

What Is an Excuse?

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Our intuitive sense that some wrongdoing is excused prompts questions about how to distinguish between the objects of two different judgments: the judgment that an agent's act is wrong and the judgment that the agent is to blame for so acting. What moral issues are settled through these different judgments? And what of moral significance is signaled when they come apart—when an agent acts wrongly but is not to blame? These issues are underexplored but important, for they help to illuminate the moral interest of our evaluation of persons as well as the range of responses we might take toward persons who act in similar ways.

In the first section of this paper, I appeal to intuitions that mark the distinction between a judgment that an agent's act is wrong and the judgment that an agent is to blame for so acting. I try to clarify this distinction and the sense of its importance. In the remaining sections I attempt to rationalize it. I will propose that different normative criteria guide these two different sorts of judgments. Judgments of wrongness express deontological requirements of justification and, in particular, justification to persons who are affected by the action type in question. Deontological moral requirements are often understood to specify forms of behavior that cannot be justified to persons who are negatively affected, even when those negative effects are balanced, overall, by good consequences to other people. I think to say that requirements are deontologically prohibited is also to say that the behavior in question cannot be justified to persons who are affected negatively by it, even when the wrongdoer's actions do not express ill will or when the wrongdoer is not responsible for her ill will.

Excusing conditions, in contrast with deontological requirements of justification, signal considerations of fairness that restrict the appropriateness

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of blame as a response to wrongdoing. I propose that these fairness considerations help to determine when compassion appropriately tempers blame.¹ But considerations that render compassion appropriate are not deontic norms: their role is not to specify the conditions under which we are required to feel compassion or to refrain from experiencing it. Neither are they mere permissions.² Instead they track the limits of those circumstances under which wrongdoers are worthy of the blaming responses to which we might be drawn. They help us to understand when it is that blame is misdirected.

1

We don't merely evaluate what people do; we evaluate *them* as persons, in view of how they act. We think a person's actions bear on her qualities as a person. Our moral appraisal of persons is signaled by judgments, attitudes, and behavior we direct toward them in view of the moral qualities of their actions. These responses might include what are commonly referred to as the "reactive attitudes" of resentment and moral indignation and the tendency to engage in retributive behavior. These responses are commonly associated with condemning and punishing. But blaming responses might also be understood, more broadly, to include less retributive sentiments, such as disappointment, sadness, or resignation. Although they are not oriented punitively, these attitudes respond to an agent's demonstrated capacity for wrongdoing and take it seriously. They may be accompanied by behavioral responses that are not retributive in nature, such as calling for an explanation or apology, lowering or otherwise changing expectations regarding future interactions, breaking off a relationship, trying to make the wrongdoer feel guilty or make amends, and so on. These responses, as I understand them, need not be thought of as retributive in nature because they need not involve commitment to the idea that the wrongdoer should suffer or otherwise pay a price as a matter of justice. They call for something else—correction of the wrongdoer's fault, for example, or reparative attention by the wrongdoer to the victim. Soliciting guilt feelings may be thought of as a step in remediating the wrongdoer's character. Apology may be called for as a way of recognizing the standing of the victim. Although not retributive, I submit that these responses might qualify as blame when they

¹ I rely on compassion as the paradigm reactive attitude associated with mitigating blame. Still we might think of compassion as belonging to a family of emotions and attitudes that includes pity, sympathy, empathy, understanding, sorrow, and the like. Different excusing conditions might draw on this pool of attitudes and emotions in different ways.

² Here I follow some recent work by Sigrun Svavarsdóttir (2011).

accompany or express moral criticism of a person. Specifically, blaming responses accompany moral criticism of a person for harboring judgments or attitudes that interfere with the confidence other people should have about her prospects for meeting their reasonable moral expectations. Blame points to a person's moral unreliability and traces it to a standing aspect of his or her character, dispositions, or personhood.

Thus far I have suggested that blame is oriented by perceptions of wrongdoing. But our sense of the appropriateness of blame may also help to solidify our judgment that a person has acted wrongly.³ Blaming responses may serve to sharpen our attention to what exactly a person has done wrong. Feeling insulted or affronted may prompt one to understand better how one has been mistreated. To be clear, I do not endorse a view that would reduce judgments of wrongdoing to those of blameworthiness (cf. Gibbard 1990). A guiding interest of my approach is in how judgments of wrongdoing and blameworthiness sometimes come apart, as well as in how they interact.

I will group retributive and nonretributive responses together, broadly, as blaming responses. I follow T. M. Scanlon in grouping together as blaming responses all responses that signify the meaning of a wrongdoer's morally criticizable attitudes and judgments for relationships in which she is involved.⁴ What I want to call attention to at present, however, is not the variety of responses that might be identified, generally speaking, as blaming behavior. What interests me is the striking difference in blaming responses we might find appropriate to similar transgressions. Some persons seem to be more to blame than others for the wrongs they commit. Similar hurtful words, similar morally criticizable acts of dishonesty, or the same type of criminal behavior coming from different persons might inspire differences in the blaming responses we deem to be appropriate. Irritable remarks that stem from jealousy seem more worthy of blame than irritable remarks provoked by physical pain. The greedy wife who kills her husband seems more to blame than the murderous battered wife.

