

In Support of the Good Reasons Approach to Understanding Responsibility

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I.

In *Responsibility and Good Reasons*,¹ David Hodgson seeks to identify certain core beliefs underpinning our view that individuals who voluntarily break the law in a fair criminal justice system can be held responsible for their offenses and justifiably punished, and to consider what stance we should take on determinism given these core beliefs. He takes up Stephen J. Morse's account,² which holds that our common sense beliefs about responsibility can be explained by our rational nature, in the sense of our capacity to grasp and be guided by good reasons. Hodgson expands on what this "good reasons" position involves, as follows:

- (1) it requires consciousness, because rationality involves being able to make conscious decisions and exercise conscious control over our actions;
- (2) it requires the ability to grasp reasons (including certain emotional feelings and experiences) and to understand them in a way that is flexible and sensitive to context; and
- (3) it requires being able to weigh and judge reasons, and to make decisions on inconclusive reasons that do not themselves entail or logically require those decisions, so that the decisions made are our own.

Hodgson argues that (1)–(3) are implicit in Morse's claim that our responsibility for our actions is explainable by "our capacity to grasp and be guided by good reasons."

Hodgson then considers the position of determinism, understood as the view that the physical laws of nature suffice to determine any future state of the world from any given (earlier) state of the world, these laws being closed to any non-

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¹ David Hodgson, *Responsibility and Good Reasons*, 2 OHIO ST. J. CRIM. L. 471 (2005).

² *Id.* at 473–76.

physical influence. Determinism challenges the above explanation of our responsibility for our voluntary actions. It implies that consciousness or conscious activity, as such, has no causal efficacy on the course of events, that we cannot consciously grasp and understand reasons, and that we cannot go beyond inconclusive reasons to make our own decisions about what to do in the light of these.

Hodgson thinks that determinism's challenge can be appreciated by seeing how it bears on the argument that we act as we do because of the way we are and so, if we are not responsible for the way we are, then we cannot be responsible for what we do or how we act. Determinism may be seen as upholding this view. In contrast, a common sense view of us as being able to be guided by good reasons can hold that we are not responsible for what we are (we do not control or choose our basic capacities), but nevertheless we are responsible for what we do because as responsible agents we have the capacity to exercise certain kinds of choice and control over our actions.

A conception of ourselves as rational and capable of being guided by good reasons also has the virtue of being able to acknowledge genetic and environmental influences on such capacities that sometimes can impair or weaken them, thus excusing or exempting their possessors from full responsibility. Determinism, on the other hand, implies that all human behavior is explicable as being the causal product of events that can be traced back beyond the individual whose behavior it is, so that there is no useful distinction to be drawn between "excusing conditions" and other "responsibility-preserving conditions." Impaired capacities and normal capacities are equally causally determined in a way so as to preclude our responsibility for them.

Our social, moral and legal practices rely on the principle that because persons are responsible for their voluntary conduct, we may justifiably impose punishments and other coercive measures on them for wrongful acts that they are responsible for. Hodgson concludes that if we are to preserve these practices as legitimate and defensible, we should adopt a view such as Morse's about our capacities, and we should take a stance of agnosticism or skepticism about determinism because its adoption would tend to undermine our commitment to responsibility.

II.

I'd like to look first at Hodgson's spelling out of the "good reasons" view, as I am not sure just how some of his remarks about (1) and (2) are to be understood. Some of the claims he makes for consciousness as evidence for responsibility can be questioned. It is true that consciousness (ability to experience consciousness) is a necessary condition for both rationality and responsibility in human beings, and for our understanding of how humans control their behavior. We might also be willing to say that normal consciousness during conduct is *prima facie* evidence for responsibility for that conduct. However, it is also true that consciousness does

not guarantee voluntariness in conduct or control of conduct, and conversely, true that one can be, and be held, responsible (morally, and sometimes in other ways) for certain actions that one was not aware or conscious of doing, as in cases of responsibility for negligent conduct.

In the former kind of case, one can be in a condition of normal consciousness, with full awareness of the circumstances of one's behavior, where one is not able to act at all but is simply in the control of external force or others' deliberate actions—so that one's behavior is not voluntary, or even happens to one rather than amounting to a case of acting at all. One may suffer from uncontrollable urges or desires that one's awareness of is ineffective in regulating, as in kleptomania or obsessive-compulsive disorders. So consciousness of one's action-situation, action-type, and even of the reasons for and against action-alternatives, can be coupled with non-voluntary or uncontrolled action for which one has little or no responsibility. Being able to control our actions is one important aspect of their voluntariness, and one that is relevant to the degree and kind of our responsibility for them.

