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Disordered Wrongdoing, Freedom, and Compassion

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Article abstract

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ARTICLE (ÉVALUÉ PAR LES PAIRS / PEER-REVIEWED)

Disordered Wrongdoing, Freedom, and Compassion

Benjamin Campbell[a]

Résumé

On parle d'« infraction liée à un trouble mental » pour désigner un comportement ayant un lien de causalité avec le trouble mental de son auteur. Une conception courante à l'égard de ce type de délit est que le trouble constitue une « explication » mais non une « excuse ». On considère toutefois souvent que les troubles mentaux sont des conditions qui limitent la liberté d'une personne à choisir d'autres lignes de conduite. En philosophie éthique et dans les systèmes judiciaires démocratiques, ce type de contraintes pesant sur la liberté est considéré comme réduisant considérablement la responsabilité morale d'une personne face à un acte répréhensible, voire comme l'éliminant complètement dans de nombreux cas. Plutôt que de m'attarder sur cette interprétation juridique de la responsabilité, je m'intéresserai au contexte éthique « global » qui régit la manière dont nous traitons les délinquants atteints de troubles mentaux : notre comportement éthique. Je soutiens que notre attitude fondamentale envers les malfaiteurs déséquilibrés, compte tenu de ces contraintes pesant sur leur liberté, devrait être empreinte de compassion. Je m'attache tout particulièrement à la notion de compassion en tant qu'elle renvoie à l'obligation morale de faire preuve de compréhension envers les raisons qui poussent ces malfaiteurs déséquilibrés à agir comme ils le font.

Mots-clés

santé mentale, liberté, libre arbitre, comportement éthique, responsabilité morale, compassion, trouble obsessionnel-compulsif, troubles du spectre autistique, schizophrénie, syndrome de Gilles de La Tourette

Abstract

Disordered wrongdoing describes behaviour that is causally connected to a wrongdoer's mental disorder. A common attitude toward such wrongdoing is that the disorder is an "explanation" but not an "excuse" Mental disorders, though, are often thought to be conditions that limit one's freedom to choose alternative courses of action. These sorts of constraints on freedom are taken in ethical philosophy and democratic judicial systems to strongly reduce one's moral responsibility for a wrong act, if not remove it altogether in many cases. Rather than focusing on this legal interpretation of responsibility, I will focus on the "holistic" ethical context of how we treat disordered wrongdoers: our ethical comportment. I argue that our basic attitude toward disordered wrongdoers, on account of these constraints in freedom, should be compassionate. I explicitly focus on the meaning of compassion as it relates to a moral obligation to be understanding toward the reasons disordered wrongdoers have for their actions.

Keywords

mental health, freedom, free will, ethical comportment, moral responsibility, compassion, obsessive-compulsive disorder, autism spectrum disorder, schizophrenia, Tourette syndrome

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INTRODUCTION

How should we approach wrongdoing in the mentally disordered? It is no secret that mental disorders can sometimes manifest in antisocial and problematic ways. A common aspect of mental disorder is that the way the subject experiences the world is abnormal and estranged from the dominant community. As such, it is hard for the mentally healthy to know what to do when disordered people do bad things. I first provide an account of what disordered wrongdoing consists in and why it is important, focusing on the connection between mental disorders and unfreedom. I then focus on describing a basic principle of a theory of ethical comportment toward disordered wrongdoers.

WHAT IS DISORDERED WRONGDOING AND WHY IS IT IMPORTANT?

Introducing Disordered Wrongdoing and Building Blocks

To begin, we must delineate the concept of "disordered wrongdoing". It is not any wrongdoing performed by a person who is the victim of a mental disorder, but that which is significantly and relevantly causally connected to the wrongdoer's mental disorder. For example, suppose that a schizophrenic person, Robert, robs a bank because he has positive hallucinations that command him to do so. This is a case of disordered wrongdoing because his behaviour is intimately tied to his schizophrenia in a way that cannot be ignored. Suppose Robert robs a bank again, even though he lacks any disordered thinking, hallucinatory commands, or psychopathological feelings that motivate him to do so — this time, he is lucid. Even though he is still the subject of a mental disorder, this is not relevantly or significantly causally related to his wrongdoing, so it does not count as disordered wrongdoing.

What makes disordered wrongdoing interesting? Why should we care if a wrong act is committed because of a mental disorder? Bodily disorders, like cancer, may spur antisocial or risky behaviour. In such cases, we may be more tolerant or patient with wrongdoing given how the person may feel, but our interpretive stance toward them is broadly the same: they are

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still rational, free agents who can choose to do right or wrong acts. But this stance is sometimes modified when the disorder becomes mental. When mentally healthy and financially stable, Robert appears, simply, to be greedy and so we pass some level of condemnatory judgment. When he is schizophrenically commanded, it seems like we may have a sense of sympathy or understanding toward Robert. The dividing line, here, seems to be that *mental disorders can sometimes interfere with a person's freedom, such that we are inclined to regard them and their relation to their wrongdoing in a less critical light*.