Some of this variation in blaming responses has to do with the positional nature of blame. Scanlon has described this as a matter of the standing a given person or group has to blame some wrongdoer (2008, pp. 175–79, 206–10). We might feel less entitled to blame the battered wife in part because the abuse she endured is facilitated by morally objectionable aspects of gender-based relationships that we do not consistently challenge or reject, even though we should. We might feel that we, collectively, have let her and others like her down by failing to protect her rights or properly to empower her with opportunities. We may

³ I thank Amelie Rorty for pressing me on this point.

⁴ See Scanlon (2008, ch. 4, especially 128–29). Scanlon stresses that questions of meaning differ from questions of permissibility. This fits with my suggestion (following Svavarsdóttir) that there is an interesting domain of moral judgment that is not governed by deontic norms.

thus feel that we lack an appropriate position from which to blame her; sharing in the blame, even remotely, may seem to disqualify us from dishing it out. Engaging in moral criticism under the circumstances seems evasive and morally distasteful.

The positional nature of blame can to some extent be segregated from the basis for making judgments of blameworthiness. Determinations of blameworthiness, while not entirely apositional, are less positional. They may be positional in the sense that it can be inappropriate for some people to engage in judgments of a person's blameworthiness, much less blaming, because, for example, doing so gives the impression of distracting from their own complicity. But other people who lack standing to blame because, for example, they are uninvolved, may perfectly well assess blameworthiness, namely, that the agent has acted in ways that give some persons reasons to blame her.

Despite the relative apositionality of judgments of blameworthiness, these judgments can vary across subjects for the same sort of morally criticizable act. Some persons seem to be more worthy of blame than others are for similar acts.⁵ Many people would agree that a person who is desperate for money to treat a sick child is less blameworthy for a theft she commits than someone who does it for fun or to buy video games. Most people would agree that child "soldiers" who murder or maim civilians are less blameworthy than their adult counterparts.

Our judgments of blameworthiness might vary in this way without thereby indicating moral bias or lack of objectivity. A person's difficult circumstances or complicated psychological dynamics have a bearing on our evaluations of her. The circumstances and psychology of an agent may lead us, for good reasons, to find her less blameworthy for her morally criticizable behavior than we would judge someone else to be.⁶ In some cases, something interferes with familiar processes of inference from wrong action to blameworthy agency. Some wrongdoing, we think, is wholly or partly excused.

Some analyses of excuses underplay the difference between our moral appraisals of action versus agent. Peter Strawson maintains that excuses undermine the ordinary sense of an agent's having done wrong by demonstrating that there was no faulty judgment, disregard, or ill will on the agent's part (2003, pp. 77–78). This position has been influential and is defended by R. Jay Wallace, among others (1994, p. 135; see also chs. 5, 6). According to Strawson and Wallace, excuses point to a missing link between the act and the agent's intentions and attitudes; her bad acts contrast with her "good will," or, at least, with the absence of bad will. We are all familiar with excuses like these: "She didn't

⁵ Some of it might have to do with moral pluralism: differences in moral judgments and attitudes compatible with full rationality. But I think it does not come down only to this.

⁶ John Martin Fischer and Neal Tognazzini (2011) describe these sorts of cases as occupying a space between morally attributing an act to an agent and holding that agent morally accountable.

mean it”; “He didn’t understand what he was doing”; “She was only trying to help.” One sort of excuse—for example, “He was pushed”—shows that the agent did not really even act; agency was undermined by circumstantial or intervening conditions.

In fact, by undermining connections between action and will, excusing conditions, so understood, render all excused wrongs only marginally the agent’s actions. Being pushed is but an extreme example of an act the agent does not intend, approve of, or identify with, including what the agent is tricked, manipulated, or intimidated into doing. The result is that wrongdoing is only apparent: the excused agent didn’t really *do* something wrong; it only seems so until the excuse is unearthed. Excuses of this sort do not raise deeper issues about the difference between moral evaluations of act and agent. Rather, they imply that these evaluations are one and the same. What normally or usually would be wrong is not wrong under excusing conditions.

This approach is challenged by a range of cases in which, it seems to me, we draw a clear distinction between our moral appraisal of an action and our varying attitudes toward the agent. These are cases in which an agent acted wrongly and in so doing demonstrated moral disregard for others. The act is clearly ascribed to the agent, and it is not morally justified or permissible. An excuse establishes that although the agent acted wrongly she should not be blamed or should not fully be blamed.

Examples extend from the ordinary to the extraordinary: the parent under emotional strain who yells at her kid, the child who is mistreated by her parent and in turn bullies another child, the inmate who brutalizes another to avoid appearing weak, the soldier in a field of battle who shoots a civilian on orders from a superior, the alcoholic who drives after drinking, the compulsive who tells a lie, the paranoid schizophrenic who commits an act of hateful violence. We might feel that such agents are excused, in whole or in part, from blame for their morally faulty actions. The circumstances or psychological vulnerabilities of these agents fit uncomfortably with the presumptions of our blaming attitudes and judgments. Yet in each of these cases the agent acts intentionally and for reasons we can criticize on moral grounds.

