

BLAME, DESERT, AND TERMINATION

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Dedicated to my parents.

ABSTRACT

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This dissertation concerns the ethics of responding to transgressors of morality through means available to us as members of society (as opposed to the question of how the state ought to respond to wrongdoers). I focus on the question of how firms should respond when an employee is the subject of mass outrage due to performing some allegedly immoral conduct outside the workplace. Since managers often feel pressure to respond swiftly in such scenarios, it is important that they have clarity about the normative issues. The first step of the argument involves defending the claim that firings in certain contexts constitute expressions of blame. The second step of the argument discusses the nature and ethics of blame. In particular, I argue that since blaming is a communal practice, there are coordination problems that prospective blamers must attend to and that the appropriateness of an act of blame depends on how much others blame. I conclude that there is strong moral reason against firing an employee in response to outside of work immoral conduct that generates mass outrage.

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CHAPTER 1: INTRODUCTION

Introduction

Many of us work. Many of us also act in ways that, at least occasionally, violate standards that have a social or communal character—e.g., through breaching etiquette, flouting norms, or transgressing morality. Sometimes, these violations happen when we are away from work. While the facts that people work and violate such standards when away from work have been true for centuries, recent technological advances, most notably social media, affect the nature of how we as a community should respond to these violations in normatively significant ways. Importantly, these advances also affect how employers should respond to these violations in normatively significant ways.

This dissertation concerns the ethics of responding to transgressors of morality through means available to us as members of society (as opposed to how the state ought to respond to wrongdoers). I am especially interested in the question of how an employer should act in response to an employee's outside of work immoral conduct that gives rise to a "Twitter trial." Roughly, a Twitter trial involves mass social media outrage directed at someone for performing allegedly immoral conduct. Here is one such example.

Shortly prior to taking off from Heathrow International Airport to spend the holidays with her family in Cape Town, Justine Sacco tweeted: "Going to Africa. Hope I don't get AIDS. Just kidding. I'm white!"¹ While she was airborne, unbeknownst to Sacco, her tweet went viral. By the time she landed in South Africa, her social media accounts and

¹ Jon Ronson, *So You've Been Publicly Shamed* (Picador, 2015), 68.

e-mail were flooded with condemnatory messages. At the time of her tweet, Sacco was thirty years of age and a senior director for corporate communications for an internet and media business company, InterActive Corp (IAC). In the month prior to her tweet, the name “Justine Sacco” was searched on Google thirty times. In the ten days following her tweet, it was searched 1,220,000 times.²

Before Sacco’s flight had landed, IAC publicly stated, “This is an outrageous, offensive comment that does not reflect the views and values of IAC. Unfortunately, the employee in question is unreachable on an international flight, but this is a very serious matter and we are taking appropriate action.”³ IAC fired Sacco within a day.

When an employee is at the center of a Twitter trial, businesses commonly respond by firing the employee. The scenario involving Sacco is a paradigm example of a Twitter trial. To be clear, it is not the fact that Sacco wrote the message on Twitter that makes it a Twitter trial, but rather, it is the social media outrage on Twitter (or other social media); Twitter trials can occur for conduct or speech that does not occur on the internet.

In this dissertation, I defend the following thesis: firing an employee in response to his or her outside of work immoral conduct that gives rise to a Twitter trial constitutes an inappropriate form of blame. To arrive at this thesis, I defend the following:

² Ibid., 71. Some social media commentators were calling for Sacco to be fired (“#IAC needs to fire this racist, stupid bitch!”), others were enthusiastically waiting to see how events would unfold (“We are about to watch [Sacco] get fired. In REAL time. Before she even KNOWS she’s getting fired.”), and still others were rejoicing in her sudden ignominy (“I cannot stop laughing at the sheer stupidity of #JustineSacco, enjoy your time in the unemployment line...”). The social media responses to Sacco’s tweet seem to sometimes take the form of what Justin Tosi and Brandon Warmke call *moral grandstanding*. Moral grandstanding involves, roughly, engaging in public moral discourse to solicit positive moral judgments about one’s own moral respectability. See Justin Tosi and Brandon Warmke, “Moral Grandstanding,” *Philosophy & Public Affairs* 44, no. 3 (June 1, 2016): 197–217.

³ Ted Coine and Mark Babbitt, *A World Gone Social: How Companies Must Adapt to Survive* (New York: AMACOM, 2014), 29.

1. *The Firing Claim*: Firing an employee in response to mass social media outrage brought about by the employee's allegedly immoral conduct constitutes an expression of blame.
2. *The Additivity Principle*: The appropriateness of an act of blame depends on how much others blame.

The first is a claim unique to organizational contexts. The second is a general principle relevant in any instance one is blaming another, but it is especially salient in the context of Twitter trials.

Firing an employee can be a decision of significant consequence. Nevertheless, in the United States, the overwhelming majority of states presume employment at-will (EAW). This is the legal presumption that employers can terminate an employee for good reason, bad reason, or no reason, and with or without warning.⁴ While some philosophers and business ethicists have argued that such a view of the employment relation is morally problematic,⁵ little philosophical attention has been devoted to the ethics of firing an employee for immoral conduct.⁶ Some legal scholars who have written about immoral conduct outside of the workplace have done so under the heading of "lifestyle

⁴ Similarly, employees can quit with or without reason and with or without warning. There are certain exceptions to employment at-will, namely, the constitutionally protected classes: race, gender, sexual orientation, and so on—see, Mark Bennett, Donald Polden, and Howard Ruben, *Employment Relationships: Law & Practice*, LSLF (Aspen Publishers, 1998). There are interesting philosophical questions that arise with regard to the extent to which the employment relation is symmetrical (e.g., is it permissible for an employee to quit a job due to a manager's immoral conduct outside of work?).

