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Dealing with Wayward Desire

Stephen P. Garvey

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Abstract The exercise of synchronic self-control is the way in which an actor can attempt to bring a desire into alignment with his better judgement at the moment and during the interval of time over which, but for the exercise of such self-control, the desire would become the actor's preponderant desire, which the actor would then translate into an act contrary to his better judgment. The moral psychology of an actor who fails to achieve such self-control can be analyzed in two ways. One way is meant to be consistent with compatibilist metaphysics; the other with libertarian metaphysics. The implications of these analyses for the criminal law are complicated, but perhaps the most important is this: the criminal law should in principle recognize a partial excuse for an actor who exercises synchronic self-control but who gives up his effort because he believes that he can no longer continue to resist. His effort to achieve self-control thus fails, and he ends up translating into action the very desire he set out to control.

Keywords Diachronic self-control · Synchronic self-control · Weakness of will · Akrasia · Partial excuse

Introduction

How should the criminal law deal with an offender who commits a crime under the influence of a strong desire to φ when the actor believes all things considered that he should not φ , when he has tried to resist the influence of the desire to φ , but when his effort has ended in failure? In other words, what should the criminal law do with the weak-willed (or akratic) offender? Should he be treated like an offender who commits the same offense but who made no effort to resist the wayward desire to φ , or indeed, like one who wholeheartedly identified with or endorsed that desire? Or should the weak-willed actor get a break of some sort for at least having tried to gain the upper hand on his wayward desire?

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In order to answer these questions, I begin with a description of the distinction between synchronic self-control and diachronic self-control. I then give two different accounts of what might be called the moral psychology of self-control, or more precisely, the moral psychology of failed synchronic self-control. One account is meant to be consistent with a compatibilist resolution to the problem of free will; the other is meant to be consistent with a libertarian resolution to that problem. Finally, I suggest that each of these accounts would, all else being equal, support the criminal law's recognition of a partial excuse for an actor who exercised, but unreasonably gave up his effort to achieve, synchronic self-control.

Synchronic and Diachronic Self-Control

Self-control can be either synchronic or diachronic. Synchronic self-control is the exercise of self-control from the moment in time at which, and during the interval of time over which, the strength of the actor's desire to φ would, but for the actor's exercise of self-control, exceed the strength of any countervailing desires. Consequently, if the actor's exercise of synchronic self-control fails, the actor's desire to φ , together with the requisite means-end belief, will cause the actor to form the volition needed to execute that desire, thereby translating that desire into an act the actor believes will satisfy it. Synchronic self-control, one might say, is self-control in the *here and now*. Such self-control is the last thing that stands between an actor and the realization of his desire to φ . It is the last thing that can prevent the actor from φ -ing. If an actor's exercise of synchronic self-control fails, he will φ .

Diachronic self-control is self-control an actor exercises prior to the point in time at which the strength of his desire to φ would, but for the exercise of synchronic self-control, exceed the strength of his countervailing desires. The wayward desire is either not yet occurrent (present to the actor's awareness), or if occurrent, not yet sufficiently strong to overtake countervailing desires. Diachronic self-control is therefore the form of self-control one exercises at time $t = 0$ in order to (a) foreclose the possibility that one's desire to φ will at time $t = 0 + n$ exceed the strength of countervailing desires, such that no effort to exercise synchronic self-control becomes necessary later on; or (b) make it impossible for one to execute the desire to φ should its strength later come to exceed that of countervailing desires. In other words, an actor may take steps prior to the point of no return in order to ensure that he never reaches that point, or he may take steps prior to the point of no return such that, should he happen to reach that point, he cannot move beyond it.

Efforts to eliminate a wayward desire from one's psychology would be an example of the first form of diachronic self-control, as would simply avoiding situations in which one realizes the wayward desire is apt to become preponderant. Ulysses' act of tying himself to the mast in order to render himself physically unable to respond to the Sirens' call would be an example of the second form of diachronic self-control. An actor's failure to take these diachronic steps may itself constitute a culpable omission, and if so, that omission may form the basis for claiming that the actor, if he ends up committing a crime, should not be entitled to assert in defense that he exercised synchronic self-control but failed to achieve it. That is, an actor's culpable failure to exercise diachronic self-control might result in the forfeiture of any defense based on his unsuccessful effort to achieve synchronic self-control.

However important or prevalent culpable failures to exercise diachronic self-control may be to the actual moral assessments we make, such failures are not my concern here.

On the contrary, I will assume that the actor comes to the bar of judgment with clean diachronic hands. He is culpable neither for acquiring, nor failing to dispossess himself of, the wayward desire to φ ; nor is he culpable for failing to take steps to keep the strength of that desire in check prior to the moment in time at which, and over the interval of time during which, the strength of that desire threatens to exceed the strength of countervailing desires.

Two Accounts of the Moral Psychology of Failed Synchronic Self-Control

I next describe two accounts of the moral psychology of self-control, one of which presupposes a compatibilist metaphysics (accepting the truth of determinism), and the other a libertarian metaphysics (rejecting it).¹ Both accounts assume that an actor is not responsible for what he does or chooses to do unless he could have done or chosen to do otherwise, and both accounts assume that at least some actors are responsible some of the time.

The main difference between the two accounts lies in the meaning each attaches to the proposition that an actor “could have done otherwise” if and because he could have exercised and achieved self-control. For the libertarian an actor’s capacity for self-control (and thus the capacity to do otherwise) is a contra-causal power that all agents are assumed to possess inasmuch as they are agents at all. An actor may be determined at any particular moment in time to do what he most strongly desires to do, but he nonetheless possesses the contra-causal power to control what at any particular moment he most strongly desires to do. For the compatibilist an actor possesses the capacity for self-control (and thus the capacity to do otherwise) insofar as he *would have* exercised self-control (and thus *would have* done otherwise) in a range of nearby possible worlds. Whether an actor possesses the capacity for self-control therefore entails a counterfactual inquiry into the course of events in nearby possible worlds. An actor who could have done otherwise in a suitable range of such worlds (but who could not have done otherwise in the actual world) is said to possess the capacity for self-control. Conversely, an actor who could not have done otherwise in a suitable range of such worlds (and who a fortiori could not have done otherwise in the actual world) is said to lack the capacity for self-control.