Despite our intuitive sense that mental disorders can interfere with one's freedom, it is exceedingly common to pass hostile judgment upon the disordered person and punish them for disordered wrongdoing. A slogan that has gained a good amount of currency is that mental disorders are explanations, but not "excuses" for wrongdoing (1). In other words, I may understand why your mental disorder is causally related to some bad act you have done, but I still regard you with disapproval. Though I may be personally empathetic with your plight, my behaviour will not be altered with respect to how I treat you.

This approach, in its strong form that precludes nuance or sensitivity to degrees of freedom, is incompatible with the approach employed by democratic judicial systems. For example, in the United States, major historical rules governing pleas of "not guilty by reason of insanity" (NGRI) all in some way make reference to the possibility that a mental disorder renders a person unfree: whether it is the superseded *Durham* rule,[1] the irresistible impulse test,[2] the Model Penal Code test[3] or the M'Naghten rule,[4] it is clear that democratic judicial systems have taken seriously the relationship between disorderment and freedom (2). Further, mental illness continues to be an important factor in determining sentence terms and length, as it is a common mitigating factor. While existing standards and sentencing guidelines, in my opinion, leave much to be desired — namely, because they almost uniformly undervalue the significance of mental illness and developmental history — the inflexible and callous approach expressed in the pithy catchphrase, "explanations but not excuses," seems to be *completely* unconcerned with the question of freedom. Given the historical-cultural importance of this subject, it seems that a deeper appraisal of the relationship is in order. Before we continue, though, two overarching clarificatory notes should be made.

First, the conception of freedom I employ is intended to be minimal and nonpartisan between broader views in the free will debate. Outside of the context of this project, I endorse a hard determinist and source incompatibilist position. But there is something to be said in ethical discussions for more measured and practical conceptions of free will, including those originating from compatibilist analyses. In the following, I adopt an understanding of freedom that involves the ability to choose otherwise in a practical and psychologically realistic way. Employing definitions like this function especially well in contexts surrounding questions of compassion and responsibility and can satisfy many with more moderate expectations as to what freedom involves. This view of freedom should accordingly be understood as provisional and restricted in its use. Nothing about the following should be taken to indicate any substantive statement on what the proper view is in broader debates surrounding the metaphysics of free will or responsibility.

The second clarification is about the conceptualization of mental disorder. The project of defining mental disorder in any adequate way is such a significant task that it would be unrealistic to expect to resolve it here. The subject of how to define mental disorder is highly controversial and includes debates surrounding the meaning of dysfunction, distress, harm, social construction, vagueness and boundaries, symptoms, the relevance of biological etiology, phenomenology, and much more. Rather than attempt to offer a satisfactory and exhaustive account of mental disorders as a class, I will merely identify and discuss particular disorders. A non-negotiable, however, is realism about mental disorders since their real instantiation in a given person is what deprives them of freedom.

Beyond difficulties in defining 'mental disorder,' there have been a range of developments in the metaphysics of mental disorders that could conceivably affect the success of my argument. A major current in the last fifty years is the growth of anti-realist approaches to mental disorderment, most notably represented by the work of Thomas Szasz. Additionally, a number of social movements have developed, including the "Mad Pride" movement, as well as the neurodiversity movement, both of which often focus on reframing mental disorders (and/or neurodevelopmental conditions) not as disorders, but as de-pathologized, diverse, and sometimes adaptive or beneficial ways of being. To be clear, each movement has a somewhat different, but potentially allied perspective about what matters (3). I have criticisms of disorder anti-realism and some aspects of the aforementioned social movements, but I set those aside for the purposes of the present analysis.

Finally, I want to make clear my aims in the following section as regards freedom and the conceptualization of mental disorder. I am not arguing that a mental disorder *must* impair freedom in every single case of wrongdoing nor that it impairs freedom in

[1] The *Durham* rule refers to a principle established in *Durham vs. United States* (1954), in which a person can be found NGRI if the criminal act was the product of a mental defect or disorder. The *Durham* rule was only ever applied in a select number of jurisdictions, but has been influential on the debate surrounding NGRI standards. Presumably, the Durham rule is based on the premise that a person is not free and thus culpable if their criminal conduct was caused by a disorder.
[2] The irresistible impulse test was established in the Alabama Supreme Court case of *Parsons v. State* (1887). Essentially, if a person *cannot* control their criminal behaviour due to a mental disorder, they must be found NGRI. Most jurisdictions that at one point allowed affirmative defenses on the basis of an irresistible impulse no longer do.
[3] The Model Penal Code (MPC) test requires either a substantial deficit in the ability to recognize the wrongfulness of one's criminal behaviour or to control one's behaviour as a result of a mental disorder. This test is less demanding than the irresistible impulse test, since it does not require a total inability to control one's behaviour. Further, it has weak cognitive standards, only requiring that one substantially suffers in their ability to understand that their behavior is illegal or wrong (if this horn of the defense is taken up). The MPC test is a common test applied for NGRI pleas.
[4] The M'Naghten rule is a historically significant rule still applied in a significant number of jurisdictions in the United States, which specifies that a person is NGRI if a mental disorder causes them not to understand the moral or criminal nature of the act they are performing, or the nature of the act itself.

all aspects of a disordered wrongdoer's life. Even more important is that I am not offering freedom-limitation as a definition of mental disorder. Rather, I am arguing that mental disorders are *real* and *harmful* configurations of mental systems and that they *often* impair freedom through their symptomatology. Beyond that minimal framing, I am content to leave any precise conceptual detailing aside, since for the present argument, we only require a fuzzy understanding of mental disorderment.

