

ANOTHER PLEA FOR EXCUSES

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Article:

It has been almost fifty years since J. L. Austin made his famous plea for excuses before an audience of the Aristotelian Society.¹ Austin's plea was not that we recognize the possibility of having an excuse for wrongful behavior; he took this possibility for granted. His plea was that we recognize how fruitful a careful study of excuses, or rather of the language of excuses, can be when one is investigating the nature of action and of responsibility. By way of demonstration of this fact, his essay meanders thoughtfully through the terrain of accident, carelessness, impulsiveness, inadvertence, negligence, recklessness, and the like, tarrying intermittently at neglected sites and revealing unsuspected nuances.

According to Austin, one has an excuse for what one has done just in case one's action was morally wrong but one is not morally culpable for it.² There is reason to think that this view is too narrow, since it seems that excuses are sometimes tendered even when wrongdoing is not admitted. (Alf may blame Bert for having let Charlie suffer needlessly. Bert may rebut the *accusation*, that is, proffer an excuse, by pointing out that he was unable to relieve Charlie's suffering. In so doing, Bert clearly need not be admitting any wrongdoing.) But this point will not be pursued here; the focus of the paper will be on the possibility of doing moral wrong without being morally culpable. (Henceforth, the "moral(ly)" will be omitted, although it will always be implicit.) Austin's assumption that this possibility exists has been challenged. In what follows, the assumption will be defended. The defense will furnish a fresh plea for excuses, one that is in a way more fundamental than that which Austin made.

Part I

In *Responsibility and the Moral Sentiments*, R. Jay Wallace devotes a full chapter to a discussion of the way in which excuses operate.³ He begins by "recalling" Austin's distinction between justifications and excuses, but his account of this distinction is not the usual one. He says (p. 120):

Suppose that agent *s* apparently does *x*, where *x* is an act that is, on the face of it, morally wrong. Austin suggests that a justification for *s*'s act would grant that *s* did *x*, but try to

adduce reasons for thinking that x is not morally wrong after all. . . . An excuse, by contrast, would grant that x is morally wrong but adduce reasons for thinking that s did not really do x after all.

Whereas this accords with what Austin says about justifications, it would appear to contradict his view of excuses, according to which, if s has an excuse for doing x , then s did indeed do x (and, moreover, x was wrong). However, Wallace goes on to modify what he says about Austin's account on the next page, saying (p. 121):

Granting that x would be morally wrong, excuses, on Austin's interpretation, apparently show that agent s did not really do x intentionally: s may have made the bodily movements that normally constitute x -ing, but without the attitudinal conditions (whatever they are) that turn such bodily movements into cases of doing x intentionally.

Well, did s do x , albeit unintentionally, or not? Here is Wallace's answer (pp. 123-24):

Of course, if s did not do x intentionally, then there is a clear sense in which there is no action that s performed at all; precisely because s did not do x intentionally, we may conclude that x was not really something that s *did*.

This seems at best an exaggeration. Although it may be agreed that there is no action, in the relevant sense, in the absence of the agent's making some choice (so that, for example, whereas normal hand-raising is an action, those produced in the throes of an epileptic seizure are not), what follows is only that all actions are intentional under some description,⁴ and not that all actions are intentional under all descriptions. But there is no need to press this point. One can simply understand Wallace to be maintaining that, if s did not intentionally do x , then s is not to blame for doing x . The issue to be addressed is what implications this view about excuses has regarding wrongdoing.

Wallace appears to assume (very reasonably, it may seem) that wrongdoing consists in the violation of an obligation. Concerning such violation, he has this to say (p. 128):

Only if an action expresses a choice of some sort can we say that a moral obligation has either been violated or complied with. Consider the moral obligation of nonmaleficence, for instance: this is not simply an obligation not to make bodily movements that harm other people. Rather it is an obligation not to act in ways that express the choice to harm other people, in the ordinary pursuit of one's ends.

He continues (p. 133):

[T]he obligation of nonmaleficence . . . must be construed as an obligation not to make bodily movements that harm someone, as the result of a choice to bring about such harm. Now if s makes a movement that harms someone (treading on another's hand, say), but it turns out that s did not tread on the person's hand intentionally, then what s did will not constitute a case of harming someone as the result of a choice to bring about such harm. Hence s will not have breached the obligation of nonmaleficence.