The range of cases I have in mind as morally significant is broader than the class of considerations recognized by the law as excuses from criminal liability. The excuses that are legally recognized as defenses are notoriously narrow. Circumstances providing excuses are mostly limited to duress, coercion, and some mistakes when they show lack of *mens rea*. Psychologically excusing abnormalities are limited to insanity, which is narrowly understood. Insanity as a legal defense is a person’s inability, at the time the crime was committed, to distinguish between right and wrong. Insanity, so understood, is an extreme and rare instance of the broader category of mental illness. Most morally disabling forms of mental illness, including significant impairments to moral motivation, compassion for others, and the like, would not be recognized as legal

defenses against criminal liability. I will not here analyze or criticize legal criteria for criminal liability. I note, however, that these criteria do not depend on blameworthiness, as I understand it. A person might be guilty of criminal wrongdoing without this establishing her moral blameworthiness. The mental or circumstantial obstacles she faces might excuse her from moral blame, even though her intentional behavior violates criminal laws. Moreover, although less relevant to the matters under discussion, some types of actions prohibited by criminal laws are not morally wrong.

To be clear, then, I am interested in cases of excused wrongdoing that might not all succeed as legal defenses against charges of criminal wrongdoing. Furthermore, I am interested in the idea that a person might be excused only in part, or to some extent, for her wrongdoing. That is, I am interested in the scalar nature of excuses. The aspect of law most connected with the scalar nature of excuses concerns whether punishment should be mitigated. Typically these determinations are made in a separate sentencing phase of a criminal procedure, after the defendant has pled guilty or been found guilty at trial. In the sentencing phase, considerations concerning the defendant's character and circumstances may be introduced as relevant to the question of how much punishment the defendant should receive. Although my main topic is moral accountability, not the norms of criminal procedure, the legal practice that separates the sentencing phase from the finding of criminal guilt lends support to and is supported by my contention that judging the blameworthiness of an agent is and should be guided by a distinct set of norms from those we consult to evaluate the moral quality of a person's action.

In challenging Strawson and Wallace's picture, I am drawing on the intuition that persons might be excused, in whole or in part, from being suitable subjects of blame, despite their violating the requirements of morality and acting wrongly. I will now take up some moral reasons we might have to maintain that an agent who is excused from blame can nevertheless have acted wrongly—the judgment Strawson and Wallace resist.

2

Morality facilitates relationships of respect and consideration between people who may or may not care personally about one another. By offering criteria to guide our thinking, morality helps us to specify our mutual obligations, both personal and impersonal. Often, if not always, these criteria take the form of principles. Public recognition of moral principles helps to ease conflicts between people that are aggravated by the bias of self- and group-interest. Furthermore, the equal standing of persons under the scope of general moral principles promotes a sense of greater commonality and mutual sympathy. In these and other ways, social life is enhanced by common principles of morality, when those principles are justified, principles that are general in scope.

The public and pragmatic dimensions of morality generate some pressure within moral thinking to handle exceptions to general principles by tempering blame rather than complicating action-guiding norms. Expanding principles to include their exceptions and qualifications is cumbersome. It requires either that we narrow our specification of the relevant action types captured by a moral principle in order to reflect relevant contextual factors, or that we enumerate qualifications and exceptions to more general principles so as properly to acknowledge such factors. Either of these strategies can detract from general principles that are intuitively appealing enough to capture our attention when we seek guidance from morality. To avoid this, we abstract, to some extent, in our moral thinking from details that characterize differences in the circumstances to which we apply our principles. Sometimes these details, including the various factors that make it difficult to act morally, have a bearing on what it is reasonable to expect people to do. It may not be reasonable to expect a person to deal forthrightly with someone who has betrayed her in the past, and we might not blame her for withholding or manipulating the truth. Or perhaps more obviously, we would not reasonably expect someone suffering from an attack of paranoia to refrain from making groundless accusations against other people, and we would be unlikely to blame her for her remarks. We might maintain, however, that the manipulation and groundless accusations were morally objectionable. We might believe that persons who were hurt by these actions were done wrong. When we formulate action-guiding norms that prohibit people from doing wrong, we meaningfully abstract from circumstances that mitigate blame.

We also abstract, to some extent, from differences in people's capacities for moral understanding and moral motivation. Morality affirms standards that most people are able to meet, even if some people cannot because they lack the capacity to understand or to care about it. Affirming moral standards makes sense when many and perhaps most people are or might be responsive to them. It is true that some persons are, in fact, not responsive to morality's demands and are very unlikely to change. Furthermore, among those, some persons lack the capacity to respond to morality's demands. But this does not defeat the social purposes served by action-guiding principles that many persons can and do abide by.

These abstractions might seem merely to represent pragmatic compromises to the justifiable content of moral requirements, but pressures to abstract and to generalize in moral thinking about right and wrong have the support of certain important normative considerations. There are moral reasons to treat all rational persons as capable of moral action, even though in fact some are not. Moral capacity, as I understand it, is the capacity to act for moral reasons. As I have indicated, a person's capacity for morality has both cognitive and motivational dimensions. A morally capable person is capable of understanding morality's requirements and so of regulating her behavior. Not only

can she recognize that other persons are sentient, concerned about their future, have meaningful relationships, et cetera, but she also has a sensibility that moves her to care about these facts. In asserting that some people lack moral capacity, I am supposing that psychological factors influence our receptivity to moral reasons, in both cognitive and emotional respects. Cognitive and emotional factors influence the reach of moral considerations as reasons for particular persons (see Kelly and McPherson 2010).

