

Gut-wrenching Choices and Blameworthiness

Note: This is the penultimate draft of an article the final and definitive version of which is forthcoming in a special issue of the *Journal of Value Inquiry* on the topic of moral responsibility. That journal is available online here: <http://link.springer.com/journal/10790>

While there is no shortage of disagreement about what is required for blameworthiness, it has traditionally been assumed that freely doing what you know to be wrong all things considered, despite being aware that it is within your power to do the right thing instead, suffices. Let us refer to this traditional assumption as the sufficiency thesis. The sufficiency thesis is plausible, but it is not beyond dispute. Reflection on certain situations in which a person can do the right thing but only at great personal sacrifice highlights some particularly pressing difficulties for it. My principal aim in this article is to show that those difficulties are not insuperable. Along the way, I also make some observations about the sorts of considerations that can limit the amount of blame of which a person is worthy without rendering the person entirely blameless.

1. The Challenge Outlined

The following story will serve as the backdrop for much of the subsequent discussion.¹ Ann finds herself in circumstances in which she has a clear obligation to save a small group of people from certain death. Normally Ann would not hesitate to come to the rescue of someone who was in danger, even if it meant risking her own life. Matters are not so simple in this particular case, however. The difficulty is that Ann's daughter is also in danger of suffering a nontrivial, though

¹ The story is an augmented version of a case sketched by Michael McKenna, *Conversation and Responsibility* (New York: Oxford University Press, 2012), p. 19.

not life-threatening harm, and Ann cannot save the group of people while also coming to her daughter's aid. So she must choose: either she saves those whose lives are in peril, or she protects her child. Rest assured that Ann wants nothing more than to help everyone who is at risk in this situation and is horrified by the gut-wrenching choice now facing her. In the end, though, she elects to help her daughter, thus allowing several people to die tragically premature deaths.

We may assume that Ann was aware that it was morally wrong for her to protect her daughter from non-lethal harm, given that doing so would come at the expense of several other innocent lives. We may further assume that Ann freely came to her daughter's rescue anyway, despite also being aware that it was within her power to do exactly what was morally required of her. Given these assumptions, the sufficiency thesis implies that Ann is blameworthy for what she did. But can that be right? Is Ann in fact blameworthy in this case? It is quite tempting to say that she is not. While Ann may have freely and knowingly done the wrong thing, despite being aware that it was within her power to do the right thing instead, blame might nevertheless seem inappropriate given the ridiculously tough spot in which she found herself.

The story about Ann is an instance of a more general phenomenon. Occasionally people find themselves in circumstances in which doing the right thing requires extraordinary personal sacrifice. When someone does what is morally required of her in a situation of this sort, it is likely that the person will be worthy of at least some praise. This is because freely doing the right thing, for the right reasons, in the face of significant temptation to do otherwise, suffices for praiseworthiness.² But what about well-meaning individuals with otherwise exemplary characters who fail to do what is morally required of them in these types of situations? What should we say about them? The sufficiency thesis evidently implies that, in at least some cases fitting this description, the person is blameworthy for his or her moral failure. But as reflection

² See Richard Swinburne, *Responsibility and Atonement* (Oxford: Clarendon Press, 1989), p. 35 for a similar view.

on stories like the one about Ann illustrates, that judgment can seem unduly harsh. Do such stories then provide us with counterexamples to the sufficiency thesis?

There is undoubtedly something right about the judgment that it would be inappropriate to blame a person in Ann's position for her moral failure. As we shall see, however, this is entirely consistent with the sufficiency thesis. Stories like the one about Ann are therefore not counterexamples to that thesis. What reflection on such cases does reveal, however, is the importance of taking into account various considerations that can impact how much blame agents who meet the minimum conditions for blameworthiness are worthy of.

2. An Initial Response

We seem to operate with a defeasible presumption of responsibility. When someone is found guilty of a moral offense, the default assumption seems to be that the person is worthy of at least some blame. This default assumption can of course be overturned, if it can be established that the person has a legitimate excuse for doing what she did. However, in the absence of any evidence that excusing conditions obtain, we tend to assume that the person is blameworthy for her wrongdoing. Defenders of the sufficiency thesis could thus argue that, unless critics of the thesis can produce good reasons for thinking that someone in Ann's position should be let off the hook completely, we ought to proceed on the assumption that she is worthy of at least some blame.

