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Agency and responsibility: The personal and the political

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Abstract

In this paper, I review arguments according to which harsh criminal punishments and poverty are *undeserved* and therefore *unjust*. Such arguments come in different forms. First, one may argue that *no one* deserves to be poor or be punished, because there is no such thing as desert-entailing moral responsibility. Second, one may argue that poor people in particular do not deserve to remain in poverty or to be punished if they commit crimes, because poor people suffer from psychological problems that undermine their agency and moral responsibility. Third, one may argue that poor and otherwise marginalized people frequently face external obstacles that prevent them from taking alternative courses of action. The first kind of argument has its place in the philosophy seminar. Psychological difficulties may be important to attend to both in personal relationships and when holding ourselves responsible. Nevertheless, I argue that neither type of argument belongs in political contexts. Moral responsibility scepticism ultimately rests on contested intuitions. Labelling certain groups of people particularly irrational, weak-willed, or similar is belittling and disrespectful; such claims are also hard to prove, and may have the opposite effect to the intended one on people's attitudes. Arguments from external obstacles have none of these

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problems. Such arguments may not take us all the way to criminal justice reform, but in this context, we can supplement them with epistemic arguments and crime prevention arguments.

KEYWORDS
Bruce Waller, Criminal justice, distributive justice, moral responsibility, poverty

1 | INTRODUCTION

Some philosophers who work in the fields of agency, free will and moral responsibility also draw political conclusions. They argue, for instance, for criminal justice reform and greater economic equality. In this paper, I will assume without debate that these are worthy goals; my focus is on the *arguments* that philosophers advance in their favour — more precisely, arguments according to which harsh criminal punishments and poverty are *undeserved* and therefore *unjust*.

Such arguments come in different forms. First, one may argue that *no one* deserves to be poor or be punished, because there is no such thing as desert-entailing moral responsibility. Second, one may argue that poor people in particular do not deserve to remain in poverty or to be punished if they commit crimes, because poor people suffer from psychological problems that undermine their agency and moral responsibility. Third, one may argue that poor and otherwise marginalized people frequently face external obstacles that prevent them from taking alternative courses of action, or at the very least make the alternatives unreasonably difficult and/or costly, thereby diminishing (though perhaps not wholly removing) responsibility for what they end up doing.

The second and third kind of argument can, of course, be combined. The first one seems to make the other two superfluous — however, even if desert-entailing moral responsibility does not exist, the latter arguments may remain relevant for some weaker or pragmatically motivated responsibility (see, e.g., Pereboom (2014) and Jeppsson (2022a) on different kinds of responsibility). All three can, in fact, be found in the late Bruce Waller's writings. I will use his texts as my main focus when arguing that in political, justice-related arguments, we should primarily rely on the third kind, and set metaphysical and psychological arguments aside. In brief, metaphysical arguments are too controversial, whereas psychological arguments may be too hard to prove, have the opposite effect to the intended one, and, importantly, be *disrespectful* against the people whose interests one attempts to promote.

In section 2, I rehearse Waller's arguments for criminal justice reform and distributive justice. In section 3, I explain why metaphysical arguments are problematic in political contexts. In section 4, I move on to explain why arguments that invoke psychological obstacles, though often important in intimate and personal responsibility discussions as well as when we hold ourselves responsible, are problematic in political contexts. In section 5, I argue that arguments relying on external obstacles are preferable, though we may need to complement them with epistemic arguments and crime prevention arguments in criminal justice debates.

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2 | BRUCE WALLER'S ARGUMENTS FOR JUSTICE AND EQUALITY

Bruce Waller provides an interesting example of a philosopher who argues from a supposed lack of responsibility for both crimes committed and overall life situation to the conclusion that we ought to instigate radical criminal justice reforms and work towards greater economic equality. He stresses, over and over, that moral responsibility does not exist and our mistaken belief in it does a lot of damage, while freely mixing metaphysical, psychological, and societal considerations.

