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# Is a Traumatic Childhood Just Another Abuse Excuse?

BEN SPIECKER & JAN STEUTEL

*Vrije University, Amsterdam*

## **Introduction**

In September 2000 a court in the Dutch town Groningen sentenced the author K. to six years' imprisonment for the manslaughter of his wife. He buried her body in the garden, where it was found nine years later. In the verdict the court shared the conclusion of a well-known institute of psychiatric research and treatment that at the time of the manslaughter K. was somewhat '*less* accountable'. According to the institute, K. suffered a personality disorder due to 'unstable conditions of upbringing'. And when, nine years ago, his wife summoned him to leave the house during a fight, separation anxiety and old feelings of anger towards his mother lead to a 'breakthrough of aggression'. Again, the court adopted this conclusion. In the same year a Court of Appeal sentenced a 57-year-old father, who was accused by his daughter of mental abuse with grave consequences, to six months' probation. The court stated that 'simple abuse' and 'intentional disadvantaging' of the daughter's health was proven. According to the daughter, because of the psychological terror that lasted years on end she suffered from grave psychosomatic complaints, an anxiety disorder, agoraphobia, and a personality disorder. The court concluded that a relationship between the humiliations of the father and the complaints of the daughter has been demonstrated. Though the court indeed admitted that there probably is not a direct causal relationship, the health problems can 'reasonably' be attributed to the behaviour of the father.

The tenor of both verdicts is that the current behaviour and symptoms of both the defendant and the plaintiff are seen as related to a traumatic upbringing or a heartless parenting. Moreover, in the first-mentioned case, because of this relationship the defendant was considered less accountable. When we are informed that a serial rapist who is on trial has himself been severely sexually abused in his childhood, we sometimes feel an almost irrepressible tendency to somehow take into account this latter fact. It is as if beyond this despicable adult the picture of a once innocent young child starts to emerge. Sometimes this unfortunate childhood is considered to be an extenuating circumstance by the judge (or the jury) and sometimes we indeed intuitively concur with this judgement. But is this response appropriate or right? Is this offender less accountable for his misdeeds, and if so, how can this claim be justified? To what extent, if this is the case at all, can adults be excused for their deeds on the basis of what they have experienced in their

formative years? Is an extremely traumatic childhood, just like being psychotic, mentally handicapped or being excessively compulsive, an excusing condition?

Lately in legal theory there is a lively discussion on excuses, in particular on the so-called 'abuse excuse'. Do excuses like drug or alcohol addiction, battered woman syndrome, pre-menstrual stress or posttraumatic syndrome, black rage or pornography defence exculpate suspects from their responsibility and consequently threaten our legal system (Wilson, 1997)? In our contribution we will not examine the similarities and differences between all the sorts of excuses, but concentrate on a traumatic childhood. A distinguishing feature of child abuse is that the subjects are children and it is often assumed that being severely mistreated during the most formative years will hamper the development of the moral and emotional dispositions. In this contribution the term 'extreme or traumatic childhood' in any case refers to flagrant neglect and chronic rejection, sexual abuse, biting humiliations, and cruel physical violence. Is this type of excuse similar to or different from the generally accepted excuses like self-defence, ignorance or coercion? We think that with regard to this specific excuse no general conclusions can be drawn. Stocker's (1999, p. 180) warning that sound reasons for accepting a particular abuse excuse raised by a person facing a specific charge need not be sound reasons for accepting a similar excuse in other circumstances, surely should be taken to heart. In the following we concentrate on two paradigm cases of traumatic childhood, one of which has often been the subject of normative-ethical discussions.

The notorious case of Robert Harris, who was executed in April 1992 at the age of 39, is often used in (moral-) philosophical investigations into the limits of moral responsibility (Watson, 1987; Wolf, 1987; Fischer & Ravizza, 1993). Harris, who had endured a nightmare-like childhood, who was stabbed and beaten by his alcoholic stepfather—at age 1 his jaw was broken—and rejected by his alcoholic mother, in cold blood killed two teenagers because he needed their car for a bank robbery. Harris took pleasure in shooting the two boys and afterwards even consumed their lunches. Because of his mean demeanour he was even disliked by the other inmates of Death Row. It is striking, however, that his sister remembered him as a young child that loved animals and craved for attention:

I still remember the little boy who used to beg for love, for just one pat or word of kindness ... (Watson, 1987, p. 273)