A Libertarian Account of Failed Synchronic Self-Control

The libertarian posits an actor’s capacity for self-control as a necessary feature of agency. This capacity consists in an actor’s contra-causal power to alter his extant balance of desire. All agents are assumed to possess this capacity. Indeed, the possession of this capacity is what makes them agents. If a putative agent is not thus equipped, then he is not an agent after all, nor therefore is he even eligible to be liable to the criminal law’s blame. For the libertarian, an actor’s choice whether or not to exercise his capacity for self-control is not to be explained in terms of yet further desires. In other words, the libertarian sees no need to explain an actor’s exercise of self-control as the result of a (second-order) desire to align his (first-order) desires with his all things considered judgment that he should or should not φ . An actor’s choice whether or not to exercise his capacity for self-control is to that degree irreducible.

¹ But see Weston (2005, p. 602) ([T]he relationship between free will and determinism is a false problem.).

An actor who believes all things considered that he should not φ , who nonetheless wants to φ , and who possesses the capacity to exercise self-control, can of course choose not to exercise that capacity. When an actor is described as “hot-headed” or “irascible,” such a description might be meant to convey that the actor is one who regularly or routinely chooses not to exercise his capacity for self-control. He chooses instead to let his desire have its way. It seems to me that such an actor should have no excuse when, having chosen not to exercise his capacity for self-control, his wayward desire carries the day, and his will ends up translating that desire into action through the formation of a volition to act as the desire bids him to act.

Alternatively, an actor might make no choice one way or the other. He does not choose to exercise his capacity for self-control, but neither does he choose not to exercise it. He neither chooses to try to control, nor does he choose not to try to control, his wayward desire. If we ask why an actor might make no choice either to exercise or not exercise his capacity for self-control, one possible answer is that he wrongly believed that he had no capacity for self-control. He sees himself as nothing more than an automaton, or a wanton, destined always to do as he most strongly desires to do at any moment in time. He regards himself as powerless to do other than that which he most wants to do. If one can imagine such a person (and I use the term loosely), then his failure to exercise his capacity for self-control should be excused, at least insofar as the belief that he is powerless to do other than that which he most desires to do is a belief he non-culpably possesses. In contrast, if an actor believes that he does possess the capacity for self-control but does not choose to exercise that capacity, then he would seem to be little different than the actor who chooses not to exercise it, and accordingly, he would lack any excuse when his wayward desire moves him to action.

Finally, suppose that the actor does choose to exercise his capacity for self-control. If this exercise ends in success, such that the actor’s desire to φ fails to overtake his countervailing desires, the actor will not form a volition that executes and translates his desire into action. He will have acted enkratically. He will have succeeded in achieving self-control, managing to keep his desire in alignment with his better judgment. But the exercise of self-control is no guarantee of success. An actor can exercise self-control but nonetheless fail to achieve it. How can the exercise of self-control fall short?

Self-control can be achieved in two different ways. Exercises of self-control can be characterized as skilled (or indirect), or brute (or direct).² An exercise of skilled self-control consists in an actor’s choice to deploy any of a number of strategies or techniques the aim of which is to decrease the strength of the wayward desire, or alternatively, to increase the strength of countervailing desires, or both. For example, counting to ten or otherwise rehearsing some mantra is a common technique. Imagining that the object of one’s desire, rather than being desirable, is in fact undesirable is another. Bringing vividly to one’s mind the costs associated with satisfying one’s wayward desire is yet another. If the strategy or technique works, the actor will achieve self-control.

An exercise of brute self-control is more difficult to conceptualize. Perhaps the best, but perhaps misleading, conceptualization is analogical: an actor’s exercise of brute self-control so as to prevent a wayward desire from becoming a preponderant desire is like the

² Mele (1987, p. 26). Although the exercise of synchronic self-control (whether interpreted along lines consistent with libertarianism or compatibilism) is here understood as a mental act of some sort, that understanding is not uncontroversial. Compare Mele (1997, 1998, 1999) (arguing that synchronic self-control is sometimes actional), and Zhu (2005) (same), with Kennett and Smith (1996, 1997) (arguing that synchronic self-control is always non-actional).

exercise of a muscle so as to perform an act requiring the use of that muscle.³ According to this line of thought, it will be increasingly more difficult for an actor to resist a wayward desire over time, much like a muscle becomes fatigued if exercised continuously over time. Indeed, it makes sense on this line of thought to say that an actor's capacity for self-control, if continuously taxed over an extended period of time, may simply 'give out,' much like the grip of an actor hanging by his fingertips over a cliff, or the resistance of an actor with a full bladder, will at some point, sooner or later, 'give out.'

In cases of this sort the movement of the actor's fingers causing him to fall, or the movement of the actor's bladder causing him to relieve himself, can fairly be described as involuntary. The actor's muscle has reached its breaking point. The analogy in the case of self-control would be that an actor's will-power can give out too, and once it does, the desire to φ causes the movement of his body without the formation of any intervening volition. Of course, the moment in time at which this breaking point is reached will depend on the strength of the actor's muscle. Moreover, muscles can be strengthened over time with the regular exercise of them, and so too, the argument goes, can the strength of an actor's will-power. In any event, if an actor's will-power truly does give out, and if the actor has not culpably failed to develop his will-power to achieve the strength he ought to have achieved, then his failure to achieve self-control should be excused.

Nonetheless, the idea that an actor's capacity to resist a wayward desire can profitably be analogized to the capacity of a muscle to move or resist the movement of the body has been forcefully challenged. The basic argument typically proceeds as follows. Imagine an actor who has made an effort at brute self-control but whose effort has failed. The actor claims that his will-power simply gave out: he could hold on no longer. Now imagine what would have happened if the actor believed that he would be killed if he did not continue to resist. If one believes that the actor, faced with such a threat, would have continued to resist, then the claim that his will-power gave out is false. Instead, the actor simply choose to *give up* his resistance, to *give into* or *yield to* the desire. In contrast, one's bladder will presumably, at some point, give out no matter what one believes will be the consequence when it does.

Faced with this challenge, the actor might switch exculpatory gears. He might admit that he did indeed give up. He chose to stop resisting. But he might go onto insist that it was reasonable for him to have given up: it would be unreasonable to have expected him to hold out any longer, even though he could have held out longer if he truly believed that giving up would mean getting killed. Accordingly, he claims that his decision to end his brute resistance should be excused. How should the law respond to such a plea? Or more generally, how should the criminal law respond when an actor claims that he committed a crime only because he succumbed to the pressure of a wayward desire that he claims in turn had become too much for him to continue to resist?

