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Philosophical Notes on Responsibility

By JESSE DE BOER*

IN THIS BRIEF paper I wish to offer some logical comments on the concept of responsibility. The first section will present the main lines of Aristotle's study of this concept. In the second section I shall pick out for special attention a couple of items in Aristotle's analysis. Here I shall draw on the penetrating discussion of freedom and responsibility by Mr. P. H. Nowell-Smith in chapters 19 and 20 of his recent (1954) Pelican volume, *Ethics*. In the third part I shall suggest that ascriptions of responsibility belong to a small but special class of statements, and that clarity on this point conduces toward clarity on the notion of a human action. What I do in this third part owes a good deal to an essay by Professor H. L. A. Hart entitled "The Ascription of Responsibility and Rights," which was published in *Proceedings of the Aristotelian Society* for 1948-49 and later (1952) was reprinted in *Logic and Language, First Series*, edited by Antony Flew.

I

Aristotle opens Book III of his *Nicomachean Ethics* by noting that our feelings and actions may be voluntary or involuntary, and that we praise or blame a man only for the voluntary ones. It is important for the moral philosopher, he says, to draw a line between the voluntary and the involuntary, and people who have to prescribe rewards and punishments would find such a definition useful.

Aristotle has very little to say in positive terms about what a voluntary action is; why this is important will be made clear at the end of this paper. "A voluntary act," he says, "would seem to be one of which the origin or efficient cause lies in the agent, he

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knowing the particular circumstances in which he is acting." The remainder of his discussion is almost entirely negative, dealing with the question, Under what conditions is an act not voluntary? The positive sentence above itself shows that the two chief exculpating conditions are compulsion and ignorance. A man acts voluntarily *unless* he acts under compulsion or through ignorance. This is still vague, of course, for "compulsion" and "ignorance" are themselves vague; not every kind of compulsion or ignorance exculpates. Let us see how Aristotle unravels these complexities.

Genuine compulsion always exculpates, but in many situations compulsion is only partial, and sometimes the term "compulsion" is improperly applied in the effort to excuse oneself. In pure compulsion, what transpires does not warrant being called a human action: e.g. being driven off course by a gale or being forcibly seized and kidnapped. Mixed cases are frequent: e.g. the jettison of cargo in a storm or doing something dishonorable as the only means to escape extreme torture or to save the lives of one's children who are in the hands of a tyrant. No one chooses for his own sake such things as throwing away his property or doing something dishonorable; so these actions are somewhat like involuntary acts. Yet at the time and under the conditions which obtain the agent had alternatives and he chose; and since the terms "voluntary" and "involuntary" are to be applied in view of the conditions obtaining when an act occurred, such an act is more voluntary than involuntary. External conditions may limit considerably the scope of the alternatives, but as long as there is occasion for preference, action is voluntary and the agent is responsible.

Now consider cases where the term "compulsory" is over-extended. One might argue that desire and anger and other passions operate with compulsion, so that acts done from passion are involuntary. This view, if carried through, would imply that no action, neither a noble one nor a base one, is voluntary. It would be disingenuous of me to expect credit for a fine deed done in "righteous indignation" while rejecting responsibility for a base deed done in anger. Moreover, it is generally held that involuntary acts are painful, but this cannot be said of doing what we desire to do, for which we have a motive. Anger or desire or other emotions, says Aristotle, are just as typical of us, and acts done

from them just as much exhibit our character, as is the case with judgment and deliberation. So they do not exculpate.

Voluntariness is removed by certain kinds of ignorance. One kind never exculpates, viz. ignorance of right and wrong, what Aristotle calls "general ignorance" or "ignorance of the end." This kind is vicious, not involuntary, and it merits blame. It is ignorance of detail, of particular circumstances, which excuses, or reduces responsibility. One cannot easily be ignorant of all particular circumstances, e.g. of oneself; but one is frequently only in part informed about the act itself or its effect, about the instrument used, or about the manner of the act. The bottle of medicine might have been labelled wrongly, or one's son might be mistaken for an enemy. Aristotle's treatment of these items is not complete, of course; further questions need to be asked about, e.g., how one fails to recognize one's son. No doubt it is impossible to form a complete list of conditions which will remove responsibility by reason of ignorance. But let us proceed. Aristotle notes that we have to distinguish between acting *in* ignorance and acting *from* ignorance. The latter excuses if the ignorance concerns details. Acting *in* ignorance, however, does not ordinarily exculpate. The drunkard acts *in* ignorance, so does the unjust man; but neither is excused. Lastly, Aristotle adds the point that a sign of involuntariness is the agent's regret for his deed. Apparently, whatever deed a man is pleased with or takes satisfaction in exhibits his character or springs from a motive; and in this case he cannot plead to be excused.