Let us set aside the class of persons who are obviously incapacitated, generally speaking, to evaluate reasons for action of any sort: prudential, moral, or instrumental, even merely concerning the means to immediate gratification. Persons who are thus incapacitated are, in an obvious sense, irrational and unfit for practical directives of a reason-giving nature. This leaves us with the category of broadly rational persons. We might owe it to all rational persons to treat them as though they are capable of responding to the demands of morality, even though some people in fact lack the capacity to understand or to be motivated by those demands. It might be arrogant and disrespectful to presume to know who has and who lacks a capacity for morality. It is certainly far from clear which persons have and which lack moral responsiveness, especially since a person might conform to the requirements of morality for reasons of self-interest. Persons who are capable of guiding their actions with moral considerations may reasonably object to being treated as though they are not, since this is bound to limit their relationships with other people. In this sense, moral ought judgments unproblematically presume moral capacity.

Still, we might have grounds to doubt a person's capacity for morality when she fails to demonstrate the understanding or concern morality requires. And we might worry that grounds to doubt a given person's capacity to meet morality's demands should unsettle our confidence about how morally to appraise her actions. While we might feel comfortable directing all rational persons to strive to meet moral requirements, when it comes to judging what a person has done, we might hesitate. It is possible that in some morally relevant domain of action a person just does not care about moral directives—moral reasons have no “authority” for her. Either she cannot cognitively grasp them or they do not resonate motivationally with her. This might represent a limit to her moral capacity.⁷

The worry I am considering is whether it makes sense to judge a person's actions to be morally wrong and to have violated her moral obligations if, in fact, that person could not have acted well. Suppose that she was not, under the circumstances, capable of appreciating the relevant moral reasons or was not, generally speaking, capable of appreciating certain kinds of moral reasons. While the limits of a person's moral capacity are real, I think it does make sense to hold all rational persons up to common standards of moral evaluation. Even

⁷ For further discussion of points in this paragraph and the next, see my 2012.

if there are persons who do not and could not act as they morally should, there is a clear sense in which any wrongdoer ought to have acted better than she did. The moral ought, as I will understand it, is fixed by what a morally motivated person would do. A reason to fix the standard of moral evaluation in this way is that only this standard properly acknowledges the moral costs, to victims, of wrongdoing. It is morally suspect to claim that, because a particular person could not have treated the victim as she ought to have, that victim has not been wronged.

Moral assessment of behavior must be properly responsive to those persons who are done wrong by the type of behavior in question. Morally we should ask whether behavior that affects them could be justified to them. Action types that reasonably are or could be objectionable to persons affected by them are wrong, whether or not the agents who commit those wrongs were capable of acting well. This standard of justifiable behavior makes sense on the assumption that many people in fact are capable of acting in accordance with morality, even if some are not. Since I have set aside cases of persons who are not even weakly responsive to reasons, what I am affirming is the relevance of moral standards for evaluating the behavior of persons who are at least minimally rational. A morality that is not pointless because it effectively guides many people can be used to evaluate any minimally rational person's acts. In formulating such a morality we have reason to separate evaluations of an agent's blameworthiness from the evaluation of her actions.

The sense I am attempting to give to the distinction between wrongdoing and blameworthiness bears a certain affinity to the deontological structure of some moral dilemmas. I have in mind situations in which the agent must choose between a set of bad options and seems forced to choose the least bad or least objectionable of all the action options available to her. As Thomas Nagel imagines, one might have to twist the arm of an innocent child in order to further morally urgent aims (1986, p. 176). While the act might be, on balance, justified, Nagel's point is that it cannot so clearly be justified to the victim. From the victim's perspective, the agent might only be excused and perhaps not entirely; what the agent has done is not without negative moral remainder. There is an affinity here with the normative structure of excuses, although not an exact parallel. In Nagel's example, the agent wrongs the victim, while not acting wrongly overall. The agent's wrong to the victim is excused by her justifiable purpose. In the cases of excused wrongdoing that interest me, there is no such purpose. The common element in Nagel's scenario and the one I am considering is the insistence on not subsuming costs to the victim in an overall calculation of what it is reasonable to expect of an individual agent. Those costs are instead highlighted in a deontological assessment of the agent's act.

The value of assessing the significance of an agent's wrongful harming of another person, apart from appraising the agent's blameworthiness for so acting, is developed in tort law. Tort law offers a framework that clearly distinguishes

between judgments of wrongful harming and blameworthiness. Victims of a tort are entitled to collect damages when they offer adequate evidence that harms they have suffered were wrongfully caused by some other party, regardless of whether that party intended harm, demonstrated ill will in causing the harm, or brought about beneficial consequences, on balance, by so acting. In fact the tortious conduct might have been morally commendable along either of these dimensions: intention and wider consequences. A person who is praiseworthy for a heroic act, such as saving a life, might nevertheless be liable for compensating the owner of property damaged in the course of her act.

