection to this claim will be that holding somebody responsible does not suffice to make her responsible in either the causative or the constitutive sense of the word. What we want to know, then, is not merely “When do we hold someone responsible,” but also “When is it just to hold someone responsible?” Regrettably, the astute Peter Strawson did not address this apt and necessary question, perhaps because he thought the answer obvious: an agent is justly held responsible if and only if she deserves to be held responsible. Unfortunately, though true, this observation merely raises a further question—viz., How can we measure an agent’s desert? Obviously, we can’t measure it with “reactive attitudes” such as resentment or a desire for retribution, which vary with time, person, and circumstance, so do not always yield assessments that can be taken as guides. For this, we need a more objective and impersonal test. But where might we find it?

To see where we do sometimes find it, consider an example. Defendant X is under trial in a court of law for having shot and killed Y. The question before the court is whether X should be accounted guilty of murder, manslaughter, or some lesser crime. Under the guidance of lawyers, the judge and jury will begin by considering some questions: Did X shoot Y accidentally or with malice aforethought? Was it done in self-defense, or while conducting a robbery? During war, or while at peace? And so on. These questions and others like them will be attempts to find out if there are facts that might exonerate the accused or mitigate a presumption of responsibility. However, it is needful to remember that no matter how many such facts are gathered, they will not by themselves suffice to determine guilt or innocence.

We still haven’t gotten what we wanted, but our quarry is now in sight. To determine the defendant’s responsibility, our justice-seeking jury will go on to ask “Given the facts recently assembled, what does the law require?” In a proper court of law, no verdict will be rendered, until that question has been addressed. But notice: This question is no longer about what the defendant did; it is now about what the jury and judge should do about it. Should they advise jail, payment of damages, or what? All the facts are in. This new question is not about a fact but about the law, and the answer to it will not be another fact of the matter; it will be a
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recommendation about what to do. Hence, it is essential to understanding the logic of such proceedings to note that verdicts in legal cases cannot rightly count as true or false; they can only be adjudged just or unjust, and the right test for that distinction is the applicable law.

Critics will ask “What if the law is itself unjust?” However, that question presumes that we know a Higher Law by reference to which actually existing laws can correctly be judged just or unjust. In other words, it assumes that Plato, Aquinas, Augustine, Kant, Anscombe, and Sidgwick were right. But while laws can meaningfully be judged good or bad, no clear meaning can be assigned to the popular, but largely emotional, and certainly ill-defined, question whether the existing laws are just or unjust. Telling against this popular distinction is the fact that the word just derives from the Latin root jus, for law. So etymology suggests that what comports with existing law is just by definition. Law being our only measure of justice, “just law” is a pleonasm comparable to “rectangular square,” and “unjust law” is a solecism comparable to “round square.”

If this observation is correct, asking whether the law is unjust is like asking whether the standard meter bar is itself a meter long. To those who understand the question, the answer should be obvious: At a given temperature, the standard meter bar is our standard for a meter’s length. Therefore, it is true by our definition that the standard meter bar is itself a meter long at that temperature, and so is everything that has the same length. Admittedly, this bar is made of metal, which expands with heat; so, its use as a standard has now been largely abandoned in favor of more stable metrics—e.g., the time it takes for a laser beam to travel from one point to the next. Still, while the standard meter bar was our operational standard for a meter in length, it was meaningless to ask whether it was itself a meter in length. To such a question only an affirmative answer would have been justifiable. There is no standard meter bar laid up in heaven that might have been used instead.

Plato, who believed that words get their meaning from heavenly archetypes, confused us about this when, in the Republic and elsewhere, he conflated “just law” with ideally perfect law, the only “law” that he thought deserved the name. The problem with this idea is that an “ideal law” is not a kind of law; it is merely an ideal for law, which exists only in the mind of the idealist. Until this imaginary law is enforced and obeyed in practice, it will not really and truly exist; it will continue to be nothing but wishful thinking. Of course, Plato’s followers Augustine and Aquinas and Kant all believed that the ideally perfect Law exists in the mind of God, as apparently did WD Ross and other 20th century intuitionist followers of Henry Sidgwick (Hocutt, 2000). However, since nobody knows how to read God’s mind, all talk about it is strictly speaking unintelligible. In practice, therefore, we have no choice but to depend on the real but imperfect laws that guide our legal practices.

If we don’t like these practices or their results, there is an alternative: make better laws. How will it be determined which laws are better? Jeremy Bentham suggested that it can be done by using his “principle of utility,” which requires making laws to yield the greatest net benefit for the greatest number of people.
Unfortunately, this recommendation has been obscured by critics who object that this principle might lead us to do injustice by convicting innocent men as scapegoats, as examples to others, or as outlets for our anger. As I have shown elsewhere, however, this objection is based on a misunderstanding. Bentham explained more than once that he meant his “principle of utility” to be used as a guide for legislators to use when making law for the general case, not as a guide for courts to use when applying it to particular individuals. As he knew and said, for an individual to be treated justly and fairly she must be judged using not the principle of utility but the existing and applicable law (Hocutt, 2005).