II

I shall now underline certain points in Aristotle. First, just a comment on why ignorance of fact excuses or reduces responsibility while ignorance of right and wrong or of the law does not. Suppose a man did not know that the money he took was not his own but should have known it; he is likely to be judged careless, but unless the carelessness is general and deepseated he is not judged to be vicious. Here the agent intended to do what he did, viz. to take the money; but he did not intend to break a moral rule or a law, to take another person's money. Thus he does not exhibit the vice of the thief, who acts on the maxim "It is permitted to take other people's money," and who, because he does not

think this wrong, chooses to do it. And for choosing to do what is wrong the thief is blamed. The case is similar with pure or "literal" compulsion. Here the man's character is again not exhibited, he does not choose what occurs, and in the correct sense of the word "action" he does not perform an action.

Now let us turn to other kinds of compulsion and to over-extensions of the term. First there are cases of compulsion within a man himself. "Compulsives" are exonerated, unless it can be established by proper means that the person could have resisted the compulsion. In fact, if a man had the capacity to resist, he is not a "compulsive." It is easy to apply the epithet "compulsory" too freely: a compulsion is not an external object that can be pointed to, like something by which one is pushed or struck; and the only way to discover that a man acts owing to an inner compulsion is to observe him over a long period and in a variety of situations. It is easy, further, to take too literally the plea that a man could not have acted otherwise than he did because he had a strong desire to do what he did. Sometimes this plea is allowed, especially if the man had not met similar situations before. But we know from experience that most men can learn to curb many of their desires, and we usually blame a man for failing to do the right thing because he wanted to do what is wrong. It is not possible to determine from a particular occasion whether a man then acted from an overwhelming passion and could not help what he did, but it is possible to learn a good deal in various ways about what capacities people have and what capacity a particular person has. Finally, it is paradoxical for a man to plead that he could not help doing what he did because of his character, e.g. that he would not have done an act if he had not been cowardly or dishonest. This is obviously a case where the statement "he could not have done otherwise" does not apply. Of course there are causes for a man's having become what he is, such things as heredity, upbringing, and past actions settling into habits; but it is a mistake to suppose that because an event had a cause it was inevitable.

One key ingredient in our way of distinguishing voluntary from involuntary acts and in our distribution of praise and blame is the notion that a man "could have acted otherwise." A man is not blameworthy unless he broke a law or moral rule and unless

he could have acted otherwise. Let us look at the phrase "could have acted otherwise." To start with, this is a modal phrase, like "would have" and "might have," and like them it does not make a straight-forward categorical statement. This means partly that evidence for its truth cannot be gotten directly from the occasion to which it refers but only from other occasions. E.g., if a man read *Hamlet* last night, and we say "He could have read *Lear* instead," the truth of our statement is not settled by observing what he did at the time: in fact, the statement "he could have read *Lear* instead" would be used only if the speaker knew that he did not read *Lear*. Also, the speaker would have to be prepared to show that conditions preventing the man from reading *Lear* were not present, such as there being no copy at hand, or the man's not wanting to read *Lear*, or his being unable to read it. As for the last condition, the man's having read *Hamlet* is good evidence for his being able to read *Lear*. To conclude, to say "*A* could have done *x*" is to say that *A* would have done *x* if certain conditions had not failed or if certain conditions had been fulfilled.

Thus to say "*A* could have acted otherwise" is to say that *A* has a capacity. It is not to say that *A* ever has done or will do a certain deed, but to say that he would have done it if. . . . Now, a very refined type of sceptic objects to such hypotheticals or to capacity-statements. The objection is that the evidence supporting or rebutting "could have" statements is never conclusive. To show that *A* has done tasks of similar difficulty with the one he did not do which is referred to, and that nothing prevented him on this occasion, does not show conclusively what the statement claims. This remark on the evidence is correct; evidence for saying "Jones could have read *Lear*" is never as conclusive as for "Jones read *Hamlet*." But if we notice what this sceptic is doing we see the reason for ignoring his complaint. He will not accept any evidence for "*A* could have done *x*" which is not sufficient for establishing "*A* did *x*." In other words, he can be interpreted as saying: "I know that *A* has done things as difficult as *x* in the past, and that in the past he has always succeeded; but he still might have failed this time." If this complaint were allowed, it would follow that the phrase "could have" would be useless: it would mean that the evidence for "*A* could have done *x*" has to be that *A* did *x*, and in this case "*A* could have done *x*" no longer has a use. The sceptic

is asking for the logically impossible; he invites us to adopt a criterion for deciding whether A could have done x at time t which would render "can" and "could have" useless. It is out of order to suppose that evidence for "could have" or "can" has to be as strong as that for "did" or "is doing." So the sceptic can be ignored: inductive evidence suffices to show that A has a capacity to do such acts as x , and this is accepted for a particular occasion unless it is shown that on this occasion A 's capacity was prevented from exercising itself.

