

The Factual Ignorance Excuse

Abstract: Philosophers of responsibility have an interest in the basis and structure of the common excuses. This interest is fuelled, in part, by concerns about the *scope* of these excuses, and by the fear that the principles which underlie them will turn out to have sceptical implications. I consider the structure of one such excuse: the excuse of blameless factual ignorance. I consider whether, as Gideon Rosen has argued, the principle underlying this excuse is such as to commit us to recognising, in addition, an excuse of blameless moral ignorance. I argue that Rosen's analysis of the excuse is mistaken, and that the principles actually in play do not have any radical implications. I further observe, (1) that focusing on the operations of the ignorance excuse seems to push us away from the view that the common excuses derive generally from principles concerning when it is fair to subject a wrongdoer to a certain form of harsh treatment; and (2) that the intensional focus of judgments of blameworthiness – the fact that excuses operate at the level of particular descriptions of the agent's actions – places a constraint on a theory of what blame is, and what blameworthiness requires.

Introduction

It seems that a person must enjoy some degree of freedom or control over his actions in order to count as morally responsible for them. A person who has acted wrongly as a result of some sort of compulsion – internal or external – or as a result of automatism, or who is subject to hypnotic control, or coercion, or manipulation, is probably blameless for the wrong that he has done.

It is a matter of controversy, by contrast, *why* we excuse wrongdoers under the circumstances that constitute this familiar family of excuses. It is controversial, that is to say, what the underlying condition on moral responsibility is, which this family of excuses acknowledges. This question has attracted a great deal of philosophical attention. Some people think that these excuses derive from the condition that a culpable agent be in some strong, metaphysical, sense *free* with regard to his actions.¹ On a competing view, the excuses derive instead from the *volitional* requirement, that the agent's actions stand in a certain relationship to his desires.² A third suggestion identifies the underlying requirement that a culpable agent's actions be expressive of a reprehensible attitude to others.³

Each of these is, I take it, an explanatory hypothesis, about the principles or structures or concepts which underlie, or rationalise, or account for, the judgment that a person is

¹ For instance, Van Inwagen, P. *An Essay on Free Will* (1983) Oxford: Clarendon Press.

² See Harry Frankfurt's 'Freedom of the Will and the Concept of a Person' in Frankfurt, H. *The Importance of What We Care About* (1988) Cambridge: Cambridge University Press.

³ The *locus classicus* of this sort of view is Strawson's 'Freedom and Resentment'. Scanlon develops a sophisticated version of the view in *What We Owe to Each Other* (1998) Cambridge, Mass: Harvard University Press

blameless for his wrongdoing, if he acts ‘unfreely’ in one of the ways mentioned. It is worthwhile in its own right to aim at an explanatory account of this sort: the business of holding people responsible is distinctively human, and we ought to want to understand the patterns and logics of this practice. But the project has derived its particular impetus less from the goal of self-understanding, than from its bearing on the question of the *scope* of moral responsibility. Determining the underlying basis for a particular excuse or family of excuses, is a way of determining how far the excuse in question generalises. The question in the background of this mode of inquiry, has traditionally been the question whether the condition on responsibility from which certain excuses derive, is a condition which can ever be satisfied in a deterministic universe.

In addition to the condition of freedom or control (whatever that condition amounts to), our patterns of blaming and excusing evince a *cognitive* condition on culpability. I am not thinking here of certain cognitive capacities which seem to be prerequisites of moral responsibility, such as the capacity to reason, or to make moral judgments, but, more mundanely, of the way in which ignorance or mistaken belief can undermine blameworthiness. If I stamp on your hand, in the belief that it is a poisonous spider, or if I stray unwittingly onto your unmarked land, or if I take a sip from your wine glass believing it to be mine, I am blameless for what I do (provided I am blameless for my ignorance). In none of these cases does the culpability-undermining factor concern the agent’s degree of freedom or control over her actions. The problem is, rather, that the agent does not believe those things she would need to believe in order to count as blameworthy for them.

