The Epistemic Condition In Moral Responsibility:
When does lack of knowledge undermine moral responsibility?
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Introduction

Whenever someone commits a morally bad action, or an action with a morally bad outcome, we usually think that it is in order to hold that person responsible for that action or outcome. Tentatively, depending on the nature and severity which we judge the action or outcome to have, we can react with either one of two practices - blame or legal punishment. Breaking promises, stealing, making threats, inflicting injury, lying, taking advantage of or killing someone are all appropriately related to responsibility, blame and culpability. But what conditions one must satisfy, in order to justifiably be held morally responsible for bad outcomes and actions, are not as apparent as one would have hoped. Sometimes, it seems, we can be excused. I will illustrate this by presenting the following four cases in which it sometimes seems appropriate to blame, and sometimes not, and then try to explain why.

1. **Feeder, feeder, unjustified cake eater.** Sugar-Ray wakes up in the middle of the night, hankering for cake. He puts his glasses on and heads for the kitchen. In the fridge sits a cake in a box with a note on it. The note reads: “Dear Sugar-Ray, please do not take any of this cake, it is for my birthday tomorrow. / Your roommate - Baker”. Sugar-Ray reads the note, opens the box, and, even though believing that it is wrong to do so, indulges himself in the entire cake, marzipan rose and all.

2. **Blind excitement.** Sugar-Ray wakes up in the middle of the night, hankering for cake, and heads for the kitchen. In the fridge sits a cake in a box with a note on it. The note reads: “Dear Sugar-Ray, please do not take any of this cake, it is for my birthday tomorrow. / Your roommate - Baker”. Sugar-Ray, exited about the possibility of cake, forgot to bring his glasses from the bedroom. He fails to read Bakers note, opens the box, and indulges himself in the entire cake, marzipan rose and all.

3. **Morning mourning.** Ms. Foot lives in a row house, next to a pet loving family. She sleeps in a room wall to wall with the neighbors daughter Jane who simply loves The distinction is meant to differentiate the practices and not the motivation as to why we blame and punish. It can be argued that our retributive system is merit-based in virtue of it having good consequences on the whole, as is our blaming someone for not keeping his promise - we don’t want the blamed to break promises in the future. A more simple distinction is that one is formal and the other informal.
guinea pigs. Unbeknownst to Ms. Foot, a nest of mice have made a tunnel through the bedroom wall. One morning Ms. Foot wakes up, and when intending to stand up, steps on one of Jane’s guinea pigs who have made its way to her bedroom via the mouse tunnel, unfortunately crushing it to death.

4. Murder? He wrote. Bud Tendy wakes up at the hospital. The last thing he remembers is riding his horse on the plains of Illinois. He notices a nurse coming up to his bedside, and sees his hand lashing at him, apparently trying to strangle him, even though he does not want it to do so. The nurse manages to get out of Bud’s grip to call the doctor. On arrival the doctor explains that, unbeknownst to Bud and the nurse, Bud had an accident with complex neurological injuries, amounting to alien hand syndrome.

These four cases seem to invoke fairly straightforward ascriptions of blame - in (1) and (2) we would normally think that Sugar-Ray is blameworthy and in (3) and (4) that Ms. Foot and Bud Tendy are not. What are the reasons for thinking that? Historically, as well as in contemporary literature, there are (at least) two conditions undermining responsibility - knowledge and control, or epistemic and freedom conditions. In the first example Sugar-Ray knows that Baker doesn’t want him to eat the cake, but does so anyway, thereby knowingly acting wrong. He wasn’t acting under any constraint, forcing him to eat the cake, so he was acting freely. In this case, both conditions are met - he is acting freely and knowingly wrong, and is therefore morally responsible for Baker being without a cake on his birthday. In the second case, Blind excitement, Sugar-Ray doesn’t know that Baker doesn’t want him to eat the cake, so it seems that Sugar-Ray is off the hook in virtue of not fulfilling the epistemic condition - he did not know that he acted wrongfully, and that Baker would be upset by his actions. However, most of us are, I think, inclined to say that Sugar-Ray should have known, had he exercised his epistemic responsibilities correctly. In the third case, Ms. Foot cannot be held responsible for the death of the guinea pig since it seems unfair to blame her for not considering the possibility of rodents on her floor.

The difference between a case where you should have known, and one where you could not have known, should be partly dependent on what, and how much, it is reasonable to demand, epistemically, of an agent. In (2) it seems reasonable to demand that Sugar-Ray investigates the note on the cake-box, but in (3) it seems unreasonable to demand that Ms. Foot should check that her floor is free from guinea pigs. In cases (1) - (3) claims of
responsibility seems to hinge a lot on the epistemic condition - in (1) Sugar-Ray knows that what he is doing is wrong, in (2) he should have known and in (3) Ms. Foot could not reasonably have known. The question I will further explore in this essay is what separates case (2) from case (3), since, from the outset, they can both claim to be non-culpably ignorant. In (4), we have a case where Bud knows what he is doing and knows that it is wrong. If the epistemic condition was the only conditions of moral responsibility, we should deem Bud as being responsible for his actions, but incidentally, we do not. Here, the second condition for moral responsibility is at play - control, or freedom. Suffering from alien hand syndrome, Bud had no control over what his arm was doing, hence his action was not voluntary. Lacking control over one’s actions, then, also undermines moral responsibility. These cases show that there are at least two conditions for moral responsibility, and it also shows that the conditions in some cases can come apart - sometimes you are in control, but your lack of knowledge undermines responsibility, and sometimes you know what the outcome is going to be but you have no control over the action causing it.2

The substantial part of this essay will be disposed in the following manner: I will first outline and account for Aristotle’s significant philosophical view in which he makes a distinction between acting freely and acting from culpable ignorance. I will continue by outlining how culpable ignorance is viewed in legal domains, linking two accounts in philosophy of law to two made in contemporary philosophy. I argue that these accounts are incomplete, in virtue of their lack of sufficient explanatory value or that their verdicts in tricky cases are unclear. In part four I leave these accounts to sketch my own version of the epistemic condition, based on my own ideas in combination with two forthcoming papers by Jan Willem Wieland. I argue that there are necessary and sufficient conditions for culpable ignorance, and present some ideas of what those conditions might consist of. While a substantial part of the written literature on this subject concerns actions, I will focus on outcomes. Bearing this in mind, I will still talk about actions, but only insofar as

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2 There are, however, accounts that claim the opposite. One of those accounts claims that the epistemic condition and the control condition both lie in the ‘quality of will’ of the agent. According to this theory, a failure to act morally right is not explained by an agents lack of knowledge, but a failure to care sufficiently to secure relevant knowledge before acting. For such accounts see: Björnsson, Gunnar, forthcoming, ‘Explaining Away the Epistemic Condition on Moral Responsibility’. For examples of opposite questions: “what epistemic requirements for being morally responsible for performing an action A are not also requirements for freely performing A?” see; Mele, Alfred, (2010), ‘Moral Responsibility for actions - epistemic and freedom conditions’, Philosophical Explorations, Vol. 13: p. 101 -111.
they are related to outcomes. The last part develops a suggestion of an epistemic condition tying on to reasons, possible outcomes, and risk of harm.

My hope is to achieve an account of responsibility that can give us guidance on when it is appropriate to regard people as responsible, in the widest range of cases possible, guided by our intuitions of responsibility and our theoretical understanding of when, and how, lack of knowledge undermines responsibility. The overarching question guiding this essay as follows: when does lack of knowledge undermine moral responsibility? Before embarking on a substantial analysis of that question, I want to clarify some of the limits of this essay, and some of the background assumptions that I make.

2

Disposition and preliminary assumptions

In order to be clear about which parts of the debate on moral responsibility the arguments I make can affect, it would be a good idea to narrow down what theoretical areas that I share some fundamental assumptions with. That is to say, not all accounts on moral responsibility buy into the same premises, so some accounts will remain unaffected by any criticism or objections I make here.

The main focus in the moral responsibility debate has predominantly been directed at the control condition. The notion of being able to do otherwise, for example in cases of force and coercion, have been one of the primary targets when constructing an intuitive and consistent account for moral responsibility. The idea is that responsibility is undermined when the agent under evaluation could not have done otherwise. Although being fairly intuitive and with a long history of endorsement, the principle got criticized by Harry Frankfurt, who convincingly made a case where the agent could not have done otherwise, but where we still want to blame that agent.3 Frankfurt explains this verdict of blame by invoking a difference between acting because of the fact that you could not have done otherwise, or acting because you had your own reasons for acting so. If it is the case that you acted because you had your own reasons to, even though you could not have done otherwise, you are responsible for the action or outcome. Even though Frankfurt caused quite a stir when questioning the Principle of Alternative Possibilities (PAP), we

can use a modified assumption of the control condition that suggests that instead of thinking that responsibility is undermined if we could not have done otherwise, we are responsible if we would not have done otherwise, given that we counterfactually could have. The control condition is then located in the agent’s ability to act because of reasons, a sort of guidance control mechanism that is responsive to reasons. For future reference, and for reasons of simplicity, I will call this assumption the WHDO condition.