It depends. A criminal lawyer is apt to think about this question in terms of the defense of duress or coercion. An actor who commits a crime under duress has a valid defense. Standard cases of duress are those in which a third party threatens to harm an actor in some way unless the actor commits the crime that the third party wants him to commit, and where the threatened harm bears some specified relationship to the harm associated with the crime committed. The circumstances under which the law will recognize duress as a defense depends of course on the law of the jurisdiction in question. The common law, for example, is said to have limited claims of duress to cases in which the harm threatened was death or serious bodily injury, and where the harm associated with the crime committed

³ For more on the muscle analogy, see Holton and Shute (2007, p. 55), Holton (2003, pp. 53–61).

was something short of another's death. The Model Penal Code broadens the scope of the defense, making it available whenever the third party's use or threatened use of 'unlawful force' against his 'person or the person of another' was such that a 'person of reasonable firmness in [the actor's situation] would have been unable to resist.'⁴ In other words, the relationship between the harm threatened and the harm associated with the crime committed must be such that a 'person of reasonable firmness ... would have been unable to resist' the threat.

A case in which an actor gives into a wayward desire is not of course a standard case of duress, principally because the 'threat' comes from the actor himself, whereas in standard cases the threat comes from a third party. Nonetheless, duress would appear to be a natural place to look for some help in deciding if and when an actor should be excused because he gives into the 'threat' flowing from an unsatisfied desire.

Unfortunately, duress is a controversial defense. The controversy centers on the circumstances under which an actor's choice to perform an action can rightly be described as 'coerced,' and (a) whether an actor who performs such an action is properly portrayed as having acted in some sense as he was permitted to act, or (b) whether he is properly portrayed, not as having acted in any sense as he was permitted to act, but nonetheless as having an excuse for having so acted. Perhaps the most that can be said in light of this controversy is that ostensibly coercive circumstances can in principle provide an actor who chooses to commit a crime under such circumstances with three distinguishable grounds upon which to deflect liability in the name of duress.⁵

First, in some cases the threatened harm may actually be greater than the harm the actor needed to cause in order to avoid the threat, where the magnitude or seriousness of the harm threatened and the harm caused is assessed in an *agent-neutral* way. That is, the fact that the harm is being directed at the agent, or to someone with whom the agent identifies, is neither here nor there. Having compared the harm threatened and the harm caused in this light, if the harm threatened is greater than the harm caused, then the actor is permitted to cause the harm he needs to cause in order to avoid the threatened harm. On this account, the basis for a claim of duress is no different from the basis for a claim of necessity. The actor has chosen the lesser evil, where the respective evils are judged from an agent-neutral point of view. Duress so understood is an *agent-neutral* permission. The actor has caused a harm, but he has done nothing wrong, nothing he is not permitted to do, in the eyes of the law.

Second, in some cases the threatened harm may be greater than the harm the actor needed to cause in order to avoid the threat, but only where the magnitude or seriousness of the harm threatened and the harm caused is assessed in an *agent-relative* way. The fact that the harm threatened is being directed at the agent, or to someone with whom the agent identifies, *does* make a difference. When the agent explains why he yielded to the threat, the fact that the interest being threatened was *his* interest, or the interest of someone with whom he identified, is an essential part of the explanation. Again, having compared the harm threatened and the harm caused in this light, if the harm threatened is greater than the harm caused, then the actor is permitted to cause the harm he needs to cause in order to avoid the threatened harm. The actor has chosen the lesser evil, but only if the respective evils are judged from an agent-relative point of view, which is presumably not the law's point of view. On this account, duress is an *agent-relative* permission. The actor has again caused a harm, but now he has done something wrong in the eyes of the law. Nonetheless,

⁴ Model Penal Code Section 2.09(1).

⁵ Watson (2004, p. 340).

the law withholds its censure because the actor has done nothing wrong from a point of view to which the law is willing to defer.

Third, in some cases the threatened harm might not be greater than the harm the actor needed to cause in order to avoid the threat, no matter how one goes about assigning weights to the various interests at stake. If so, then what the actor did was on any account impermissible. Still, the intuition might persist that the actor should nonetheless be *excused* for his decision to cause the harm he needed to cause in order to avoid the threat, not because his giving in was in any sense permissible, but instead because even a person capable of the self-control we fairly demand of others—a person of reasonable firmness—would have done the same under the circumstances. Enduring the harm associated with a threat, so the thought goes, is sometimes too much for the law to demand, even though avoiding the threatened harm means causing a greater harm. In this case the actor has not only caused harm, he has also done something that he is not permitted to do, no matter how one evaluates the various interests at stake. Nonetheless, the law withholds its censure. On this account, duress is an *excuse*, and a complete one at that.⁶

Return now to the actor who gives up his brute resistance to his desire to φ . When an occurrent desire, whether to bring about or prevent a certain state of affairs, goes unsatisfied, the result can sometimes be that the actor experiences a form of psychic pain or discomfort, usually characterized as dysphoria, anxiety, tension or stress. The longer the actor resists, the more intense and more difficult to bear the dysphoria may become. Continued resistance thus means that the actor ends up threatening himself with ever-increasing dysphoria, which can only be alleviated if he gives up his resistance and commits the crime that his wayward desire bids him to commit. Imagine that an actor experiencing such dysphoria decides to give up his effort to control the desire the continued non-satisfaction of which is the proximate cause of that dysphoria. Instead, or in addition, he decides to act in such a way as to satisfy the desire and in so doing to put an end to the dysphoria. But ending the dysphoria also means committing a crime.

Now, it might turn out that an actor who commits a crime under these circumstances ought not to be condemned for his choice to give up further resistance. It all depends, so it would seem, on the intensity of the dysphoria he is experiencing and would continued to experience with unbroken resistance, on the one hand, and the seriousness of the crime needed to end it, on the other. If the dysphoria is intense enough, and the crime not so serious, such that the actor can be said to have acted under duress on at least one of the three accounts of duress, then the law should in principle withhold condemnation altogether, either because the actor was permitted to commit the crime, or because his commission of it was excusable. It might of course turn out that the dysphoria associated with unsatisfied desire can never be so intense that it could sustain a claim of duress under any of the foregoing accounts, save perhaps for cases involving the commission of the pettiest of offenses. Yet even if the actor cannot be said to have acted under duress, such that he was permitted to commit the crime or such that his commission of it was excusable, perhaps the law should nonetheless recognize the good-faith effort he has made to control his wayward desire, even though his effort was not good enough, assuming that the actor gave up his resistance because he believes that he could resist no longer. A partial excuse would be one way to mark this recognition.