More recently, the 15-year-old La'Tasha Armstead initially was sentenced to life imprisonment for slicing the throat of the nurse who looked after her ailing grandmother. Later, another judge ruled that she would be eligible for parole in fifteen years. She had a caring relationship with her grandmother and knew the nurse quite well. But she and a friend desperately wanted the latter's car and in the process of hijacking the car she killed the nurse. At the time of her horrendous action La'Tasha Armstead was only 11 years of age and already had been raped several times and had at least one miscarriage. Her mother was a drug-addict and her father was in prison for killing one of her ten half-siblings. At the age of 13 she was pregnant again and her son was born in juvenile detention (*Los Angeles Times*,

6 August 1999). Here a minor who has endured a broken family, deep emotional neglect, poverty, and all sorts of violence becomes a victimiser herself.

Are both persons fully responsible for their criminal deeds and to what extent did their traumatic childhood make them less morally accountable for their crimes? Are they both fully to blame for their actions or must we conceive them as persons who developed into 'morally insane persons', whose responsibility is diminished? And what kind of moral deficiencies or defects are assumedly associated or correlated with the traumatic childhood experiences?

### **Moral Responsibility**

In moral philosophy and moral psychology considerable attention has been given to the phenomenon of child(hood) abuse and its consequences regarding moral responsibility. Often these reflections hook on to Strawson's seminal views on responsibility (Strawson, 1982). The commonplace Strawson wants to depart from is the great importance we attach to other persons' attitudes and intentions towards us as well as to the great extent to which our personal feelings and reactions depend upon our beliefs about these attitudes and intentions. It does indeed matter to us whether the actions of others, and in particular of significant others, reflect attitudes towards us of goodwill, affection, or esteem on the one hand, or contempt, indifference, or malevolence on the other. Strawson is especially interested in the particular conditions under which, what he calls, the (negative and positive) *reactive attitudes* do or do not seem reasonable or appropriate, and also what it would be like not to endure them (p. 63). When one is offended or injured by another person it is quite natural to feel resentment. However, there can be special considerations that modify or remove this feeling.

The first group of special considerations—often called excusing conditions (Watson, 1987)—indicate that the agent did not intentionally cause the harm; he 'didn't mean to' or 'was ignorant'. What all these excuses have in common is that we continue to see the agent as a fully responsible agent. This is not the case with the second group of special considerations—usually called exempting conditions—more in particular with a second sub-group. This latter group comprises pleas like 'she is chronically depressed', 'she is severely obsessive compulsive', or 'she is only a very young child'. In this context insanity, mental illness, extreme youth or psychopathy are also mentioned (Wallace, 1994). These pleas invite us to suspend our ordinary reactive attitudes towards the agent, either temporarily or permanently. The agent is seen as psychologically abnormal or morally underdeveloped. We are forced to suspend our negative reactive attitudes and to adopt an objective attitude; that is, to see the other as an object of treatment, as someone who should be treated with special care, trained or cured. Though we can still care for and love the other, she is not the subject of the full range of reactive attitudes and feelings, like resentment, gratitude and anger (any more). Of course, the transition from the reactive to the objective attitude is a gradual one, but when the attitude is almost wholly objective, you may fight the other person but not quarrel with her, you can talk to or negotiate with her but you cannot reason with her (Strawson, 1982, p. 66).

According to Strawson, holding a person morally responsible or accountable is just being an object of (positive or negative) reactive attitudes and emotions. Regarding the second (sub-)group of special considerations, Strawson argues that seeing someone

as warped or deranged or compulsive in behaviour or particularly unfortunate in his formative circumstances—seeing someone so tends, at least to some extent, to set him apart from normal participant reactive attitudes on the part of one who sees him, tends to promote, at least in the civilised, objective attitudes. (p. 66)

It is striking that an ‘unfortunate childhood’ straight out is assumed to be an exempting condition; that is, a valid abuse excuse, be it to some extent and only for the civilised.