These clarifications are an attempt to make this analysis relatively moderate and free from at least some conceptual disagreement, since I take it that the argument and conclusion is plausible from a large range of perspectives — though certainly this does not mean all. I seek to disengage from questions surrounding the metaphysically "deep" meaning of freedom and mental disorder, and instead rely on more everyday notions of the two.

Freedom and Mental Disorders

Freedom, as I use it here, is the ability to choose otherwise. This "ability" is not a metaphysical ability (indeed, one may always be metaphysically able to do *x* or *y*), but an ability grounded in the factual constitution of a person, including one's psychological makeup. While I am, for instance, perhaps metaphysically able to run when someone holds a gun to my head, the fact of the gun being held to my head constrains, practically and psychologically, the sorts of choices I can make. Not only is it impractical to make any decision which might anger the gun-holder, because it will thwart any ends I am working toward (namely, because I would be dead), but I may also experience an overwhelming psychological compulsion to make one or another decision. Even if I could generate good reasons to ignore the demands of the gun-holder, everything in my mind and body would cry out to *just listen to them*. The "gun-against-the-head" trope is an example of an external constraint where a decision is made under duress — but not all such factual and practical constraints are external. Mental disorderment is often construed as a paradigm of an internal constraint on freedom (4). O'Connor, for example, argues that experiencing a traumatic event places serious limits on "what is psychologically possible" (5, p.123). In other words, experiencing a severe traumatic event may impair one's ability to choose a course of action other than the one they do end up choosing. The possibilities that are realistically open to their choice are limited by their condition.

The ability to choose otherwise, in this sense, is not binary — it is not an on/off switch where one suddenly has the ability or one does not. Rather, just as one can be said to "more or less" have the ability to understand a concept, or can "more or less" have the ability to do a somersault, so too can we "more or less" have the ability to choose otherwise. There are times when I can choose otherwise quite fully: I can take other options seriously, weigh them, review my beliefs and see how my values interact with them. But there are situations where I cannot choose otherwise in such a full manner — when the gun is to my head, my ability to really take alternatives seriously crumbles because my psychology *propels* me toward the answer. I am, as it were, not really in the driver's seat when I make a decision under those circumstances. When I am "forced" into an option, whether by internal or external constraints, we accordingly say that I was more or less free in whatever choice I make.

The relevance of free will discussions to psychopathology is clear. Compare a mentally healthy person who is, as a matter of disposition, angry, with someone who has intermittent explosive disorder (IED), a disorder marked by devastating bursts of almost uncontrollable anger. Suppose the mentally healthy person engages in a hit-and-run because of palpable but not pathological levels of anger. This person can still reasonably consider other options, even if their anger makes the wrong act enticing. Now, suppose the person with IED engages in a hit-and-run out of a burst of excessive, jaw-dropping anger. This person's experience of their options, their ability to consciously decide one or another, is washed out by the extent of their anger. Deciding *not* to engage in some aggressive act is a nonstarter, if it even shows up on their radar at all. This is not to say that there is a lack of variation in non-clinical populations, in particular, variation that can produce meaningful differences in levels of freedom. It is that mental disorders, in a wide range of cases, can undermine one's level of freedom far beyond normal psychological variation, and the level of responsibility we assign to that person should accordingly fall. Some may reject this analysis because making sense of or operationalizing the notion of a "degree of freedom" is difficult, or they think perhaps the idea is incoherent. But such a rejection would need to explain why such intuitions exist in the first place and why they can exert compelling persuasive power on the general population, attorneys and judges, and, indeed, philosophers. There are countless ways that mental disorders can impair freedom owing to the diversity of their features. I will now examine a few important and exemplary ways that disorders do so.

To begin with, consider the role of delusions and hallucinations in impairing freedom. Imagine a schizophrenic person who murders their neighbour because they have a delusion that the neighbour is poisoning them, perhaps with hallucinatory features commanding them to do so or false visual experiences of the neighbour dropping arsenic in their food or water supply. To many, it seems obvious that the schizophrenic person is not free in making such a decision. What makes them unfree is an epistemic deficiency: they do not really know what they are doing as regards the shared, intersubjective world. Their world, the one that they have information about, information that provides them with reasons and motivation for action, is one in which their neighbour is trying to kill them. The decision they make in the disordered world does not closely correlate to what happens in the world in which the rest of us live. They choose one course of action in their subjective world, and they are meaningfully severed from the "real" course of action and its consequences. How *could* they really choose otherwise? Hence, such a person would be unfree.