Since my main interest is in the epistemic condition, I will cut out most of the literature and debate on the control condition and instead ask questions about when a person can be excused for the outcomes her actions produce in virtue of not knowing better. With that in mind, I want to clarify my stance on free will. In an attempt to keep matters simple, I have decided to leave the questions ‘when is X responsible for Y?’ and ‘When can we hold X responsible for Y?’ aside. Thus, when referring to ‘responsible’ I do not claim it to mean neither of the above. I am simply going to ask ‘When is it reasonable to regard X as being responsible for Y?’, where Y is taken to be an action or an outcome, since it does not assume a truth of the matter.

Sometimes we can regard people as being responsible without finding it appropriate to hold them responsible, which is why I take them to be different questions. For example, suppose that Alex eats meat and that I regard him as somewhat responsible for the suffering of the animals from which his meals stem, as well as for a part of the increase of global warming. Furthermore, Alex is sensitive to criticism and any attempt to hold him responsible for the outcomes of his actions will result in him eating even more meat and being even more averse to vegetarianism. In such cases, the

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6 I take it that the question ‘When is X responsible for Y?’ implies that responsibility is a matter of truth. I want to make it clear that I do not want to engage in the debate of free will and determinism. I am going to suggest that whatever falls out of my theorizing here can be either determined in a strong sense or be subjected to free will. The idea is to fall back on a Strawsonian account and just say that even if determinism would be true, we should not abandon practices of blame and punishment (and if determinism is true, we would not have the choice to do so anyway). Strawson’s idea, one that I agree with, is that both the consequentialist compatibilists and the merit-based incompatibilists share a faulty presupposition about moral responsibility - namely that in order to hold X to be responsible for Y, X must be responsible for Y.

7 One could ask if this distinction holds in legal domains and I think it does, although for other reasons. The difference is that every case of regarding someone as responsible will coincide with holding them responsible, since, consequentially, they will be treated equally by the Law. Instead of choosing not to blame, as we might do on an individual level (for consequential reasons), the Law can choose to punish differently, with the same consequentialist motivation. Consider community service, fines, prison, forensic psychiatric care etc.
rationale for holding him responsible (that it generates better consequences) fails to be satisfied. It is no less true, however, that we can regard him as being responsible.

Further, I grant that responsibility can be seen as either binary or gradual. Since I take it that this question lies more within the scope of holding agents responsible, I will try to remain neutral on the matter. That is, in cases where you really could not know (recall Ms. Foot) you are excused, and in cases where you should have known, there are extenuating circumstances. The aim for me is to find out where to draw the line between them, which is not to say that you are as responsible for some outcome you were certain was going to happen, as when you are culpably ignorant of those outcomes. The substantial part of the essay will rely on the premise that all agents in my cases, and agents who are apt for claims of responsibility in general, are moral agents. Moral responsibility, then, can be said to apply to a certain subclass of agents, agents which we deem to have the relevant preconditions for participation in a moral community.

The essay will assume that using intuitions, when paired with careful considerations, can be sufficiently justified so as not to cause any substantial problems in this essay. That being said, I am aware that this methodology is not without controversy.

To recap my disposition: I will try to explain how, why and when a moral agent can be reasonably regarded as responsible for some impermissible outcome in virtue of lacking knowledge, and when lack of knowledge is justified enough to exculpate the agent. Let us start at the beginning and put the phrase ‘standing on the shoulders of giants’ to good use.

3

Background

The problem of when to regard someone as responsible for an action or an outcome has a long and withstanding tradition of being unsolved. Nevertheless, accounts have been made, and many of those have been utilized in law for purposes of retribution. In this section I will first briefly sketch Aristotle's view on responsibility, which is the foundation

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8 We can think of a range of criterion here: sufficient cognitive abilities, capacity to recognize others as moral agents, an understanding of causation etc. Alternatively: “...it is widely accepted that potentially blameworthy agents must be capable of reflecting upon, reasoning about, and executing a decision about how to behave. If someone lacks these capacities, he is exempted from blame”. Tognazzini, Neal and Coates, D. Justin, 2014, ‘Blame’, SEP.

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on which others have built, and then follow up with a discussion of the epistemic condition in philosophy of law and compare those to similar accounts in contemporary philosophy.\(^{10}\)

3.1. Aristotle and voluntary action

For Aristotle, an action has to be voluntary in order to be assessed by claims of responsibility. But what counts as a voluntary action? Aristotle, presumably the first one to do so in writing, names two conditions for voluntary action: “What comes about by force or because of ignorance seems to be involuntary”.\(^{11}\) Aristotle does, however, notice that actions sometimes can appear forced, but where the agent nevertheless contributes to the outcome - like a bad storm forcing a captain to either throw the cargo aboard or face the demise of his crew, or in the event of an external aggressor forcing you to do something morally wrong by threatening to kill your family if you fail to comply. Origin, then, seems important to Aristotle in attributing an action as voluntary - if the origin of movement causing the action is internal to the agent, the agent is acting voluntary.\(^{12}\) Aristotle does not make an explicit distinction between responsibility for actions and for outcomes, but he seems to be interested in both, and we can apply the distinction he makes between voluntary and involuntary in both cases.

Contrary to initial intuitions, an action with a morally bad outcome that is performed voluntarily does not necessarily imply that it is appropriate to blame the agent that performed that action. Praise and blame, Aristotle says, can be distributed for example when agents choose to allow some minor evil in order to secure some greater good, or when they choose to do some great evil for a negligible gain in good. But there are grey areas here that are hard to judge, as Aristotle is well aware:


\(^{11}\) Aristotle, (1985) [384-322 B.C.], Nichomachean Ethics, chapter 3:12 [1110a].

\(^{12}\) Ibid. chapter 3:12 [1110a]
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It is sometimes hard, however, to judge what [goods] should be chosen at the price of what [evils], and what [evils] should be endured as the price of what [goods]. \(^{13}\)

Regarding ignorance, Aristotle does make a distinction: acting \textit{in} ignorance (when you don’t know what you are doing) or acting \textit{because of} ignorance. Acting because of ignorance can be described as someone who is acting in a certain way because he is drunk or angry - here the ignorance itself is not the author of action, the drunk or angry state of mind is. This does not, of course, automatically relieve the angry or the drunk from being responsible for actions performed in such a state of mind, since ignorance could, for example, have played a part when the agent decided to get drunk. We can trace, as it were, culpability back to the faulty decision to drink, failing to accurately determine the probability of one acting wrong when drunk. This is not to say that ignorance is the reason for deciding to drink, only that deciding to drink entails taking responsibility for what you do when drunk.\(^{14}\)

Aristotle goes on to describe the factors in relation to which we must exercise epistemic virtue: who is acting (agency), what that agent is doing (action theory), in relation to what (means and ends), what end the action has (axiology) and how it is done.\(^{15}\) Some of these factors are what undermines responsibility in virtue of ignorance - one can be ignorant, for example, of what one is doing, as we might imagine that Sugar-Ray says he is to Baker in the \textit{Excitement} case earlier. Aristotle calls cases when you act in ignorance of one of these factors counter-voluntary, and describes it as cases in which it is appropriate for an agent to feel remorse or indignation when finding out the true nature of his action. Couched in Aristotelian terms then, the category which my essay will concern is that of counter-voluntary actions, in so far as the supposedly unforeseen outcome of the action entails that the agent would have done otherwise if he or she knew about the consequences. Tentatively, I will argue that actions that produces morally undesirable outcomes will sometimes entail responsibility even if the agent is acting in ignorance of some of Aristotle’s factors. A counter-voluntary action producing bad outcomes, then, can

\(^{13}\) Ibid. chapter 3:12 [1110a]


\(^{15}\) Aristotle, (1985) [384-322 B.C.], Nichomachean Ethics, chapter 3:12 [1110a].
sometimes carry responsibility, and sometimes not. That is to say, sometimes conditions are such that an agent did not know, but he should nevertheless have known. Aristotle’s distinctions and ideas will be the foundation on which this essay will build, hence in the next section I will present and scrutinize suggestions that have been made about such extenuating conditions.