The basis of the factual ignorance excuse is worth investigating in its own right. Like the various ‘freedom’ excuses, it is also worth investigating in the context of sceptical anxieties about the scope of moral responsibility. In particular, it may be thought to shed light on a question which has periodically niggled the philosophical conscience: the question whether blameless *moral* ignorance is similarly exculpatory. This connection is explored by Gideon Rosen, who argues that there is indeed an excuse of blameless moral ignorance.⁴ He bases his claim partly on an analysis of the ordinary, uncontroversial excuse of blameless factual ignorance.

This paper is an investigation of the basis of the excuse of blameless factual ignorance. It will make three observations: first, that Rosen’s analysis of the ignorance excuse is mistaken, and that there is no reason to think that the principle at work in such cases also yields an excuse of blameless moral ignorance; second, that focusing on the operations of the ignorance excuse seems to push us away from the view that the common excuses derive generally from principles concerning when it is fair to subject a wrongdoer to a certain form of harsh treatment; and third, that the intensional focus of judgments of blameworthiness – the fact that excuses operate at the level of particular descriptions of the agent’s actions – places a constraint on a theory of what blame is, and what blameworthiness requires.

⁴ Rosen, G. ‘Culpability and Ignorance’ in *Proceedings of the Aristotelian Society* (2003)

When does ignorance excuse?

Every wrongdoer is of course ignorant of countless numbers of things when he acts. But not every instance of ignorance constitutes an excuse. The first task is to identify the sort of ignorance that is exculpatory – or the conditions under which ignorance is exculpatory. Clearly, if it is to excuse him, the agent's factual ignorance must be related in some way to the act that he is performing. But how exactly must it be so related?

The natural first hypothesis is that exculpatory ignorance must *account for* the agent's action – that ignorance can only excuse a wrong act whose performance is *due to* that ignorance.

A natural line of thought leads to the conclusion that ignorance *should* be exculpatory under these circumstances: If a person's action is due to ignorance, and that ignorance is itself blameless, then to blame him for his action would be to blame him for a direct consequence of something for which he is blameless – a prospect which is uncomfortable in a familiar way.

A natural line of thought leads similarly to the view that ignorance ought *not* to be exculpatory if it does *not* account for the agent's act: If fact F does nothing to account for the agent's behaviour, why on earth should fact F affect the way we assess him, morally, on the basis of his actions? Harry Frankfurt has argued that an agent's inability to do otherwise is exculpatory only if that inability explains why he acted as he did⁵; it seems similarly plausible on the face of it that ignorance is exculpatory just in case it serves as an explanation of the agent's wrong action.

However natural it may be, this hypothesis is off track. Blameless factual ignorance may constitute an excuse even if it is not the case that the agent only did what he did because he was ignorant; and where it *is* the case that the agent only did what he did because of his ignorance, blameless factual ignorance may yet fail to excuse him.

Suppose I stamp on your hand in the belief that your hand is a poisonous spider. My action is blameless as long as my ignorance is blameless, and this is so even if we suppose that I bear you ill will, and that I would have stamped on your hand with even greater force had I known it to be your hand. This extra supposition has no bearing at all on my culpability in the present instance. Or suppose that I trespass unwittingly on your unmarked land. It would be wrong to blame me for trespassing under such circumstances. And this will be so even on the supposition that I am a determined anarchist and would have stridden across your land with all the more glee and determination had I believed it to be private property. The latter piece of information may aid you in assessment of my character; but it has no bearing whatsoever on my culpability for trespassing.

⁵ 'Alternate Possibilities and Moral Responsibility' in Frankfurt, H. *The Importance of What We Care About* (1988) Cambridge: Cambridge University Press

In neither case does the exculpatory force of my ignorance depend on the assumption that I would have behaved otherwise had I not been ignorant. So the ignorance excuse does not depend on the thought that the agent acted wrongly *only because* he was ignorant.

If my factual ignorance *does* account for my action, on the other hand, it may nonetheless fail to excuse me. To borrow an example from Rosen, if A assaults B in the mistaken belief that B is an Arab, A's blameless mistake does absolutely nothing to excuse him, notwithstanding that A would otherwise have left B in peace.⁶ If I stamp on your hand *only because* I believe the hand to belong to someone else – or *only because* I believe it to be your foot – I cannot convincingly cite this mistake in my defence.