Next, mental disorders may restrict freedom through a kind of affective coercion. Take for instance a person with obsessive-compulsive disorder (OCD). OCD is characterized by the presence of obsessions (sticky, distressing thoughts that constantly

occupy a person's attention) that cause a person to perform compulsions (actions that are intended to make such thoughts less distressing or altogether eliminate them). Unfortunately, the performance of compulsions causes the person with OCD to become negatively reinforced to rely on them, so they enter an endless, self-perpetuating cycle of *scary thought-act-scary thought-act* (6). Imagine I am a person who has an obsession about stepping on a crack. I have thoughts that swarm my mind whenever I am walking, that direct my attention to the possibility that if I step on a crack, everyone I know will die. I may rationally recognize that nothing bad will actually happen if I step on a crack, but anxiety, discomfort, fear, or a "not-just-right-feeling" push me to be highly aware of where potential cracks are and to avoid them at all costs. Levy views the performance of compulsions as often "mechanically dictated" — as though the person with OCD were a robot, apprehending some threat and automatically trying to extinguish it. He concludes that OCD is a "malady of free will" (7, p.214). Not all compulsions are like those Levy describes. Some are highly cognitively involved and deliberative — a person with OCD may agonize over whether to perform a compulsion. What is relevant for our purposes, regardless of its automaticity (that being said, automaticity does serve as a good reason to consider a given act less freely chosen) is the intense affective weight that props up the compulsive cycle. Not performing a compulsion can feel like torture. This affective quality *pushes* me to perform the compulsion, often against my higher-order wishes. The intensity of the internal demand to perform a compulsion varies between individuals — so too, then, does the amount of freedom a person has in performing the compulsive act. The more powerful the demand, the less I can choose otherwise. OCD is quite revealing of the role of emotional coercion in the performance of a wide range of acts found in mental disorders: whether it be the decision to stay home from a friend's birthday party because one is in the thralls of agoraphobia's terror, the decision to lay in bed all day because the feeling to not do anything at all is so oppressive in major depression, or the intensity of some urge or desire over and against self-control mechanisms in impulse-control disorders. These sorts of internal pressures and demands constrain the psychological ability of a disordered person to choose otherwise.

Neurodevelopmental and neurological conditions often have a foot in both camps of "neurodivergence" and "mental disorder." The concerns raised here about free will and moral responsibility often apply to these conditions. I will not feign neutrality on the question of whether such conditions can, in some cases, count as mental disorders, and that some actions performed under the influence of these disorders can count as disordered wrongdoing. A useful example is Tourette Syndrome because it vividly highlights the complex nature of volition under the conditions of disorderment. Performing tics is annoying and can be exhausting. Depending on the intensity of the tic and how widespread it is, it can be temporarily disabling (or, when in a tic episode, the set of tics can be disabling for longer periods of time). The basic feeling of the premonitory urge, the sensation that precedes and motivates the performance of tics, is aversive and uncomfortable (8). Further, the phenomenology and neurobiology of Tourette's overlaps significantly with recognized mental disorders like OCD; the two are highly comorbid, and an "intermediate" disorder construct, "Tourettic OCD" has been proposed (9). We know quite confidently that Tourette's is at least hanging out in the neighborhood of mental disorders. But I claim more than that: there are good reasons for a significant number of cases to believe that having Tourette's makes one worse off and that the cause of this being worse off is a set of mental symptoms. We should consider those cases to fall under the label, "neuropsychiatric disorder." Of course, even if this reasoning is not persuasive and one absolutely insists that Tourette's could, under no circumstances, be counted as a mental disorder, one would have to answer to the fact that Tourette's, autism (specifically autism spectrum disorder, or, ASD), and ADHD all feature in the DSM-5TR *as* mental disorders.[5] The reason I argue that Tourette's (and, *mutatis mutandis*, other neurodevelopmental disorders) can count as a mental disorder is precisely to show that disordered wrongdoing can emerge from it, and further, that such wrongdoing *is* not performed totally freely. The person with Tourette's, in the vast majority of cases, does seem to choose with at least some amount of freedom to perform the tic. Leckman, Walker, and Cohen (11) found that 92% of participants with Tourette's reported having *some* volition over the performance of their tics. However, their agency is nonetheless impaired by the condition — asking a person with Tourette's not to tic is like asking someone who stubbed their toe not to wince. The feeling generated by stubbing your toe is so intense that it is exceedingly difficult to *not* wince, so too for premonitory urges and tics. Tourette's is a case of a neurological condition that is simultaneously a mental disorder. For the majority of people with it, the central act following from the disorder, ticcing, is at least partially unfree. When a person suffering from coprolalic tics shouts a racial slur, or a person punches another individual due to a tic, it is intuitively unjust to hold them to account in the same way one would a person who does not have Tourette's. Namely, because it is incredibly difficult for a person with Tourette's to inhibit the tic for any length of time, such that we would say they "didn't have a choice."