3.2
Culpable ignorance in law and modern philosophy

3.2.1. M’Naghten and Haji
Retributive punishment, as practiced in legal systems across the world, is dependent on a thorough understanding of responsibility, both legal and moral. It is, in a way, the formal version of a moral judgment and needs to be able to distinguish between who is responsible, who is not, and why. When the law considers whether you should have known or not, it finds your performed action or its outcome as a result of either culpable ignorance or non-culpable ignorance. The most famous rule on this topic concerns the conditions according to which the defendant is fully exculpated in virtue of being insane or delusional. These rules are known as the M’Naghten Rules and has two disjunctive conditions:

At the time of committing the act, the accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong.16

In an act of killing the accused would either have to know that (i) killing is wrong, but not understanding that his own act constituted killing someone, or, (ii) know that he was killing someone, but failing to understand that it was wrong to do so. In cases where the former condition applies, a delusion could mask the act of killing with some other act. In the latter it might be the case that the defendant believes that he is under some threat in which it is appropriate to act in preventive self-defense.17 In either case, the accused is free from responsibility in virtue of satisfying one of either conditions. The reference to

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‘wrong’ is interpreted differently in legislation across countries, some of which entails ‘legally wrong’ as in failing to understand that something is prohibited by law, and some which entails ‘morally wrong’ which has a wider scope. The latter is harder to use when determining whether or not the defendant is legally culpable since something can be legally wrong without it being morally wrong and vice versa.\textsuperscript{18}

The M’Naghten Rule can illustrate how legal practices often relate to precedent cases, where the law has previously failed to account for nuances relevant to the responsibility of the accused. Such cases are real world versions of philosopher’s thought experiments, where the court ruling becomes legislative. Effective though these pragmatic solutions might be in the courts, they seem insufficient for a more precise theoretical account of responsibility. The reason is that they only seem to be able to tell whether or not a defendant is criminally liable or not. It seems unlikely that any application of the M’Naghten rule could be used to excuse the agent, or decide if there were lenient circumstances for the act for which the defendant stands trial. The M’Naghten rule is, as it stands, of little or no help to me.

Mirroring the intuitions behind the M’Naghten rule, there are some philosophers who believe that an epistemic condition must be rid of all references to explicit knowledge, that is to say, they think that demanding actual knowledge about a particular action, or its outcomes, from the agent is to require too much. Amongst these are philosophers Carl Ginet, Kevin Timpe\textsuperscript{19} and Ishtiyaque Haji\textsuperscript{20}, all of which rely on moral, or normative, beliefs to track responsibility instead. I will make explicit the suggestions of the latter, and argue that it is only as useful and coherent as the M’Naghten rule. In a recent book, Haji gives two propositions of the epistemic condition, one of which he rejects. I will follow Haji and reject the stronger version of the condition and only focus on his more plausible, albeit somewhat vacant one, which reads as follows:


\textsuperscript{20} “I know of no discussion on the epistemic requirements of moral responsibility in which it is maintained that no sort of belief or awareness constituent is any part of the epistemic constraint” (Haji 2008, 99).

“Like Haji, I think there is good reason not to require actual knowledge in the epistemic condition.” (Timpe 2011, 14)
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(Haji’s Weaker Condition) Agent, S, is morally blameworthy for action, A, only if S does A at least partly on the basis of the belief that A is morally wrong; and S is praiseworthy for A only if S does A at least partly on the belief that A is morally obligatory or permissible.  

I will try to argue that this condition fails to hold agents culpably ignorant in two respects we want them to be: in amoral intent and outcomes. Haji’s condition is built on the idea that agents can only be responsible (blame- or praiseworthy) if they perform some action that they already know, at least to some extent, is good or bad. To utilize the idea that an agent has to have some sort of moral belief in play in order to be blameworthy seems intuitive and reasonable. If S does A while believing that it is wrong to do so (which is true), it is clear as day that S is blameworthy, and that he should be regarded as responsible. But this is not controversial. What if S does A, which is a particularly horrendous act, while having no moral beliefs involved what so ever? He fails to recognize A as a moral action all together. We would then be inclined, I belive, to say that S should have known that A was morally prohibited, given that he indeed is a moral agent. A particularly horrendous act would simply be part of a moral agents frame of reference or general knowledge. So Haji’s condition seems unable to answer the question of what it means to say that someone should have known. His condition can provide us with guidance in some cases, all of which must contain at least a partially guilty mind, (or mens rea, in legal terms). But the scope of his condition fails to account for cases in which the agent lacks moral beliefs about his or her action, given that we agree that he or she should have known that the action was morally out of bounds.

Haji’s condition also seems to lack guidance when we want to regard agents as responsible for outcomes and not merely actions. A morally bad outcome can be sufficiently probable, as the result of some seemingly non-moral action, without you knowing that it

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21 Haji’s first proposition: “Agent, S, is morally blameworthy for action, A, only if S knows that A is morally wrong; and S is praiseworthy for A only if S knows that A is morally obligatory or permissible.” Haji, Ishtiyaque, (2008), Incompatibilism’s allure - Principle Arguments for Incompatibilism, Ontario Broadview Press. This condition is to be paired with the premise that S is blameworthy for A only if A is morally wrong. Additionally, ‘belief’ here is not to be conflated with knowledge.

22 This is how I interpret “S does A at least partly on the basis of the belief that A is morally wrong”. So it seems there could be two different renditions that both support my interpretation: either S’s moral belief contribute causally to S performing A, which constitutes a breach deserving of blame, or; S’s moral belief has the action as its object, in which case that belief does not itself contribute as a cause to the action, but is rather about the action, which would also warrant responsibility.
is, in which case it would be strange to require you to have moral beliefs about the action that brings about that outcome. In my opinion, this is an unreasonably weak demand. We must be able to hold agents responsible for bad outcomes, given that the outcome is sufficiently probable and knowable, without requiring the agent to have moral beliefs about the action that triggered the outcome. This latter demand may simply be a disagreement on the desideratum of the epistemic condition, but I strongly oppose the idea that normative beliefs of particular actions are sufficient for responsibility. There seem to be few substantial differences between Haji’s account and the M’Naghten rule and can arguably be said to consist solely in the “from disease of the mind” clause. In conclusion then, Haji’s account is no closer to determine whether or not lack of knowledge can become an extenuating circumstance for the moral agent than the M’Naghten rule is.

3.2.2. ‘The rational man’ vs. Vargas

There is another relevant discussion in philosophy of law, regarding whether or not the ‘natural and probable consequences’ (i.e. the outcome) of an act could be foreseen by the defendant. That is, if an objective model, or a ‘rational man’ model, would be utilized, the defendant should have understood the natural and probable outcomes, or consequences, of his actions in virtue of the fact that a ‘rational man’ would have. But if a subjective model is utilized, the defendants actual knowledge of what the consequences could be must be guiding. In my view, there is conceptual space for an ecumenical solution by separating that one has the ability to recognize natural and probable consequences, and that which one has the capacity to recognize. I will stipulate the former as the already realized set of skills belonging to the agent, and the latter as possible additions of skills to this set. The former is more in tune with the subjective model, but also leaves some leeway in terms of including more than the defendants actual and occurent knowledge.

Let me explain this further. Suppose that Mr. Heat wants to commit arson, and finds a building that fits his criterions. Mr. Heat does not know if there are people in the building.

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23 The ‘rational man’, ‘reasonable man’ or “the man on the Clapham omnibus” all serve to illustrate the same concept. The concept of this informed and fictive person is described in the case of Jones VS. the US by The District of Columbia Court of Appeals as “a reasonably intelligent and impartial person unversed in legal esoterica.” The legal concept is ancient, as it probably derive from the Roman “Bonus pater familias” meaning something like ‘a good family man’. For more on the subject see: Lucas, J.R., (1963), ‘The Philosophy of the Reasonable Man’, The Philosophical Quarterly, Vol. 13, p. 96 - 106.

or not, and only wants to burn the building down, without harming any people. Suppose further that he sets fire to the building and the consequence is that three people die in the fire.\(^{25}\) It would be highly implausible for Mr. Heat to say that he did not know that such an outcome, or consequence, was natural and probable, given that he was engaged in high risk activity. A distinction we could make here is between particular knowledge and general knowledge - surely, he knows that fire can kill people, and that buildings contain people most of the time. So we can say that, even though he lacked *some particular* piece of knowledge (that there were people in the building at that particular time), he still had sufficient general knowledge about what the natural and probable consequences plausibly *could* turn out to be. He had, as it were, the *ability* to foresee the outcome as it happened. This reasoning is why I consider my distinction slightly more fine grained. It allows us to utilize features of the rational man view, but in a way that still allows for agent relativity, by arguing that an agent who is engaging in risky activity, and has the ability to foresee the natural and probable outcomes of that activity via general knowledge, cannot plead innocent in virtue of not knowing a particular piece of information.