⁵ See, for example, R.T. De George, *Business Ethics* (Prentice Hall, 1995); Patricia Werhane and Tara J Radin, "Employment at Will and Due Process," *Ethical Issues in Business: A Philosophical Approach* (6th Ed.). Upper Saddle River, NJ: Prentice Hall, 1999; Patricia Werhane, Tara J Radin, and Norman E Bowie, *Employment and Employee Rights* (John Wiley & Sons, 2008); John J McCall, "A Defense of Just Cause Dismissal Rules," *Business Ethics Quarterly* 13, no. 2 (2003): 151–75.

⁶ For a discussion regarding how firing an employee for outside of work conduct can impact free speech and its associated moral and political values, see Bruce Barry, *Speechless: The Erosion of Free Expression in the American Workplace* (Berrett-Koehler Publishers, 2007); Bruce Barry, "The Cringing and the Craven: Freedom of Expression In, Around, and beyond the Workplace," *Business Ethics Quarterly* 17, no. 2 (2007): 263–96.

discrimination.”⁷ Unfortunately, however, these scholars provide little in terms of moral argument for the wrongness of firing an employee for off-duty immoral conduct. I argue that a manager’s discretion to fire an employee for off-duty immoral conduct is more morally limited than is commonly understood. Even if a business is not concerned with the employee’s immoral conduct per se, but is rather strictly concerned about public relations, my arguments provide strong moral reason against firing an employee in response to outside of work immoral conduct in certain contexts.

The thesis I defend might strike some as counterintuitive, because if businesses are morally permitted to fire employees for reasons related to performance and competitive pressures, it seems odd that a business should not fire an employee for something as serious as immoral behavior. One might think condemning immoral conduct through firing would be a good thing for a socially and morally conscious business to do, and not at all, as I will argue, something morally inappropriate. I will now offer a brief sketch of how I defend my thesis that firing in response to a Twitter trial constitutes an inappropriate form of blame.

While firing is not paradigmatically an act of blame, the first step of my argument involves supporting the claim that firing in response to a Twitter trial constitutes a form of blaming (i.e., the firing claim). In doing so, I engage with the objection that a business is not *really* trying to blame the employee, but is merely seeking to disassociate from him or her. In particular, I defend the claim that whether the act of firing is or is not an act of blame does not depend exclusively on the intentions of the manager. In some circumstances, the intentions of the manager may be irrelevant to whether the firing is an act of blame.

⁷ Marvin Hill and James Allan Wright, *Employee Lifestyle and off-Duty Conduct Regulation* (Bna Books, 1993); Stephen D Sugarman, “‘Lifestyle’ Discrimination in Employment,” *Berkeley Journal of Employment and Labor Law* 24, no. 2 (2003): 377–438.

The second step involves arguing that not only is the firing an expression of blame, but it is an inappropriate form of blame. In recent discussions on the ethics of blame, scholars have outlined various conditions that one must meet in order to appropriately blame another.⁸ One of the least controversial of these conditions is that one should not blame someone who does not deserve blame or blame someone beyond what she deserves. I argue that a firm either will fail to meet this condition, or will act recklessly with respect to it, when firing in response to outside of work immoral conduct that gives rise to a Twitter trial. The general principle I defend is that the appropriateness of blaming depends on the extent to which others are blaming—that is, one must account for the *additivity principle of blame*. I argue this principle is especially relevant in Twitter trial contexts.

Moralized Contexts, Employment At-Will, and the Preference to Disassociate

There are many kinds of reasons that may ground a decision to fire an employee: incompetence, disloyalty, cost, redundancy, disagreeability, malingering, and so on. Identifying which reasons (or combination of reasons) justify dismissing an employee would require developing a comprehensive theory of firing. I take on a more modest task: I am concerned with firings that occur in moralized contexts. Specifically, I am concerned with

⁸ See, for example, Gerald Cohen, “Casting the First Stone: Who Can, and Who Can’t, Condemn the Terrorists?,” *Royal Institute of Philosophy Supplement* 58 (2006): 113–36; Miranda Fricker, “What’s the Point of Blame? A Paradigm Based Explanation,” *Noûs* 50, no. 1 (March 1, 2016): 165–83; Marilyn Friedman, “How to Blame People Responsibly,” *Journal of Value Inquiry* 47, no. 3 (2013): 271; Linda Radzik, “On Minding Your Own Business: Differentiating Accountability Relations within the Moral Community,” *Social Theory and Practice* 37, no. 4 (2011): 574–98; Gary Watson, “Standing in Judgment,” in *Blame: Its Nature and Norms* (New York: Oxford University Press, 2012).

the extent to which an employee's outside of work immoral conduct in Twitter trial contexts should be a determining factor in firing decisions.⁹

While the distinction between work-life and non-work-life can be fraught, I will assume that in many instances one can reasonably tell when certain conduct is done “on the job,” as it were, and when it is not. I also assume that there was no reason to fire the employee prior to the immoral conduct. More precisely, the justification to fire was not overdetermined, or even partially determined, by the employee's conduct prior to the allegedly immoral act.¹⁰

I am not considering cases in which the employee's outside of work immoral act is also of the most serious criminal sort (e.g., assault, rape, or murder), nor acts that wrong an entire victim class through *blatant* racism, sexism, etc. (e.g. pejoratively addressing someone using a racial slur).¹¹ There are likely good moral reasons for why firing in these cases would not be wrong, but the reason I exclude them here is that these cases are likely to entail a

⁹ I am concerned with firing. There are similar moral questions that arise regarding hiring, promotions, bonuses, adverse consequences, refusing to work with certain customers or suppliers, etc. For example, should exemplary conduct performed outside of work, such as donations and volunteerism, be considered in workplace promotions? In this dissertation, I restrict my attention to firing.