Watson (1987) also takes up the issue of childhood abuse and introduces the infamous Harris case. Many of the exempting conditions, he points out, imply explanations of why the agent displays the deviant qualities and is therefore exempted from moral demands. It matters for our reactions to Robert Harris how he became the man he is/was. How unfortunate was he in his formative years? Despite Harris’s horrendous childhood, Watson rightly concludes that the biographical information does not bring him to the belief in the inevitability of the upshot. Instead of ‘It had to be’ the thought is ‘*No wonder*’. Despite their horrendous and inhuman deeds, we cannot bring ourselves to totally reserve our reactive attitudes towards Harris and La’Tasha Armstead. But we understand that they are also victims and our heart goes out to the young boy and girl they once were. Our reactions and feelings are ambivalent: as children they were victims but as adults they are victimisers. Watson sensitively observes that, unless one knew Harris as a child or keeps his earlier self vividly in mind, sympathy can hardly find a purchase.

### **Justifying the Claim**

In our view, trying to answer the question ‘is an extreme childhood an exempting condition?’ presupposes a specific conception of moral responsibility, viz. responsibility as a historical notion. In a structural and seemingly nonhistorical notion of moral responsibility, an agent who identifies wholeheartedly with his will should be held responsible for his actions, irrespective of the history of his identifications. Fischer & Ravizza (2000) characterise this approach as a ‘time-slice approach to moral responsibility’. According to this view, it is the sort of character a person has that is relevant to assessing his moral responsibility for action, not how he came to have that character. It can be argued, however, that there are processes or mechanisms like brainwashing, hypnosis and direct stimulation of the brain that can cause acts for which the agent cannot be held responsible. Consequently, Fischer & Ravizza conclude that certain histories, particularly understanding how mental capacities came about or are blocked, do indeed matter. For them the past is ‘epistemically helpful’ and, therefore, an individual’s childhood or past experience

can only be useful to responsibility ascription if the past is found to have left some trace or shadow on the present. Regarding our question, these ‘traces’ can be understood as the lack of specific moral capacities or qualities. Let us now return to our main question.

Given this conception of responsibility, we will defend that our main question, ‘is an extreme youth or childhood abuse an exempting condition?’, can only be answered affirmatively if in any case the following claims are plausible:

- a) the agent, who was abused as a child, misses one or more of the mental qualities that are separately necessary and together sufficient to holding her fully accountable, and
- b) the fact that the agent indeed misses one or more of these qualities, must be related to or result from extreme childhood deprivation.

The plausibility of both claims, however, does not yet seem sufficient for rightfully claiming that an extremely traumatic upbringing is an exempting condition. Think, for example, of a person who misses certain mental qualities to which claim (a) refers, but who could without much effort have acquired those missing qualities by some self-cultivation or by seeing a counsellor quite some time before she committed the crime. Are we still allowed then to claim that her extreme youth is an exempting condition? On the one hand, one may be inclined to answer this question affirmatively, for in line with claim (a) it can be defended that an agent is *fully* accountable only if at the moment of the lapse she is in full possession of a certain configuration of mental qualities. If the historical conception of responsibility is taken seriously, however, the question must be answered in the negative. For if it is indeed the case that the agent still had the capacity and the opportunity to acquire the missing mental qualities, then this person, herself, can be blamed for missing these qualities and in any case can be held *partially* accountable for the committed crimes. Therefore, in our view the plausibility of a third claim must also be demonstrated, viz.

- c) the agent was unable, either by self-cultivation or with the help of available others, still to acquire the missing mental qualities.

The justification of claim (a) in fact comprises two elements. First, a normative-ethical view must be defended that indicates which mental qualities a person must possess to hold her fully accountable. Next, on the basis of this view and with the help of empirical findings it must be made plausible that this person indeed misses one or more of these qualities. Regarding the first element, R. Jay Wallace (1994) developed an interesting theory. In a philosophical, more specifically Kantian, justification, Wallace explains in detail that it is only fair to demand of a person to comply with particular obligations if the obligations are supported by distinctively moral reasons (p. 157). According to him, this idea of fairness implies that a person can only be held accountable for not observing the obligations if she possesses the power of reflective self-control. This power comprises both the capacity to grasp

and apply moral reasons and the capacity to control or regulate her behaviour in the light of these reasons. Both capacities are very sophisticated indeed and are composed of different mental qualities. Next to the basic capacity to grasp the moral concepts and values involved in moral justifications, in addition the first-mentioned capacity comprises a well-developed capacity for moral judgement too, including certain sensitivity for morally relevant aspects of the situation. The second capacity involves both the capacity for critical self-reflection, that is, to step back from and to assess one's desires and inclinations, and the capacity to control them whenever deemed appropriate or necessary. These capacities, Wallace keeps stressing, are not an all-or-nothing affair; different levels of development can be discerned.