One can thus understand Wallace to be maintaining that, if *s* did not intentionally do *x*, then *s* did not wrongly do *x*.

The claim that intentionally doing *x* is necessary both for being to blame for doing *x* and for wrongly doing *x* does not, of course, imply that one cannot have an excuse for wrongdoing; for it could be that something else is also necessary for culpability that is not necessary for wrongdoing. However, Wallace characterizes his view in just such terms. He says (p. 127) that "excuses serve to show that an agent has not really done anything wrong." (He repeats this claim on p. 135.) Even if the passages that have been quoted do not themselves entail this conclusion, they may seem to point in its direction. Is the conclusion acceptable?

Part II

It may seem easy to dismiss Wallace's remarks, for surely intentionally doing *x* is not necessary either for culpability or for wrongdoing regarding *x*. What about negligence in doing *x*? What about recklessness? But Wallace is well aware of these phenomena. He says (pp. 138-139):

Both negligence and recklessness can be taken to reflect qualities of will, as expressed in action, and so to be appropriate grounds for blame. . . . But the qualities displayed when negligence or recklessness leads to *x* are different from those involved in intentionally doing *x*. Recklessness . . . involves a cavalier attitude toward risk that shows itself in the relation between one's choice and one's awareness of the risk in acting on that choice . . . , and so recklessness can itself be a blameworthy quality of will. Negligence and forgetfulness are slightly harder cases, perhaps, because there may not even be awareness of the risks involved at the time when one acts negligently or forgetfully. Here one may have to trace the moral fault to an earlier episode of choice. . . . In this way, negligence and forgetfulness may also be traced to a blameworthy quality of will.

Here Wallace seems to be saying that acting negligently typically involves, not doing something that is itself either intentional or reckless, but rather doing something that is a consequence of some earlier action that was either intentional or reckless. (This sort of "historic" approach to negligence and related phenomena is both popular and plausible.⁵) So understood, the passage just quoted constitutes a sensible amendment to Wallace's thesis, so that his considered view regarding both culpability and wrongdoing may now be put as follows: if *s* did not do *x* either intentionally or recklessly, then *s* is not to blame for doing *x* and did not wrongly do *x*, unless *s*'s doing *x* was itself the consequence of some prior action, *y*, which *s* did either intentionally or recklessly. Once again, then, one can understand Wallace as identifying a condition that is common to both culpability and wrongdoing and thereby pointing toward the view that one cannot have an excuse for wrongdoing.

Part III

As already mentioned, the passages from Wallace's book that have been cited do not suffice for the view that excuses preclude wrongdoing. Nor do there appear to be any other passages in his book that do so. But his remarks are suggestive and invite supplementation in such a way that the view may be explicitly derived. Wallace might not endorse the following amplification of his remarks; nonetheless, the argument to be presented perhaps constitutes the strongest argument

available for the view in question. Undermining it will serve to provide indirect support for the traditional account of excuses, according to which one can indeed have an excuse for wrongdoing.

The argument begins as follows.⁶ Let us suppose that

(1) Jane opened her front door and her doing so was wrong.

Then there are two possibilities:

(2) Either Jane believed that her opening the door was wrong or she did not believe this.

Now

(3) If Jane did believe that her opening the door was wrong, then she is culpable for opening it and thus has no excuse for opening it.

On the other hand, if Jane did not have this belief, two further possibilities arise. More particularly,

(4) If Jane did not believe that her opening the door was wrong, then either she is culpable for this failure of belief or she is not culpable for it.

But

(5) If Jane is culpable for her failure to believe that her opening the door was wrong, then she is culpable for opening it and thus has no excuse for opening it.

And so

(6) Jane has an excuse for opening the door only if she inculpably failed to believe that her opening it was wrong.