The case of the anarchist trespasser shows that an agent need not act *from* blameless ignorance in order for his ignorance to excuse him; it is sufficient that he act *in* blameless ignorance of the relevant fact. But this takes us back to the question of what makes an instance of ignorance *relevant* in this way. In addition to his ignorance that the woods are private property, the anarchist trespasser may act in ignorance of the fact that Kathmandu is the capital of Nepal; but his ignorance of *that* fact is clearly not relevant to the question whether he is blameworthy for trespassing.

The case of the would-be Arab-basher suggests an answer to this question. Consider just why it would seem so absurd for A to cite in her defence her mistaken belief that B is an Arab (even supposing the belief to be blameless). The answer, surely, is that this fact is morally irrelevant. It is no part of what makes the act wrong. It makes no contribution at all to the moral status of the act. If the fact of which we supposed A ignorant were instead the fact that B is a person, or that B does not constitute an immediate threat to A's safety, then we *would* be wont to excuse A for what she does, because these are the facts on which the wrongness of her act turns. They are its *wrong-making features*. Only if she is blamelessly ignorant of *these* features of her act does A's ignorance constitute an excuse. If we suppose her perfectly cogniscent of these wrong-making features, then her ignorance is no excuse at all.

It seems that the ignorance which exculpates is ignorance specifically of the wrong-making features of an act. Ignorance excuses, it appears, not when it plays a certain role in accounting for the agent's behaviour, but when the facts of which the agent is blamelessly ignorant bear in a certain way on the moral status of his actions. We turn next to the question of why this should be so.

Why is this a condition on blameworthiness?

What is the condition on culpability from which the factual ignorance excuse derives? We have rejected the suggestion that ignorance excuses, when it does, in virtue of its *accounting for* the agent's behaviour.

⁶ 'Culpability and Ignorance', p.64, footnote 4

Rosen makes an alternative suggestion as to the basis of the ignorance excuse, which is appealing in several ways. *Why* does my ignorance that the land is private property render me blameless for trespassing? Its salient effect, Rosen claims, is to render me ignorant of the fact that I am doing something wrong. *This* aspect of my case – my failure to realise that what I am doing is wrong – is what excuses me from blame.

So Rosen traces the excuse of blameless factual ignorance to the following principle:

A person is blameless for doing something, if he blamelessly believes there is no compelling moral reason not to do it.⁷

And beneath *this* principle, Rosen thinks, is a basic moral intuition, to the effect that it would be unfair to blame someone who innocently believes that his actions are permissible. This specific suggestion exemplifies a more general theory about what sorts of concern underlie the common excuses. Rosen follows R. Jay Wallace here in supposing that the conditions of blameworthiness derive in general from moral constraints which bear on blame *qua* form of sanction or harsh treatment.⁸ The relevant moral principles are, specifically, principles of fairness. The requirement from which the ignorance excuse derives, on Rosen's suggestion, is the requirement that a wrongdoing agent have true beliefs about the moral status of what he is doing if blame is to be *fair*.

The suggestion sits neatly with the observation that it is ignorance specifically of *wrong-making features* which seems to be exculpatory. It is natural to think that the significance of knowing whether one's actions have certain wrong-making features must derive from the significance of knowing whether one's actions are wrong. But the suggestion sits less easily with the presumptions of common morality. This is because it is a significant consequence of Rosen's analysis that there must be an excuse of blameless *moral* ignorance, as well as an excuse of blameless factual ignorance. Moral ignorance just as much as factual ignorance may issue in ignorance of the moral status of one's actions.

How one reacts to this consideration is likely to depend on one's feelings, *ex ante*, about blamelessly morally ignorant wrongdoers. Consider the young graduate of a terrorist training camp, who has been effectively indoctrinated to see it as morally *beholden* on him to wage war on the western world. If you find the idea preposterous that such a person might be excused, on the basis of blameless moral ignorance, you may conclude that Rosen's analysis of the factual ignorance excuse must be wrong. Rosen himself finds it independently plausible that blameless moral ignorance constitutes an excuse. He cites the cases of an ancient Hittite slave owner, and a sexually discriminative 1950s father, each of whom is blamelessly ignorant of the true moral principle he transgresses.