Now, the two latter distinctions, that between general and particular information, as well as between ability and capacity, are, as far as I am aware, my own and they will figure in my account of the epistemic condition later in this essay. However, the former, between rational man and subjective man, is utilized in American and English law.\(^{26}\) One would think that philosophical accounts should contain a more finely grained condition for responsibility, but unfortunately, it does not appear to be the case. In the paper “The Trouble with Tracing” Manuel Vargas provides a stipulation of the epistemic condition that mimics the distinction between the subjective / ‘rational man’ approach:

\[(\text{Vargas’ Condition}) \text{ For an agent to be responsible for some outcome (whether an action or consequence) the outcome must be reasonably foreseeable for that agent at some suitable prior time.}^{27}\]

Vargas condition is supposed to take care of cases where we intuitively want to hold

\(^{25}\) Modified example from Tebbit (2005).

\(^{26}\) This may or may not be an exhaustive list of states utilizing the concept, but I gather that these states are enough for me to take the concept seriously.

\(^{27}\) Vargas, Manuel, (2005), ‘The Trouble with Tracing’, *Midwest Studies in Philosophy*, XXIX.
agents responsible for some outcome, but where they, at the time of action, did not know that this particular outcome would be the upshot of the action performed. In the case of Mr. Heat for example, the death of the three could be described as being reasonably foreseeable. The reason for ascribing responsibility in such cases is that the agent could ‘reasonably foresee’ that the consequence was one of the more probable out of the possible ones, or that it was a particularly harmful outcome. This sounds a lot like saying that the things we can ‘reasonably foresee’ are the very same things that a ‘rational man’ can foresee. I gather, given the apparent equivalence, that any critique against Vargas applies to the ‘rational man’ approach as well as the other way around.28

I think Vargas is right about us wanting to regard agents as responsible for outcomes, as well as the idea that the agent should have reasonably foreseen those outcomes. But what, exactly, is it reasonable to foresee? What would a reasonable man foresee? How can we tell what sort of possible consequences are amongst the most probable in a given situation, or if there is a lot at stake? It seems that we have to analyze the content of what ‘reasonably foreseeable’ or ‘rational man’ means in order to determine that. These two accounts, then, say little or nothing about when we can regard someone as responsible for a certain outcome, unless we can fill these notions with substance. I will assume that such conditions, as they stand, are insufficient or incomplete in a theory of responsibility, given that they provide no explanation to what constitutes a rational man or what it means to reasonably foresee something. In the next section, I will try to sketch an account that will begin to fill the blanks of what it means to reasonably foresee something.

4

Availability of information

When invoking additional justification for any talk of an epistemic condition, we can consider our requirements for moral agency. A person must possess a significant amount of cognitive competence to count as a moral agent, but the content of this competence shows that we, at least intuitively, think of the skill to process information and form

28 To his credit, Vargas stipulation of the epistemic condition is deliberately coarse since he is not making any argument that requires a fine grained notion of the epistemic condition. He is more than willing to substitute his conditions with other, more fine-grained, ones. My purposes for using his stipulation is that it seems reasonable to start with an intuitive and coarse formalization of the epistemic condition and work from there.
reasonable and coherent beliefs, as important for us to qualify as moral beings. This tells us, I believe, that the epistemic condition is important for a sound account of when we can (and perhaps should) regard agents as responsible. It is not sufficient, however, that moral agents, in virtue of being such, are responsible for all their actions, since we have yet to determine what counts as a reasonable level of epistemic responsibility.

Recall the case in the beginning, with Jane the guinea pig lover and her neighbor Ms. Foot. We can say of Ms. Foot that she is a moral agent, since, besides the fact that she shares moral sentiments with others, she is capable of knowing that a nest of mice could have made a tunnel through the wall, paving the way for a guinea pig to escape to her bedroom. It is a possible scenario that Ms. Foot can grasp intellectually. It does not seem reasonable, however, to hold her responsible for not considering this possible event every single time she gets up in the morning. This should be clear enough to illuminate the difference between understanding the relevant information, which I believe is a component of the condition ‘cognitive competence’ in moral agency, and our epistemic responsibilities. Though with what conditions should we evaluate agents then, if not with cognitive competence?

As we saw in section 3.2, there have been both legal and philosophical accounts made to explain when you are exculpated in virtue of not knowing better. I argued that the accounts were right in locating certain features, such as agents have to reasonably foresee possible harmful outcomes, but that they are far too vague and incomplete conditions as they stand. Nevertheless, we can agree that an epistemic condition is necessary for moral responsibility, and thus, it is a matter of how to formulate and design such a condition. In this section, I suggest that availability of information is a strong candidate to fortify the epistemic condition.

4.1. Is availability necessary for culpable ignorance?

For information or knowledge to be available can mean a number of things; the agent needs to have a certain amount of cognitive competence, which I assume is granted by the fact that the agents I’m concerned with are moral agents, thereby guaranteeing a lower bar of cognitive function. Additionally, the information needs to be comprehensible to the agent at the time of interaction, which suggests that availability is an agent-relative

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criterion. Now, I find the notion of comprehension to be crucial for availability. Say that Anna is stuck in a room with a bomb and the only way to get her out is to punch in a code on the lock on the door. In order to save Anna, you have to read a sheet of latin text, wherein the code is hidden. If you fail to save her, then, you can only be blameworthy if you are somewhat fluent in Latin.

I think that, for illuminating purposes, we would do well to glance at the previous discussion in the philosophy of law, regarding the rational man view (recall the distinction between what a ‘rational man’ could foresee and what the defendant could actually foresee), in order to shed some light on comprehension. I suggested that there was conceptual space to cash out the difference between subjective and objective in terms of what an agent has the capacity to do versus what an agent has the ability to do (at the time of action). On this construal, capacity entails what abilities it is possible for the agent to have, while abilities are capacities that have already been realized. So even if it were the case that you had the capacity to read Latin, you did not have the ability to do so at that specific time. I do not think this is a controversial statement, but it seems fair to be meticulous about the details of my account on the founding criterions for the epistemic condition, and it also seems to fit nicely in between what could be seen as ‘objective’ and ‘subjective’ views on what one can be expected to know, or understand. The general upshot of my distinction is that in some cases, what a rational man would have understood to be the natural and probable consequences of his action has its locus in either the agents actual abilities or in the agents capacities. The former carries responsibility in substantially more cases than the latter, even though it could be argued that this distinction depends on how fast or easy a capacity can be made into an ability,

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30 Wieland, Jan Willem, ‘Two Rooms’, forthcoming. There is a distinction one could make between different sorts of availability: that it is possible to get a hold of, and that it is comprehensible. I recognize the distinction but stipulate that a conjunction of them is what I consider to be relevant for my purposes.

31 The notion of availability will rely on the premise that information can take the form of propositional content or practical knowledge (know-how). Ignorance, then, will in this case be the state of lacking the practical knowledge to read Latin. For a detailed account on different types of ignorance see: Peels, Rik, (2010), ‘What Is Ignorance?’, Philosophia, vol. 38, pp. 57-67.


33 Given the preconditions of that agent - if a person suffers from some dysfunction unrelated to the agent being otherwise cognitively capable, for example dyscalculia (difficulty in learning or comprehending arithmetic), the impossibility to obtain certain abilities is caused by the fact that that ability is not part of the set of that agent’s capacities. Capacities, furthermore, would stretch over a lifespan.
since it is only in such cases that the agent actually can act according to what is demanded.\textsuperscript{34}

The idea of having availability of information as a criterion of an epistemic condition is not new. In what follows I will purport to examine a version where it is the \textit{only} criterion. In the paper “Unexpected Blockers” Jan Willem Wieland and Rutger van Oeveren present an account of culpable ignorance which has availability as its sole condition:

\textbf{Externalism}

$S$ is blameworthy for not gathering $B$ for $A$ if $B$ is available to $S$.\textsuperscript{35}

$B$, in this instance, is referring to a blocker - a piece of information which undermines the permissibility of a particular action $A$. For example, say that you were about to demolish a house while there, unbeknownst to you, were people inside. You were ignorant of this since you failed to check. Are you responsible for not checking? On this account an externalist would say that you are, but internalists would say that you are only responsible if you believed that you had to check. Occurent beliefs are what defines the internalist, and available information, external to the agent, is what defines the externalist. As Wieland and van Oeveren rightly says, the only condition that this simple form of externalism has is that $S$ \textit{could} have known better, in virtue of availability. The satisfaction of this single condition, then, would make $S$ responsible. Notice that responsibility in this case is for being ignorant, which is to say that externalism is neutral on whether or not responsibility is carried from being responsible for one’s ignorance of being responsible for the outcome of said ignorance. I want to try and test the plausibility of externalism with an extension of the scope of responsibility - if you are responsible for being ignorant, you can sometimes be responsible for the outcome of that ignorance.