Tort law aims to compensate victims for harms wrongfully caused by the defendant. Facts about the defendant's mental state or the further consequences of her act are not germane to the victim-centered, rights-based focus of judgments of tort liability. The notion of fault required to establish the defendant's tort liability is "objective." Typically it involves the judgment that a reasonable person would not have engaged in the type of behavior exemplified by the defendant without recognizing (1) the risk of its causing harm to others and (2) that harm so caused would constitute grounds for appropriate compensation to the victim.⁸ Furthermore, the type of behavior is such that people cannot reasonably be expected to obviate the risk to them associated with the conduct in question. A defendant might be found to be at fault for harms that are wrongful, in this sense, despite that fact that she is less reasonable than other persons, that she did her best to take care not to harm others, that she minimized harms overall, or that she was responding justifiably to a morally urgent problem. The relevant standard of fault is a generalized standard: it describes the conduct of a reasonably prudent person in situations of a relevant kind. This standard is used to establish that a victim has been wrongfully harmed and should be compensated even though the tortfeasor's mental state is virtuous and despite the fact that in a particular case, beneficial consequences of the defendant's tortious act might accrue to other persons or even to the victim herself. Legal scholars disagree about whether the rationale for tort law has the moral structure of corrective justice (see Coleman 2001). It is not my task to enter into that dispute here. Still there seems to be an affinity between the moral dynamics that I am discussing and the structure of tort law.

I have argued that, setting aside persons with demonstrated incapacities to appreciate reasons of any sort—hedonistic, prudential, or moral—we should extend the deontological requirements of morality to everyone else. Moral ought judgments extend to persons who discount the importance of moral reasons, provided that such persons are capable of appreciating reasons of any sort—prudential, egotistical, or otherwise.⁹ Their rational faculties make them

⁸ For this formulation I am indebted to George E. Smith.

⁹ Matthew Talbert (2008) takes a similar position and from it concludes that it is appropriate to direct blaming responses to all minimally rational wrongdoers. I resist Talbert's conclusion.

candidates for moral obligation and moral assessment, whether or not morality will or could be effective in directing them. Morality effectively moves many people, and that is enough reason to maintain moral standards to assess action. Victims of wrongdoing can meaningfully be said to be morally entitled to the regard that morally motivated persons would give them.

We have good reasons to believe that most persons are capable of acting morally and that all rational persons are subject to morality's demands and assessments. While morality presumes general compliance, it need not presume the possibility of universal compliance. General compliance gives us good reason to maintain, for all rational persons, standards dictated by moral considerations. So we should assume that morality is addressed to rational agents, that is, to agents who respond to reasons, even though not all rational agents are morally capable. Only persons who can understand and be motivated by morality can be said to be morally capable.

3

The general (but not universal) presumption of moral capacity underlying deontological moral requirements suggests a role for excuses: excuses point to the limits of an individual's moral capacity and the relevance of these limits for assessing her blameworthiness. Excuses point to reasons for doubting that a person whose behavior we morally judge to have been wrong was in fact capable of having acted better. While wrongdoing does not depend on the wrongdoer's moral capacity to have acted well, perhaps blameworthiness does. Blameworthiness presupposes moral capacity; excuses point to its absence. Those who are excused could not (or probably could not) have acted for moral reasons.¹⁰ While we might judge their actions, we should not blame them for acting badly. Call this analysis of excuses the Incapacity Thesis.

In fact Strawson and Wallace use a version of the Incapacity Thesis to demarcate a class of cases in which an agent intentionally acts contrary to morality yet is not to blame. They do not, however, understand such cases as cases in which excuses operate. Instead they place these cases in a separate category in which persons are exempted from moral responsibility because they are defective as agents. Wallace writes, "Thus, whereas excuses inhibit responsibility for a particular act by showing that a morally accountable agent has not done anything morally impermissible in the first place, exemptions block responsibility for a particular act by showing that an impermissible act has been

¹⁰ This view fits with a familiar notion of desert: namely, that those who could not have done otherwise cannot be said to deserve blame for their wrongdoing. Those who lack excuse for their wrongdoing, by contrast, and hence could have acted well, deserve blame. The operative notion of blame here tends to be retributive in nature.

done by someone who is not, in general, a morally accountable agent” (1994, p. 156). On this line of thinking, an agent is exempted from accountability because that person lacks, in a broader way, what Wallace refers to as “powers of reflective self-control.” These are the agent’s powers, generally speaking, to understand moral reasons and to regulate her behavior on their basis (p. 157). Agents who are exempted from responsibility have a defective capacity, either permanently or for a limited period of time, to grasp and comply with moral reasons.¹¹

Appealing to this model of defective moral agency does not do justice to the full range of cases I have specified. While there are some cases of intentional wrongdoing in which the agent lacked the capacity, more broadly, to recognize and respond to moral reasons, not all cases in which blame is misdirected fit this description. Some cases in which blame is mitigated are cases in which the agent may have demonstrated a healthy capacity to grasp and to abide by moral reasons, generally speaking, and has not lost this general capacity, even under the excusing conditions. Appealing to a highly general account of an agent’s capacity for morality is too crude an instrument to account for the scalar nature of excusing conditions and for selective exemptions from an agent’s general accountability, such as cases of acting under stress and cases of certain focused psychological pathologies.

The relevant moral capacity could, of course, be construed more narrowly: as the capacity to recognize moral reasons of a certain type or under certain circumstances. Thus it would be more plausible to claim that exempting conditions track an agent’s moral incapacities. The trouble with this proposal is that it opens the door too widely to the skeptic, who worries that any instance of wrongdoing might be excused in this sense. Even normal and rational agents might have been caused to act by psychological factors they could not have overcome.¹² People can have moral blind spots, some erratic patterns in their psychological dispositions, and psychological pathologies that do not interfere with most ordinary functioning. This psychological complexity entails that it becomes very difficult to tell whether an agent has or lacks the relevant capacity. We cannot reliably make out the distinction between an unexercised capacity and an incapacity. Blame might never gain a reliable foothold.