In the second kind of case, we may sometimes properly be (held) responsible for outcomes that we did not know we were causing, where the circumstances were such that we should have and could have known of the probability of these outcomes and taken steps to avoid them. Cases of carelessness and negligence are illustrative. In these cases unintended and unforeseen consequences may be attributable to a person because of his failure to meet some expected standard of care or consideration to others, or to carry out some duty that he had.

These are cases where consciousness or awareness is either not necessary or not sufficient for responsibility for some action done. In some of these cases, the person may have understood and been able to evaluate certain reasons for (against) acting, so that the second condition highlighted by Hodgson is also met, without the conditions for responsibility or voluntary action being satisfied. A famous example is Hamlet's inability to act on an abundance of well-understood strong reasons for avenging the murder of his father. The familiar point is that a person may grasp and appreciate good reasons for action while being unable to act on and be guided by those good reasons—just as a person may sometimes act impulsively on an insufficiently reasoned basis. (See Hamlet again). In fact, I think that all three of the factors identified by Hodgson could be satisfied without our "being guided by good reasons" in Morse's sense.³

Hodgson does appreciate some of these complexities. He notes early in Part IV that, where responsibility for harm is attributed to an actor, the harm must be connected with the making of some conscious decision by the actor, such as that of

³ There are other examples where one's capacities for control and understanding are normal, but one's opportunities to act in conformity to law or other expected standards are severely curtailed, or make conformity unreasonably onerous. These also show that the idea of being capable of being guided by and acting on good reasons does not encompass all of the parameters relevant to being personally responsible.

driving in circumstances where the person should have been aware of a risk of such harm occurring. In this way, consciousness plays a necessary part in the etiology of the harm's occurring. That seems correct. We can agree that the making of some decision in a normal state of consciousness is a necessary part of a sequence giving rise to personal responsibility. However, it is not true that responsibility for driving dangerously or creating a serious risk of harm requires a conscious awareness that one was driving dangerously or creating such a risk.

In the same passage, Hodgson notes that a person can be responsible for harm caused through falling asleep at the wheel because he or she "fail[ed] to respond to indications sufficient to make the person aware that sleep was imminent."⁴ This remark implies something about a person's capacities when normally conscious, but it says nothing about their conscious experiences or aware states of mind, or about certain standards of conduct that they are expected to meet. It is enough for such responsibility that the person, without being aware of the danger, could have been aware of the danger and should have been aware of the danger when he decided to act as he did. Norms of required or appropriate care and consideration in conduct do shape our judgments about personal responsibility for conduct. Neither the condition of consciousness, nor that of being able to grasp and judge certain reasons, encompasses or explains these requirements.

The examples are enough to show that:

(1) While consciousness and the capacity to grasp and judge good reasons may be necessary for responsible behavior, they are not always sufficient to secure voluntary action or control over our behavior (either in the form of doing an action or avoiding an action). Acting voluntarily or under our own control is important for our responsibility for many of our actions, although it is omitted from Hodgson's account.

(2) Absence of knowledge or full awareness of what we are doing does not always preclude responsibility for those doings or their consequences. Such responsibility is possible where we possess the capacities to know that certain standards of care or knowledge were expected of us in situations of that kind, and where it lay within our capacities to meet those expectations. Responsibility, this suggests, rests on a broader range of human capacities or abilities than Hodgson specifies in his account of what is needed for it.

(3) There is something more to Morse's idea of rationality in the sense of being guided by good reasons than is captured in Hodgson's first two (and perhaps three) conditions. For a person to be guided by good reasons, he should have the ability and also, perhaps, the disposition to act on the reasons he thinks good (better), and in normal circumstances his action should be done because of those reasons. I leave for separate consideration what such an account of reason-guided action entails.

⁴ Hodgson, *supra* note 1, at 477.

III.

My comments in Part II may misunderstand how Hodgson intends his two highlighted conditions to be understood. If they are meant as an analysis of what Morse understands by “being rational and able to be guided by good reasons,” then the comments look in order, because it is relevant to point out that their combined satisfaction does not guarantee that a person will be able to be guided by good reasons. The same holds good if these two conditions are supposed to provide sufficient grounding for the view that people can be considered responsible for their actions.