The question arises, however, whether this illuminating philosophical view has indeed indicated all the mental qualities a person must have acquired to be conceived as fully accountable. The judgement that Robert Harris and La'Tasha Armstead are less accountable because of their horrendous youth basically can be justified not by referring to their lack of cognitive capacities or the power to control themselves, but rather by referring to their underdeveloped moral-affective qualities, in particular their incapacity to empathise and sympathise. In this respect we take them to diverge from those young offenders who are mentally retarded (IQ < 70). Surely both offenders are quite aware that certain practices promote or are harmful to human welfare, and in this sense they are not totally ignorant of certain facts of human wellbeing (Elliott, 1992). Both are capable of experiencing physical pain themselves and, unlike animals, both indeed understand, at least partially, what hurting or killing another person is. In carefully planning their heinous crimes and in wilfully bringing about death or administering pain they, unlike a fully psychotic person, made themselves causal agents in harming others. Moreover, because of their careful planning, their crimes can hardly be explained by uncontrollable impulses. In other words, next to the mental capacities that Wallace mentions, in particular the capacity of moral reasoning and the power of self-control, an elementary capacity to experience feelings of sympathy is also required to hold a person who violates his moral responsibilities fully accountable (Hoffman, 2000).

Regarding claim (b), the question arises, which demands must be made on the evidence that there is indeed a relationship between an extreme childhood and the lack of the qualities that are required for being fully accountable? Must we have at our disposal empirically corroborated causal explanations? And is this a realistic and thus a justified requirement? What type of research is needed here and indeed feasible? Surely behavioural researchers will not and cannot subject young children to experimental conditions that together form an operationalisation of an extremely harsh and brutal upbringing and in due time compare their (im)moral behaviour and attitudes with those of children brought up in 'normal' circumstances. Moreover, nowadays the idea that specific childhood experiences in themselves have long-term effects is rejected in favour of the assumption of much more complicated, multi-causal processes. This issue requires longitudinal studies that comprise various parameters:

Until prospective studies have followed individuals—whose premorbid personality and environmental characteristics are known—over sufficiently long periods of time to yield a sufficient base rate of disorder, we will not be able to distinguish causal from concomitant, confounding, or residual factors. (Muris & Merckelbach, 2001, p. 375)

Alas, outcomes of such complex prospective studies are hardly available yet.

It is of crucial importance to indicate that, though claim (b) indeed refers to a relation that can only be corroborated by empirical research, the question which epistemic criteria the supporting evidence must eventually meet is a normative–ethical issue. The question really is whether it is *fair* or *just* towards the suspects to insist on strict epistemic requirements, for example on an empirical corroboration of the claim at issue. In our view, answering this question indeed requires a different method or procedure of justification than a purely empirical one; viz. a normative–ethical method of justification, which is also called the method of ‘reflective equilibrium’. In this procedure by systematic reflection, our moral intuitions, the moral principles on which these are based, and relevant background theories (inclusive of the available scientific theories) are brought into a coherent system (Daniels, 1996; Elgin, 1996). On the basis of such deliberation we are indeed inclined to reject strong epistemic criteria. Insisting on strong criteria would imply that there is insufficient support for claim (b), and consequently an extreme childhood could never be a valid reason for exempting a person from being fully accountable for crimes committed later in life. Such an extreme view conflicts with our deepest moral intuitions, and therefore we argue for the much more moderate principle that claim (b) is sufficiently proven if established scientific views and empirical data make *plausible* that a criminal act is at least partly the result of an extremely deprived upbringing. For example, in behavioural genetics it is stressed that children will only develop normally in a species-normal environment, but not in those lacking ‘average expectable conditions’ under which our species has evolved (Scarr, 1992). For children and older children these species-normal environments include protective parenting adults, a supportive family, or a tribe or group into which the child is socialised. Rearing conditions that fall within the limits of a normal environment are crucial to *normal* development. The results of behavioural genetics research and the theoretical notions that are grounded on these data make it rather plausible that a severely traumatic childhood in relevant respects promotes an abnormal moral development. According to Bouchard (1999), current thinking holds that each individual on the basis of her genotype creates a unique set of experiences, that is, creates her own environment. However, he also stresses that this view of human development does not deny the existence of inadequate and debilitating environments.