⁶ But see Weston and Mangiafico (2003) (arguing that duress so conceived constitutes a justification defense).

A Compatibilist Account of Failed Synchronic Self-Control

Like the libertarian analysis of failed synchronic self-control, a compatibilist analysis begins from the premise that the actor believes all things considered that he ought not to φ but finds himself wanting to φ nonetheless. It also begins from the premise that the actor possesses the (or some) capacity for self-control. But the capacity for self-control means one thing for a libertarian and something different for a compatibilist.

When the libertarian says that an actor possesses the capacity for self-control he means that the actor possesses a contra-causal power to desire (and act) otherwise than he desires (and acts) in the actual world. In contrast, when the compatibilist says that an actor possesses the capacity for self-control, he means that, ignoring all features of the actual world except those properties that constitute an actor's capacity for self-control, the actor exercises and achieves self-control in a range of nearby possible worlds, such that the actor desires otherwise than he actually desires (and therefore acts otherwise than he actually acts), even though he could not have desired otherwise (and therefore could not have acted otherwise) in the actual world, and thus did not desire otherwise (and therefore did not act otherwise) than he did in the actual world.⁷

⁷ This account is drawn from Smith (2004, p. 132). Several points warrant emphasis. First, much of the contemporary compatibilist literature on free will and moral responsibility rejects the proposition or principle that an actor is responsible for what he does if and only if he could have done otherwise, generally known as the principle of alternative possibilities (or PAP). Many compatibilists reject this principle because they believe that so-called Frankfurt-type cases demonstrate that an actor can be responsible for an act even when the circumstances are such that he could not have done otherwise (see McKenna and Widerker 2003). Others reject it because they believe that a careful analysis of our moral practices of praising and blaming reveal that we do not in fact suppose that legitimate ascriptions of praise and blame depend on the existence of alternative possibilities (see Wallace 1994). In contrast, the compatibilism described in the text accepts the principle of alternative possibilities, such that an actor is not responsible for what he does if he could not have done otherwise, but construes that principle in such a way that its truth is compatible with the truth of determinism (Smith 2004; Vihvelin 2004). For criticisms of Smith's analysis, see Corrado (2000, p. 956, 2006, p. 138).

Second, on Smith's analysis, an actor's capacity to exercise and achieve self-control is a matter of degree, and as such, it makes sense to describe an actor as having a 'partial capacity' to exercise and achieve self-control (Smith 2001a, pp. 53–54, 2001b, p. 16). An actor's capacity is a matter of degree because the number of nearby possible worlds in which the actor exercises and achieves self-control can in principle range from 0 (no capacity) to ∞ (full capacity). An actor's capacity to exercise and achieve self-control can therefore be described as 'partial' when it falls somewhere in between.

Third, Smith's analysis is an analysis of what it *means* to say that an actor 'could (or could not) have done otherwise.' The *best evidence* of whether an actor could or could not have done otherwise is typically whether he has done otherwise in similar circumstances in the past. Smith (2001b, p. 14) ('[O]ur best evidence for the truth of the claim that [an actor] can exercise self-control, when he fails to do so, is very often that he usually succeeds when he tries.');

Smith (2001b, p. 17) ('Regular patterns in actuality are, quite in general, what provide us with such evidence as we have for the similarities and differences that obtain between the actual world and other possible worlds. But we must not let this epistemological point obscure the metaphysics of capacities.')

Fourth, accounts that analyze what it means to say that an actor 'could (or could not) have done otherwise' in terms of what he would have done if faced with some severe consequence like a 'gun at the head,' Morse (2000a, p. 29), such that an actor is said to possess the capacity to not- φ if and because he would not have φ 'd if the consequence of doing so would have been his death, almost inevitably end up rejecting the idea that any actor could ever be said to lack the capacity to control a desire whose satisfaction would result in his committing a crime: no desire can be fairly described as 'irresistible.' In other words, on this account an actor could have done otherwise if he would have done otherwise in at least one other possible world, no matter how remote that world might be from the actual world. On this point, I'm inclined to agree with Mele, who has argued that 'an agent's desire to A ... may properly count as irresistible even if he would successfully resist it in some extreme counterfactual scenarios' (Mele 2002, p. 163).

If an actor lacks the capacity to exercise and achieve self-control (understood in terms of possible worlds) over a wayward desire, then he should be excused. In such a case we might characterize the desire in question as ‘irresistible,’ such that the desire ‘compelled’ the actor to move in accordance with the desire, and did not simply ‘coerce’ him to do so. Indeed, we might even say that the desire caused the actor to move without any intervening ‘act of will.’ Assuming that an actor possesses the capacity for self-control, he can proceed in the face of a wayward desire in one of two ways. He can choose either to exercise or not to exercise that capacity, or he can make no choice one way or the other. If he chooses not to exercise that capacity, then he is entitled to no excuse. His choice is culpable. If he makes no choice one way or the other, such that once again his capacity for self-control goes unexercised, the question arises: Why not? Why did the actor not choose to exercise his capacity for self-control?

For a compatibilist, the answer would involve yet further beliefs and desires the actor possesses or failed to possess. Thus, an actor who could have exercised self-control but who made no choice to do so lacked either (a) any or sufficient desire or motivation to exercise his capacity for self-control, or (b) the belief that the exercise of that capacity would constitute a means to his desired end: the possession of a preponderant desire not to φ . One could of course press the issue and ask: Why did he lack *that* desire or *that* belief? The compatibilist answer would make reference to yet further desires and beliefs, and so on. At some point, however, ‘our explanations [will] run out,’⁸ and we will have to settle for whatever explanation we can manage. In any event, an actor who possesses the capacity for self-control, but who fails to exercise that capacity on a particular occasion because he lacks the desire or belief necessary to cause him to choose to exercise that capacity should, it seems to me, be excused if and when, having failed to exercise that capacity, he ends up executing the desire to φ . But his excuse should be only a partial one, at least if we assume that the actor had the capacity to have the desire and belief necessary to cause him to have chosen to exercise his capacity for self-control, even though he did not in fact have them.