III

Early in this paper I noted that Aristotle's positive account of voluntariness is very brief. Why this is important I shall now try to make clear. I begin with remarks about a whole set of concepts to which "responsibility" belongs. We often use sentences in which we do not *describe* persons, things or events, but instead claim or recognize rights, ascribe and transfer rights, and admit or ascribe responsibility. E.g., "This is mine;" "This is yours;" "I did it;" "He did it." These are all alike in not being factual or descriptive. To get at the logical peculiarities of this set of concepts we may consider one or two legal concepts as models, say "contract" or a concept in criminal law. Such concepts are not descriptive in the sense that if certain necessary and sufficient conditions are established the concept is said to apply to or to characterize the facts. Instead, the court has the task of determining that certain facts occurred and of judging that certain legal consequences attach to these facts. The facts support or justify the judgment but do not entail it as one factual statement entails another. It is only within the context of legal institutions that the facts support the judgment. Further, there is no set of general criteria, already formulated, for defining, say, contract; instead there is reference to precedents (their number is usually not closed) and the court has to determine what the precedents amount to. Hence no closed definition of contract can be stated. More important, there are two ways to challenge a legal utterance. First, the accused may deny the facts alleged. Second and more important, the accused may plead that though all the facts alleged are true, in the case in hand certain circumstances are present which bring the case under a recognized head of exceptions, and

in consequence the accusation or claim is defeated or reduced. This means that a legal concept is not understood until one learns what can defeat a claim, and so the concept is *defeasible*. There are at least half a dozen types of defences (two of them refer to what are called knowledge and will) which are capable of defeating or reducing the claim that a contract exists, and "contract" is not understood until these defences are understood. So too with crime. This case is especially interesting since the maxim *actus non est reus nisi mens sit rea* has led jurists and philosophers to suppose that the key notion is that of a mental state or occurrence being present, the "mental element." One trouble (and it seems insuperable) with this is that to say a mental factor is present is to give information which is *additional to what is required* for reaching the judgment "Smith is guilty of *x*" (where *x* stands for a crime). The mental element is to be understood only by reference to certain exceptions or defences, such as accident, provocation, insanity, etc. These defeat or reduce the claim or accusation. They are not evidence against the presence of a mental element, or for its absence; they are criteria for defeating the allegation of responsibility. To say that an act is voluntary, or includes both voluntariness and foresight, is to say (and is treated by the court as saying) that certain defences cannot be sustained or were not sustained.

Now the final point. The concept of a human action (what we refer to when we say "I did it" or "He did it" or "You did it") is best compared to legal concepts. By using such sentences we admit or ascribe responsibility. Our actions are ours much in the sense in which property is ours, *not* in the sense in which our teeth are our own. The difference between "*A* is holding a piece of earth" and "*A* owns a piece of property" can be explained only by taking account of the non-descriptive utterances by which laws are promulgated, decisions made, rights claimed and recognized. Likewise the difference between "*A*'s body moved in violent contact with *B*'s" and "*A* hit *B*" can be explained only by taking into account the non-descriptive utterances by which responsibility is ascribed. As "property" is a social concept, so is that of action; both are dependent on rules, legal or moral. Neither is factual or descriptive; and both are defeasible and made clear by exceptions instead of by a list of necessary and sufficient conditions whether

physical or psychological. "*A* hit *B*" can be countered either by denying the fact that *A*'s body moved in violent contact with *B*'s or by pleading that the fact occurred by accident, or inadvertently, or with mistake of fact, or under provocation, or under duress, etc. To treat "action" and "responsibility" in this way is to depart from both one traditional analysis (which held that a mental event occurred simultaneously with and as cause of the physical movement) and a common modern analysis (which holds that to say "*A* did it" is to say, first, that his body moved, and second, that he would have responded in various ways to various stimuli or that his body would not have moved as it did had he chosen differently). Both these accounts treat "action" as a descriptive or factual concept. And it is worth noting that Aristotle says in effect that "*A* did it" means that an action was his *unless* certain defences can be offered which defeat the ascription.