¹⁰ The case of a celebrity is an interesting one. This is because, for many endorsement deals, the basis of the deal is not what the celebrity is doing for the business, but the association with that person. In such cases, the person is not separable from his or her work-related capacities. While I think how to respond to the immoral conduct of celebrities is also an interesting question, in this dissertation, I focus on non-celebrities.

¹¹ Some readers might think that Sacco's tweet was blatantly racist. While I find this implausible (especially in view of the example of blatant racism I have offered), I will not get into specifying the necessary and sufficient conditions for what counts as blatant racism. For those interested in Sacco's reflections after the tweet, here is a letter she penned to the South African newspaper, *The Star*: “*Words cannot express how sorry I am, and how necessary it is for me to apologize to the people of South Africa, who I have offended due to a needless and careless tweet. There is an AIDS crisis taking place in this country, that we read about in America, but do not live with or face on a continuous basis. Unfortunately, it is terribly easy to be cavalier about an epidemic that one has never witnessed firsthand. For being insensitive to this crisis—which does not discriminate by race, gender or sexual orientation, but which terrifies us all uniformly—and to the millions of people living with the virus, I am ashamed. This is my father's country, and I was born here. I cherish my ties to South Africa and my frequent visits, but I am in anguish knowing that my remarks have caused pain to so many people here; my family, friends and fellow South Africans. I am very sorry for the pain I caused.*” See “Racist Aids Tweet: I Am Ashamed,” *Independent Online*, December 23, 2013, <http://www.iol.co.za/news/south-africa/western-cape/racist-aids-tweet-i-am-ashamed-1625863>.

serious, potentially debilitating, economic burden or disruption to workplace culture and operations.¹² I am concerned with homing in on whether the mere fact of immoral conduct outside of the workplace should ground firing decisions.

One might think excluding cases that disrupt the workplace or impose significant economic burdens unduly idealizes the investigation. That is, one might argue Twitter trials do impose significant economic burdens, and if there is a Twitter trial, this will always, or almost always, constitute good financial business reason to fire.¹³ I think this is not quite right. First, given the notoriously short attention spans of people involved in Twitter trials,¹⁴ it is difficult to conclude that continued employment of the person who is the subject of the Twitter trial will be too economically burdensome. It is not obvious that the Twitter trial participants are motivated or influential enough to harm the business, especially when the business has a customer base that does not overlap with those participating in the Twitter trial.

Second, firing someone often means that the business must replace the fired person in question. There can be significant costs involved in finding a replacement candidate and training the newly hired employee.¹⁵ Until a suitable candidate is hired and trained, others in the workplace may need to pick up the slack, as it were, and this might adversely affect their productivity. These are non-trivial costs that may ultimately outweigh the costs of continuing

¹² Alternatively, if it is wrong to fire an employee for these more serious cases, it may be for different kinds of reasons than the reasons I am offering.

¹³ Whether a Twitter trial imposes a significant economic burden will of course ultimately turn on empirical investigation.

¹⁴ Ronson, *So You've Been Publicly Shamed*, 2015, 79.

¹⁵ Arindrajit Dube, Eric Freeman, and Michael Reich, "Employee Replacement Costs," *Institute for Research on Labor and Employment*, 2010.

to employ the subject of the Twitter trial.¹⁶ By hypothesis, the employer knows the subject of the Twitter trial to be a productive employee.¹⁷

Most importantly, even if it is fanciful to omit cases that bring about serious disruption to the traditional economic aims of business, clarifying the sort of cases I am considering will be an important first step toward making progress on the more difficult question of how businesses should act when there are significant economic harms or disruptions resulting from an employee's outside of work immoral conduct.

Despite these qualifications, I am not merely considering a narrow set of cases. Examples of cases permitted within my analysis include drunkenly berating someone, participating in a swingers' club, using marijuana, purchasing a kidney, undergoing an abortion, making an off-color joke, cheating on one's spouse, and so on.¹⁸ To be clear, in this dissertation I will not take a stance on whether these cases in fact constitute immoral conduct. Instead, I will argue that even if we suppose all the cases I have mentioned involve immoral acts, or alternatively, if the manager thinks (perhaps contrary to fact) these acts constitute immoral acts, the manager nevertheless has strong moral reason not to fire the employee when such conduct done outside of the workplace gives rise to a Twitter trial.

¹⁶ One complexity I have bracketed is how to handle those who are leading the firm. For example, we might think that if the employee who is at the center of a Twitter trial is the chief executive officer, this should merit a different kind of response.

¹⁷ In the context of employment protection from wrongful dismissal more generally, recent studies indicate there might be positive, innovation-related, benefits to employment protection through wrongful discharge laws. See Viral V Acharya, Ramin P Baghai, and Krishnamurthy V Subramanian, "Wrongful Discharge Laws and Innovation," *Review of Financial Studies* 27, no. 1 (2014): 301–46. For other economic benefits related to employment protection, see Florian Baumann, "On Unobserved Worker Heterogeneity and Employment Protection," *European Journal of Law and Economics* 29, no. 2 (2010): 155–75.

¹⁸ We might also think that the *means* through which the person's immoral conduct comes to light matters. Specifically, if the person volunteered the information in a public forum rather than if the person's conduct came to light due to being covertly taped, or being eavesdropped on, this may be of moral significance.