Our initial educational intuitions and beliefs that grave child abuse and neglect can result in deficiencies in moral development are also reinforced by Wallace’s philosophical analyses. Regarding claim (b), Wallace also argues that, though severe childhood deprivation does not necessarily determine adult wrongdoing, it is, nevertheless, unfair to treat such a person as fully accountable. For



extreme and chronic physical and verbal abuse and emotional neglect during the most formative years most probably will hamper, often to a considerable degree, the development to a normal level of the powers of reflective self-control. Wallace assumes that childhood abuse impairs the powers of reflective self-control not by depriving the adult agent of the ability to grasp and apply moral reasons—as in psychopathy—but by substantially diminishing the agent’s capacity to control her behaviour in accordance with such reasons (1994, p. 233). Just like Watson, he states that a childhood abuse excuse affects our judgements of responsibility by altering our perception of the motives and abilities of the wrongdoer as an adult:

they make the adult wrongdoer’s action seem, not inevitable, but psychologically intelligible. (p. 233)

Claim (c), in which it is stated that the agent was unable to acquire the required qualities, can partly be elucidated with the help of the notion of ‘undoing the effects of one’s past’; in this context Fischer & Ravizza (2000) speak about ‘*taking responsibility*’. Is the agent herself capable of taking responsibility for the mechanism or processes that cause specific immoral acts; can she, metaphorically speaking, ‘defuse’ or ‘deactivate’ them? Clearly in cases like brainwashing or hypnosis the help or support of another person is needed. However, the incapacity of the agent to improve her moral capacities herself might indeed be a ‘shadow’ or a ‘trace’ of a traumatic childhood. So the question is: has the agent, despite her history of abuse, acquired those specific qualities that will enable her to transform the effects of the abuse into personal considerations and motivations to meet or undo the lack of moral capacities? Is she capable of transforming her third-person perspective on her history of abuse into a first-person perspective?

A necessary condition for being able to make such a shift, and this is succinctly stated by Fischer & Ravizza, is that in her childhood the agent has formed a disposition to view herself as an apt target for the reactive attitudes. However, the latter in turn presupposes that in her upbringing the child has been treated *as if* she is an appropriate candidate for reactive attitudes and has been invited to take this ‘internal view’ of herself (2000, pp. 212, 214). This very basic capacity to see oneself as an apt target for reactive attitudes, and consequently have acquired the capacity to experience (a certain level of) moral feelings like shame, guilt and resentment, possibly forms a condition for being able to morally improve oneself. An appreciation of this capacity might help us to understand why so many severely abused or neglected children manage to grow into rather sane and well-adjusted adults. Overcoming or transforming the effects of a traumatic upbringing often requires the support of others, be it trained professionals (social workers, counsellors etc.) or sympathetic friends or neighbours. And, clearly, abused or neglected children that grow up in severely impoverished neighbourhoods often have the bad luck of being also deprived of opportunities to transform their horrendous past and, consequently, are perhaps more liable to get caught in the intergenerational transfer of violence.

## Conclusion

Our main question was, can a wretched upbringing or a traumatic youth be a reason for exempting, be it fully or partially, a person from his criminal behaviour? In our view it indeed can, provided that a number of conditions are fulfilled. First, it must be demonstrated that the person lacks a certain configuration of mental qualities, or in any case that these qualities are developed inadequately. Wallace indicated the qualities that form the building blocks for the capacity for reflective self-control, and to this we added, in referring to the example of Harris, the capacity to have feelings of sympathy. It can be cautiously assumed that both Harris and Armstead miss one of the indicated qualities, but a valid observation regarding such qualities requires a diagnostic examination. Second, on the basis of available corroborated theories and empirical data it must be made plausible that indeed there are multi-causal relations between the lacking of the mentioned qualities and the horrendous upbringing. Corroborated theories like the behavioural genetics theory of the species-normal environment and perhaps the attachment theory (Bowlby) might very well serve this goal. If these two conditions are met, it can be assumed that the person in question in any case cannot be held fully accountable for the committed transgressions. To make a reasonable case that a person is not even partially accountable, it must be made plausible too that in the past the person was yet unable to acquire the missing mental qualities. We conjecture that a person will be unable to do so if, because of her extreme traumatic youth, even the basic disposition to view herself as an apt target of reactive attitudes has hardly evolved. To effectively conclude whether the person has or has not acquired this basic capacity, a valid diagnostic instrument is indeed indispensable.

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