Skeptical doubts about whether a person possessed the capacity to distinguish and act from the particular moral reasons she neglected under the circumstances

¹¹ In Wallace’s view, such agents are exempted not only from blame for their morally impermissible behavior but also from the moral obligation to act as morality prescribes, since “it does not seem fair to demand that people comply with such obligations unless they have the general ability to grasp those reasons and to regulate their behavior accordingly” (1994, p. 161). In section 2 of this paper, I argued that all minimally rational persons are subject to moral directives and are obligated to act morally. Contra Wallace’s suggestion, this would include persons who lack the general capacity to recognize moral reasons and to regulate their behavior accordingly.

¹² As discussed below, I think that this shows the retributivist notion of desert is unstable.

in which she acted wrongly are serious.¹³ Taking the skeptic's challenge seriously, I propose that a reasonable assessment of when blameworthiness is mitigated or averted cannot depend on fine discriminations about capacity. This means that Wallace's strategy of using moral incapacity to mark off a separate class of cases in which an agent intentionally does wrong but is not to blame will not work.

I propose instead that excuses function by undermining what normally are reasonable expectations about how a person should be motivated.¹⁴ Excuses do not challenge our notions about how a morally motivated person would act. For this reason they do not challenge our evaluations of right and wrong action. Nor do they entail that the excused agent was incapable of having satisfied morality's demands. The point of excuses is to address obstacles to moral motivation, both cognitive and emotive, and to do this based on a normative standard. The normative standard is a moral one, but the norms that regulate it are different from the norms that guide our appraisal of actions as right or wrong. In evaluating an agent's blameworthiness, we assess how reasonable it is to expect an agent to act morally in the face of obstacles. At the margin we might wonder whether we should retain the assumption of the agent's moral capacity under those circumstances (or more generally)—but this is the outer margin only. Within the scope of many excuses, we do not necessarily relinquish our belief that the agent could have avoided wrongdoing. Instead, we might think that morality itself requires that we relax our expectations that she should have. Circumstances surrounding an agent's disregard for morality sometimes challenge the appropriateness of ordinary moral expectations by unsettling the ordinary presuppositions of our expectations. This is the case if obstacles seem too much reasonably to require the agent to bear without experiencing inner conflict, ambivalence, indifference, or stress that might lead her morally to fail to act well. A blameworthy person is someone we think should have remained committed to moral ends, under her difficult circumstances and despite internal psychological obstacles. We might think that despite her difficult circumstances, the moral demands on her were not unreasonable. Perhaps this is because we all face difficult circumstances at one time or another. Those who are not blameworthy are persons whose commitment to morality is too much to require—obstacles to success are too devastating. Moral expectations would be strangely inhuman.

One way to express this rationale for excuses is to say that it seems unfair that the requirements of morality are so much harder for some people to meet.

¹³ Wallace himself seems to recognize this (1994, pp. 183–86). He sets these skeptical doubts aside, however, because he claims that what matters is not a person's ability to exercise her reflexive powers of self-control under the circumstances; rather what matters is simply her possession of such powers (see p. 183). I find this position implausible and hard to reconcile with Wallace's acceptance of selective exemptions from an agent's general accountability (see pp. 169, 179).

¹⁴ Gary Watson (2004, p. 72) makes a similar suggestion, although he does not elaborate it.

While our moral judgments of right and wrong reflect our acceptance of moral luck—the recognition that the moral rightness or wrongness of a person’s actions depends on a range of factors beyond the agent’s control—our judgments of blameworthiness are uncomfortable with it, and legitimately so.¹⁵ A person with the misfortune to be faced with tough moral choices might fail to act well. Our recognition of the difficult circumstances under which she acted in morally criticizable ways bears on our assessment of what her wrongdoing says about her. Obstacles to moral success might challenge our sense that it is fair to blame, not because we lack standing or because we judge that the agent’s capacity to choose to act in line with morality has been compromised, but because an agent’s confrontation with significant obstacles to moral understanding or moral motivation calls out for our compassion. This is not to say that the moral costs of wrongdoing are not real or important. Our judgment of a person’s acts as wrong acknowledges their seriousness. Compassion is, in this way, compatible with moral criticism (see Watson 2004, pp. 244–45).

Judgments that circumstances can mitigate blame despite an agent’s wrongdoing express morality’s recognition that the stringency of its requirements varies contextually in a way that can be unfair. Judgments of what it is reasonable to expect of a person, under the circumstances, are moral judgments regulated by norms that address unfairness in the distribution of moral demands. This normative appraisal of unfairness can stand in tension with a deontological appraisal of the content of the demand the agent faces. Our compassion for the wrongdoer alleviates this tension, to some extent, by leading us vicariously to share in the burden of unfair moral demands.

4

I have stressed a distinction between two sorts of moral judgments, guided by two sorts of normative standards. The first sort concerns the evaluation of actions. Like the legal criteria of tort liability, judgments of actions as right or wrong are structured by principles that attain a certain generality. I have suggested that such moral principles should meet requirements of justification, especially to the victim, and that they are expressed by our understanding of how a morally motivated person would act. I stressed a parallel with the role of objective criteria in establishing tort liability, criteria that refer to generalized standards of reasonable conduct. Both moral principles for evaluating conduct as wrong and legal criteria for judging conduct as tortious express general standards for regulating and evaluating behavior that are characterized by a victim-centered focus.