Let us interrupt the argument at this point. Premise (1) is required to set the scene, and premises (2) and (4) are clearly true. But what about premises (3) and (5)? Should we agree, first of all, that wrongdoing coupled with a belief that one is doing wrong suffices for culpability for one's action? Let us concede that we should. It is commonly held that one can be culpable for an action only if the action was free, but it is plausible to contend that this condition is already satisfied by the stipulation in premise (1) that Jane's opening the door was wrong, in that, if one cannot help doing what one does, one at most does something bad rather than something wrong.⁷ Should we agree, next, that wrongdoing coupled with a culpable failure to believe that one is doing wrong suffices for culpability for one's action? Again, let us concede that we should. The culpability will be indirect, by way of culpability for one's mental state, but indirect culpability for something is culpability all the same. (This fits well with Wallace's comment about tracing the moral fault associated with negligence or forgetfulness back to some earlier episode of choice. Even if premise (5) were denied, the wrongness of opening the door is *ex hypothesi* conjoined

with Jane's culpability for something—her mental state, if not her action—and so such a case clearly does not provide an instance of wrongdoing unaccompanied by any sort of culpability.)

Part IV

Let us therefore grant the argument's first conclusion, that excuses for wrongdoing are possible only if one did wrong while inculpably failing to believe that one was doing wrong. In order to see where the argument goes from here, let us focus on a particular case in which an agent inculpably fails to believe that her action is wrong. Consider Jane again, who is about to enter her house. Let us now imagine that, without her knowledge, some terrorists have sabotaged her front door, rigging it so that, if someone opens it, a bomb will explode and the occupants of the house will be killed. Jane does not, and has no reason to, believe that it would be wrong for her to open the door. Accordingly, she opens the door, killing all the occupants.⁸ Was her opening the door in fact wrong?

Holding all else "equal," a consequentialist would say "Yes." But that is not news. Nor is it news that this is an answer that is not immediately appealing. On the contrary, beginning students of philosophy often respond to cases such as Jane's by asking, "How could it be *morally* wrong for someone to cause a disaster completely by accident?" G. E. Moore would diagnose a confusion on their part between ascriptions of wrongdoing and ascriptions of blameworthiness,⁹ but even seasoned philosophers whose intuitions about such matters have been blunted over the years might well sympathize more with the students' position than with Moore's. The argument being considered here supports this stance. It resumes with the assumption that

(7) Jane inculpably failed to believe that her opening the door was wrong.

It is then observed that

(8) If Jane inculpably failed to believe that her opening the door was wrong, then she did not wrongly lack this belief.

But

(9) If Jane did not wrongly lack the belief that her opening the door was wrong, then her opening it did not constitute the violation of any (alleged) obligation not to open it.

However,

(10) If Jane's opening the door did not constitute the violation of any (alleged) obligation not to open it, then her opening it was not wrong after all.

And so

(11) Jane's opening the door was not wrong after all.

Coupled with the intermediate conclusion that

(6) Jane has an excuse for opening the door only if she inculpably failed to believe that her opening it was wrong,

the upshot (generalized) is, of course, that one cannot do wrong and have an excuse for doing so. If this conclusion is to be rejected, then, since (6) has been accepted, fault must be found with at least one of premises (8)—(10). And so it will. Each of the premises may seem attractive, but in fact each is problematic.

Consider (8), the first of the premises in question. It must of course be agreed that, if in general one could not have an excuse for wrongful behavior, then in particular one could not have an excuse for wrongly lacking a belief about wrongdoing (on the assumption that lacking such a belief constitutes behavior of the sort covered by the general thesis). But the general thesis is precisely what is at issue, and so it cannot be used to support the more particular thesis. Moreover, it is not at all clear what other reason might be given in support of the latter. Indeed, a proponent of the view that there can be excuses for wrongful behavior in general is likely to want to insist that there can indeed be an excuse for wrongly lacking a belief about wrongdoing.