Another possibility would be that the actor, although possessing the skills and will-power needed to achieve self-control, nonetheless lacked on the present occasion the desire or sufficient desire needed to deploy the skills or will-power at his disposal sufficient to achieve self-control, and thus failed to deploy them. Or maybe he was mistaken as to which of his skills or how much will-power it would take to resist the wayward desire. For example, perhaps the actor believed that deploying one of the skills in his repertoire would work, but he turned out to be mistaken. Or perhaps he believed that the brute self-control he exercised would suffice to achieve self-control, but again he turned out to be mistaken. In each of these cases, and in cases of a similar sort, it seems to me that a compatibilist would excuse the actor’s failure to achieve self-control, but the excuse would again be only partial. In other words, assuming that an actor had the capacity to have the desire and beliefs necessary for him to have deployed the wherewithal necessary to achieve self-control, the actor should get some credit for having tried to achieve it, but not full credit.

Finally, as in the libertarian analysis, we can imagine a case in which the actor exercises his capacity for brute self-control, but the anxiety and dysphoria associated with the continued exercise of that capacity are such that one would say that the actor’s choice to give up further resistance, and so instead to choose to commit the crime, was made under duress or coercion. The actor should in such a case have a full defense: His decision to give up was permissible under the circumstances, or at least (fully) excusable. On the other hand, if the actor decides to give up when doing so would be neither permissible nor

⁸ Smith (2004, p. 133).

excusable, then a partial excuse would seem to be appropriate, assuming that he gave up because he believed that he could no longer bear further resistance. He should again get at least some credit for having made the good-faith effort.

Consequences for the Criminal Law

What difference, if any, should the fact that an actor exercised his capacity for self-control, but failed to achieve such control, make to the substantive criminal law? It depends. It depends not only on whether a libertarian or compatibilist metaphysics is assumed, but also on why the actor failed to achieve self-control. For now, however, I want to focus on one case: the case in which an actor possesses the capacity for self-control (whether that capacity is given a libertarian or compatibilist interpretation), exercises that capacity, but unreasonably gives up his effort because continued resistance has become too hard for him, even though he believes that he can and should continue to resist. Both accounts described above suggest that such an actor should get a partial excuse.

As it now stands, the criminal law recognizes no such excuse. Indeed, one can fairly say that the criminal law is in general positively hostile to excuses based on defects of will. Consider the sorts of cases apt to prompt one at least to entertain the thought that a crime committed under the influence of desire might render the actor eligible for some sort of excuse. The cases that come to mind are those involving intense fears and anger, cravings, phobias and manias, addictions and provocations. Under some circumstances the criminal law does of course offer some relief to actors who commit crimes under the influence of such desires. The relevant doctrines would be insanity, duress, provocation, and diminished capacity (in its partial responsibility variant). Yet none of these doctrines affords what the criminal law needs: a partial excuse for any actor who exercises self-control but who unreasonably gives up his effort to achieve it.

An insanity defense based on the claim that the actor's desire was 'irresistible' should in principle provide a full excuse if indeed the desire was 'irresistible.' But even if we grant the existence of such desires, many jurisdictions do not recognize this form of the insanity defense. Moreover, even if a jurisdiction does recognize 'irresistible-impulse' insanity, the defense is available only to actors whose irresistible desire is the result of a mental disease or defect. In any event, my concern for now is not with actors who lack the capacity to control a wayward desire inasmuch as that desire is irresistible. My concern instead is with those actors who possess and indeed exercise their capacity for self-control but who fail to achieve it because in their mind the effort to achieve it has become too much.

A valid claim of duress would also be a full defense, but any such claim would be unavailable to an actor whose decision to give up his resistance in order to avoid or end the dysphoria associated with the non-satisfaction of a wayward desire is characterized as unreasonable. Moreover, duress typically requires that the threat causing the desire to commit the action constituting a crime comes from a third party. Even the Model Penal Code's relatively liberal approach to the scope of duress requires that the force or threat of force constituting the coercion be 'unlawful,' and human beings alone can use or threaten to use 'unlawful force.' Indeed, even if so-called 'situational duress' is recognized as a defense, the source of the threat must be still be external, not internal. In any event, my concern once again is with actors whose choice to give up resistance is on any account unreasonable, not with actors whose choice to give up resistance can be characterized as reasonable.

Provocation and diminished capacity might provide a partial defense in some of the cases I have in mind, at least (and not uncontroversially) if those doctrines are understood as providing a partial defense when an actor exercises self-control but unreasonably gives up when the effort becomes too hard. But the scope of these pleas is limited. Standard formulations of the provocation defense extend only to those actors in the grip of a strong desire resulting from some provocation, whereas strong desire can grip an actor even in the absence of anything amounting to provocation. Standard formulations of diminished capacity extend only to those actors who are in some sense abnormal, whereas an actor can presumably find himself in the grip of a strong desire but not otherwise be fairly described as abnormal. The bigger problem of course is that provocation and diminished capacity are limited to homicide. They reduce what would otherwise be murder to voluntary manslaughter, but with respect to other offenses, they provide no break whatsoever.

Reason and Will

The upshot is the need for the criminal law to recognize a generic partial excuse. Stephen Morse has recently identified much the same need. According to Morse, an actor who commits a crime under the influence of desire should be excused if, but only if, the desire has undermined or diminished his capacity for rationality—by which he means his capacity for *cognitive* rationality—and thus *a fortiori* has rendered him irrational. Moreover, inasmuch as the capacity for rationality is a ‘continuum concept,’⁹ an actor’s rationality and his capacity for rationality are a matter of degree. At some point we would say that an actor lacks the capacity for rationality altogether, such that Morse would then call him insane. He is beyond moral address and thus exempt or fully excused from praise or blame. Before that point is reached an actor’s capacity for rationality may have been sufficiently impaired or diminished such that we might say he deserves a partial excuse. In any event, an actor’s rationality or capacity for rationality, and thus the basis for the partial excuse Morse defends, has everything to do with his cognition; it has nothing to do with his volition, with controlling or failing to control desire’s influence on action.¹⁰

In contrast, the generic partial excuse defended here is based on the fact that the actor exercised self-control but failed to achieve it because he unreasonably gives up the effort. Such an actor can also be described as irrational, but his irrationality consists in the failure to do what he believes that he should do all things considered. He is practically, not cognitively, irrational. For Morse, however, the law should not for a variety of reasons recognize any defense based on alleged defects of will, practical irrationality, weakness of

⁹ Morse (2000, p. 255, 2003, p. 295). The extent to which an actor is cognitively irrational is presumably a fact about the actor the truth or falsity of which can be determined without reference to possible worlds. The extent to which an actor *lacks the capacity* for cognitive rationality is presumably a fact about the actor the truth or falsity of which can only be determined with reference to possible worlds. According to Morse, an actor’s capacity for rationality (or reason) in turn consists of ‘a congeries of abilities, including the ability to perceive relatively accurately, to reason instrumentally, to evaluate one’s actions in light of one’s reasons, to weigh appropriate considerations, and the like’ (Morse 2002, p. 1067). Insofar as any claim that an actor possesses or does not possess a particular capacity must for a compatibilist be understood in terms of possible worlds, it would seem to me that the same type of analysis can be used to understand claims to the effect that an actor could not have done otherwise because he lacked the capacity to do or choose to do otherwise. See Smith (2001b, p. 16) (‘[T]he sort of thing that makes *any* ... modal claim true or false ... [is] ... facts about the similarities that obtain between possible worlds.’) (emphasis added).