Rosen's position on moral ignorance is not popular. Some people find it not merely mistaken, but morally perverse. I find the issue is complex, demanding a good deal of

⁷ *ibid*, p.74

⁸ This view is developed in detail in Wallace, R. Jay *Responsibility and the Moral Sentiments* (1994) Cambridge, Mass: Harvard University Press

thought. But the present question does not require us to come down on one side or the other. However we feel about the excuse of blameless moral ignorance, Rosen's cannot be the correct explanation for the fact that factual ignorance excuses. This is because ignorance of wrong-making features may render an agent blameless for an act without leading him to believe that the act is permissible.

Take again the hapless trespasser, who strays into a patch of unmarked private woodland. The trespasser's blameless ignorance is sufficient to make him blameless for trespassing. Rosen has it that this is because the trespasser does not take himself to be doing anything wrong. But let us suppose that this trespasser happens to believe that it is wrong to walk in woodlands. (Perhaps he believes in fairies, who might be carelessly trampled underfoot; or perhaps he is concerned about the damage that might be done to a delicate eco-system.) *This* trespasser believes that he *is* doing something wrong in walking through the woods. And he happens to be right. But his blameless factual ignorance still excuses him from trespassing.

Or take the case of Ann, who stamps on Bill's hand in the belief that it is a poisonous spider. Ann is blameless for stamping on Bill's hand, even if she happens to think that it is wrong to kill spiders. Her beliefs about the morality of killing spiders has no bearing at all on the question of her culpability for stamping on Bill's hand – which question hinges only on whether she realised it was Bill's hand she was stamping on.

In the examples above, each of the wrongdoers *does* believe there is a morally compelling reason not to act as he does; neither falls under Rosen's principle; but both are blameless nonetheless. So the significance of factual ignorance for blame cannot after all derive from the significance of the agent's beliefs about the moral status of his actions (even if we assume that these beliefs are independently significant for blame). Ignorance of the wrong-making features of his actions may get a wrongdoer off the hook, even if he truly believes his actions to be wrong.

This is on the face of it a slightly paradoxical result. It suggests, among other things, that it is mistaken to understand the ignorance excuse in terms of moral norms bearing on the fairness of blaming those who are *trying their moral best*. A person may not be trying her best to act rightly – she may take herself to be acting wrongly, and she may even delight in this. But if she is ignorant of the wrong-making features of her act, she will be blameless for that act all the same.

Other cognitive relations to the fact that the act is wrong

The counter-examples to Rosen's analysis involve a Gettier-like coincidence of fact and belief: The agent's action is wrong; he believes that it is wrong; but his belief does not stand in the right relation to the moral facts to render him culpable for the act. It is only by chance that the agent truly believes he is doing something wrong, and this seems like the culpability-blocking factor.

This might lead us to think that the ignorance excuse derives from the requirement that a culpable wrongdoer bear some stronger cognitive relation than *true belief* to the fact that he is doing something wrong. Perhaps the relevant condition on culpability is not true belief, but *knowledge*. On this analysis, ignorance, or mistaken belief, may be claimed to undermine culpability when it gives the agent the false belief that his action is permissible, but also (as in the cases just considered) when it prevents the agent's true belief that his action is impermissible, from having the status of knowledge.

It seems clear, however, that nothing so strong as *knowledge* of the status of one's actions can be required for culpability. Suppose that our trespasser has heard from a wholly unreliable source that the woodland is private property. This is enough to make him putatively culpable for trespassing, even though he does not *know* on this basis that the wood is private property (or, therefore, that he is doing anything wrong). And suppose that Ann's poor eyesight can make her only reasonably sure (but not certain) that the object in front of her is Bill's hand when she decides to stamp on it. She is certainly culpable, notwithstanding her failure to *know* that she is doing something wrong. It seems, then, that a wrongdoing agent's cognitive relation to the fact that he is acting wrongly may fall short of knowledge either in degree of belief, or in terms of the relation of belief to the moral facts, without disturbing his culpability. It seems to me, indeed, that nothing so strong even as *justified belief* is required for culpability. Our trespasser will be blameworthy for trespassing even if the conviction that the woodland is private property has come to him in a dream, or has been read to him in his tea-leaves.