¹⁵ On the notion of moral luck, see Nagel (1979, ch. 3).

The second sort of moral judgment I have discussed concerns judgments we make about the extent to which we think it is reasonable to expect a particular person to overcome obstacles to moral motivation. These judgments deal more directly with threats to morality in worldly circumstances and in our psychologies. Reasonable expectations about how a particular person should be motivated to act are regulated by considerations of fairness. Our sense that a particular person is unfairly burdened by contingencies the rest of us rarely encounter triggers a judgment that compassion is appropriate and that the circumstances that call for our compassion temper a person's worthiness of blame.

This claim about fairness and compassion goes against the Kantian view that we may always reasonably expect a rational person to overcome the appeal of her inclinations and disinclinations when so acting would conflict with the demands of morality. On this Kantian view, it is always reasonable to blame wrongdoers. This view depends on an uncompromising premise maintaining the autonomy of rational agents from psychological obstacles and, accordingly, asserting the categorical nature of all moral demands. It is the categoricity of morality's demand that rational agents demonstrate "good will" that I challenge here.

The Kantian view is reflected in Strawson's and Wallace's position that those persons who fail to act as the morally motivated person would act and are excused either did not really do something wrong or they are defective as agents, incapable of responding morally to reasons. As we have seen, Strawson and Wallace maintain that when persons are excused from blame despite demonstrating ill will, it is because their capacity for reflexive self-control is diminished or malfunctioning. I am suggesting a different paradigm. Excuses do not necessarily indicate either lack of ill will or an agential incapacity. Rather, they point to obstacles that trigger our compassion. They help us to identify ways in which the requirements of morality can be very difficult to meet—not for everyone, but for some people and under some circumstances. Sometimes wrongdoing is excused, even when accompanied by ill will, not because an agent could not have exercised reflexive self-control but because moral action is so hard under the circumstances, be those circumstances marked by internal or external obstacles. The obstacles the agent faces are significant enough that we should relax our notion of what it is reasonable to expect, even though we may not relinquish our understanding of the actions morality demands.

Let me pause at this juncture to consider an objection.¹⁶ The view I have presented might seem to be too crude. It might be argued that it is not simply the relative difficulty of the moral task that triggers excuses. It is also the genealogy of the obstacles the agent faces. When these obstacles themselves have

¹⁶ I am grateful to Emily Robertson for pressing this objection.

resulted from the agent's morally flawed behavior, their presence may fail to incite our compassion or to constitute an excuse. We feel much less sympathy for someone who is struggling with the results of her own bad choices—for example, someone who gambles away her paycheck or who is incarcerated for committing a crime—than we do for someone whose troubles are not of her own making. This explains the ambivalence that many people feel about whether an addict's wrongdoing under the influence of her addiction is excused. While an addict craving a drug might lack a normal capacity to recognize and be motivated by moral reasons, this impairment might have resulted from bad choices she made at a time when she did not lack this capacity.

The account I am developing accommodates and analyzes the intuitions underlying such responses as follows: we assess whether the circumstances creating the obstacles an agent presently faces are circumstances that the agent ought to have avoided and could have avoided without undue burden. We want to know whether the agent had a fair opportunity to have avoided the circumstances or conditions (e.g., poverty, addiction) that now are extremely difficult for her to overcome and may factor into bad choices she now makes. If avoiding the circumstances that now pose serious difficulties for her moral performance would have been too much reasonably to expect of her, then her blameworthiness is called into question. In this way, the analysis I am proposing applies genealogically. If, at the earlier stage, we find that a person did have fair opportunity to have avoided present constraints on her choices, we may find her blameworthy, even though she now faces difficulties that would cause most people to falter. I believe this suffices to accommodate the intuition that people are accountable for problems they have caused themselves to have.

5

I turn now to some further implications. The way I have proposed to understand how excuses function may seem to imply that wrongdoing that is not excused is blameworthy: when a wrongdoer lacks an excuse, she is blameworthy. This would mean that persons with appropriate standing would not be misguided to blame her. Is this right? The answer depends on how we understand blameworthiness. If a person is worthy of blame when she is not motivated in ways that it is reasonable to expect her to be, then lacking excuse would imply blameworthiness. Wrongdoing without excuse would be blameworthy.

This makes sense if we understand blame as, for example, involving an emotionally tinged judgment that such a person has disappointed and may well again disappoint moral expectations and thus is impaired, for morally significant reasons, in her relationships with other people (see Scanlon 2008,

ch. 4). Emotions naturally connected with this judgment include disappointment, regret, frustration, sadness, and longing. The judgment of blameworthiness might be rationally related to recognizing reasons that relevant people share to change their expectations, intentions, and emotional investment in relating to the wrongdoer. Those persons themselves would have reason to make those changes, that is, to engage in blame. Other people might not have such reasons.