Below I present two cases with different levels of availability of information. In the cases below the outcomes are the same and in neither of them you are acting on moral reasons. The latter is important since neither of the cases below is such that the agent is

\textsuperscript{34} For example, if you had to learn to perform some rudimentary physical task in a finite amount of time in order to save a life, I would argue that such a capacity ought to be considered an ability based on the minuscule effort relative to your current ability. That is, if you, within the time given, could easily assimilate such a capacity, it is within your scope of abilities.

\textsuperscript{35} Wieland, Jan Willem & van Oeveren, Rutger, ‘Unexpected Blockers’, forthcoming.
aware that what he is doing is wrong. They are not aware of their action being wrong, and they are not aware of any moral obligation to improve their epistemic situation and thus, the agents are not actively disregarding an improved epistemic position. If you, like me, are inclined to regard yourself as responsible in one case and not in the other, I shall grant that availability is a necessary condition.

(A) *F*cking tourist: Imagine that you are in Japan on vacation. You want to see as many historical sights as possible so instead of walking everywhere you take the tram. After a long ride, finally, the next stop is yours. In your hometown of Göteborg, there are pullchords in the ceiling of the trams so the passenger can signal the driver when it is her stop. However, in this particular country, the same type of pullchord functions as an emergency brake. They have a bright red color and a continuous text below saying “Emergency brake”. You are too involved, however, in the beautiful scenery to pay attention to these signs, so you pull the chord, believing that it functions as it does at home. This causes the tram to violently and immediately stop, in turn causing an elderly man to fall and break his leg.

(B) Knock, knock. Who’s there? - *genuine ignorance*: As in (A), you are in Japan, taking the tram to go sightseeing. You are almost at your destination when, to your surprise, you spot an old friend outside the tram. You knock on the window to get her attention, causing the tram to suddenly open its doors, in turn causing an elderly man to fall out and break his leg. Unbeknownst to you, you were sitting on 1 of 10 high-tech beta test trams, where the windows doubles as touch screens and a specific series of taps activates the emergency door opening. Given the odds of someone tapping the code to the emergency opening, the engineers never told the general public about the beta-test.

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37 In both cases you know there is an elderly man standing in a vulnerable position, and that all the other passengers are strictly Japanese speaking, which you are not.
The question is: should you be excused for breaking the old man’s leg in both cases? Let us run these cases against claims of availability. If it is true that availability is necessary for the epistemic condition, we should regard you as responsible in (A) and not responsible in (B), and intuitively, this seems right.\textsuperscript{38} Additionally, you did not actively disregard any opportunity to improve your epistemic situation. If the availability condition is such that the agent must actively engage in finding relevant information, how exhaustive research can we demand?

The WHDO condition could have some illuminating purpose in this discussion. It appears that the notion of guidance control, which is what the WHDO condition fundamentally relies on, must have some, at least rudimentary, framework of beliefs in which it operates.\textsuperscript{39} If it does not, guidance control would either be randomly directed at random actions or it would be impotent. Different frameworks of knowledge, then, will produce different ‘paths’ for guidance control to operate through, yielding different suggested actions. This is just to say, the more you know, the easier it is for you to reach your goal (at minimal moral expense) using guidance control. It is also to say that what you might be responsible for is to not expand your framework of knowledge to a sufficient degree for guidance control to operate according to your demands and what is morally demanded of you. So, my own theory will build on the idea that the above cases constitute grounds for thinking that availability is a necessary condition, and that responsibility for being culpably ignorant can transfer to responsibility for outcomes. In F*cking tourist, what explains that you seem responsible is that you should have known, which (in my view) entails that relevant information for the morally bad outcome was easy to access and such information would increase your understanding of the possibility that the action would lead to a morally bad outcome. A general formula would amount to something like the following:

S is culpably ignorant about the possible negative outcomes of X iff:

\begin{align*}
S \text{ had access to available evidence of the possible negative outcomes of } X
\end{align*}

\textsuperscript{38} I should mention that I have tried these cases with friends and family, some of which are philosophically trained, and their intuitions are fairly even, you are responsible in (A), and not in (B).

4.2. Is availability sufficient for culpable ignorance?

It seems like me, Wieland, and van Oeveren are in agreement about the necessity of availability for culpable ignorance, but the question now becomes whether or not it is sufficient? The challenge they pose to externalism is captured in the following case:

Case 1. Ann just bought a coffee in her favorite café owned by the fair trade brand ‘Happy Coffee’. Exceptionally, Happy Coffee has been conducting fraudulent business recently and selling Slave Coffee with a different label. Everyone, including Ann, knew that one shouldn’t buy coffee from Slave Coffee given massive exploitation in the supply chain. Unbeknownst to Ann, a good friend of hers, Friend, just discovered Happy Coffee’s fraud, and Ann could easily have asked Friend about it to inform herself.40

This case satisfies my condition of availability as well as Wieland and van Oeveren’s simple externalism, and accordingly, Ann is to blame for failing to inform herself about Happy Coffee’s slave trade fraudulence. However, Wieland and van Oeveren claim that such a verdict is inapt due to the fact that the fraud was unexpectable, making Case 1 a counterexample to externalism’s claim.41 Now, Wieland and van Oeveren explicitly state that unexpected blockers are the biggest problem for externalism, so a solution to this problem would be a welcome addition to any account of culpable ignorance. Before outlining my own claims, let us see what revision Wieland and van Oeveren make in order to save externalism from unexpected blockers:

S is blameworthy for not gathering B for A if B was available to S and for many similar series of S’s past actions similar to A, similar blockers for them were available to S.42

The amendment here is supposed to take care of blockers being unexpected - if S has a history of actions where blockers were available, it seems that the current blocker wasn’t unexpectable. Hence, it is not an extraordinary circumstance for S to have available

41 To be distinguished from Ann not expecting it.
42 Ibid.
blockers for the permissibility of A. I am not entirely convinced of this solution. If, for past actions, there were blockers available, but S never finds out that her actions had such blockers, why would she now believe that there are? It seems arbitrary that somewhere along the line of S’s history of prohibited actions with available blockers, she becomes culpable. How many instances of actions with blockers are necessary? Does S have to know that she has such a history of available blockers for actions? Additionally, recall Vargas’ intuitive account about what is reasonably foreseeable - the amount of blockers previously available has no effect on what is reasonable to foresee. That is, it is no more reasonable to foresee harmful outcomes with a history of blockers than it is without a history of blockers. We cannot, henceforth, fill in the blanks in Vargas’ account with Wieland’s and van Oeveren’s amendment.

Even though I contend that Wieland and van Oeveren’s solutions is flawed, I think we can safely say that availability, as it stands, is not sufficient for culpable ignorance. I believe that a second condition can be introduced to provide additional explanatory value, as well as avoiding counterexamples like Case I. Thus, my own explanation for why Ann, in Case I, is non-culpably ignorant is that she did not have any reason to improve her epistemic position regarding her coffee purchases. This will be the subject matter of the fifth and final section of this essay.

5.