Some might object that a default assumption of blameworthiness of the sort just described is unwarranted, even in cases of clear wrongdoing. Being the target of blame is often an unpleasant experience. Perhaps, then, we should be a bit more circumspect when doling out blame. Instead of automatically assuming that people are blameworthy for their immoral behavior, perhaps we should withhold judgment on the matter until their blameworthiness can be

established beyond a reasonable doubt. If so, then the burden of proof would be on defenders of the sufficiency thesis to substantiate their judgment that Ann is blameworthy.

While I am not entirely unsympathetic to this way of thinking, I do not think it undermines the presumption in favor of thinking that Ann is in fact blameworthy in the story at issue. Even if we agree that we ought to adopt a more cautious approach when assigning blame, this is compatible with the plausible claim that, in the absence of any evidence that Ann has an excuse for her wrongdoing, the fact that she freely did something she knew was morally impermissible, despite being aware that it was within her power to do the right thing instead, provides us with good reason for thinking that she is worthy of at least some blame. So, while there might very well be a legitimate demand that those who deem Ann blameworthy substantiate their judgment, it is far from clear that they lack the resources to meet the demand.

Notice, moreover, that the sorts of considerations typically thought to *completely* absolve a person of blameworthiness for her moral offense do not seem to apply here. Ann, we are supposing, knew what she ought to do and that what she was doing was morally wrong. So she cannot plead ignorance. Nor can she honestly say “it was an accident,” or “I couldn’t help it,” or “I had no choice,” for by hypothesis she acted intentionally, of her own free will, and had it within her power to do what was morally required of her. What, then, is her excuse supposed to be? In the absence of a satisfactory answer to this question, we seem justified in concluding, at least provisionally, that Ann is in fact blameworthy. Having said that, though, we must be careful to distinguish this provisional conclusion from two other claims with which it can easily be confused and to which proponents of the sufficiency thesis at issue need not be committed.

It is important, first, to distinguish the claim that a person is blameworthy from the closely related but nevertheless distinct claim that others would be justified all things considered

in blaming the person. The failure to do so is doubtlessly at least partly responsible for whatever initial inclination we may have had to let Ann off the hook. Proponents of the sufficiency thesis are committed to the claim that Ann is worthy of at least some blame for what she did. But, as is now fairly widely recognized, it does not automatically follow from that claim that it would be appropriate all things considered for anyone to actually blame Ann.

Consider an analogy with punishment. The fact that someone deserves punishment is a reason to punish her. But it does not follow that the person ought to be punished all things considered. There can be any number of reasons why we should not punish someone who deserves to be punished. If, to take a rather extreme case, the choice is between punishing someone who deserves it and saving a school full of children, the right choice is obvious.

Similar remarks apply to blame and blameworthiness. There can be any number of reasons why it might be inappropriate to blame someone who is in fact blameworthy. We might have evidence which suggests that the person is not blameworthy when in fact she is, blaming the person might be hypocritical, blaming the person might have various untoward consequences, and so on. So, from the fact that Ann is blameworthy for what she did, we cannot automatically infer that anyone would be justified in blaming her. And no doubt there are reasons that tell against blaming Ann in this particular case, regardless of whether she is blameworthy. Given the circumstances, blaming her might seem rather cruel, and it could very well do more harm than good. We can therefore agree that, all things considered, perhaps Ann should not be blamed for what she did in this case, even if she is blameworthy for doing it.

It is also important to distinguish the claim that a person is blameworthy from the further claim that the person merits *unmitigated* blame. In saying that Ann is blameworthy, proponents of the sufficiency thesis are not committed to this further claim. The fact that a person is

blameworthy does not imply that there are no mitigating excuses, considerations that diminish the amount of blame a person deserves without necessarily rendering the person blameless.³ So, from the fact that Ann is worthy of at least some blame, we cannot automatically infer that she is worthy of unmitigated blame. In order to justifiably conclude that, we would first need to rule out the possibility that Ann has a mitigating excuse. However, as I will argue momentarily, it is quite plausible that the difficult position in which Ann found herself provides her with a strong mitigating excuse. If I am right about this, then while Ann may indeed merit some blame for her wrongdoing in this case, she is worthy of significantly less blame than she would have been had she not been faced with such a difficult, gut-wrenching decision.