This notion of blame is substantial, but it is not retributive in nature. A retributive notion of blame requires a further premise: that the wrongful agent could have acted as morality requires. I have claimed that doubting any given wrongdoer's capacity to have acted well is coherent. This implies that lacking excuse for wrongdoing would not suffice to substantiate an agent's moral capacity. Someone who we think should have remained committed to moral ends, under her difficult circumstances and despite internal obstacles, might in fact have been incapable of doing so. But although I cannot argue this point fully here, the justification of retributive blame seems to depend on the wrongdoer's moral capacity to have acted well. Her deservingness of blame seems to depend on having this capacity. That is, it seems to depend on the Kantian view. If I am right about this, then wrongdoing without excuse would not imply the appropriateness of retributive responses. There is room for the skeptic's challenge to the appropriateness of retributive blame.

Blame in either sense I have just discussed is a weak rationale for criminal punishment. Retributive blame lacks adequate justification, or so I have claimed. Nonretributive blame lacks adequate position-independent credentials: since nonretributive judgments of blameworthiness fail to pick out reasons all persons have to engage in blame, these judgments would seem to be too narrowly tailored to serve as a rationale for a public institution. Insofar as criminal punishment has expressive value, it is best understood to express not an offender's blameworthiness or the blame an offender deserves but rather social condemnation of the offender's wrongdoing. As Joel Feinberg puts it, "What justice demands is that the condemnatory aspect of the punishment suit the crime, that the crime be of a kind that is truly worthy of reprobation" (1970, p. 118). Social condemnation of criminal acts, scaled according to the social harmfulness of their types, can and should be distinguished from directing blame toward offenders.

6

I have proposed that excuses represent a threshold of reasonable expectations formed by reference to norms about the burdens we morally expect persons, generally speaking, to bear in order to do the right thing. It seems unfair to expect some persons to bear much greater burdens in order to meet moral

requirements on action. Our judgments about whether an agent is excused, or is excused to some extent, will connect with certain sentiments, and I have stressed a connection with compassion. Whether or not excused wrongdoers lack the capacity to meet morality's demands, we can recognize that the obstacles they face would be deeply unsettling to almost anyone.

This approach to understanding excuses makes sense of scenarios that trigger our compassion and helps to illuminate the value of compassion as an attitude that is available to us as we reckon with people who have made moral mistakes. We come to view a person's mistakes through the lens of a common standard for judging moral commitment. This standard recommends modesty and restrains moral high-handedness by urging us to refrain from holding other people to a higher standard than one that we ourselves could confidently meet. Conversely, for our own moral and psychological health and the vitality of relationships in which we emotionally invest, we might better appreciate that it can be very difficult to live responsibly.

Our sense that compassion is called for might also, strangely enough, help to confirm our sense that an agent has acted wrongly. Our compassion expresses the painful realization that the outcome of the agent's action, and indeed the action itself, were morally troubling. We share in the response that a morally sensitive agent would experience. We do this in part via the recognition that the agent may not have been adequately situated fully to anticipate or to take on this response. We feel it, in effect, on her behalf or, if the agent feels regret, to lessen its sting. Thus, unlike a compassionate response to the phenomenon of "agent-regret," whereby an agent regrets the outcome of an action of hers that was not wrong, compassion in this connection adheres more directly to our assessment of the agent's action as morally wrong.¹⁷ We attempt to soften the connection between the agent and her wrongful act.

The recognition that a wrongdoer faced obstacles that would have led many or most people astray does not entail a normative requirement to feel compassion toward the wrongdoer. A moral requirement would be too strong, and not just because feelings cannot readily be willed. Requiring compassion would seem to neglect the significance of the moral wrong done, especially for those people who have suffered because of it. But although considerations that render compassion appropriate do not require us to feel it, they do enable us to understand how and why someone could be worthy of it. And if we understand that someone is worthy of compassion, we can see that blame would be misdirected. Judgments moderating our sense of an agent's blameworthiness share characteristics with what Sigrun Svavarsdóttir refers to as "value-based criticism of attitudes." Svavarsdóttir writes, "[V]alue-based criticism of attitudes does not take the form that the agent fails to have a required attitude

¹⁷ On agent-regret, see Williams (1981, ch. 1).

towards an object or has an impermissible attitude towards an object. Rather, the criticism is that the agent's attitudes are misdirected: his emotional or motivational energies are *wasted* by directing them at things not worth them or by *not* directing them at things worth them" (2011, p. 39).

Blame, as I have described it, characterizes a range of responses to wrongdoing. This range of behavioral responses is not restricted to emotional reactions. It might also include, I have suggested, demands for apologies, explanations, and the like, as well as changes in our expectations and interests in relating to the wrongdoer. For example, a person's wrongdoing may undermine our trust and affect our friendship. I do not mean to deny, however, that blaming responses are often imbued with strong emotion. When this emotion is misdirected, we pay a price. When we become emotionally invested in negative moral assessments of persons whose failures do not set them apart from most people, we lose sight of our common human frailty and an appreciation of the contingencies of our moral successes as well as our failures. By congratulating ourselves we distract ourselves morally. We lose sight of the collective nature of our moral achievements and of the moral obligations we have to protect one another from morally hazardous circumstances. And when we resent wrongdoers who are not blameworthy, we waste opportunities to retain them as members of the moral community.

In sum, while it seems to me that we are not morally required to enter into a wrongdoer's perspective enough to appreciate the difficulty of the obstacles that led her to falter, the possibility of a compassionate recognition of the reasons for a person's moral failures humanizes relationships and opens possibilities for understanding, forgiveness, and an honest reckoning with faults we might share. This is not the subject of moral imperatives, but we might find our relationships to be worthy of these possibilities.