Reasons and possible outcomes

5.1. Reasons to epistemically improve
Imagining a case where information is easily available, but in which there are no reasons for you to look for it. Reasons to improve your epistemic position seem to be prerequisite to availability, since it is only after you have some reason to investigate, that the availability of the information matters. As in Case I, reasons can help to explain why we think that availability matters for culpable ignorance. A lot of general information is now available through your fingertips, provided that you live in a country which is reasonably well off, but that does not mean that you can be regarded as responsible for some outcome, just in virtue of the fact that you had easy access to information relevant for you knowing the real possibility of that outcome. The explanation, as I see it, is that you had no reason to look for that information. A reason to improve your epistemic position, or a reason to doubt
your current beliefs in certain contexts, is, in Vargas’ terminology, necessary to ‘reasonably foresee’ some outcome. Similarly, the availability of information is crucial for responsibility, given that you already have such a reason. If you have a reason to investigate but information is scarce, or beyond your cognitive abilities, that could undermine responsibility. So, what you are regarded as morally responsible for, is a failure to respond to, or to recognize, your reasons for improving your epistemic position. In *F*ucking tourist our intuition to regard you as responsible is explained by the fact that you had reasons to inform yourself. In this case constituted by the fact that you were in a vastly different culture, where the set of actions causing harmful outcomes alters according to the norms, policies and values in that culture. The lower bar of cognitive abilities required for moral agency, guarantees the general understanding that if cultures are different, they have different practical arrangements, and in such cases the risk of harmful outcomes increase. The idea that reasons are related to blame and culpability is certainly not new, but as far as I can tell, it has never been clearly connected with availability to form an epistemic condition in the literature on moral responsibility.43

5.1.1. From general to particular knowledge
What does it mean to have a reason to improve your epistemic situation? As I suggested, being in a different context, in which you generally know that risks are high or many, gives you a reason to inform yourself. Our nature of being properly risk-aversive, often makes us want more particular knowledge, if we know that we are about to enter a new environment.44 I previously mentioned a distinction between general knowledge and particular knowledge that I think would be helpful. For example, if I have a general knowledge that cultures and cultural norms differ amongst groups, nations, or societies, it follows that if I were to enter such a group, nation, or society, I should know which particular things are different. If that is true, which I think it is, that gives you a reason to inform yourself about what those particular things are. It does not follow from this, however, that you have to be aware of that reason in order to be responsible for some


44 If you are not risk averse at all, but still qualify as a moral agent, that could be the upshot of either some previous culpable act or moral gambling, in which case blame seems appropriate.
negative outcome. It requires you to engage in some active deliberation to establish that you have a reason to improve your epistemic standing in virtue of having some piece of general knowledge. This, I gather, amounts to the claim that you sometimes have reasons of which you are not aware, which I do not find to be particularly unorthodox.\textsuperscript{45} But that is just one example of what could constitute a reason to actively inform yourself. Another could be that you know that, generally, minority groups can take offense by certain expressive terms. Suppose then that you were to encounter an individual from such a group and engage in conversation with him. At some point, you use one of these, to him, offensive terms. When confronted about it, you make it your defense that you were ignorant of the fact that this particular term was offensive to him. However, given that you had the general knowledge that sometimes, minority groups take offense of certain terms, you had reason to inform yourself of the terms which would constitute an offense to the person you are talking to. The easy fix here would be to simply ask if there are certain terminology that should be avoided before engaging in conversation.\textsuperscript{46}

There are cases in which a persons profession entails higher epistemic demands than that person would otherwise have. Doctors, nurses, and teachers are all bestowed with additional epistemic responsibilities in virtue of their professional position, which means that all of them have reasons for epistemic improvement, within the scope of their professional responsibilities toward a second party. In English Tort law this is referred to as having a ‘duty of care’. A doctor is responsible for any harm inflicted upon a patient, if it can be established that such a duty of care existed between the parties and that there was a breach of that duty. In cases where a breach can be identified, the doctor is considered liable for negligence in a way that does not require \textit{mens rea}. On the identification of what is entailed in a duty of care, we find that a person upon which this duty is bestowed must be able to reasonably foresee the harm.\textsuperscript{47} As we recognized from Vargas earlier, this condition is at best vague, but functions as a (somewhat) sound variable within the framework of

\textsuperscript{45} “…it is uncontroversial that an agent can have reasons to do things that she is not actually motivated to do (particularly if she is unaware of those reasons).” In Finlay, Stephen and Schroeder, Mark, (2015), ‘Reasons for Action: Internal vs. External’, \textit{The Stanford Encyclopedia of Philosophy}, Edward N. Zalta (ed.).

\textsuperscript{46} This example does not exclude that a person outside of certain groups can be just as offended by slurs or degrading expressions towards others. However, the set up of my example is made to illustrate the most obvious case. I admit that this is a far cry from being a conventional conversation style, and there are, of course, more smooth ways to enlighten yourself regarding what terms are permissible in different contexts.

\textsuperscript{47} In Donoghue vs. Stevenson: \url{http://www.bailii.org/uk/cases/UKHL/1932/100.html} and; Caparo Industries plc vs. Dickman: \url{http://www.bailii.org/uk/cases/UKHL/1990/2.html}. 

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law. The above serves as an indication that what we should reasonably foresee is subject to what we are expected to know, which varies from case to case and person to person. This subjective flare is what I was trying to achieve by making a distinction between ability and capacity, namely that what one can reasonably foresee must be subject to what epistemic demands you are under, which turns on what you have the ability to know. You cannot be culpably ignorant of that which you did not have the ability to understand.

In the case of uttering slurs to a member of a minority group, your culpable ignorance may be located in the fact that you did not recognize the reasons you had for improving your epistemic position. If you would have recognized such a reason and informed yourself (if the information was available in the terms stipulated above), you would presumably have vetoed any offensive expression.\textsuperscript{48} And as always, if you knew that a certain term was offensive but expressed it anyway, you would be culpable in virtue of knowingly doing something wrong.

So the claim is that we can regard you as culpably ignorant if you had some reason to improve on your epistemic situation, but failed to recognize that reason, and where that lack of recognition causes ignorance of facts relative and important to an action and its possible moral outcomes. This addition to a general formulation amounts to the following claim:

S is culpably ignorant about the possible negative outcomes of X iff:

(a) S has a reason to gather evidence about the possible negative outcomes of X.

(b) S has access to available evidence of the possible negative outcomes of X.

An objection to such a claim could be that it would render almost everyone responsible for everything all of the time. That is, the above proposition entails that you almost always have a reason to gather evidence, even if minimally so. Reasons here are, however, always connected to the possible harmful outcomes of actions. You might always have some weak reason to find out whether or not aliens have replaced your laptop keyboard with one that trigger bombs in orphanages every time you press a key, but in the next section I will

\textsuperscript{48} This claim suggests that recognizing a reason to epistemically improve is also grounds for acting freely. That is, if an agent has a reason to epistemically improve and acts on that reason, the agent is intentionally acting. This equivocation is drawn from Fisher and Ravizza (1998): “when an agent has guidance control, we assume that he performs the relevant action intentionally (i.e. for a reason)”, and if true, suggests, which Alfred Mele (2010) points out, that epistemic conditions are also conditions for acting freely.
argue that such objections fail in virtue of not constructing a reason properly - that there is no indication, sign, evidence, experience or other factors weighing in on such a reason. So probability assignments (or the real possibility of harmful outcomes) will be a crucial notion to discuss in relation to reasons, as what reasons you have may be linked to what the real possibility of a harmful outcome is.

5.1.2. Risk and possibilities

There are two different risk assessments at work here: one is coarse and related to reasons and general information, the other is more fine grained and related to particular information and specific acts. Let us start with the former. As I reasoned above, if you have the knowledge that some cultures have different norms, you should be able to deduce that certain behavior in such contexts produces harmful consequences. Another way to say this is that you should be able to infer a real possibility of harm within such contexts, i.e. some risk of wrongdoing. Since your knowledge is of a general type, the risk assessments will consequentially be coarse, but the important aspect is that it constitutes a reason for you to epistemically improve your position, thus getting a more accurate calculation of risk. Should you fail to recognize such a reason, the decision to act in a situation where the morally bad outcome has a risk of 1 to 5, that decision entails to (tacitly) take responsibility, should the outcome turn out to have overall morally bad consequences.

The second version of risk assessments is located in relation to specific acts. So, some specific act, in a certain context, has outcomes that are more probable than others, and the best way for you to assess those assignments more correctly is to inform yourself. Think of possible outcomes connected to the act of buying a sweater. You might know, statistically, that one in five clothing stores have sweatshops in Bangladesh, with horrible working

49 The idea that risk, probability, and possibles harms matters for the epistemic condition is supported in both Fisher and Ravizza (1998): “In some contexts, it seems appropriate to hold an agent responsible for a later action (or omission or consequence) that is extremely unlikely to occur, whereas in other contexts the extreme unlikelihood of (say) the action seems to rule out responsibility. This makes it reasonable to think that a full and explicit tracing approach would not specify a degree of likelihood that is always employed straightforwardly to ascertain responsibility; rather, the degree of likelihood employed by the tracing approach would need to be context-relative.” as well as in Vargas (2005); “[..] it seems that we demand that agents be differentially responsive to the probabilities of morally significant outcomes in complex ways.”