3. A Mitigating Excuse

While it may have been morally impermissible for Ann to protect her child instead of rescuing the group of people she allowed to die, it could be argued that she is not, even in principle, the appropriate target of negative reactive attitudes such as resentment, indignation, and guilt, on the grounds that it would have been enormously difficult for her to do the right thing in this case.⁴ If, as seems plausible, a person is blameworthy if and only if she is, in principle at least, the appropriate target of such negative reactive attitudes, it follows that Ann is not blameworthy for her behavior in this case. What are we to make of this line of reasoning?

Doing the right thing is not always easy. If it were, there would presumably be much less wrongdoing in the world. Ordinarily, though, the fact that it was difficult for someone to do the right thing does not excuse the person for failing to do it. It might be very hard for a politician

³ Richard Brandt, "Blameworthiness and Obligation," in A.I. Meldon (ed.), *Essays in Moral Philosophy* (Seattle: University of Washington Press, 1958) 3-39, p. 21.

⁴ Cf. John Martin Fischer and Neal Tognazzini, "The Physiognomy of Responsibility," *Philosophy and Phenomenological Research* Vol. 82 (2011), p. 389.

looking to fund his next campaign to turn down a sizeable bribe from a corrupt lobbyist, but it does not follow that he is off the hook in the event that he accepts it. Similarly, it can be extremely difficult to tell the truth when lying will save you substantial pain or embarrassment, but, again, it does not follow that you are off the hook for your mendacious behavior. Now, this is not to say that its being difficult for a person to do the right thing can never be relevant to blameworthiness. As we will see, it certainly can be. It is only to say that a person cannot get off the hook simply because it was very hard, though not impossible, for her to do the right thing.

How might the fact that it was difficult for someone to avoid wrongdoing be relevant to the person's blameworthiness, if it does not free her from blame entirely? Distinguishing between mitigating and full excuses will help answer this question. A mitigating excuse, you will recall, is a consideration that reduces the amount of blame of which the person is worthy without rendering the person blameless, whereas a full excuse is a consideration that completely absolves a person of blame for what she did. The fact that it was difficult, though not impossible, for someone to do the right thing, I have argued, is not a full excuse; by itself it does not completely absolve the person of blameworthiness for her offense. However, this leaves open the possibility that it could be a mitigating excuse. This possibility is worth exploring further.

It is plausible that, in most ordinary cases at least, the amount of blame that would be warranted for a particular offense is inversely proportional to how difficult it was for the person to avoid the offense in question.⁵ Other things being equal, the more difficult it was for the person to avoid doing the wrong thing, the less blame she merits for doing it, provided, of course, that she is not to blame for getting herself into a situation in which she knew it would be difficult for her to avoid wrongdoing. The kleptomaniac who, through no fault of his own, experiences a powerful but ultimately resistible urge to pilfer some trivial item may very well be

⁵ Cf. Swinburne *op. cit.*, p. 49.

blameworthy if he succumbs to temptation. However, he would presumably be worthy of significantly less blame than the ordinary shoplifter whose larcenous behavior was motivated by a comparatively weak desire to escape forking out a small sum. A plausible explanation for this is that, given the strength of the kleptomaniac's desire to steal, it was significantly more difficult for him to resist the temptation to do wrong than it was for the ordinary shoplifter. This suggests that its being very difficult but not impossible for a person to avoid wrongdoing in a situation, though certainly not a full excuse, can nevertheless be a mitigating factor.

Let us apply this suggestion to Ann and her gut-wrenching decision. We may safely assume that Ann's desire to protect her daughter, though not irresistible, was extremely strong, and, accordingly, that it would have been rather difficult for her to opt to rescue the group of people whose lives were in jeopardy while leaving her child to suffer serious harm. It is thus quite plausible to suppose that while Ann may be worthy of some blame for what she did, she is not worthy of unmitigated blame, owing to how difficult it would have been for her to do the right thing. Recognizing this can help explain any initial inclination we may have had to let Ann off the hook. It can also help alleviate further resistance to the claim that she is blameworthy.