Waller argues that free will exists, though his idea of what free will consists in is quite deflationary — a kind of mental flexibility that humans share with many other animals (Waller, 2014, Ch. 8; 2015). Therefore, he does not consider free will sufficient for moral responsibility. The latter, he argues, does *not* exist (Waller, 2014; 2015, p. 1). Moral responsibility does not merely require that we exercise our agency and make choices based on the way we are now and the situation we find ourselves in — if we are not morally responsible for our characters and situation, we cannot be morally responsible for what we do either. Compatibilists, Waller writes, are *myopic* — they believe that we can hold each other responsible for as long as we refuse to look too closely on people's backgrounds, upbringing, genetics, and everything else that make us be the way we are and do whatever we do.

We falsely believe, Waller writes, that criminals deserve harsh punishments and the poor deserve to lack money, because we falsely believe that they are morally responsible for their actions and their situation. Whereas a fellow sceptic like Derk Pereboom argues that moral responsibility is metaphysically *possible*, though it does not sit nicely within a scientific worldview and is highly *unlikely* to exist (Pereboom, 2014, Ch. 3), Waller, at times, suggests that moral responsibility would require a logically impossible act of self-creation from scratch (e.g., Waller, 2014, p. 113). However, he often relies on empirical arguments, as in his objections to George Sher's defence of wealth disparities. Sher (1987) writes that it is rarely impossible for poor people to improve their situation, even though it might be hard and require lots of effort. Sher goes on to state that successful people can deserve their money and privilege, as long as it remains *possible* for the less fortunate to achieve the same (ibid: pp. 31–32). Waller (2014, p. 69; 2020) objects that people who start out with material advantages also tend to be better at planning ahead, persevere, act with confidence, and so on. Since the poor also tend to be short-sighted, insecure, weak, etc., they do not stand a chance.

I will now argue that as sympathetic as I am to Waller's political conclusions, his metaphysical and psychological arguments are problematic.

3 | THE PROBLEM WITH METAPHYSICAL ARGUMENTS IN POLITICAL CONTEXTS

3.1 | The metaphysical and the empirical

The term "metaphysical" may, as most philosophical concepts, be used in slightly different ways in different contexts — for instance, some philosophers distinguish metaphysical possibility from logical possibility whereas others conflate the two (e.g., Chalmers, 1996). In this context, I use "metaphysical" as a contrast to empirical arguments which rely on sciences such as psychology, sociology, or political science. If someone wants to argue that moral responsibility does not *exist*, and that people *never* deserve to be poor or punished *at all*, we must move beyond empirical science. Compatibilists and libertarians of all varieties generally agree that both internal,

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psychological impediments to rational agency and external obstacles can diminish one's moral responsibility. Compatibilists and libertarians may even argue that people suffer from agency-related problems and subsequently diminished moral responsibility quite *frequently*; perhaps there is less moral responsibility to go around than we typically assume (Jeppsson, 2018). Nevertheless, we cannot get all the way to full-blown scepticism by just piling empirical arguments on top of each other.

Let us return to the Sher-Waller debate. Sher (1987) paints an optimistic picture of talented and industrious poor people who manage to climb the social and economic ladder through hard work, whereas Waller (2020) makes their situation seem bleaker by adding psychological problems to external obstacles. Nevertheless, Waller has not shown that it is *impossible* for poor people to climb. I will come back later to Sher's problematic normative assumption — that wealth disparities can be just as long as it is *possible* for the poor to get richer through hard work. For now, I just want to point out that we cannot prove the impossibility of social climbing by bringing up psychological problems in addition to societal ones. Sher might admit that working hard at your job is not enough if you start out poor, you should also work hard at self-improvement; practice your planning skills, confidence, determination, and other virtues. This might seem like a tall order, he could say, but it remains possible if only you put your mind to it.