In all the above examples, the ability of the disordered person to choose otherwise is impaired by their disorder. We should therefore recast the definition of disordered wrongdoing as wrongdoing that is committed out of some degree of unfreedom related to mental disorderment. Accordingly, the level of moral responsibility conferred on the person for the performance of some wrong action should likewise be diminished. If the argument thus far is persuasive, and mental disorders can impose constraints on one's moral responsibility in the performance of wrongdoing, then how ought we act toward the wrongdoer in cases of disordered wrongdoing?

[5] At multiple points in the DSM-5TR, neurodevelopmental disorders are referenced as mental disorders. For example, in their preliminary description of neurodevelopmental disorders, the authors say that "neurodevelopmental disorders also frequently co-occur with other mental and behavioral disorders with onset in childhood" (10, p.35). Note that "other," here, means that neurodevelopmental disorders *themselves* are mental disorders. We need not, however, rely on this sort of semantic analysis. Elsewhere, the authors explicitly give neurodevelopmental disorders as examples of mental disorders (10, p.374).

ETHICAL COMPORTMENT TOWARD DISORDERED WRONGDOERS

Disordered wrongdoing — as in, the act — is not itself exempt from criticism. The wrongdoing is *still* wrongdoing, regardless of its origins. As such, all the feelings and frustrations that respond to the wrongdoing (according to the severity of the offense) are fitting. It is not at all wrong for a person whose mother is murdered because of a schizophrenic delusion to be sad, shocked, frustrated, angry, and whatever other emotions are present. The question we face is how we should respond to disordered wrongdoers — the perpetrators of disordered wrongdoing.

Answers to this question are typically posed in terms of punishment — how much and what kind. There is often a legalistic flair to discussions about disordered wrongdoing. But our ethical orientation toward disordered wrongdoing exceeds just the question of punishment. It involves issues of how we should evaluate the person themself as "good" or "bad," how we ought to talk to them, with what tone, in what contexts, whether we want to avoid them, whether they should be excluded from the community, and whether one wants to have a relationship with that person at all. When we stand in relation to each other as members of an ethical community, there is an overarching character and attitude to how we treat others that integrates not only the dramatic or obvious ethical foreground — verbally expressed ethical judgments and condemnations, punishments, argumentation and rigorous ethical reasoning — but also the ethical background of everyday acts, that is, the way we look at people, smile or frown, move around them or avoid them, and so on. This is one's *ethical comportment*. It includes the "prereflective" (12, p.77) and the reflective, and the dramatic (putting someone to death because of some wrong act) and mundane moments (frowning at a person because they did something wrong) of moral existence.

I argue that the mode of ethical comportment we ought to bear toward disordered wrongdoers is compassion. But what is compassion? Compassion is a somewhat analogical notion. In Strauss et al. (13), the authors summarized and reviewed eight "major" definitions of compassion, each with distinct features and components. Three major components, though, were generally accepted by these diverse perspectives: awareness of another's suffering, resonating with that suffering emotionally and/or cognitively, and feeling motivated to alleviate or help the suffering person (13). When it comes to the contributions of the compassion literature, I think this is a fair composite model, but it misses the broader sense in which people tend to use the term 'compassion' in day-to-day life. Compassion is often used interchangeably with empathy, sympathy, care, sensitivity, tolerance, and benevolence. Much is made of the distinctions between these concepts by philosophers and ethicists, particularly between 'compassion,' 'empathy,' and 'sympathy,' but these distinctions in no way map onto their ordinary usage. I thus worry that in an attempt to gain conceptual clarity, we might be over-legislating differences between highly overlapping and similar concepts. While there may be good reasons to distinguish between them, such as putative neurobiological differences as reported in Gallagher, Raffone, and Aglioti (14), we can develop the right sort of attitude, one which I will be labelling compassion, without drawing solid lines between fuzzy concepts or agonizing over their minutiae.

As I use it, compassion roughly equates to a mode of ethical comportment in which someone is concerned for the situation and well-being of another person. This concern can be unimodal, where a person feels sorry for another person's suffering, or multimodal, where the person might also have beliefs about what they should do or motivations to alleviate their suffering. Theoreticians tend to emphasize different components of compassion as more or less important or interesting. Nussbaum, for example, emphasizes the cognitive component such that compassion, treated as equivalent to pity, requires no particular feeling. Using the example of Emile from Jean-Jacques Rousseau's classic, Nussbaum argues:

> On the other side, if Emile really does the cognitive work, if his imagination really contains the thoughts of pity, with all their evaluative material, in such a way that they become part of his cognitive makeup and his motivations for action, then he has pity whether he experiences this or that tug in his stomach or not. No such particular bodily feeling is necessary. To determine whether Emile has pity, we look for the evidence of a certain sort of thought and imagination, in what he says, and in what he does (15, p.38).