Some cases I include in my analysis are widely agreed to be immoral, while there is significant disagreement about others, and still others seem morally ambiguous. It is worth noting the diversity and range of these cases. For instance, many agree adultery is wrong. In the debate surrounding abortion, there is significant disagreement, but depending on which side of the disagreement one falls, the conduct is considered seriously immoral—that is, many of those who think abortion is wrong think it is *seriously* wrong, and those who think that it is permissible, often think that it is a very minor wrong, if even a wrong at all. Using marijuana is illegal in certain jurisdictions, but it is much less clear that its use is immoral. Making an off-color joke might be thought to be morally ambiguous. So, despite the cases I have excluded, there are plenty of interesting cases that are permitted in my analysis.¹⁹

Some might take issue with the very question I am investigating. Specifically, one might object that insofar as there is a presumption of employment at-will, someone running a business can fire an employee for whatever reason or even no reason. Asking what justifies a particular instance of firing is simply out of place and confused.

Even if we suppose a manager has a legal right to fire an employee in the way EAW permits, there are better and worse ways in which the manager can *exercise* this right.

Consider the following example:

¹⁹ I am concerned with firing someone in a context in which this is the first time such conduct has been brought to the employer's attention. There are interesting issues that arise with respect to how we ought to treat repeat offenders (as well as unapologetic offenders), and whether we can justify treating them more harshly than first-time offenders (or apologetic offenders). This raises additional complications, so for the purposes of clarity, I assume this is the first time the alleged wrongdoing has been brought to the employer's attention. My attention was first drawn to this issue in footnote number seven in Douglas N Husak, "Already Punished Enough," *Philosophical Topics* 18, no. 1 (1990): 79–99.

Campus Recruiter: Suppose a manager participates in a campus job fair and hires fifteen bright-eyed undergraduates. Unbeknownst to the candidates, the manager has hired these individuals only for the pleasure of firing them the next day.

The manager's exercise of EAW is not plausibly well-justified. Insofar as there are better and worse ways in which one can exercise EAW, this is what I minimally need for the question I am exploring to get off the ground.

Some might think it is obvious why an employer might want to fire an employee who has acted immorally. So, the pertinent question is: Why *shouldn't* the business fire the employee? In interpersonal morality, if I learn that an acquaintance has a habit of making off-color jokes, surely I am justified in not inviting this person to my next cocktail party—"because I do not want that sort of person at my party" (call this reason the "preference to disassociate," or "PTD") is reason enough. The observation concerning interpersonal morality seems, at least in part, to be correct.²⁰

There are several possible explanations for why the PTD may not justify firing an employee for outside of work immoral conduct. First, perhaps the business owes it to the employee to keep him or her on as a matter of some sort of relational obligation. Alternatively, the employee might have a right to employment, or some other sort of moral protection, such as a property right to his or her job. While these are interesting responses, these are not my concerns in this dissertation, and I will remain agnostic as to these possibilities.

²⁰ Perhaps if one has a close relationship with another and suddenly decides to disassociate, even if one does not owe it to the friend, it might be good, morally speaking, to indicate to the friend why one is distancing oneself.

I argue that one's PTD does not justify firing an employee at the center of a Twitter trial because the manager's preference not to have such a person in the workplace does not permit the manager to act inappropriately. When I use "inappropriate," I mean that there is strong moral reason weighing against the act. In the remainder of the dissertation, I argue that the manager acts inappropriately when he or she fires someone for acting immorally outside the workplace. Specifically, I argue that when a manager fires an employee at the center of a Twitter trial, the manager is blaming inappropriately. So, rather than arguing for a right to employment or a property right in one's work, my arguments for why the manager should not fire the employee are grounded in interpersonal morality, specifically, the ethics of blame.

The Badness of Being Fired

I will briefly discuss the significance of work and the badness of getting fired. Though I suspect this section will not be especially controversial, it is important to keep at the front of one's mind the seriousness of the issue.

Firing an employee can be a decision of significant consequence. In the United States, for many people, their work is rightly or wrongly inextricably linked to their sense of self or "identity," so to speak. It is not uncommon that the first question one asks upon meeting another is, "What do you do?" The structure of the response is telling: "I am an accountant", "I am a banker", "I am a doctor", and so on. Besides the obvious benefits of income providing for food and shelter for oneself and one's family, work is often an important source of one's community and friends. One's social standing is also often linked

to his or her work; students at universities acquire elevated social status for obtaining employment at certain companies rather than others. People also spend a significant portion of their adult waking hours at work, so even if one's work is not especially important to oneself, it still occupies a significant portion of one's life.

Given the importance of work, not surprisingly, getting fired has serious implications. Beyond the obvious loss of income (which is not a trivial matter), extensive evidence points to the negative psychological (and sometimes physical) impact of being unemployed, losing one's job, or being fired.²¹ For many, job loss is among their biggest fears and it is also accompanied by a perception of a serious hit to self-worth. It can take months to recover emotionally from job loss. Many terminated employees also experience various detrimental physical symptoms such as "chest pains, headaches and panic attacks."²² But job loss does not merely impact the person who has lost her job—it affects her relations as well. There are serious negative effects on relationships and marriages, including increases in extramarital affairs, alcoholism, and domestic violence.

The consequences of being fired for immoral conduct (as opposed to being fired for economic reasons pertaining to the firm's financial health) are especially significant. That is, when one is fired due to immoral conduct, it can increase the difficulty of securing new employment. A person who is fired for immoral conduct will need to offer a credible and persuasive explanation to any prospective employers for why one's firing should not be held

²¹ J.M. Ivancevich and M.T. Matteson, *Stress and Work: A Managerial Perspective*, Management Applications Series (Scott, Foresman, 1980); J.C. Quick and J.D. Quick, *Organizational Stress and Preventive Management*, Management Series (McGraw-Hill, 1984); Stefanie P Spera, Eric D Buhrfeind, and James W Pennebaker, "Expressive Writing and Coping with Job Loss," *Academy of Management Journal* 37, no. 3 (1994): 722–33.