However, if Hodgson simply intends his account to identify certain basic human capacities and conditions that are needed to explain our common sense practices and beliefs regarding moral and legal responsibility attributions, then his claims look correct. These capacities do not provide the whole story about what is involved in voluntary action or in acting voluntarily or under our control, or what is involved in all cases of responsibility-attribution. Nevertheless it is true that our abilities to experience consciousness, to consciously grasp, examine, and evaluate reasons for action, and to make decisions and choices that go beyond such reasons in a non-automatic or non-mechanical way, are an essential part of our understanding of ourselves as agents who can be, and normally are, responsible for what we do. We draw on these capacities to explain intentional and purposeful action, and we indirectly draw on them to explain how we can be responsible for certain omissions, for negligent and careless behavior, as well as to explain how excuses and justifications work in the context of responsibility-attribution.

So let us accept the Morse-Hodgson account as outlining certain central requirements on which our belief in the justifiability of our responsibility and punishment practices is premised. Then it seems hard to deny that determinism, if it is understood as Hodgson understands it, does tend to undermine the central ideas in our understanding of how we can be responsible for our actions—including our ability to be aware of, understand, and appraise reasons for action and action alternatives, our being able to make a decision or choice as to which action to do in light of our assessment of such reasons, and our ability to initiate actions in accordance with such decisions.

If we further accept that not only our central self-understandings but also our major social, moral and legal practices assume for their soundness this set of beliefs about ourselves and our capacities as agents, it would be unwise to make a commitment to any other set of beliefs that would undermine this common sense understanding. Assuming that determinism would be such a set of beliefs, it would be unwise of us to make any assumption to the effect that determinism is true. Instead, it would be reasonable to remain agnostic about whether determinism is true or not. Indeed, we might go further and say that we should continue to subscribe to these common sense beliefs about our capacities for reasoned choice and action as long as the empirical evidence continues to provide support for them, and there is no incontrovertible argument or evidence to the effect that we are

mistaken in holding them. These beliefs seem to be practically necessary for our basic forms of personal and social interaction and assessment.

I believe it is compatible with such agnosticism about whether determinism is true to entertain the hypothesis that it may be true, if only in order to try to spell out more clearly how best determinism should be understood and what the possible implications of its truth might be. There continue to be many aspects of the question of how determinism might be related to free will, in the sense needed for responsibility for our actions, that we simply do not understand. We are uncertain about the status of consciousness, and how it, and other psychological conditions and processes, play an efficacious role in the course of physical events and physical actions, and we do not know what kind of fit, if any, there is between the categories that we use in describing our aware intentional behavior and the categories and concepts we use in describing the biochemistry and neurological activity of the brain and its processes.

I agree with Hodgson that our law as well as other social practices should be informed by science. Doing so does not commit us to accepting the truth of determinism. The thesis of determinism, in the form outlined by Hodgson, is not itself a scientific thesis or provable by science. In fact, scientific investigation often proceeds on beliefs about the general orderliness of the physical world and its causal explainability that are less ambitious than is posited by this formulation of determinism. It is not clear, for instance, what science is committed to as fundamental forms of explanation in the case of biological forms of life, including its complex forms (human life and behavior). Is it committed to the claim that these forms of explanation extend to every event that is part of a biological entity's life? Is it committed to holding that behaviors of biological entities can be brought under some form of deterministic laws that could hold in the physical sciences? The answers to such questions are still in need of much more investigation.

Also, do we have reason to think that as our scientific understanding of the factors at work in human behavior increases, it will progressively erode our belief in our capacities for responsible action? I doubt that there is any such pattern to the upshots of our growing scientific understanding of ourselves and our actions to date. Of course, we have learned a lot through science about the social and environmental influences on, as well as the biochemical and physical sources of and manifestations of, certain human diseases, disorders and susceptibilities. But this understanding has brought with it an increased understanding of the influences that underpin normal, healthy human functioning. That understanding seems to coexist compatibly with our continuing belief in human capacities for exercising intelligence and control in our actions. Increased scientific understanding has made possible new treatments for certain human conditions, enabling people to have greater control over certain ranges of behavior than they could have had previously. Think especially of beneficial applications of our increased understanding of the sources of mental and emotional disorders such as bipolar disorder, schizophrenia, and dementia. In this way, scientific knowledge has been

used to extend and enlarge the scope of personal responsibility, on our ordinary understanding of that idea.

So science provides increasingly detailed knowledge of the ways in which normal human capacities and functioning rely on the healthy functioning of our brains and body chemistry, while *not* undermining our belief that we are able to exercise those capacities in ways needed for responsibility. This strongly suggests that the abilities important to personal responsibility for our actions can exist compatibly with certain causal understandings of the physical and chemical operations underlying such capacities.