50 Or as Gary Watson describes it: “In general terms, these are, first, the capacities to “understand” one’s environment and the norms to which one is subject, and, second, to choose effectively and rationally in view of that understanding.” In Watson, Gary, (2013), ‘Moral Agency’, The International Encyclopedia of Ethics.
conditions and child labour. But you do not know which one, if any, of the five stores in your town has these sweatshops. If you decide to act and buy a sweater, you are accepting (consciously or unconsciously) that the ‘moral price’ of this act is a responsibility claim if you were to buy the sweater from the morally bad store. You accept, as it were, to be regarded as responsible if your action has a morally bad outcome.

However, if there were some piece of available information that would greatly improve your understanding of which store to avoid, in order to act morally, that information would greatly improve the strength of your belief, rendering a change in the possibility of a morally bad outcome. If at first, your belief was strictly statistical, it now has further justification. Let us say that the information is reliable, and that now, the risk that your action, to buy a sweater, would have a morally bad outcome has dropped significantly from 1 of 5 (or 20%) to somewhere in the vicinity of, say, 1 of 1000 (or 0.1%).\textsuperscript{51} There is still some risk, of course, that the store might have changed names and logos so that you actually buy the sweatshop sweater, but this would have to be considered as a case of non-culpable ignorance, as it would not be probable enough to constitute a reason. Additionally, the harm of the outcome is not great enough for such a possibility to entail a reason. It might also be the case that, in fact, all the five stores have sweatshops in Bangladesh, but four of them have been more successful in hiding that fact from the general public. This would, however, not count as a counterexample since it would not satisfy the availability condition. The working factor in determining culpability according to what risk there is that an action has a harmful outcome seems to be what evidence you have in favor of a risk assessment. Think about determining risk from a perspective of general knowledge. A low possibility of great harm, as well as a high possibility of minor harm, suggests a strong reason to epistemically improve. So in a case where the outcome of a particular action could result in someone’s death, for example, you have a moral reason to epistemically improve your current position, since your current epistemic position only allows you to make rather crude risk assessments. Let me illustrate:

\textit{Great harm, slight possibility}: Suppose you are trapped inside the control room of a nuclear power plant. You know that one of the many buttons on the control

\textsuperscript{51} To tell exactly how much the probability drops would certainly be an achievement, but I think it is uncontroversial to say that the reduction of probability depends entirely on the quality and quantity of the information, and that information here entails robustness in a common sensical way.
board will open the door to let you out, but you also suspect that some buttons will set off an irreversible process of a plant meltdown, causing massive harm to a lot of people. On the control board, there are a lot of buttons so the odds of you pushing the ‘meltdown’ button are really high. Given, however, the amount of harm that could prove to be the outcome of your decision to push some button in the hopes of getting out, deciding to act would be morally prohibited.

Additionally: there is a “nuclear power plant control board instructions for dummies” laying in a drawer next to the control board.

Minor harm, strong possibility: Suppose that there is a beach, extremely popular with the locals, in some area. The beach is open for nine days but closes every tenth day for maintenance. Above the beach is a rock positioned in a way that makes it impossible to see if someone is on the beach. You sit on the rock to have some coffee with a friend but the coffee tastes awful today and you feel like throwing it over the rock. You know about the maintenance routine but not if it is due today. Given the high risk that chucking the coffee over the rock would cause some minor harm, the decision to do so would be morally prohibited.

Additionally: there is a community bulletin board with beach maintenance information just shy of a 100 meters from the cliff.

In both cases you have some general knowledge, but the real possibility of harm derived from that knowledge leads to risk assessments that suggest the suspension of action. So, these cases illustrate the idea that certain risk assessments of harmful outcomes from certain acts can form a reason for the you to either: i) epistemically improve your position in order to access a better probability assignment, via the book or the bulletin board, or; ii) suspend action. In these cases, we have both conditions involved: availability and reasons. Another feature to take notice of is that in neither case the retrieval of the additional information would amount to any cost of the agent. Let us set up a parallel condition
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regarding when an agent has reasons to gather evidence, as a complement to the general formulation:

S is culpably ignorant about the possible negative outcomes of X iff:

(a) S has a reason to gather evidence about the possible negative outcomes of X.

(b) S has access to available evidence of the possible negative outcomes of X.

Additionally:

* S has a (moral) reason to gather evidence iff the expected harm caused by X will be reasonably large or severe.

This latter condition, where ‘expected harm’ should be understood as probability times harm and where ‘reasonably large or severe’, is open to whatever moral theory you prefer. A utilitarian could define something as being ‘reasonably large or severe’ when the costs of the outcome is larger than the cost of gathering evidence, someone sympathetic to virtue ethics could ask what a virtuous person would judge to be reasonably large or severe, or a deontologist could consider a definition in terms of violations of autonomy etc. The point is that this reasons-condition is sensitive to the subjective judgments S makes about what constitutes an expected harm, whatever the normative framework this judgments refers to. Furthermore, this implies that the expected harm of some possible outcome must override the expected harm that could follow from gathering evidence. Basically, it is not to say that you are under an obligation to epistemically improve at any cost.

A problem with this condition could be that S could claim to have adequately judged X-ing as not fulfilling the right hand side in the conditional, (that the expected harm caused by X will be reasonably large or severe), even though we would judge his judgments as irrational or factually wrong. Regrettably we might have to settle for a case-to-case evaluation about S’ judgment based on the particular circumstances, i.e. context, stress, rational inferences, what was at stake etc. Does this subjective flare threaten to collapse my conditions into the same realm of vagueness that we saw in, for example, Vargas? I do not think so. Following these conditions in an evaluation of S’s potential culpability, seem to be more potent in distinguishing between what was reasonably foreseeable at the time, and what was not. That is, we can use the facts surrounding the case and the ‘cognitive profile’ of the agent (or, the abilities of the agent) and evaluate to what extent the judgment of ex-
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5.1.3. Supportive frameworks in decisions, risk and precaution

Ideas similar to the ones I have tried to argue for above, can be found in Christian Munthe’s theory about responsibility and decisions. This normative notion is stipulated as separate from an agent’s character or rationality, the outcomes of actions, or whether or not the agent’s actions were factually wrong. According to this view, to act responsibly entails that even if the outcome was bad or the action was morally wrong, one can still claim that the decision to act was responsible, or at least permissible, given that the evidence supported such a decision, or that it was the decision amongst a set of possible decisions that entailed less harm. This reasoning fits nicely in my model, and seems intuitively correct. It also allows for gradual responsibility, as opposed to a binary ascription:

[…] the gradual model still leaves room for comparative judgements of responsibility that are powerful enough to ground a notion of irresponsibility relative to a situation of choice, or – if there is need for comparing options from different situations of choice – relative to a particular set of possible decisions. Hence, we may say that, relative to such a set, a particular decision is irresponsible if and only if at least one other decision belonging to this set would be more responsible. And if we add to this the claim that an option is responsible if, and only if, it is not irresponsible, this secures that, for each situation of choice, there is at least one option that is the responsible decision in this situation.

The idea, as I understand it, is that agents may be responsible for their decision to X, regardless of what sort of moral status X actually has, or what outcomes X produces. So, to make a responsible decision, is to decide in virtue of the set of decisions that are available and permissible. In any situation, the agent is subjected to a certain amount of evidence and consequently a certain set of decisions. If the agent choses a permissible option (and

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53 Authors italics. Ibid.
there were no other options that was more permissible) within that set, that choice satisfies what it takes to act responsibly, regardless of outcome or moral status of the action as such. According to the evidence and a principle of precaution, there should be at least one responsible decision.54

When faced with a decision involving some risk of harm, then, I make the more extensive claim that you have a reason to find out what decision would produce the least harm of the ones possible, not according to the evidence you currently possess, but from all available pieces of evidence, given that gathering such evidence does not bear more expected harm than not doing so. In the event of failing to recognize such a reason, a decision to X will, in my model, entail responsibility for the outcome of X.