²² Jada Graves, "The Psychology of Being Fired - US News," April 17, 2014, <http://money.usnews.com/money/careers/articles/2014/04/17/the-psychology-of-being-fired>.

against oneself—one is on the defensive from the very start of the job search. Also, the person fired likely loses her former employer as a reference.²³

Moreover, there are also psychological biases that may make prospective employers less inclined to hire the person who was fired. For instance, the “just-world fallacy” is a cognitive bias that causes people to think that the bad things that occur to someone must have been deserved due to some previous untoward behavior on his or her part. As such, the “just-world fallacy” may cause people to think that someone who was fired got what he deserved (even if it was in fact unjustified and undeserved). This makes the consequences due to being fired for allegedly immoral conduct much more severe since certain cognitive biases may increase a prospective employer’s cautiousness with regard to giving an opportunity to someone who was fired.

Overview of Chapters

I will now offer a brief chapter-by-chapter overview of the arguments that follow. Chapter 2, entitled “Employment At-Will: A Misguided Debate,” explores some influential arguments that aim to criticize employment at-will (EAW), the legal presumption that an employer can terminate an employee for good reason, bad reason, or no reason, and with or without warning (similarly, an employee can quit with or without reason and with or without

²³ For a discussion concerning the effects of the perception of procedural justice with regard to how employees come to terms with dismissal see Brockner et al., 1994. For an analysis of the connection between the psychological aspects of the employer-employee relationship and its relation to the quantity of wrongful termination complaints, see Lind, Greenberg, Scott, & Welchans, 2000.

warning).²⁴ The position I defend is that the debate surrounding the issue of EAW has to a great extent involved the two sides in the debate talking past each other. Defenders of EAW argue that governments should not implement laws to regulate employment practices (e.g., through requiring procedural due process prior to the dismissal of an employee or through requiring a just cause for dismissal).²⁵ Opponents of EAW have been arguing that having EAW allows for the immoral treatment of employees. I claim that one can simultaneously accept the claims that both parties are making, and as such, that this counts as good evidence that the two sides in the debate are talking about different matters (even if they do not see themselves as doing so). I conclude this chapter by stating how my view in this dissertation fits into the discussion surrounding EAW.

In Chapter 3, I argue for the claim that a manager firing an employee in response to the employee's immoral conduct that gives rise to a Twitter trial constitutes an expression of blame. While mobs, witch-hunts, and other forms of communal responses to transgressions of morality are familiar, Twitter trials have several unique dimensions that are morally significant: (1) anyone with an internet connection (at the time of writing, this is estimated at 3.2 billion people) can participate in the Twitter trial, (2) it takes minimal effort to participate in the Twitter trial (e.g., it is as easy as pressing "like" on Facebook), (3) there is little accountability for participating in the Twitter trial, (4) after the Twitter trial occurs, there is often a permanent, public, and visible record of the Twitter trial, and (5) a full scale Twitter trial can occur within mere minutes, requiring little in terms of coordination and effort due

²⁴ Werhane, Radin, and Bowie, *Employment and Employee Rights*; McCall, "A Defense of Just Cause Dismissal Rules."

²⁵ Richard A Epstein, "In Defense of the Contract at Will," *The University of Chicago Law Review* 51, no. 4 (1984): 947–82; Ian Maitland, "Rights in the Workplace: A Nozickian Argument," *Journal of Business Ethics* 8, no. 12 (1989): 951–54.

to the nature of social networks.²⁶ The fact that most employers are included within (1) has significance for our investigation—the Twitter trial will undoubtedly be brought to the attention of the employer, either intentionally (e.g., the employer is “tagged” in a post) or otherwise.

Sometimes the conduct for which a Twitter trial erupts is undoubtedly immoral. Other times, it is less clear. There are several scenarios regarding the manager’s view of the employee’s action: (a) the manager *thinks* the conduct is immoral, but it is not, (b) the participants think it is immoral, but the manager does not, and it *is not* immoral, or (c) both the participants and the manager think it is immoral and it is in fact immoral. These are all distinct possibilities that might give rise to distinct normative issues that turn on the moral significance of the “subjective ought.” In the course of the dissertation I assume (a) or (c).

My view is that firing in response to immoral conduct that generates a Twitter trial constitutes an expression of blame—the *firing claim*. I first discuss how I understand the concept of blame and then claim that firing in response to a Twitter trial constitutes an expression of blame. I then engage with the objection that firing is not *really* blaming; rather, the business is merely disassociating. I argue for an important distinction between *agent-relative expressions* and *agent-neutral expressions*. I claim firings in Twitter trial contexts express blame in the agent-neutral sense of expression, and this kind of expression is intent

²⁶ In the weeks that followed Sacco’s tweet, she had to shorten her stay with her family in South Africa because employees of the hotel she was lodged in threatened to riot and authorities told her that they could not guarantee her safety. Once she returned to New York, journalists were assigned to follow her around the city. Others took it upon themselves to place Sacco’s life prior to the tweet under a microscope, including unearthing her past social media activity from years and months prior, in order to spotlight other unfortunate tweets. It is worth noting that Sacco was previously an unknown PR person with 170 followers on Twitter. Relatively speaking, she had an insignificant social media presence and was not a public figure. One reason it went viral was that a Gawker journalist, Sam Biddle, retweeted Justine’s tweet to his 15,000 followers, thereby setting off the chain reaction that generated the Twitter trial. For more on this, see Jon Ronson, *So You’ve Been Publicly Shamed* (Picador, 2015).

insensitive. So, whether the business was blaming does not always depend on whether the business's intention was to blame.