If we want to argue that poor people have *no* real choice about anything, it is literally *impossible* for them to do anything about their situation, and *therefore* they do not deserve their plight, we must move from empirical to metaphysical arguments. We must appeal to something like Peter van Inwagen's consequence argument and rollback argument (van Inwagen, 1983, p. 69; 2004, pp. 227–228; Waller 2014, p. 4), which aim to show that free will and moral responsibility are incompatible with both determinism and indeterminism, Derk Pereboom's four-case manipulation argument (Pereboom 2001, Ch. 4; 2014, Ch.4), Galen Strawson's regress argument (Strawson, 1994), or similar. If any of these arguments work, they show that *no one* — poor people included — is morally responsible for anything. However, all such arguments ultimately rely on intuitions. No matter how deductive and logical they are, they will use intuition-based premises about what it takes to be *truly* or *ultimately* or *really* morally responsible for what we do. Compatibilists do not believe that moral responsibility exists because they deny basic logic, but because they do not believe that anything like an ultimate act of self-creation is required in the first place.

3.2 | The problem with intuitions

I have argued elsewhere that we should all be somewhat humble when it comes to the merits of intuition-based arguments, at least when the intuitions invoked vary greatly among philosophical peers (Jeppsson, 2021). Who is to say whose intuitions are more reliable? On what basis could we judge one camp in the debate to have better intuitions than the others? We thus have epistemic reasons for not being *too* certain that our own camp in the moral responsibility debate is right and everyone else wrong, and this goes for compatibilists, libertarians, and sceptics alike. Moreover, from a more pragmatic standpoint, it is unlikely that moral responsibility scepticism will become the default view in philosophy and/or society at large any time soon. Scepticism is a minority position. Thus, any argument for criminal justice reform and/or greater economic equality that depends on the premise that moral responsibility does not exist will have very narrow appeal.

Even if moral responsibility scepticism became the default view, it might be difficult to convince people that we ought to reform our institutions so that they no longer rely on desert assumptions. Many people conflate moral responsibility with moral agency. Stephen Morse (2013, pp. 128–129),

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for instance, argues that if the sceptics are right, all normative reasoning would be undermined. Scepticism does imply that the statement “criminals deserve to be punished, so we ought to punish them” is false, but it *also* implies that “we ought to enact radical criminal justice reforms” is false — if there is no moral agency, no one ought to do anything.

A statement such as “we ought to radically reform the criminal justice system, because there is no such thing as moral responsibility, and no one deserves to be punished” can only be true if moral *responsibility* does not exist whereas moral *agency* — people who do *right* and *wrong* and *ought to* do things — does. Now, this position has been defended in the literature (e.g., Pereboom, 2001; 2014), but the appeal of any political argument that depends on this specific combination of views — moral agency exists whereas moral responsibility does not — will be *very* narrow.

3.3 | Sceptical cultures?

Nevertheless, Waller is optimistic about the possibility of convincing society at large that moral responsibility does not exist. He writes that “social democratic corporate cultures” have already gone a long way towards embracing scepticism. He quotes sociologists Michael Cavadino and James Dignan on this (Cavadino and Dignan, 2006). However, they never discuss the philosophical concept of moral responsibility, nor do they argue that social democratic corporate cultures would subscribe to some particular *metaphysics*.

Sweden, one of the countries from which they draw their data on such cultures, has moved quite far to the right on the political scale since said data was collected (they actually mention in the paper that a general move towards more neoliberal politics was underway at the time of writing). But even if we disregard these political trends, and instead look back to how Swedish left-wing politicians have argued for increased economic equality in the past, they did not rely on moral responsibility scepticism. Rather, left-wing politicians have always been as fond of blaming their political opponents as the right-wing side — a practice which would make little sense unless the left-wing supposed that the right could be *morally responsible* for what they say and do.

To sum up, we have no reason to believe that it is feasible to sway most of a country’s population towards moral responsibility scepticism (combined with a belief in moral agency) — nor that sceptics will win the philosophical moral responsibility debate and make scepticism the default position any time soon. Therefore, arguments for criminal justice reform and increased equality that depend on moral responsibility scepticism will only have very narrow appeal.