Thus there is a sticking point right at the start. But let us move beyond this, for an examination of the remaining premises will prove instructive. Consider (9). Did Jane violate any obligation not to open the door? Wallace would deny that she did, precisely because she lacked the requisite mental state. There is undoubtedly something to this. Just as it is odd to say that someone can *comply* with an obligation by accident, so too it seems odd to say that someone can *violate* an obligation by accident. Both compliance and violation seem to require some sort of relation between the agent's mental state and her action. More particularly, we might say this: *s* complies with an obligation not to do *x* if and only if *s* is obligated not to do *x* and intentionally does not do *x*; *s* violates an obligation not to do *x* if and only if *s* is obligated not to do *x* and either intentionally or recklessly or negligently does *x*. On this account, Jane certainly did not violate any obligation not to harm the occupants of the house, since she neither intentionally nor recklessly nor negligently did so. It might be pointed out that she nonetheless did intentionally open the door, so that we could still say that she violated the obligation not to do that. But this doesn't seem right. The (alleged) obligation not to open the door was wholly derivative from the obligation of nonmaleficence. This being the case, nonviolation of the latter should suffice for nonviolation of the former (an observation that might require a revision to the account of violation just suggested).

Premise (9) thus seems quite plausible. If one accepts both it and (8), though, it may seem that one should indeed conclude that excuses preclude wrongdoing. For the sole remaining premise, (10), may seem trivially true: no violation, no wrongdoing. But here one must be very careful. Even if it is agreed that Jane did not *violate* an obligation not to open the door, the question still remains whether she *failed to meet* such an obligation. The account of violation just suggested provides for exactly this possibility; for, if *s* is obligated not to do *x* but does *x* nonetheless, then surely *s* does indeed fail to meet the obligation not to do *x*, even if he does not violate this obligation because he does *x* neither intentionally nor recklessly nor negligently. This is a possibility that Wallace seems committed to denying when he says that the obligation of nonmaleficence is not merely the obligation not to harm but the obligation not to harm "as a result of a choice to bring about such harm." But this is surely contentious. Again, one might agree that someone who

has harmed another by accident has not violated the obligation of nonmaleficence, but why agree that she has done no wrong? Consider Jane. She could easily have refrained from opening the door and thus easily have avoided killing the occupants of the house. Why, then, deny that she did wrong in acting as she did?

One response to this question is this. For *s*'s doing *x* to be wrong, *s* must have a reason not to do *x*; Jane had no reason not to open the door; hence, her opening it was not wrong.

This won't do. The phrase "to have a reason" is ambiguous. In one sense, to have a reason to do something is to have a motive to do it. Now, Jane had no motive not to open the door, and so she indeed had no reason in this sense not to open it. In another sense, however, to have a reason to do something is simply for there to be a consideration in favor of one's doing it. One need not be aware of this consideration, let alone be motivated by it, in order for such a consideration to exist. In this sense, it may be insisted, Jane did have a (moral) reason—indeed, a conclusive reason—not to open the door, and it is for this reason that her opening it was (morally) wrong. In general, one need not be motivated to perform an action in order to be obligated to perform it. (Think how easy it would otherwise be to avoid being burdened with any obligations! Apathy would be the perfect liberator.)

But, it might be retorted, it is not as if Jane lacked a motive that she should have had. On the contrary, premise (8) acknowledges that she did not wrongly lack the belief that her opening the door was wrong. How can she have been obligated to act on the basis of a belief that she did not have and was not obligated to have? She cannot, and she therefore did no wrong after all.

This won't do either. To say that Jane was obligated not to open the door is *not* to say that she was obligated to refrain, on the basis of some particular belief, from opening it. A fortiori, it is *not* to say that she was obligated to refrain, on the basis of the belief that she would or might thereby harm someone, from opening it. It is simply to say that she was obligated not to open it, period. This is something she could easily have managed. In general, our obligations are a function of the things that we can do and of the reasons that there are for doing them, not of the reasons that we believe there are for doing them.

But how, it might be asked, can Jane be expected to have satisfied an obligation of which she was unaware and had no obligation to be aware? The answer depends on what is meant by "expected." If this means the same as "obligated," then the questioner seems to be presupposing that one cannot be under an obligation of which one is unaware and has no reason to be aware. But why accept this? Conscientious people are frequently concerned with discovering whether they are under any obligations of which they are currently unaware, even ones of which they currently have no reason to be aware. Such a concern is surely coherent, indeed admirable. If, instead, "be expected to have satisfied" means the same as "be culpable for not having satisfied," the answer is that Jane cannot be expected to have satisfied the obligation not to open the door. That's precisely what gives her an excuse for opening it!