In Chapters 4 and 5, I argue that not only is firing in response to a Twitter trial an act of blame, but that it is an inappropriate act of blame. These chapters present the argument for that further claim. In making this argument I claim that we must pay attention to the fact that blaming is a communal practice. This is where the additivity principle comes in. The communal dimensions of blame make it such that considering the proportionality of an act of blame as individuals is not enough; we need to consider the extent to which others in the community are blaming. Not doing so can result in one's act of blame being inappropriate.

Some theorists speak of there being “an arc of normative current passing between” members of the moral community.²⁷ But sometimes, in our responses to wrongdoing, we act as though we are the *only* channel of normative current and fail to consider that what we ought to do will depend on the fact that many others are connected in this same way. This failure is magnified in Twitter trial scenarios.

²⁷ Michael Thompson, “What Is It to Wrong Someone? A Puzzle about Justice,” in *Reason and Value*, ed. R. Jay Wallace, Samuel Scheffler, and Michael Smith (Oxford: Oxford University Press, 2004), 335. This citation is due to Nicolas Cornell, “Wrongs, Rights, and Third Parties,” *Philosophy & Public Affairs* 43, no. 2 (2015): 110.

CHAPTER 2: EMPLOYMENT AT-WILL: A MISGUIDED DEBATE

Introduction

Many employees in the United States believe that they cannot be fired without good reason.²⁸ This is a flagrant misperception. In the United States, employment relations are presumed to be “at-will”—that is, an employee can be fired for good reason, bad reason, or no reason, and with or without warning (similarly, employees can quit for good reason, bad reason, or no reason and with or without warning).²⁹ So, employment is largely unprotected (except for the constitutionally protected classes and a few prohibitions that vary from state-to-state) in the United States, and not only does an employer not need a just cause to terminate an employee, but also an employer need not have a cause at all.³⁰

In this chapter, I defend the claim that the debate surrounding employment at-will (EAW) has been misguided. Specifically, I claim that the two sides in the debate have been talking past each other. To be clear, I am not claiming that the participants in the debate see themselves as talking past each other; rather, I claim that their arguments do not entail contradictory theses. I focus on some philosophical arguments that critics of EAW offer and

²⁸ Pauline T Kim, “Bargaining With Imperfect Information: A Study of Worker Perceptions of Legal Protection in an At-Will World,” *Cornell Law Review* 83 (1997): 105–60.

²⁹ Many nations do not presume employment at-will. Much of Europe mandates a just cause for dismissal and extensive procedural due process.

³⁰ The road to the presumption of employment at-will was paved relatively recently. The first mention of employment at-will was in Horace Gray Wood, *A Treatise on the Law of Master and Servant: Covering the Relation, Duties and Liabilities of Employers and Employees* (JD Parsons, jr., 1877). Wood observed a pattern among past court rulings on employment relations that seemed to him well-captured as “at-will.” As it turns out, rather than considering Wood’s observation as simply describing a pattern in past rulings, his work ended up serving as justification for future employment decisions and paved the way for EAW to secure its status as a deeply entrenched default legal rule in the United States. Wood’s observation ended up gaining justificatory force once the prestigious New York Court of Appeals acknowledged his view as the authoritative understanding of employment relations in *Martin v. New York Life Ins. Co.* (1895). Thus, an observation about past cases, combined with a misinterpretation about that observation having normative force for how to understand employment relations, resulted in employment at-will having immense influence on the structure of employment relations in the United States.

suggest that these arguments fail to target what defenders of EAW are concerned with. My broader aim in this chapter is to diagnose the state of the debate and ultimately to clarify where this dissertation fits into the EAW conversation.

The Overview of the Questions Related to Employment At-Will

There are at least four questions at issue in the debate regarding EAW:

- a) Should it be legally permissible for an employer to terminate an employee for bad reason or no reason and without warning?
- b) Should it be legally permissible for an employee to terminate the employment relation for bad reason or no reason and with or without warning?
- c) Would it be wrong for a business to terminate an employee (without reason, or for arbitrary or bad reason and without warning)?
- d) Would it be wrong for an employee to leave a firm (without reason, or for arbitrary or bad reason and without warning)?

Defenders of EAW answer (a) and (b) affirmatively and do not speak to (c) or (d).³¹ Critics of EAW answer (c) affirmatively, and some seem to even affirm (d).³² It is unclear where critics of EAW stand regarding how to answer (b). One aim of this chapter is to argue that critics of EAW go astray by using arguments marshalled in service of an affirmative answer to (c), to attack an affirmative answer to (a).

Now—here is the critical question for the critics of EAW—is the source of the worry with EAW what it legally allows for or what it morally allows for? If it is the former, critics of EAW need more significant and targeted arguments—in particular, it may require

³¹ Epstein, “In Defense of the Contract at Will.”

³² Werhane, Radin, and Bowie, *Employment and Employee Rights*.

arguments concerning political authority and why it ought to be exercised in certain specific ways (such as legally mandating a just cause and due process for employment terminations) with respect to employment relations. In other words, they must address the question Richard Epstein, a prominent defender of EAW, poses: “If government regulation is inappropriate for personal, religious, or political activities, then what makes it intrinsically desirable for employment relations?”³³ If, however, it is the latter, then critics of EAW have needlessly worried themselves, because defenders of EAW are not arguing for claims about how the manager morally ought to treat her employees.

My claim that the two sides in the debate are arguing past each other is based on the following. When arguments “talk to each other,” one argument’s premises entail that P and the opposing argument’s premises entail that \sim P. When arguments “talk past each other,” one argument’s premises entail that P and the other argument’s premises entail that Q. I suggest, in the EAW debate, defenders of EAW have been making arguments for the conclusion that P, but critics of EAW have been arguing for the conclusion that Q. While I am open to the possibility that critics of EAW see themselves as making arguments for the conclusion that \sim P, I aim to show that one can simultaneously endorse the conjunction of the conclusions of both sides in the debate (that is, one can simultaneously accept both that P and that Q).