Let us, therefore, move towards empirically based arguments. I will argue that *psychological* empirical arguments are problematic in political contexts, even as they play an important role in more personal and intimate responsibility discussions.

4 | THE PROBLEM WITH PSYCHOLOGICAL ARGUMENTS IN POLITICAL CONTEXTS

4.1 | The personal importance of psychological problems

In the philosophical literature, moral responsibility is often talked about in binary terms — what does it take for an agent to be morally responsible for an action, and what does it take to be excused? What does it take to be a morally responsible agent in the first place, and what does it take to be exempted? There might be valid reasons for discussing responsibility in these binary

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terms in certain contexts, but surely both agency and responsibility are scalar phenomena. Our actions can be more or less circumscribed by external obstacles, and we may be more or less weak-willed, informed, rested, and so on, when deliberating about and deciding what to do. It is part of our ordinary moral responsibility practices to weigh in various costs and difficulties when judging to which extent someone is blameworthy for bad things they have done; the harder it was to do right/not do wrong, the less blameworthy the person. We may think of impossibility to do otherwise and therefore not blameworthy at all as residing at the far end of the scale.[1] Wolf (1990, pp. 86–87) and Nelkin (2016) both argue that any decent philosophical theory of moral responsibility should include this common-sensical feature, and I agree.

I have argued elsewhere and at length for the importance of taking all kinds of problems and hardships into account when making moral responsibility judgments (e.g., Jeppsson, 2018; Jeppsson, 2022b). Other philosophers have written about how holding oneself responsible is a balancing act; if I constantly exculpate myself, I will undermine my self-respect, but I should not be excessively hard on myself either (Dillon, 1992; 2001; Korsgaard, 1996, Ch. 7). We must pay keen attention to relevant problems and hardships, whether they are external or internal.

Nevertheless, as important as psychological problems are in responsibility discussions between, e.g., friends, or when pondering whether one's own actions were blameworthy, it is problematic to use them in political contexts. First, they are hard to prove. Second, arguments that rely on supposed psychological difficulties in some minority group or oppressed class of people frequently turn belittling and disrespectful. Finally, such arguments may even have the opposite effect to the intended one.

4.2 | Proof

Let us begin with the issue of proof. We may take our own psychological difficulties into account when holding ourselves responsible, because we can assess these difficulties via introspection and memory. Of course, neither is a fool-proof source of knowledge about our own minds, but they can be good enough for handling our own problems and learning to live with ourselves; good enough when we try to find the delicate balance between being too hard on ourselves on the one hand, and seeing ourselves as helpless victims of our own psychological issues on the other. They can also be good enough in interactions between friends, family, and other people that are already inclined to trust each other, and accept each other's testimony about relevant difficulties and struggles.

Political arguments are a different beast altogether. Suppose that one side in the debate is initially inclined to believe, e.g., that criminals are just bad, and poor people are just lazy. People talking about their mental struggles may still elicit sympathy from and sway some of those who are initially undecided, but only insofar as they trust the criminals' and poor people's testimony.

Waller would likely object that we do have empirical evidence of poor people's psychological difficulties and wealthier people's corresponding advantages. He cites, for instance, Bandura (1997) and Cacioppo and Petty (1982) on how wealthy people develop a stronger sense of self-sufficiency, fortitude, and get better at rigorous thinking. But here is the rub: how are we to distinguish *inability* to do something from just not doing it? Irresistible desires from desires not resisted? A researcher may show that poor people, say, resist temptations less than rich people. But why is that? Because it is so hard for them to resist, or because they do not bother to? Philosophers may invoke different possible worlds — in which more extreme situations prompt agents to take action — in order to distinguish these cases (e.g., Coates and Swenson, 2013). But we are, unfortunately, stuck in this world, and cannot check out what happens in others. We

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cannot distinguish these cases by observation, only by listening to and taking seriously people's testimonies about their difficulties and struggles.