That Nussbaum would interpret compassion in a cognitive way is not surprising, given that her overall argument is aimed at the cultivation of compassion for the sake of justice (15). After all, it seems like justice would be next to impossible to deliver if we acted merely upon the whims of the heart. But others emphasize the motivational component of compassion as what makes it so important. Schopenhauer, in *The Basis of Morality* (16), understands compassion as grounding all virtue through a distinctly genuine and voluntary motive that can regulate egoistic and malicious desires. To be sure, though, the bulk of what most people take to be distinctive about compassion is its emotional weight: to suffer because another is suffering is powerful and likely inspires much of our cognitive and motivational responses.

For my part, I am most interested in the cognitive element of compassion. In particular, the degree to which compassion means that we take an *understanding* approach to others. The relation between compassion and understanding is a relatively natural one: if I am concerned for the well-being of another person, it stands to reason that I might inquire about who they are, where they came from, what they do, what they feel, and how they think. In psychotherapy, for instance, a stance of "compassionate caring" is one that might involve an attempt by the psychotherapist to "understand [the patient] in a safe, non-judgemental and non-shaming way" (17, p.44). Understanding compassionately sometimes involves acts of imagination and empathetic simulation. As Bierhoff puts it, "Compassion refers to the understanding of another person's thoughts and feelings by putting oneself in the shoes of the other" (18, p.148). If I can really try to think about what it would be like to be another person — their

history, their feelings, beliefs, and, indeed, their pathologies — then it seems like I am in a better position to understand them as a person.

But why is understanding so important for compassion when we are concerned with disordered wrongdoing? It is because when the intentions and reasons of others in doing something wrong are inaccessible, a black box as it were, it becomes more difficult to generate a robust caring relationship with them. If I do not understand the person I am trying to behave compassionately toward, it is harder for additional cognitive, emotional, and motivational components of compassion to organically arise.

Imagine the following scenario: you have just been rear-ended by another car. When you pull over and ask for the other driver's insurance, they yell at you and drive off. In this situation, it is natural to develop feelings of anger, beliefs about the moral character of that other person, and to want some sort of punishment to be doled out to them. Nothing about your mode of comportment is compassionate in those moments nor would you be likely to behave compassionately if you were to see them again. But imagine that you saw that person's life through their own eyes. You learned about their childhood and how anger was modelled for them, that they never faced consequences for bad behaviour as an adolescent, and maybe that they struggle to afford insurance for their car. Suppose that in your jurisdiction, driving without insurance is a crime, but that person needs to drive to work and make ends meet. Our comportment toward that person very well might change. We might still be angry and want some sort of compensation, but we might not make the same sorts of moral and emotional judgments. We might not behave as confrontationally as we would have, and we might not talk as negatively about them to our friends and family. When we develop understanding, we gain a broader view of the person and their humanity.

When it comes to disordered wrongdoing, understanding is essential because disordered wrongdoers are not just wrongdoers, but a unique kind of wrongdoer who suffers from impairments in freedom. If we approach them without understanding, we might make judgments and behave in ways that are disproportionate to their condition and responsibility for their actions. Furthermore, without understanding, we would neglect to address the causes of their wrongdoing and to ameliorate them. For example, if a person with bipolar I disorder engages in reckless spending during a manic episode that puts their family in financial jeopardy, merely condemning them without making an effort to understand their condition would inadequately take account of the context of their actions and would do nothing to help manage future episodes. While I would urge a compassionate and therefore understanding approach toward wrongdoing broadly, the necessity of compassionate comportment is made manifest in cases of disordered wrongdoing. To be understanding toward disordered wrongdoers is simply more fair to that person and can prove more productive for the well-being of the broader community.

What is more poisonous than a mere difficulty to apprehend another person's intentions, though, is a *lack of desire* to understand. When we close ourselves off to the other person, any hope of fruitful, compassionate communication dies. If we are to be compassionate, a major goal is the cultivation of a desire to understand, in addition to resolving and enacting the answers to practical questions about how to actually go about understanding. Attitudes resembling the "explanations but not excuses" variety are, in effect, an attempt to close off understanding and accordingly engage in punitive social interactions. This stands in stark contrast to strong evidence that the development of understanding between victims of wrongdoing and offenders is mutually beneficial: in restorative justice interventions, wherein offenders and victims engage in dialogue, victims tend to report positive psychological effects, including reductions in the severity of posttraumatic stress symptoms, feelings of helplessness, and anger and desire for revenge (19), and offenders recidivate at lower rates and display more empathy for their victims (20). Since understanding and compassionate relations with others may strengthen our individual well-being, it seems that inflexible and narrowly judgmental attitudes could prove deleterious.

The understanding which I take to be crucial to compassion should not be taken to be uncritical. Compassion demands more than any platitude or any reductive belief about exceedingly complex ethical questions. It demands practical wisdom — that each individual case of disordered wrongdoing be evaluated carefully with fair and right judgment and sensitivity to truth. It is to remain steadfast in understanding why the disordered wrongdoer did what they did, even if the act is so bad that its repugnancy pushes one away from the attempt to understand and critically evaluate. This means, basically, to attempt to bridge the gaps in experience that impair our ability to relate empathetically. However, persistence in understanding does not equate to an allegiance to that person and their account of their actions. Wrongdoers often lie and this is especially so when we take into account wrongdoing connected to personality disorders (21). What we need is therefore something more along the lines of what Fricker calls "*critical openness*" (22, p.66). In being critically open to the reasons, motivations, and abnormal states of mind that lend themselves to wrongdoing, we are compassionate.