The assessment of premises (8)–(10), in sum, is this. Premise (8) is unpersuasive; the only apparent rationale for it begs the question regarding whether excuses preclude wrongdoing. Premise (9) may perhaps be granted, on a rich understanding of "violate" according to which not

every failure to meet an obligation is tantamount to a violation of it; but then (10) is to be rejected, since the failure to meet an obligation constitutes wrongdoing, regardless of whether it amounts to a violation. If, however, "violate" is understood simply to mean the same as "fail to meet," then (10) must be accepted; but then (9) is to be rejected, since one need not be aware of the wrong that one does.

Part V

It should be stressed that the evaluation of the argument just considered does not rest on the view that Jane did wrong in opening the door. As noted above, a consequentialist such as Moore would say that she did, but many are uneasy with this verdict. Some would rather say that wrongdoing is a function of the risks that one runs. If we assume that Jane ran a very low risk of causing any harm in opening the door, then there is perhaps good reason to say that her opening it was indeed not wrong after all. But this provides no support for the argument. Still (8) would be question-begging, and still either (9) or (10) would founder on the fact that one need not be aware of the wrong that one does. Suppose that we alter Jane's case so that there was evidence available to her that the door was rigged and that opening it would likely cause harm to the occupants of the house. Then, on the present view, there will once again be good reason to say that her opening the door was wrong. Must we also say that she is to blame for opening it? Surely not. She may not have recognized the risk that she ran and, as long as her failure to recognize it was inculpable, then she is not to blame for running it even though her doing so was wrong. How could her failure to recognize the risk be inculpable? In any number of ways. Perhaps she was momentarily distracted by an ambulance siren; perhaps she was on medication; perhaps she had just received some distressing news; perhaps...

It may be responded a la Wallace that the correct criterion for wrongdoing implies, not that it is wrong to cause harm or to risk causing harm, but that it is wrong to do so while in a certain state of mind.¹⁰ There are good reasons for rejecting this view,¹¹ but there is no need to discuss them here. The fact is that, unless one very particular mental state is at issue, still a "gap" between wrongdoing and culpability must be acknowledged. Suppose it were said that it is only the witting causing of harm that is wrong. Still one must distinguish between wittingly *causing harm* and wittingly *doing wrong*. The gap between wrongdoing and culpability exists because culpability is a function of one's attitude toward *wrongdoing*. This gap could be closed only by insisting that wrongdoing itself requires an attitude toward wrongdoing. While this thesis has been proposed by some,¹² it is surely fraught with problems. As long as one resists it—and the argument considered above gives no reason not to do so—one may continue to maintain the common sense view that excuses for wrongdoing are possible.¹³

Notes

Many thanks to Ishtiyaque Haji and Eduardo Rivera Lopez for helpful comments on previous drafts.

1. Austin (1956-57). All page references are to the reprinted version.
2. Ibid., p. 20. This way of putting his position regiments it somewhat. He talks on p. 19 in terms of an action's being "bad, wrong, inept, unwelcome, or in some other of the numerous possible ways untoward," and of responsibility in general rather than moral culpability in particular. The regimentation provides focus.
3. Wallace (1994), chap. 5.

4. Or, to put the point in a way that does not presuppose a coarsely-grained individuation of actions: whenever one acts, one acts intentionally.
5. See, for example, Smith (1983), Zimmerman (1986) and (1997a), and Alexander (1990).
6. This argument is inspired in part by passages in Wallace (1994), but mostly by Rivera Lopez (forthcoming).
7. Someone who distinguishes between culpability and wrongdoing may agree that each requires a sort of freedom and yet maintain that these sorts differ. This may be so, but the point will not be pursued here, since the aim is to see whether there are other reasons for separating culpability from wrongdoing.
8. This case is borrowed from Rivera Lopez, *op. cit.*
9. Moore (1912), chap. 5.
10. Cf. Prichard (1949), chap. 2, and Ross (1939), chap. 7, on such a "subjective" approach to obligation and wrongdoing.
11. Cf. McConnell (1988).
12. Cf. Strawson (1986), p. 220.
13. Excuses reflect just one aspect of the gap between wrongdoing and culpability. Another, complementary aspect is explored in Zimmerman (1997b).

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