¹⁰ My analysis of Morse’s argument against the law’s recognition of an excuse or partial excuse premised on practical irrationality or weakness of will is based primarily on Morse (1994, 2003). For additional renditions of the general argument, see Morse (1998, 1999, 2000a, b, 2002, 2004, 2006, 2007).

will or whatnot. The difference between the generic partial excuse Morse defends and the generic partial excuse defended here might thus be understood (if only for dramatic contrast) as the difference between an excuse grounded in a defect of reason (cognitive irrationality) and one grounded in a defect of will (practical irrationality).¹¹

In order to see what is at stake here, consider the case of an actor suffering from I imagine it would be like to suffer from kleptomania. Such an actor sometimes experiences what would typically be described as an intense or overwhelming desire to steal the continued non-satisfaction of which causes him considerable and ever-increasing psychic distress. In addition, assume that (1) he does not identify with the desire to steal; (2) he is not culpable for coming into possession of the desire, nor for failing to dispossess himself of it; (3) he is not culpable for being in a situation in which his unsatisfied desire to steal causes him distress; (4) he does not believe that the law permits him to steal (on the contrary, he believes that he is not so permitted), even on those occasions when the non-satisfaction of the desire to steal causes him distress; (5) he exercises self-control but fails to achieve it such that his (intrinsic) desire to avoid the dysphoria he is experiencing becomes his strongest desire; (6) the only way to satisfy his desire to end the mounting distress is to satisfy his (instrumental) desire to steal; (7) he forms a volition that translates his desire to end the dysphoria into action;¹² and (8) his choice to give up his resistance is neither permissible nor (fully) excusable.

How do you react to such facts? My own reaction is one of some measure of sympathy, at least in comparison to the actor who steals without experiencing the dysphoria associated with kleptomania. For although the kleptomaniac failed to control his desire to steal, and although he could and should have controlled his desire to steal, he nonetheless ought to earn some merit for the good-faith effort he made to achieve such control, even though in the end he chose to give up that effort.

Morse might respond to this reaction and the supposed basis for it—the kleptomaniac’s practical irrationality or weakness of will—in one of two ways. First, he might agree that sympathy for the kleptomaniac is an appropriate reaction, but if and only insofar as the kleptomaniac is cognitively irrational. Second, insofar as one’s sympathy for the kleptomaniac is indeed based on his supposed practical irrationality (and not his cognitive irrationality), Morse would likely say that any such sympathy is simply inappropriate.

First Response

Morse might first argue that what really explains any sympathy one has for the kleptomaniac is not that he suffered from any defect of will (practical irrationality, weakness of will, etc.), but rather that he suffered from a defect of reason (cognitive irrationality). Indeed, the only appropriate basis for any sympathy toward him, according to Morse, is the fact (insofar as it is a fact) that his unsatisfied desire to steal and its associated dysphoria caused him to some degree or another to be unable to ‘think straight,’ or to ‘think[]

¹¹ The generic partial excuse defended here should be seen, not as a substitute for the partial excuse Morse defends, but as a supplement to it.

¹² Drawing on the work of Michael Moore, Morse conceives of the will as nothing more than a mental state—a volition or bare intention—the function of which is to bridge the gap between more complex or general intentions and action, or in other words, to execute intentions into action (Moore 1993; Morse 1994, pp. 1595–1596). On this conception of the will, the kleptomaniac suffers from no defect of will, inasmuch as he does indeed effectively form a volition that translates desire into action.

rationally.’¹³ If his irrationality was profound enough, then he should be excused (or exempted) from criminal liability altogether. He would no longer be a fit subject for moral address. Short of that point, he might be eligible for a partial excuse.

Perhaps, but unless the actor’s desire to steal caused him to believe that the law permitted him to steal, or caused him not to believe that the law prohibited stealing, why should the fact that he cannot otherwise ‘think straight’ matter to our assessment of his criminal culpability? We are assuming that the law does not in fact permit him to steal despite the fact that not stealing will cause him considerable dysphoria, and moreover, we are assuming that he realizes the law places this demand on him. However much his unsatisfied desire clouds his mind and inhibits his ability to think straight, he is not so befuddled that he actually comes to believe that the law would condone his stealing. If we nonetheless continue to believe that the law should treat him less harshly than his otherwise similarly-situated counterpart who makes no effort to control his wayward desire, then it would seem that our sympathy must be a reaction to the simple fact that he, unlike his counterpart, at least made a good-faith effort to achieve self-control.¹⁴

Second Response

Inasmuch as the kleptomaniac is not cognitively irrational, Morse would probably insist that any sympathy for him is misplaced. In order to see why he asks us to consider the case of the ‘moneyphile,’ who steals because he has a strong desire for money. The only material difference between the moneyphile and the kleptomaniac, we are to suppose, is that the moneyphile, unlike the kleptomaniac, is ‘exceptionally greedy.’ Otherwise, they are the same. Most importantly, they both steal in order to avoid or end the same subjectively-experienced dysphoria that comes from not stealing. The moneyphile argument against recognizing a partial defense for the kleptomaniac based on the kleptomaniac’s practical irrationality proceeds in three simple steps:

Premise 1: The moneyphile should not be excused at all. The moneyphile case is a case of ‘clear-headed akrasia—that is, normal weakness of will—[for which] the agent [is] fully responsible.’¹⁵

Premise 2: The case of the kleptomaniac cannot be distinguished in a principled way from that of the moneyphile.

Conclusion: The kleptomaniac should not be excused (unless and only insofar as he is cognitively irrational).