We have now found the meaning of legal responsibility. With only apparent circularity, we may summarize our finding as follows: Agent X is legally, so justly, held responsible for doing or causing Y if and only if X is liable (i.e., likely) after a fair trial to be held responsible under the applicable rules of law for doing or causing Y. More briefly: to be responsible is to be liable under the law to be held responsible. As Thomas Aquinas observed when he was thinking not like an other-worldly Platonist but like a down-to-earth Aristotelian, there is justice rightly so-called only where there is law, and there is law only where a reasonable person can know what to expect from those who judge him. If a definition of procedural justice is wanted, that is as good a one as can be expected.

What follows? Just this: Legal responsibility is procedural, not metaphysical. In other words, it is not a personal trait, or a stain on the soul, that can be ascertained only by looking into an agent’s inner self from a clear God’s-eye point of view. Rather, responsibility is an assigned social status. The requirements for being justly assigned this status are determined by man-made laws as these are usually interpreted and applied by validly constituted courts after a proper trial, either criminal or civil. Specifying these requirements, as well made law does, provides a kind of operational definition, or criterion, for assigning responsibility to a defendant under trial. Notice, however, that this is an assignment of responsibility only for what someone has done or caused, not also for what someone is or has become. Assessing the latter kind of metaphysical responsibility must be left to an omniscient God on the final Day of Judgment; it is not a task for mere human beings such as you and I.

Such, then, is the meaning of legal responsibility: It is a matter of law. Clearly, however, mere law does not and cannot determine moral responsibility, our ultimate quarry. No matter. It is now within grasp. Just replace the word “legal” with the word “moral” and our definition of legal responsibility will become a definition of moral responsibility. As the existing laws determine what is just, so the existing mores will determine what is moral. What if the society’s mores are themselves immoral? Again, that is a question which presupposes a proposition that has yet to be proved—viz., that there is a Higher Morality that we can use to decide the answer. However, though many have tried to find it, we have neither proof that such a transcendent morality exists nor a proved method of discovering its requirements. Rather, all of the relevant evidence favors the contrary hypothesis of the ancient Greek sophists, who held on good empirical
grounds that all provably real laws and morals are man-made social conventions or customs.

No doubt, these conventions and customs have come into being to serve needs and express instincts that are much the same everywhere, and due consideration of that fact might be used to improve them, as Bentham suggested. However, the means of satisfying these common needs and expressing these common instincts vary with local circumstances and times, as do the resulting practices. So, for good or ill, conduct that is rightly judged moral—in accord with the applicable mores—in one place and time might with equal correctness be counted immoral in another, just as what is legal—in accord with the applicable laws—in one place and time might be illegal in another. Morality and law are not the same things, but their grammar is logically parallel. Therefore, while utility is no proper test of the morality of an individual’s conduct, it can be a measure of the goodness of the morals by which that conduct is properly judged.

Free Will

Armed with this much clarification of responsibility, we may now return to our original question: Does it presuppose free will? Our answer has to be that it often does in practice but not as a matter of analytic or metaphysical necessity. As noted already, we do in practice sometimes, though not always, excuse from responsibility both (1) agents who act under coercion or constraint and (2) agents who lack either the ability or the opportunity to do better. We generally excuse the first sort of agent on the grounds that she “did not act of her own free (i.e., uncoerced) will,” and we generally excuse the second on the grounds that she “had no free will (i.e., no capacity)” to do better. So, in these two cases, “free will” figures in our determinations of responsibility, though by different definitions of the concept.

This double usage indicates that talk of free will has become equivocal, but there is no need for confusion about it if we keep the distinction between the two cases in mind; for in both, there is a clear rationale for our practice. Take them in turn. On the one hand, if the agent acted under coercion, the responsibility for her conduct is better assigned to the person who coerced her. Since he profited from the wrong, it is he who should be made to pay for it, not she. On the other hand, if the agent did wrong because she lacked the ability or the wherewithal to do better, punishing her would serve no purpose but revenge, which civilized societies have increasingly found it advisable to regulate. However, enthusiasts for free will should note that neither case provides a justification for the wholly unintelligible idea of such philosophers as the Scotsman Thomas Reid and his American followers Roderick Chisholm and Richard Taylor, that making uncoerced choices means being “a prime mover unmoved” who, like God, makes choices without anything in the natural order, including his own desires, causing him to do so. As Peter Strawson meant to show and his son Galen to affirm, it is only on the indefensible concept of absolute responsibility that this “panicky metaphysics” seems required (P. Strawson, 2013).
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All of this duly acknowledged, we should add that the connection between an equivocal “free will” and responsibility is not self-evident as usually supposed. We can imagine a world in which the sole rule was the lex talionis—an eye for an eye and a tooth for a tooth. For all we know, the world of our distant ancestors might have been such a world. Every harm done or offense caused in that world by a normal adult would, when it did not risk retaliation, have been instinctively and immediately punished by an act of revenge or a demand for recompense, no allowance made for excuses and no exemptions being recognized for incompetence. Even then, however, some latitude might have been given to children and, for superstitious reasons, to the insane and demented. Furthermore, if this was the normal practice, it would not only have been thought right by all observers; it would have been right when measured by the only available standard. That it was not the most desirable standard is proved by the fact that we have largely abandoned it in favor of a better one.

References


Author’s Note

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