The sufficiency thesis does not imply that it would be appropriate all things considered for others to blame Ann, nor does it imply that she is worthy of unmitigated blame. What it does imply (given the assumption that she freely did something she knew to be morally impermissible, despite being aware that it was within her power to do the right thing instead) is the considerably weaker claim that Ann is worthy of at least some blame, however minimal. But even this weaker claim is not entirely beyond dispute. I turn now to a recent objection to it.

4. The Challenge Renewed

Let us say that a person's behavior manifests an objectionable quality of will on the part of that person if and only if it expresses, or is somehow indicative of, a lack of due regard for others or for the relevant moral considerations that bear on the person's situation. In recent years, several theorists working on the issue of moral responsibility have come to emphasize the importance of the quality of an agent's will in assessing whether and to what degree the agent is morally praiseworthy or blameworthy for her behavior. For instance, in his recent book *Conversation and Responsibility*, Michael McKenna contends that traditional theories of moral responsibility, according to which the conditions for blameworthiness are exhausted by a control condition and an epistemic condition, are useful as "a preliminary conceptual map, something that can be used as a point of departure for further theorizing."⁶ However, McKenna insists that these traditional theories need to be supplemented with an independent quality of will condition. In his opinion, the fact that a person freely did something she knew to be morally impermissible does not suffice to render the person blameworthy for her behavior. In addition, McKenna says, the behavior in question must also manifest an objectionable quality of will on the part of the agent.

That there is a quality of will condition on blameworthiness along the lines of the one McKenna proposes is plausible. If a person's actions are in no way indicative of a lack of due regard for others or for the relevant moral considerations, I think we can agree that it would be in principle inappropriate to blame the person for those actions.⁷ However, it is also plausible that freely doing something you know is morally wrong, despite being aware that it is within your power to do the right thing instead, suffices for having an objectionable quality of will. But if so, it would seem that someone like Ann satisfies the quality of will condition on which McKenna

⁶ McKenna, *op. cit.*, p. 18.

⁷ See my "Blameworthiness Without Wrongdoing," *Pacific Philosophical Quarterly* Vol. 93 (2012) for a defense of these claims that differs importantly from McKenna's.

insists. Since she also satisfies standard control and epistemic conditions as well, it would seem that she is blameworthy for what she did, just as the sufficiency thesis implies.

Evidently, though, McKenna thinks otherwise. According to him, “there is nothing negative revealed in the quality of [Ann’s] will in terms of her regard for others’ morally relevant interests. Her reasons for acting,” he says, “showed no lack of moral concern for these others, and so on.”⁸ Accordingly, he concludes that Ann is not worthy of any blame for what she did, not even a little bit, since she does not satisfy the quality of will condition. If McKenna is right about this, then, contrary to what I have argued thus far in this article, reflection on stories like the one about Ann does provide us with good reason to jettison the sufficiency thesis after all.

5. A Quality (of Will) Response

In order to evaluate McKenna’s position, we need to take a closer look at what it takes to have an objectionable quality of will of the sort he insists is required for blameworthiness. Unjustified ill will towards others would no doubt suffice. However, it is not necessary. A person can fail to show due regard for others even if she does not bear them any ill will. She might be completely indifferent to their concerns, for example. Utter indifference of that sort would also suffice for having a morally objectionable quality of will, but it too is unnecessary, since it is possible to manifest a lack of due regard for others without being completely indifferent to their concerns.

Consider Bob. Bob cares enough about others and about morality in general to avoid harming innocent people or violating moral demands to which he is subject, as long as doing so does not require him to sacrifice his own interests. However, in cases where he cannot achieve his own ends without harming others or failing to fulfill his moral obligations, his interests always take precedence. “It’s a shame,” Bob thinks, “that I sometimes have to do things that are

⁸ McKenna, *op. cit.*, p. 19.

morally wrong and that hurt those around me, and I feel really bad when I harm others or fail to do what is morally required of me. But the fact that I sometimes have to do such things in order to get what I want, though regrettable, is just one among many necessary evils in the world.”