Advances in neurology, finding more and more correlations between various mental phenomena and brain phenomena, cannot help us solve the problem either. Surely, there are *no* mental states that are completely free-floating and independent of the physical brain. Surely, *every* mental state must either be accompanied with or identical to a brain state (Arpaly, 2005; Jefferson, 2022). So, we can expect brain differences between those who have resistible and those who have irresistible desires — but also between those who resist their desires and those who do not bother to resist. If we first, by independent methods, found out that certain kinds of desires are irresistible, we may later discover that those and only those desires come with a certain "biomarker", say, a detectable brain phenomenon. We could then use brain scans to prove that particular individuals suffered from irresistible desires. However, this means that we would have to solve the philosophical problem *before* we could use neurology to prove anything about individual cases.

Waller (2014, pp. 242–243) cites research which shows that a combination of certain genes and adverse childhood experiences significantly increases the probability that someone will become a violent offender. But do we see this correlation because the combination makes it so difficult for the person to control themself, or because the person is now so nasty that they enjoy being violent? We might think that someone cannot be responsible for their nasty behaviour if it stems from a nasty character, and that they cannot in turn be responsible for their nasty character if it stems from a combination of genes and environment, but this is just old-fashioned moral responsibility scepticism again, which ultimately rests on controversial intuitions in tension with other, more compatibilist, intuitions. The claim that serious difficulties can diminish responsibility is far less controversial than the claim that you must be impossibly self-created to be morally responsible at all — but we cannot show, unless we trust people's testimony on the matter, that some people have it psychologically *harder*, they are not just lazy or bad.

4.3 | Disrespect

In chapter 12 of *The Stubborn System of Moral Responsibility*, Waller attacks opponents who argue for a "myopic" view according to which we should not look too closely at people's background or problems. He argues against "threshold views" according to which everyone who lives up to some basic agency and responsibility demands should be assumed equally competent (Waller 2014, pp. 243–244). It is easy to agree that a refusal to take special circumstances into account can be cruel and unforgiving — nevertheless, his opponents also make important points. There is a big difference between the relationships I have with friends, family, and *myself* on the one hand, and with the state, official institutions, and agencies on the other — not to mention philosophers and other writers who want to speak on my behalf.[2]

Even in closer, personal relationships, it can be disrespectful and dismissive to label someone hopelessly irrational, devoid of agency and therefore exempted from moral responsibility. It is one thing to cut people slack because of, e.g., temporary exhaustion or sleeplessness, temporary confusion due to strong pain medications or similar. But when we judge that someone's agency is undermined due to alleged mental defects or even a hopelessly bad character, we no longer take them seriously as fellow adults or fellow moral agents. This has been noted by P.F. Strawson (1962) and plenty of Strawsonians following him — exemption due to (alleged) mental defects has a serious downside, which is not being taken seriously. We might think that we are just trying to be nice and non-judgmental when declaring that the poor fellow could not help himself, he is just

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like that, he cannot think or reason or control himself as well as you and I, but it rarely feels nice to be on the receiving end of such assessments (Arpaly, 2005; Jeppsson, 2022b). Still, in personal relationships, there is a place for putting ourselves in the other person's shoes, and excuse them from a place of compassion and understanding with their difficulties, without disrespect. A distant government or impersonal institution cannot similarly pull off this feat.

Bruce Waller does not cite Ian Carter when discussing threshold views, perhaps because Carter is not focused specifically on moral responsibility, but rather on analyzing how best to understand claims according to which the liberal state ought to treat people as equals. Nevertheless, he makes some important and relevant points.

Carter (2011) draws an analogy between prying into the details of someone's mental capacities and other kinds of exposure. People feel exposed, humiliated, and degraded when forced to strip down naked, when their private things are searched through without their consent, and likewise if others try to probe their minds, analyze them to assess how much rational agency they truly possess without reciprocity or consent. Therefore, the state should abstain from prying into people's rational capacities and assess whether they have a little or a lot — at least as soon as they surpass some basic threshold. The state should treat people as if they are all rational agents, period, and this is what it means for a liberal state to treat everyone as equals.