Here is how I proceed. I will consider three arguments that critics of EAW offer: (1) the arbitrary treatment argument, (2) the managerial analogical argument, and (3) the “even in principle problematic” class of arguments. I will argue that all three of these arguments

³³ “In Defense of the Contract at Will,” 954.

share the same two flaws: (i) they are arguments that entail a moral thesis that few would disagree with, and (ii) the premises in these arguments for the moral thesis entail no further conclusion about why it would be wrong for EAW to be a legally permissible presumption. While the moral thesis critics of EAW have argued for may ultimately also serve as an intermediate conclusion in an argument for the wrongness of the legal permissibility of EAW, the further premises that take us from such an intermediate conclusion to the desired final conclusion are absent in their present arguments.

Arguments Against Employment At-Will

The Arbitrary Treatment Argument

In Patricia Werhane et al.'s influential view, the problem with EAW is that employers can treat employees in an arbitrary manner, and this is at odds with how persons should be treated—that is, with respect. They state,

“Ordinarily, companies give reasons, usually good economic reasons, for layoffs and dismissals. EAW, however, permits arbitrary layoffs, and this leeway is problematic. When I get rid of a robot, I do not have to give reasons, because a robot is not a rational being. It has no emotions and no use for reasons. On the other hand, people do reason and feel, and they feel an entire range of emotions. If I fire a person arbitrarily, I am making the assumption that he or she does not need reasons. But if I

have hired people, then, in firing them, I should treat them as such, with respect, throughout the termination process.”³⁴

This is an important position in the debate. It is worth examining this and related arguments that aim to target EAW. I will claim that these arguments miss the mark with respect to answering either (a) (*Should it be legally permissible for an employer to terminate an employee for bad reason or no reason and without warning?*) or (b) (*Should it be legally permissible for an employer to terminate the employment relation for bad reason or no reason and without warning?*) in our list of four questions.

Werhane et al. claim that the arbitrary treatment of employees is wrong, because it is disrespectful. While this claim is independently plausible, it does not address the legal presumption of EAW; rather, it is a claim about how businesses ought not to treat their employees. Philosopher John McCall appears to make a similar point as Werhane et al.: “Terminating a person’s employment for no reason or for purely personal reasons is the epitome of arbitrary treatment.”³⁵ Again, this seems plausible. But to my knowledge, few defenders of EAW suggest that managers *should* terminate an employee for no reason or purely personal reasons.

Importantly, even if we grant that treating employees arbitrarily is wrong, it does not follow that there ought to be a legal regime in place to prevent this kind of wrongful behavior. So, the argument that firing an employee arbitrarily disrespects that employee is plausible, but it does not license any conclusions about whether such treatment of employees ought to be legally impermissible.

³⁴ Werhane, Radin, and Bowie, *Employment and Employee Rights*, 70.

³⁵ “A Defense of Just Cause Dismissal Rules,” 167.

The Managerial Analogical Argument

Werhane et al. criticize EAW by drawing a parallel to other aspects of managing a business:

“...EAW permits inconsistent, even irrational, management behavior by permitting arbitrary, not work-related, treatment of employees—behavior that is not considered a good management practice...Since arbitrary accounting, marketing, and investment practices are not tolerated, arbitrary human resource practice should be considered equally questionable”³⁶

Suppose Werhane et al. are correct to point out that arbitrary accounting and marketing practices are not considered appropriate and are not tolerated. What follows?

The managerial analogical argument amounts to the following: if people do not do X in situation Y, and if situation Z is sufficiently analogous to Y, then people should not do X in Z either. The argument goes, since in marketing (or other areas of business) managers do not make decisions arbitrarily, neither should they do so in employment. Even if consistency is of moral significance, there is a problem with the analogical argument. One way to object is to deny the analogy (for example, by claiming that marketing and accounting are not analogous in certain morally relevant ways to the employment realm). I will not pursue this route. A second way to object—and the route I pursue—is to suggest that whatever inconsistency that Werhane et al. claim is present between employment and other areas in management is merely apparent; thus, the analogical argument lacks normative force.

³⁶ Werhane, Radin, and Bowie, *Employment and Employee Rights*, 197.

Let's first disambiguate the issues at stake in the claim that arbitrary treatment is not tolerated in other areas of management. Answering this will turn on a conceptual question and an empirical question: the conceptual question is, what do Werhane et al. mean by "tolerated," and once we settle that, we can move to the empirical question of, is arbitrary treatment not tolerated in other areas of managing a business?

Suppose by "not tolerated" Werhane et al. mean that it is not *morally* acceptable. Let's suppose that on such an understanding of "not tolerated," it is correct that arbitrary practices are not tolerated in other areas of management. Given this understanding of "not tolerated" and the assumption that it is in fact not morally acceptable in other domains of business, Werhane et al. make an analogical argument that derives its force from the conditional claim that, *since* arbitrary treatment is not tolerated in other parts of management, it should not be tolerated with respect to employment decisions either. But this argument does not get us too far, because its conclusion is trivial; few would deny it. That is, on the assumption that "not tolerated" means not morally acceptable, few would deny that treating someone arbitrarily in employment is not tolerated.

On the other hand, if what Werhane et al. mean in saying that arbitrary treatment is "not tolerated" in other domains of business is that it is not legally permissible to make arbitrary decisions, then the claim is false. It is legally permissible for a manager to act arbitrarily with respect to switching suppliers or changing a marketing campaign—the reason might be as arbitrary as not liking one's cappuccino that morning. The legal prohibition against arbitrary behavior in other domains of management is just as it is in the employment context (that is, there is no prohibition against it!)—marketing is indeed "at-will" in the

relevant sense; a manager can change, remove, or alter a marketing campaign with or without good reason at any point. A marketing manager's right to do so would be legally tolerated, despite it perhaps being managerially unwise and morally unacceptable.