Reflection on a person like Bob is instructive. He clearly lacks sufficient regard for other people and for moral considerations more generally. He manages to do so, moreover, without having any positive ill will towards others and without being entirely indifferent to their concerns. The lesson: lack of *due* regard does not necessarily imply a total lack of regard.

The point is worth emphasizing further. Imagine a scenario in which you are considering doing something that you know will negatively affect those around you. Suppose you know that, because of the negative impact this action of yours would have on other people, it is morally impermissible for you to perform it, and that it is within your power to avoid wrongdoing in the situation by simply not performing the action in question. If you deliberately perform the action despite knowing all this, have you manifested a lack of *due* regard for those affected by your action or for the moral considerations that bear on your situation? It certainly sounds like it. And this is so, it would seem, even if you did not have any positive ill will towards those negatively affected by your action and even if you were not entirely indifferent to their interests.

Notice that the situation just described is similar to the story about Ann in important respects. Ann was aware that helping her own child instead of those whose lives were at risk would negatively impact those around her, that because of the negative effects this action would have on those other people it would be wrong for her to perform it, and that she could avoid wrongdoing entirely. Despite knowing all this, however, she freely chose to help her daughter. Now, if you can count as having an objectionable quality of will in the story outlined in the preceding paragraph in virtue of lacking sufficient regard for the interests of those harmed by

your immoral behavior, it seems that Ann should count as having an objectionable quality of will for the very same reason. To be sure, she did not have any positive ill will towards the people whose lives she could have saved, nor was she entirely indifferent to their plight. But, again, this does not suffice to show that she lacked an objectionable quality of will, for as we have seen, it is entirely possible to manifest a lack of *due* regard for others or for the relevant moral considerations, and thus to have an objectionable quality of will, without bearing ill will towards those affected by your actions and without being entirely indifferent to their interests or to the relevant moral demands. Arguably, then, Ann's behavior did manifest an objectionable quality of will of the sort McKenna and others insist is necessary for blameworthiness in virtue of the fact that it manifested a lack of sufficient regard for the lives of those she could have saved.

Of course, the quality of Ann's will as displayed in her behavior in the story at issue was not nearly as bad as it might have been. This fact also helps explain why the amount of blame of which Ann is worthy is quite limited. Had she displayed an utterly callous disregard for those whose lives she ought to have saved or for the relevant moral demands to which she was subject, then no doubt she would have been worthy of significantly more blame than she actually is. So, not only is the quality of a person's will relevant to whether the person is at all blameworthy, it also seems relevant to how much blame the person is worthy of. None of this, however, provides us with any reason to think that someone in Ann's position is *completely* off the hook.

6. Some Results

An adequate theory of moral responsibility will tell us what gets agents on or off the moral hook. However, it will also acknowledge the fact that various considerations can affect how much blame someone who satisfies the minimum conditions for blameworthiness is worthy of. Careful

attention to cases like the one at issue in this article can help remind us of this fact. Attention to such cases also suggests that a comprehensive account of the mitigating circumstances should include considerations about how difficult it was for the person to avoid wrongdoing and about the quality of the person's will as manifested in her behavior.

Reflection on stories like the one about Ann does not, however, cast doubt on the sufficiency thesis that freely doing what you know to be morally impermissible, despite being aware that it is within your power to do the right thing instead, suffices for blameworthiness. Someone who had to make a gut-wrenching choice like the one Ann had to make is not automatically off the hook in the event that she does the morally wrong thing. The fact that it may have been difficult for her to do the right thing does not itself absolve her of blame, nor does the fact that she did not bear ill will towards, and was not entirely indifferent to the concerns of, those negatively affected by her immoral actions. However, these facts arguably can serve to significantly limit the amount of the blame of which the person is worthy. When we take all this into account, neither the claim that Ann is worthy of at least some blame for what she did nor the sufficiency thesis that cases like this are believed to call into question seem terribly problematic.

Acknowledgements: My thanks to Andrew Khoury, David McNaughton, Daniel Miller, Michael McKenna, and two anonymous referees for their helpful comments on earlier versions of this article.