Carter continues to argue that this stance does not preclude promoting various state-funded programs and welfare programs. For instance, we may argue for tax-funded and truly accessible higher education so that everyone gets the opportunity to further develop their knowledge and rational powers. But we may not point to a specific group and say that *they* suffer from unfortunate rationality deficits which we must try to rectify by special government programs. *That* would fail to treat this group as equal to everyone else.

It is not hard to find popular articles and debates that vividly illustrate Carter's point; people often feel disrespected and intruded upon as soon as they suspect that others consider them helpless, devoid of initiative and motivation. It is common for victims of crimes or injustices to insist that they are *not* victims — they might call themselves "survivors" instead, or stress that they are smart and hard-working people who do the best they can in a tough situation. For instance, popular articles about the harsh circumstances that many sex workers face will detail all the ways in which they are victims of, e.g., oppressive and moralizing legislation, but they refuse the victim label — because they are resilient, resourceful, and have other characteristics that victims presumably cannot have (Ortiz, 2020; Tso, 2022). Victims, it seems, must lack motivation, lack initiative, never do anything to improve their situation. On this picture, victims are like poor people as described by Waller — but no one wants to be described that way.

I mentioned earlier that despite Waller's claim that Scandinavian social democratic cultures have come a long way towards embracing moral responsibility scepticism, Swedish left-wing politicians did not historically promote the welfare state via some metaphysical arguments about the impossibility of moral responsibility. Actually, they did not tend to bring up poor people's psychological flaws either. Classic texts and speeches, like Per Albin Hansson's "the people's home" speech from 1928, notably lacks any Waller-like claims about wealthy people being better at planning, rigorous thinking, strength of will and other virtues. Now, Hansson came from poor circumstances himself — his parents were a maid and a bricklayer — and as already stated, people rarely want to think of themselves as being tragically short-sighted or weak-willed.[3] Hansson, who would become prime minister four years later, was still in opposition when he gave this speech, and he vehemently blames the rightwing government for the country's stark inequalities. He goes as far as accusing them of being democratic in name only. The working-class and the poor, on the other hand, are *not* blamed for their situation, but neither does he paint them

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as passive and helpless. Rather, he describes them as hard-working and struggling in impossible circumstances imposed on them from above — that is, he focuses on external problems.

However, before discussing the strength and limitations of such arguments in social justice contexts, I will discuss the third serious drawback with bringing up poor people's supposed psychological problems in political contexts — it might generate the opposite effect to the one intended.

4.4 | Blame and hostility towards the allegedly irrational

P.F. Strawson claimed, in his enormously influential *Freedom and Resentment* (1962), that when we come to regard someone as warped, deranged or irrational, any felt indignation or resentment tend to melt away, and we no longer blame them. Countless other philosophers have accepted that this is how "our moral responsibility practices" work. But we can be mistaken about what our own practices are — paint an idealized picture in the philosophy seminar which doesn't correspond as well as we think it does to actual practice (Williams 2008: 63–68).

Empirical research shows that painting certain groups of people as irrational or out of control need not have any mitigating effects on the blame and resentment they must endure; it can, on the contrary, engender hostility and *harsher* blame and punishment (Ciurria, 2020, p. 122, 146; Hutchison, 2018; Atkins-Loria et al., 2015, p. 9). There is also ample research on how the belief that people with diagnosed mental disorders suffer from brain dysfunctions and/or genetically determined conditions affect stigma. Even when brain dysfunction narratives manage to decrease other people's tendency to *blame* those with mental disorders, those same narratives frequently lead to *increased* stigma in other ways (Angermeyer & Matschinger, 2003; Harré & Read, 2001; Schnittker, 2008; Pescosolido et al., 2010; Loughman & Haslam, 2018; Kvaale et al., 2013).