Actions under descriptions

When a person is blameworthy for his actions, he is blameworthy for them under one or more particular descriptions. Once we focus on this fact, it seems easier to account for the ignorance excuse. We can do without the suggestion that culpability requires the wrongdoing agent to bear a particular cognitive relation to *the fact that she is doing something wrong*. We may say instead that culpability requires merely that she have accurate beliefs about *what she is doing*.

Where an agent does several bad things at once, his culpability for each of these wrong actions may be separately assessed. A person may be blameworthy for his actions under one description while remaining blameless for them under a different description. Take the unfortunate Oedipus, who commits at once the three wrongs of murder, regicide and parricide. Oedipus is blameworthy for his actions under one description – 'killing a traveler' – but he is not blameworthy in addition for 'killing his father' or for 'killing the King of Thebes', though these are wrongs which he also performs. He is blameless for these additional wrongs, because he does not realise he is performing them. (Besides rendering an agent altogether blameless for his actions, then, factual ignorance may differentiate those descriptions under which he is blameworthy for his actions from those under which he is blameless).

Let us suppose that a person cannot be blameworthy for *his actions* unless he is blameworthy for them under some particular description. Let us further suppose that a

person cannot be blameworthy for his actions under descriptions under which they are not wrong. (The latter assumption is disputable. But it is part of philosophical orthodoxy, and I will not bother to defend it here). Let us combine these hypotheses, finally, with the principle that a person cannot be blameworthy for his actions under a description which he is blamelessly ignorant that they satisfy – or, put more elegantly, that a person cannot be blameworthy for something he doesn't realise he is doing.

These three principles in combination entirely account for the Gettier-type cases considered above, and they remove all aura of paradox from the general principle that ignorance of wrong-making features may excuse even an agent who correctly believes his actions to be wrong. Consider the eco-trespasser, who strays into your patch of woodland in the doubly mistaken belief that it is not private property, and that it is wrong to walk in woodlands. Under one description – ‘trespassing’ – his action is wrong. But he is not culpable for trespassing because he does not realise he is doing it (and is blameless for failing to realise this). Under a separate description – ‘walking in the woods’ – he *does* recognise what he is doing; but he is not culpable for his actions under this description, because under this description they are not wrong. Take the case of Ann, similarly, who stamps on Bill's hand in the belief both that it is a poisonous spider, and (incidentally) that it is wrong to kill spiders. The description under which she recognises her action – and under which she takes it to be wrong – is a description which the action does not actually fit (‘killing a spider’). The true description under which her action *is* in fact wrong (‘stamping on Bill's hand’) is one under which she does not recognise it, and under which she cannot then be culpable for it by our third principle.

The proposition that a person is blameless for her actions if blamelessly ignorant of their wrong-making features follows quite simply from these three (reasonably self-evident) principles: If a person is blamelessly ignorant of (all of) the wrong-making features of her actions, this means that, under every true description of her actions, either they are not wrong under that description, or she does not recognise them under that description. Either way, she cannot be blameworthy for the action under the description in question; and if there is no description under which her actions are blameworthy, her actions as a whole cannot be blameworthy.

If this is approximately the right way to understand the excuse of blameless factual ignorance, then any appeal, in accounting for this excuse, to the question whether the agent believes his actions to be wrong, is a red herring. And this undermines the suggestion, at least, that the excuse of blameless factual ignorance generalises into an excuse of blameless moral ignorance. A person who is blamelessly ignorant of true moral principle may after all be perfectly cogniscent of *what he is doing* – and if this is the case, he will not fall under a principle which excuses people for actions they do not realise they are performing.

But not everything is resolved by this account of how the factual ignorance excuse works. For one thing, the account is not very *deep*, as it stands. We ought to hope for some explanation, ultimately, of why it is that a person cannot be blameworthy for something he does not know he is doing.

Is there scope for suggesting that the significance of knowing what you are doing itself derives from the significance of knowing that what you are doing is wrong? If so, the ignorance excuse may be *ultimately* derivable from Rosen's fairness principle (and the moral ignorance excuse will drop out after all). The difficulty lies in making a plausible suggestion as to *what* the agent must believe to be wrong, if he is to be culpable for his act – that is, a suggestion as to what the culpable agent must believe to be wrong, which will plausibly explain the ignorance excuse. It will not do to suggest simply that the culpable agent must believe that *what he does* is wrong, because this suggestion is ambiguous. How are we to interpret the idea of 'what the agent does'?