My objection is to the first premise. It seems to me mistaken to say that a case of ‘clear-headed akrasia’—a case in which an actor tries but fails to control his wayward desire—is one in which the actor is just as culpable as his non-akratic twin. Moreover, it is a mistake whether the desire to steal is linked to kleptomania or moneyphilia. Insofar as both cases are in fact cases involving practical irrationality or weakness of will in which the actor tried but failed to control his wayward desire, they should be treated the same. My disagreement with Morse can therefore be traced to first principles. *Is an actor who commits a*

¹³ Morse (1994, p. 1624).

¹⁴ In his earlier writings, Morse suggested that cases like that of our imagined kleptomaniac might be cases in which the wayward desire *itself* is irrational, such that what accounts for any sympathy one might have toward him is his supposed *conative* irrationality (Morse 1994, p. 1624). In his later writing, Morse seems to have abandoned this position (Morse 2002, p. 1069).

¹⁵ Morse (1994, p. 1630) (emphasis added).

crime due to practical irrationality or weakness of will no different than, and just as culpable as, one who makes no effort to control his wayward desire, or indeed, one who actually embraces or identifies with it (and as such makes no effort to control it)? I don't think so.

I suspect that insofar as the case of the moneyphile leads one to nod in agreement with the first premise, it does so because we really don't believe that the moneyphile case is a case of weakness of will, even though we are supposed to believe that it is. Instead, we are likely to imagine that the moneyphile is an actor who wants the cash, realizes that the law does not permit him to take it, and then takes it anyway—without any effort at all to reign himself in. If so, then no one should object when the moneyphile gets the full measure of his just deserts. But if (as we are supposed to believe) the moneyphile wants the cash, realizes that the law does not permit him to take it, and makes a good-faith but ultimately unsuccessful effort to resist the desire to grab the cash, then my reaction changes. The moneyphile should get a partial excuse. Moreover, if we grant the truth of the second premise, as I would be happy to do, then the kleptomaniac should get a partial excuse too.

Objections

One might raise at least two objections to a proposal that the criminal law recognize a generic partial excuse based on an actor's failed attempt to achieve synchronic self-control.

Objection One

The first objection holds that weakness of will, though not completely without relevance to how the criminal law deals with offenders, should be irrelevant as a *defense*. It should instead be one among the many facts considered in mitigation at sentencing.

Perhaps. It seems to me, however, that an important difference *does* exist between a crime that results from weakness of will and one in which the actor makes no effort to resist a wayward desire. The former seems to me less culpable than the latter, and moreover, the difference between them seems best understood as a difference in kind, and not just in degree. If so, then a crime committed only after an actor has struggled not to commit it should be understood as an offense of a different order than one committed in the absence of any such struggle, even though it remains the case that neither crime would have happened if the actor had not in the end formed a volition translating desire into action. The law should mark this distinction as clearly as it can.

Probably the simplest way to do so would be to permit the jury to return a special verdict reflecting the fact that defendant made a good-faith, though ultimately unsuccessful, effort to comply with the law's demands.¹⁶ Of course, within the class of weak-willed offenses, it may have been more difficult for one offender to have controlled his wayward desire compared to another, or put otherwise, the capacity of one offender to have successfully exercised self-control may have been more diminished compared to another. These differences can and should be taken into account at sentencing.

¹⁶ I thank Doug Husak for pressing me on this point. Morse calls for a verdict of 'guilty but partially responsible' (GPR) if the jury finds that the defendant at the time of the crime 'suffered from substantially diminished responsibility for which the defendant was not responsible and which substantially affected the defendant's criminal conduct' (Morse 2003, p. 300).

Objection Two

The second objection holds that recognizing weakness of will as a partial defense will do more harm than good; as such, the criminal law should decline any invitation to do so. The objection proceeds as follows. A finder of fact can never have much confidence in his judgment that an actor who claims to have exercised synchronic self-control (but failed to achieve it) either did or did not really do so. Indeed, it might even be true that in some cases the actor himself might not have much confidence in his own judgment as to what he did or did not do. Imagine how easy it is to deceive oneself into believing that one tried one's best to control the desire for that drink, that cigarette, or that lovely piece of chocolate cake. Consequently, a finder of fact might wrongly conclude that an actor tried to exercise self-control when in fact he did not, thus extending a partial excuse to which the actor is not in fact entitled. On one side of the balance is the cost of such false-positives.

On the other side is the cost associated with false-negatives. If the law does not recognize a partial defense, then defendants who exercise self-control (but fail to achieve it) will be treated as if they made no effort at all. Yet, the objection proceeds, the incidence of these cases is apt to be quite small, for at least two reasons. First, in many cases in which an actor finds himself in a situation in which he needs to exercise synchronic self-control, he should have realized that he might or would find himself in that situation, such that he should have avoided it in the first place. His failure to do so is therefore culpable, and moreover, supplies a basis for denying him any partial defense to which he might otherwise have been entitled. In other words, in many cases in which an actor exercises synchronic self-control (but fails to achieve it), he can fairly be held to forfeit any defense predicated on the exercise of such self-control, if and because he culpably failed to exercise diachronic self-control.

Second, any case in which we might be inclined to say that an actor should be partially excused on the ground that he tried but failed to achieve synchronic self-control will almost invariably also be a case in which the actor is to some extent or another cognitively irrational, in which case he should be partially excused on grounds of irrationality. In other words, rare will be the defendant who should be partially excused for having tried unsuccessfully to achieve self-control but who would not be already be partially excused on the basis of irrationality (assuming the law recognizes such a defense). Rare will be the case that falls between the gap, since the gap, if any, is so small. Thus, all in all, little is to be gained (in terms of false-negatives avoided), and much is to be lost (in terms of false-positives produced) if the law recognizes a partial excuse based on an actor's failed effort to achieve self-control.

Much the same objection was of course directed at irresistible impulse and cognate tests for insanity. According to the American Psychiatric Association's Statement on the Insanity Defense, the 'line between an irresistible impulse and an impulse not resisted is probably no sharper than that between twilight and dusk,' and as such a trier of fact would have a hard time indeed distinguishing cases in which an actor lacked the capacity to exercise self-control from those in which he simply chose not to exercise it. Consequently, mistakes will be made: finders of fact will sometimes acquit defendants who are not insane. Of course, if actors who lack the capacity for self-control should be excused, but the law provides no basis upon which they can be excused, then the opposite error will arise: actors who should be acquitted on grounds of insanity will nonetheless be convicted and sent to prison.