5 | EXTERNAL OBSTACLES

5.1 | External obstacles and poverty

So far, I have detailed a number of ways in which arguments relying on poor people's supposed psychological issues are problematic. Fortunately, we need not choose between relying on those or accepting that poor people deserve to remain poor and receive harsh punishments for any crimes they commit. We can argue against the latter by pointing out the many external problems that poor people face. The existence of external obstacles is normally easier to prove, we can focus on them without being disrespectful, and there is less risk of inciting increased hostility.

Of course, external obstacles tend to make improving your situation more *difficult* and/or *costly* rather than *impossible*.

Some external circumstances might make it truly impossible to, e.g., get out of poverty. Suppose, for instance, that you must work twelve hours a day already to make ends meet. In order to get a job with a higher salary, which would allow you to work a normal number of hours and still survive, you must get an education. However, with the twelve-hour workday and necessary chores to do, there is literally no way you could both study and get the sleep required to remember anything you have learnt. If you find yourself in this situation, you would need some initial stroke of luck to change things *first*, before you could even begin clawing your way out of it. But often enough, various obstacles make it *harder* and/or more *costly* to change your situation and do what you want to do, rather than utterly impossible. Perhaps you can make do with "only" a fifty-hour

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workweek, or a forty-hour very tough one, and you can combine it with evening classes and still sleep seven-eight hours, constantly tired and exhausted, but you *manage* and eventually improve your situation.

However, *pace* Sher, we do not normally believe that sheer possibility is all that matters for justice. Imagine if I randomly assigned some students a terribly difficult exam at the end of my philosophy course whereas others got an easy one. Everyone agrees this would be horribly unfair; I could not defend myself by pointing out that it *is* possible to get top grades at the difficult exam too, if only the students who were unlucky enough to get it set aside every hobby and relationship to study every waking hour. Nor would it constitute a legitimate defence to say that some students who got the difficult exam and ended up with low grades actually did not study much either, and could have done better if they did — giving students completely different exams remains unfair.

All this should be uncontroversial enough. And if someone remains unconvinced that it is unfair for some people to face much more difficult tasks and bigger external obstacles than others, they are also unlikely to be convinced by psychology-based arguments.

5.2 | Externa obstacles and criminal justice

Nevertheless, arguments which rely on external obstacles may not take us all the way if we want to argue for criminal justice reform. One may argue that it is terribly unfair that some people start out struggling just to get by and need to work themselves to the bone if they are ever going to improve their situation, whereas others start out in a good place and can remain there or improve further through reasonable amounts of effort — and yet insist that even if you struggle hard, you have no right to commit crimes that hurt other people. If you do *that*, you still deserve to be punished and suffer for your crime. One may argue that people who commit crimes despite being wealthy and privileged ought to be punished even *harder*, but this does not mean that poor criminals are *excused* — they should be punished *too*. After all, most poor people still obey the law; thus, it cannot be *that* difficult for people from poor backgrounds to abstain from crime.

For some categories of criminals, arguments that rely on external problems and obstacles may take us further. When it comes to *children*, we should all agree that they gradually develop their rational thinking and ability to appreciate the consequences of their actions. If someone was dragged into a criminal lifestyle as a child, and was in too deep to easily exit once they reached adulthood — they would risk, say, their own or their loved ones' safety if they tried to get out — pointing out these circumstances may take us a long way towards exculpation. But many criminals do not fit this picture, and the would-be criminal justice reformer may therefore need more arguments up their sleeve.

Nevertheless, it remains true in criminal justice contexts that moral responsibility scepticism is controversial and that arguments which rely on alleged psychological problems are hard to prove, can engender *more* hostility to offenders, and are experienced as disrespectful and belittling. Polaris Koi (2021) writes of how people with psychiatric diagnoses — in the paper, he focuses on ADHD, but the point he makes goes for other diagnoses too — may insist, out of a sense of pride, that they are fully blameworthy, rather than accepting other people's attempts to exempt them on grounds of mental defects. But we can supplement appeals to external obstacles with first epistemic arguments, second crime prevention arguments.