5.2. Counterexamples

Let us now see if my version of externalism can hold water against the objections and counterexamples that Wieland and Oeveren make in their paper “Unexpected blockers”. Recall that their claim is that Ann, in Case I, is not blameworthy for buying slave coffee in virtue of the fact that the company that sold it were fraudulent in an exceptional way, thus making the fraud unexpectable. But the information about the company’s fraudulence was available for to Ann, so the condition of availability was still satisfied. This, they argued, makes externalism, at least in its simplest form, invalid. I agree with the conclusion given the premises, but suggest an alternative mode of revision. Instead of trying to dissolve the unexpectability by providing the agent with a history of available blockers, I suggest that an agent has to have some reason to epistemically improve, in order for blame to be appropriate. Given my model, then, there is an easy explanation as to why Ann is not culpably ignorant, even if she is ignorant - she had no reason to doubt her beliefs about the company’s fair trade policy. Not because of her history of available blockers, but due to the lack of signs needed to establish that the harmful outcomes of her actions would amount to a reasonably large harm. Counterexamples to simple externalism, then, is not

54 The precautionary principle have been formulated differently by different authors but I will follow Munthe’s suggestions that there are at least three key features:

“1. The Requirement of Precaution: Activities, which may bring great harm, should not be (or be allowed to be) undertaken unless they have been shown not to impose too serious risks. 2. The Proof Requirement of Justifiable Policy Claim: Policy measures against some activity that may bring great harm may be justified even if there is no scientific proof that this activity imposes (or would impose) this harm. 3. The Burden of Proof Requirement: Showing that some condition for the permissibility of activities is met is the responsibility of those who propose to undertake the activity in question.” Ibid. p.11.
counterexamples to my account. Case I is, however, not their only objection. Let us consider another case from Wieland and van Oeveren:

Case V. Ten years ago, Ann moved to a foreign city, Happytown. In those years, she regularly went to a café that presents itself as selling fair trade coffee. All that time, the café has been fraudulent and in fact supported horrible working conditions. In Happytown, this is common practice for the big brands. Thus, almost every big brand in that country presents itself as fair trade, while they in fact sell slave trade goods. Black, who now believes that Externalism*** is the correct account, has made the relevant blockers available to Ann. This time, he has masqueraded himself as a functionary in the Ministry of Home Affairs with a large network of business contacts. He knows about the fraud and has informed everyone in Happytown of it ages ago, except for Ann. Had Ann asked any of her fellow citizens in the past years, they would have told her about the fraud. Ann came from a country, though, where fraud with fair trade labels does not exist and she knows that it does not happen there. Furthermore, she has never been exposed to reasons to think that this might be different in other countries or elsewhere in the world. Hence it never occurs to her that she might need to inform herself about fraud.55

In this case, Wieland and Oeveren clearly states that Ann “[…] has never been exposed to reasons to think that this might be different in other countries or elsewhere in the world.” The very stipulation of this case rules out reasons as a vehicle for culpability, so in my view the verdict is easy - she is not culpably ignorant. But let us tweak the example. Say that Ann moved from Honestyland to Fraudlandia where in the former, fraudulence is non-existent and in the latter it is customary. She has the general knowledge that different countries have different political policies, cultural norms, business ethics, public demands etc. In short, she has the general knowledge that the outcomes that count as harmful in Honestyland is partly dependent on all of these factors. This, then, provides her with a reason to find out just what policies, norms, ethics and public demands determine what outcomes are harmful in Fraudlandia, given that the harm can be considered reasonably large. When adding this contextual notion to the general formula we get the following:

55 Externalism*** is the version of externalism that includes that agents has a history of available blockers. Wieland, Jan Willem & van Oeveren, Rutger, ‘Unexpected Blockers’, forthcoming.
S is culpably ignorant about the possible negative outcomes of X in C iff:

(a) S has a reason to gather evidence about the possible negative outcomes of X in C.

(b) S had access to available evidence of the possible negative outcomes of X in C.

Additionally:

* S has a (moral) reason to gather evidence iff the expected harm caused by X in C will be reasonably large or severe.

But what would happen if the context just altered ever so slightly? Say that the difference between Happyland and Fraudlandia is just that in the latter, selling slave coffee under fair trade flag is customary. The set of actions with possibly harmful outcomes in Fraudlandia is, other than this, exactly the same as in Happyland. Is this a reason for Ann to inform herself as to whether or not buying coffee is part of what is considered to have harmful outcomes in Fraudlandia? The slightly depressing answer is: it depends. If gathering evidence is more costly than the expected harm (on a utilitarian interpretation) this is not a reason for Ann.56 It also appears to depend partly on the availability condition: the level of availability matters for the judgment about expected harm. Easily accessed information about the negative consequences of purchasing coffee seems to suggest that the expected harm from gathering evidence is far less than purchasing coffee. It should be noted, however, that as far as policies go, you should know what the law says in the country you are in - if there was a law stating that it is illegal to buy slave coffee that is falsely labelled fair trade, but not to sell it, you would at least have a legal obligation to know this.

The account I have fashioned might not hold water in all cases, but I think it stands on reasonably firm ground compared to other accounts. My idea is that a full account of moral responsibility should be sensitive to the conditions according to which an agent is culpably ignorant. With reservation for using 1) and 2) as placeholders for fine grained accounts and that there are legal considerations concerning strict liability, I want to stress that these may be the relevant conditions for moral responsibility:

56 Or on a deontologists interpretation: if gathering evidence amounts to more violations of autonomy than the expected harm.
S is morally responsible for the negative outcomes of X in C iff:

1. S had control over performing X in C.
and
2. S knew that performing X in C would bring about negative outcomes.

Or:

1. S had control over performing X in C.
and
2* S was culpably ignorant about the possible negative outcomes of X in C iff:
   a. S had a reason to gather evidence about the possible negative outcomes of X in C.
   b. S had access to available evidence on the possible negative outcomes of X in C.

In an attempt to clarify and visualize the formal conditions, I have tried to make a flow chart that should help the reader through my line of thinking.

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**Fig:** Assume that S performs X in C and that it had a harmful outcome. If we want to find out if S is responsible for those negative outcomes we could ask these questions. In this model, S is responsible when satisfying (1) and (2) or (1) and (2*) where (2*) is satisfied when both (a) and (b) are satisfied.
The contribution of the above formula of culpable ignorance, as well as the conditions of having a reason, to the debate on the epistemic condition, is that it provides additional explanatory value vis-á-vis the interpretation of what it takes to reasonably foresee some harmful outcome, makes sense out of intuitions in tricky cases, accommodates a sensitivity to context, and handles outcomes instead of merely actions. The most important feature, however, is that it does not rely solely on an agent’s intentional moral shortcomings, as we could see that, for example, Haji’s account did.

6. Conclusion and final remarks

In this essay I have argued against what I consider to be an oversimplification of the epistemic condition in moral responsibility, and provided a suggestion of a new model. After a brief introduction and historical undertaking I argued that popular accounts of culpable ignorance in philosophy of law lacked the necessary constituents to be able to determine responsibility over all cases in the desideratum. My argument first built on the similarity of the M’Naghten rules and that of Ishtiyaque Haji, where the former only was able to determine whether or not the defendant constituted a moral agent or not (or whether or not the defendant was subject to liability). The latter was only able to assign responsibility in cases where the agent had some moral belief in play at the time of action, and thus could not declare responsibility in cases where the agent acted morally wrong without moral beliefs. Additionally, I argued that Haji’s account lacked merit in cases where an agent is responsible for the outcome of his action. I then proceeded to argue for the similarities between two other accounts, the ‘rational man’ view in philosophy of law and Manuel Vargas’ view of ‘reasonable foreseeability’. The argument made here was that both accounts had trouble explaining when, exactly, something was reasonably foreseeable in the latter and, conversely, when something was objectively knowable in terms of rationality, in the former. My point was that we cannot regard someone as responsible for something that was reasonably foreseeable, if we do not know what reasonably foreseeable entails and mutatis mutandis for the ‘objective-subjective’ view.

Since these accounts were vulnerable to such objections, I proceeded to look at accounts where some preceding epistemic improvement were obligatory on actions with possible moral consequences. These accounts suggested the availability of relevant information as a
condition for culpable ignorance, where the availability in and of itself rendered an externalist position and when paired with an agent’s belief that he should epistemically improve makes an internalist view. The externalist view was successfully argued against by several cases, but left a philosophical vacuum in terms of how to revise it. My suggestion was to introduce a second criterion on the epistemic condition - reasons. The idea was to successfully render the objections to externalism mute by explaining the cases in terms of reasons and availability - you are only culpably ignorant if there was a reason for you to epistemically improve and the relevant information was available. I then gave a substantial explanation of what I consider to be conditions for having such a reason, and how it relates to availability as well as principles of precaution and risk.

This work resulted in the conclusion that the epistemic condition ought to be understood as more complex, on the surface at least, than popular opinion would have you believe. I will not claim to have provided the final form of an epistemic condition on moral responsibility in this essay, only a version I believe will be nudging on the right variables for a plausible explanation about when an agent is exculpated in virtue of not knowing better. What I hope to have achieved is to draw attention to a problem embedded in theories regarding moral responsibility, which I believe has been somewhat overlooked.
List of references


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