The significance of practical wisdom is made clearer when we conceive of compassion as a virtue. Garcia-Uribe and Pinto-Bustamante (23) describe compassion as occupying the golden mean between apathy and hyperpathy, as part of a broader neo-Aristotelian approach to compassion fatigue. In the compassionate frame of mind, one is cognitively and, if possible, emotionally connected to the plight of the disordered wrongdoer and recognizes their situation as in some way tragic. However, this connection is not the same as full-bodied identification. Sometimes, as Garcia-Uribe and Pinto-Bustamante point out, going too far into hyperpathy can exhaust and push a potentially compassionate person into apathy (23). We should accordingly be careful that the positive attitudes, beliefs, and emotions we hold toward a disordered wrongdoer do not overextend, as we might end up back at our often cruelly indifferent starting points. However, that risk should not goad us into

inaction or resting comfortably in attitudes and habits that are disproportionate to the level of freedom enjoyed by the disordered person. While compassion may be a hard tightrope on which to balance, to refuse to strive for that balance is destructive. Insofar as we think that our ethical comportment should reflect the circumstances of wrongdoing, both on the side of the act and its perpetrator, it seems that a measured but humane compassion is called for in cases of disordered wrongdoing.

What I have suggested is not a vapid optimism nor an outright permissiveness. According to the severity of the offense and the extent of one's freedom, we might censure or punish the disordered wrongdoer. This sort of act can be necessary depending on the degree to which an offender is dangerous to the well-being of other people, i.e., a quarantining punishment (24). But to be compassionate means that these sorts of acts, wherein we punish another person, are not rooted in hatred or disdain for the person. It means that we treat even those people who commit severe wrongdoings as human beings with physical and emotional dignity, with a desire to understand their motivations and realign them with the interests of society. If one fairly appraises the impact of mental disorderment on the ability to choose otherwise, it becomes apparent that the intensely punitive attitude that characterizes criminal, community, and social justice in countries like the United States represents a systematic failure of compassion on nearly every level, given the pervasiveness of mental disorders among incarcerated and paroled individuals. Against this current, I suggest that disordered individuals are often not free and so we are morally obligated to consider, weigh, and take substantial action in light of that fact.

My thesis of how we ought to ethically comport ourselves toward disordered wrongdoing is as follows:

> If a person x is disordered in some way y and some act z committed by person x is causally connected to the disorder y, such that the person x was, to some degree, unfree in performing the act z, we ought to comport ourselves compassionately, with special emphasis on understanding their reasons for the wrongdoing, toward the person x, both in terms of our general, everyday behaviours toward them and any potential punishments or significant moral judgments, with sensitivity to the level of unfreedom the person x had in performing the act z.

This argument importantly applies not only to criminal justice settings, but also, and significantly, to the sphere of non-governmental and personal communities. The level of freedom we enjoy should always be at issue, whether the insignia of the state is present or not. If such a principle is not adopted, we will continue to punish the most vulnerable and the least free. Compassion is our only escape from cruelty.

CONCLUSION AND TWO OBJECTIONS

Mental disorders are often debilitating and disabling. They often interfere with the way one wants to live one's life on a broader scale, as well as the decisions one may make in day-to-day existence. Mental disorders, I believe, and as many other philosophers and psychologists have concluded, sometimes impair freedom in a nontrivial way. In the broader ethical tradition, those who are unfree are not morally responsible for their actions. Given this context, I argue that our fundamental disposition toward disordered wrongdoers should be compassionate. Compassionate comportment is a stance toward the disordered wrongdoer that is characterized most powerfully by a critical desire to understand. I therefore urge against the callousness and moral inflexibility so frequently displayed and embodied toward disordered wrongdoers and suggest that we shift to a more sensitive, nuanced, and ultimately humanistic orientation.

Before ending this discussion, I want to review two objections to my argument.

One objection emerges from a long historical tradition in Western philosophy that identifies personhood with freedom and accountability for one's actions. In other words, personhood is identified with *moral agency*. A notable example of this sort of view comes from Immanuel Kant. Kant views persons as rational beings with an awareness of the moral law who can accordingly exercise freedom and thus be accountable for their actions (25). This is a maximal definition of personhood that reflects Kant's unique philosophical framework and ethical theory. Nonetheless, his view is shared by many other thinkers, who take moral agency to be at the core of what makes someone a person. A worry with these sorts of views has always been the degree to which they might render certain groups who do not have moral agency as *non-persons*. The relevance here, is that under this view of personhood, we might end up with disordered wrongdoers treated as not people, since they are at least partially unfree — an undesirable conclusion. I have two responses. First, to be unfree with regard to an action or some set of actions does not mean that one altogether lacks moral agency. If a person with major depression is unfree in failing to meet an obligation to a friend, this does not entail that they are unfree with regard to all their actions. They might well freely choose their other actions and thus be accountable for the vast majority. Second, it is always an option to reject the identification of moral agency with personhood. If we do not take freedom and accountability to be core parts of what makes a person a person, no issue arises. There are plenty of influential and compelling critiques of the moral agency view of personhood, so it should not be taken for granted that we should accept it. I personally do not accept the moral agency view of personhood precisely because it is prone to generating unsatisfactory conclusions about who is and is not a person.