Epistemic arguments against having a harsh retributivist criminal justice system do not attempt to convince people that such a system is definitely *wrong;* instead, they focus on all the controversy and uncertainty surrounding every premise required to justify harsh retributivism (Vilhauer,

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2009; 2013; Shaw, 2014; Caruso, 2020: Jeppsson, 2021). The details can be quite technical and therefore unlikely to appeal to others than philosophical specialists, but the gist of it is simple enough: we should not subject people to harsh punishments unless we can be quite *certain* that we are justified in doing so, but there is a lot of uncertainty and controversy in this area.

Moreover, non-philosophers are unlikely to subscribe to a "pure" theory of crime and punishment; they are unlikely to be pure retributivists, pure consequentialists, pure expressivists, or pure anything at all. This is reflected in the public debate about crime and punishment, which often mixes retributivist and consequentialist arguments. Offenders should get what they deserve, and we must also bring down the crime rates. Now, these two goals are often presented as if they go hand in hand, because harsh punishments are supposed to deter would-be criminals, and lengthy prison sentences to keep offenders off the streets. However, Marcelo Fischborn (2022) shows that when these two considerations were explicitly teased apart in a study, the participants prioritized crime prevention over just deserts. In real life, it often seems difficult for scientists and scholars who argue that harsh punishments can be *detrimental* to the goal of crime prevention to be heard and believed; nevertheless, Fischborn's results indicate that such pragmatic/consequentialist arguments have strong potential.

6 | CONCLUSION

This paper has focused on how best to argue for increased economic equality and criminal justice reforms in public, political debates. Of course, such debates can overlap quite extensively with philosophical, peer-reviewed papers and books. I have mostly focused on Bruce Waller's arguments, and he wrote both for a philosophical audience and a more popular one, as do many other philosophers. Nevertheless, there are also philosophical texts written and philosophical discussions had that really just concern other philosophers, and where the aim is to weigh arguments and develop theories out of sheer philosophical interest. I am not saying that philosophers should not, for instance, advance what they take to be good metaphysical arguments for moral responsibility scepticism just because such arguments have low popular appeal, or that we should not delve deep into the intersection between psychology, agency, and moral responsibility. Nevertheless, I have argued that when we aim to convince people that society ought to change in the direction of more economic equality and a more humane criminal justice system, it is best to focus on external obstacles, difficulties, and costs that people face, rather than either metaphysics or psychological problems.

ENDNOTES

[1] "But what about Frankfurt scenarios?" some readers are bound to ask at this point. "Don't they show that it's possible to be blameworthy even if one couldn't do otherwise?"

This paper is not the place to deal with Frankfurt scenarios in depth. I personally agree with Dana Nelkin's (2004) criticism of how Frankfurt scenarios are used in debates about determinism and moral responsibility: They deploy a counterfactual intervener who, in the end, merely observes, and this makes him very different from deterministic laws of nature.

Nevertheless, this paper is not the place to dig into into this controversy. Let me just remind my readers that Frankfurt scenarios typically feature agents who are unaware that they cannot do otherwise, and therefore, this inability does not factor into their deliberation. Frankfurt agreed that if someone does what he does *only because* he could not do otherwise, this constitutes an excuse. Real agents who face real obstacles, both external and psychological, are rarely as ignorant as the typical Frankfurt main character.

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[2] With the former group, we can add, perhaps, my co-workers, my closest boss, a doctor, other people that I may not be *very* close to but still have personal relationships with. I might need to disclose some psychological difficulties I struggle with to people at my job, and kindly ask them to cut me some slack, but this is already likely to feel more awkward, less comfortable, than discussing these difficulties with people I am truly close to.

[3] Insofar as people *do* accept something like this picture of themselves – "I'm so oppressed and marginalized that I'm devoid of initiative and motivation and have trouble to think straight" – they are understandably hard to politically mobilize (Melo Lopes, forthcoming). But many, perhaps most, people are reluctant to think of themselves this way.

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