At the end of the day, the question is how the cost of false-positives should be balanced against the cost of false-negatives. Reasonable minds can disagree. What can be said,

however, is that the question is a second-order one. As such it presupposes that an actor who tries but fails to achieve self-control is less culpable than one who makes no such effort (as of course is an actor who lacks the capacity to exercise such self-control). It can also be said that each false-negative means that the state will be guilty of punishing a person more than he deserves to be punished (or of punishing him when he does not deserve to be punished at all), whereas each false-positive means that state will be guilty of failing to punish a person as much as he deserves to be punished (or of sending him to a mental institution when he deserves to go to prison). If it makes sense to say that the former injustice is *ceteris paribus* worse than the latter, then perhaps it also makes sense to allocate the burden of proof to those who reject the idea that the law should recognize an actor's failure to achieve self-control as a partial defense.

Conclusion

The suggestion has been made that the criminal law can manage quite well with a minimalist idea of the will, according to which the will is nothing more than a mental state commonly called a volition whose work is limited to executing background intentions into bodily movement. With this minimalist conception of the will in place, the suggestion is further made that most of the excusing work the criminal law needs to do can be accomplished without asking whether the actor suffered from anything we might call a defect of will. It need only ask whether he suffered from what we might call a defect of reason. I hope to have made some progress toward resisting these suggestions. A more robust notion of the will, according to which the will is understood not only as the capacity to translate desires into action but also as the capacity to resist their translation into action, has an important and legitimate place in moral psychology. It may also have a legitimate place in the criminal law, and if it does, then the criminal law should be amenable to the possibility of excuses based on defects of will, in addition to those based on defects of reason. Can the criminal law really live by reason alone?

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References

- American Law Institute. (1985). *Model penal code*. Philadelphia: The American Law Institute.
- Corrado, M. (2000). Addiction and causation. *San Diego Law Review*, 37, 913–957.
- Corrado, M. L. (2006). Addiction and the theory of action. *Quinnipiac Law Review*, 25, 117–146.
- Holton, R. (2003). How is strength of will possible? In S. Stroud & C. Tappolet (Eds.), *Weakness of will and practical irrationality* (p. 39). Oxford: Clarendon Press.
- Holton, R., & Shute, S. (2007). Self-control in the modern provocation defense. *Oxford Journal of Legal Studies*, 27, 49–73.
- Kennett, J., & Smith, M. (1996). Frog and toad lose control. *Analysis*, 56, 63–73.
- Kennett, J., & Smith, M. (1997). Synchronic self-control is always non-actional. *Analysis*, 56, 123–131.
- McKenna, M., & Widerker, D. (2003). Introduction. In D. Widerker & M. McKenna (Eds.), *Moral responsibility and alternative possibilities: Essays on the importance of alternative possibilities* (p. 1). England: Ashgate.
- Mele, A. R. (1987). *Irrationality: An essay on akrasia, self-deception, and self-control*. Oxford: Oxford University Press.

- Mele, A. (1997). Understanding self-control: Kennett and Smith on frog and toad. *Analysis*, 57, 119–123.
- Mele, A. (1998). Synchronic self-control revisited: Frog and toad shape up. *Analysis*, 58, 305–310.
- Mele, A. (1999). Motivation, self-control, and the agglomeration of desires. *Facta Philosophia*, 1, 77–86.
- Mele, A. R. (2002). Akratias and addicts. *American Philosophical Quarterly*, 39, 153–167.
- Moore, M. (1993). *Act and crime: The philosophy of action and its implications for criminal law*. Oxford: Clarendon Press.
- Morse, S. J. (1994). Culpability and control. *University of Pennsylvania Law Review*, 142, 1587–1660.
- Morse, S. J. (1998). Excusing and the new excuse defenses: A legal and conceptual review. In M. Tonry (Ed.), *Crime & justice: A review of research* (Vol. 23, p. 329). Chicago: University of Chicago Press.
- Morse, S. J. (1999). Crazy reasons. *Journal of Contemporary Legal Issues*, 10, 189–226.
- Morse, S. J. (2000a). Hooked on hype: Addiction and responsibility. *Law and Philosophy*, 19, 1–49.
- Morse, S. J. (2000b). Rationality and responsibility. *Southern California Law Review*, 74, 251–268.
- Morse, S. J. (2002). Uncontrollable urges and irrational people. *Virginia Law Review*, 88, 1025–1078.
- Morse, S. J. (2003). Diminished rationality, diminished responsibility. *Ohio State Journal of Criminal Law*, 1, 289–308.
- Morse, S. J. (2004). Reason, results, and criminal responsibility. *University of Illinois Law Review*, 2004, 363–444.
- Morse, S. J. (2006). Addiction, genetics, and criminal responsibility. *Law & Contemporary Problems*, 69, 165–207.
- Morse, S. J. (2007). Thoroughly modern: Sir Fitzjames Stephen on criminal responsibility. *Ohio State Journal of Criminal Law*, 5, 505–522.
- Smith, M. (2001a). Irresistible impulse. In N. Naffine, R. Owens, & J. Williams (Eds.), *Intention in law and philosophy* (p. 37). England: Dartmouth Publishing Company.
- Smith, M. (2001b). Responsibility and self-control. In P. Cane & J. Gardner (Eds.), *Relating to responsibility* (p. 1). Oxford: Hart Publishing.
- Smith, M. (2004). Rational capacities. In M. Smith (Ed.), *Ethics and the a priori* (p. 114). Cambridge: Cambridge University Press.
- Vihvelin, K. (2004). Free will demystified: A dispositional account. *Philosophical Topics*, 32, 427–450.
- Wallace, R. J. (1994). *Responsibility and the moral sentiments*. Cambridge: Harvard University Press.
- Watson, G. (2004). Excusing addiction. In G. Watson (Ed.), *Agency and answerability* (p. 318). Oxford: Clarendon Press.
- Weston, P. (2005). Getting the fly out of the bottle: The false problem of free will and determinism. *Buffalo Criminal Law Review*, 8, 599–652.
- Weston, P., & Mangiafico, J. (2003). The criminal defense of duress: A justification, not an excuse—and why it matters. *Buffalo Criminal Law Review*, 6, 833–950.
- Zhu, J. (2005). Explaining synchronic self-control. *Southern Journal of Philosophy*, 43, 475–492.