We might interpret the suggested principle as follows:

A is blameless for some wrongful act of his (for his actions under some wrongful description), if he blamelessly believes it is not wrong to perform acts of that sort.

This is the 'intensional' reading of the principle, on which we understand *what the agent does* to designate the agent's actions under the particular description under which he is potentially blameworthy for them. But clearly, read this way, the principle has no hope of explaining why blameless factual ignorance excuses. A person may be blameless for doing something which he realises it is wrong to do – if, for instance, he does not realise he is doing it! After all, it is no part of our story about the unwitting trespasser that he believes it is not wrong to trespass.

On the alternative – 'extensional' – reading, the suggested principle goes like this:

A is blameless for some wrongful act of his (for his actions under some wrongful description), if he blamelessly believes that his actions are not wrong.

On this reading, it is proposed that the agent must believe his *conduct* to be impermissible, if he is to be blameworthy for some act. But this is the very reading on which my counter-examples bite. The principle may or may not be *true* on this reading; the point for our purposes is that it cannot be taken to underlie the factual ignorance excuse. This is because not all cases in which an agent's ignorance renders him blameless for what he does are cases in which he believes his actions to be morally faultless.

Ignorance may excuse a wrongdoer for some particular wrong act, regardless of his beliefs about the moral status of his actions as a whole and regardless of his beliefs about the moral propriety of acts of the sort in question. An agent's belief that he is acting wrongly, and his belief that it is wrong to X, are quite consistent with his being blameless for X, because they are consistent with his failure to realise that X is what he is doing.

Of course, a quick fix yields a moral belief condition on culpability which *is* capable of accommodating the ignorance excuse:

A is blameless for some wrongful act of his if he blamelessly believes he is not doing anything wrong *in performing that act*.

This principle covers our cases, and it yields an excuse of blameless moral ignorance. But the principle is more complex than is needed to account for the factual ignorance excuse. This principle in fact identifies two separate conditions on blameworthiness – the condition that the agent recognise that she is performing the act in question, and the condition that she recognise it to be wrong. But, as I have already claimed, all the work of accounting for the structure of the ignorance excuse is done by the first of these conjuncts. The second is explanatorily superfluous.

Conclusion

Several things emerge from a close examination of the ignorance excuse. The conclusion I have drawn most firmly, is that the excuse does not have its basis in the requirement that the agent realise that what he is doing is wrong. It follows that the ordinary ignorance excuse does not generalise to an excuse of blameless moral ignorance. If it is suggested that there *is* an excuse of blameless moral ignorance, that suggestion must stand on its own two feet.

Beyond this, three points emerge which may help with the project of developing a unified account of the excuses.

First, the common excusing conditions do not all exculpate by suggesting that the agent only acted as he did because the excusing condition obtained. Ignorance may excuse whether or not we think that the agent only acted as he did because of his ignorance.

Second, a wrongdoer's ignorance may excuse him from blame even if he conducts himself unconscientiously – in a manner he believes to be impermissible. And this casts some doubt on the suggestion that whether a person is blameworthy depends on whether it is fair to sanction him. If a person has behaved in an unconscientious manner, it may not seem unfair to sanction him for his conduct – it may seem, indeed, that he *deserves* sanction – even if his actions are not in fact wrong in the way in which he takes them to be wrong. But a person whose actions merits sanction in this general way will still be excused any wrongful act he unwittingly performs in the course of those actions.

The third point is a generalisation of the second. As we have seen, to understand how the ignorance excuse works, we need to remember that excuses can operate at the level of particular action-descriptions, as well as at the level of the agent's conduct as a whole, or his actions at a particular time. This puts a constraint on any account of the basis of the common excuses. It means that it will be impossible to give a fully general account of the excuses in terms of the importance of facts which occur only at the level of the agent's conduct as a whole, or at the level of his actions at a particular time, such as whether the agent acts conscientiously, whether his conduct exhibits a reprehensible attitude, or whether he deserves moral criticism. Our blaming practices cut more finely than that, and our theory of blameworthiness must cut equally finely.