Another objection concerns the relation of compassionate comportment to concerns about recognition and mental illness. Earlier in this paper, I mentioned the Mad Pride movement. An important part of mad activism is the construction of "madness" as an identity, one with a unique history and culture. Accordingly, one of the aims of many Mad Pride activists is *recognition* from others that "madness" is a legitimate identity, and even one that should be held in esteem. Recognition is often taken to

be psychologically important because it is validating to an individual or group's self-identity. Charles Taylor, for instance, argues that "[misrecognition] can inflict a grievous wound, saddling its victims with a crippling self-hatred" (26, p.26). But beyond that, some argue that recognition is a crucial part of what it means to be free. This view originates most clearly in G.W.F. Hegel's *Phenomenology of Spirit*, where he argues that to truly recognize one's own self-identity requires recognition by an "Other." Mutual recognition, for Hegel, is not a detriment to freedom, but a condition for its actualization. Hegel's view is not geared at the psychological benefits of recognition, and this concern should be considered distinct. As Rashed puts it, "Hegel was not after some basic fact of human psychology, rather, he was developing a conception of freedom for which recognition is a necessary condition" (27, p.95). So, recognition may be important, whether for psychological reasons or for the sake of ensuring human freedom. The worry, as applied to my argument, is that by treating disordered individuals *as* disordered and in some cases unfree, thus deserving especially compassionate treatment, we are not recognizing "mad" identities as legitimate or worthy of celebration.

One could reject either the analysis that recognizing identity is beneficial psychologically or that Hegel's analysis of freedom and identity is correct, or both. I think that unequivocally rejecting the former is a mistake, since the recognition of important identities is *usually* psychologically beneficial for the person demanding recognition. In the wake of reinvigorated bigotry amounting to rejecting the recognition of, for instance, trans identities, it's clear that we should be taking recognition seriously on at least the level of psychological well-being. Rejecting the latter is a far more plausible move. I obviously cannot give anything resembling an adequate treatment of Hegel or the two centuries of debate surrounding his theory of recognition here, so I will leave my remarks at the following: rejecting Hegel's view can be and has been done before. I will therefore relegate my response to the former concern entirely.

Simply put, I do not think that recognizing mental disorders as real, disabling, harmful, distressing, or freedom-limiting is necessarily incompatible with the recognition of a distinct "mad" identity and a partially positive evaluation of that identity. Incompatibility only emerges when we take "mad" identity to be fundamentally defined by an opposition to realism about mental disorders or require our evaluation of "mad" identity to be unconditionally positive. I think that views of madness that treat disorderment as normatively ambiguous, like the "'dangerous gifts'" view, which recognizes the distress and impairment of disorders alongside their potential for fostering creativity, are compatible with the approach in this paper (27). Elsewhere, I have argued in favour of the project of partial transvaluation, whereby we evince the positive or useful components of mental disorders, while simultaneously acknowledging the sheer scale of suffering and harm they cause.

Recognition, in my estimation, does not amount to an uncritical acceptance of any and all identities in the exact way an individual or group wants them to be. If what it means to recognize "mad" identities requires that I treat disorders as fictions or as purely positive and adaptive ways of being, then I think that the psychological harm caused by my refusing to recognize those identities as such is outweighed by greater harms that adopting such views may cause for individuals with mental disorders. A significant difference between the sort of moderate recognition I am offering here, and the universal and absolute recognition I would prescribe in favour of, for instance, trans identities, is that recognizing trans identities as absolutely valid and worth celebrating does not in any way do harm to trans individuals. In contrast, if I absolutely and unequivocally recognize "mad" identities as positive and non-pathological ways of being, there is a serious risk that "mad" individuals might be emboldened to, for instance, refuse evidence-based therapies and pharmaceutical interventions. My recognition could accordingly cause significant harm by encouraging actions that result in significant suffering for those I recognize. In the context of freedom, if we recognize "mad" identities as unambiguously free from limitations on freedom, it might affect "mad" wrongdoers negatively in social and legal contexts through enhanced punitive measures.

These previous two objections are quite powerful and complex and would require specific and extended response in order to be at all adequate. I have attempted to provide an honest reply to both in a briefer context, though I do not think that my reply is anything amounting to a knockdown against those objections. But, I nonetheless think that my responses could bolster our confidence in the conclusion reached: that the most appropriate mode of ethical comportment toward disordered wrongdoing is compassion.

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