Perhaps a more charitable understanding of Werhane et al.'s worry is that EAW *supports* arbitrary treatment of employees and does so in a way that "supplier at-will" or other business relations do not, and this discrepancy should not be legally tolerated. They state, "...EAW supports inconsistent and even irrational management behavior by permitting arbitrary treatment of employees, behavior that is not tolerated as best management practice."³⁷ However, if by "supports" they mean EAW encourages arbitrary treatment, this is false, and they too are aware of this. They state, "EAW is a *default* rule, not a guiding principle. In other words, while EAW allows employers and employees to behave arbitrarily, it does not necessarily encourage it."³⁸ Not only does EAW not "necessarily encourage it," it doesn't even contingently encourage arbitrary treatment; this is because there is little (if any) action guiding content to EAW.

Thus, if the target of the "managerial analogical argument" are those who answer (a) affirmatively (*it should be legally permissible for an employer to terminate an employee for bad reason or no reason and without warning*), there is no inconsistency between employment and other domains of business. Thus, the argument loses its force with respect to the value of consistency. If on the other hand, the target is those who answer (c) negatively (*it is not morally wrong for a business to terminate an employee without reason, or for arbitrary or bad reason*), then the argument is trivial—few hold this view, and defenders of EAW take no stance with respect to it.

³⁷ Ibid., 73.

³⁸ Ibid., 81.

The “Even in Principle Problematic” Class of Arguments

Still, perhaps we have moved too fast in suggesting the arguments against EAW miss their target. We can first, for the sake of argument, assume the government can justifiably use its authority (contra political anarchist positions). Then the question becomes not a question of political authority, broadly speaking, whether coercive use of the law is permissible by governments, but whether the coercive force of the law is permissible *within employment relations*.

This question has been answered affirmatively with respect to certain areas in employment, namely, the constitutionally protected classes. So, the question of whether the government ought to have a say with respect to employment decisions has been answered in the affirmative by the law, and again, I will assume this is justified.

Given there is (by hypothesis) justification for government intervention with respect to some subset of employment decisions (that results in omitting a subset of reasons from counting as legally permissible justifications for termination), let’s briefly look to some arguments for why this government intervention might extend further, for example, to require procedural due process and a just cause for dismissal.³⁹

Philosopher John McCall argues, “Given the unavoidable and central role that employment plays in contemporary life, a policy that allows employers to demand ever-

³⁹ Identifying whether there is a just cause for a termination is a thorny matter. On one particularly influential formulation of what constitutes a just cause, it involves the following seven tests: “(1) Employee was forewarned of consequences of his actions; (2) company’s rules are reasonably related to business efficiency and performance employer might expect from employee; (3) effort was made before discharge to determine whether employee was guilty as charged; (4) investigation was conducted fairly and objectively; (5) substantial evidence of employee’s guilt was obtained; (6) rules were applied fairly and without discrimination; and (7) degree of discipline was reasonably related to seriousness of employee’s offense and employee’s past record.” Carroll Daugherty, *Enterprise Wire Co.*, No. 359 (LA March 28, 1966).

increasing productivity under threat of dismissal is an unreasonable policy.”⁴⁰ But this argument moves too fast; we need to distinguish between the ability to terminate employment from *threatening* to terminate employment.

Consider an example in a different context: If I am in a romantic relationship, I have the ability to break up. But this ability does *not* entail that I am threatening to break up. While employment relations and romantic relations are normatively distinct kinds of relations, the point is merely that the fact that an employer can terminate the relationship does not entail that the employer is threatening to terminate it (relatedly, merely because an employee has the ability to terminate the employment relationship, it would be odd to think that the employee is threatening to quit). Possessing the ability to terminate the employment relationship does not entail that those in the relationship are “under threat of dismissal.”

There still may remain a more promising option for taking EAW head-on. Perhaps Werhane et al.’s claim should be understood as defending the view that it is wrong to have a legal system that *even in principle* allows people to treat others in an arbitrary manner.⁴¹ This is the argument that it would be wrong to leave open the possibility for firms to treat employees arbitrarily—even if no one ever did so—without legal consequence, and thus there should be mandatory procedural due process and just cause requirements. However, the claim that the mere possibility of arbitrary treatment should be legally closed off is peculiar. Consider the following:

⁴⁰ McCall, “A Defense of Just Cause Dismissal Rules,” 168.

⁴¹ While I think arguing against the principle itself is a promising route, there is some reason to think that this is not the view that Werhane et al. espouse. This is because they state, “The most telling argument against at-will employment does not the [sic] question of the principle itself but rather raises issue about its abuses.” *Employment and Employee Rights*, 73.

Friendship At-Will: The United States subscribes to Friendship At-Will (FAW), the legal presumption that in a friendship between A and B, A can legally terminate the friendship for good reason, bad reason, or no reason, and with or without warning. Similarly, B can do so as well. Some theorists have criticized FAW as allowing for the possibility of friends to terminate friendships arbitrarily, something that causes a serious harm (after all, friends invest a great deal of time, trust, and loyalty into the relationship) and is disrespectful. It has been suggested that the mere possibility of this is morally problematic and that there should be a just cause requirement for terminating friendships. Moreover, critics of FAW claim that friendships should not be terminated without procedural due process.

Some might say that this is a laughable comparison because when a person loses their employment that person is seriously harmed. But this is so with friendships just as well; many think friendships constitute an important component of the good life. It is implausible to think that there ought to be a legal requirement for just cause termination of friendship or due process. The point is simply that the possibility of arbitrary treatment in a domain is not sufficient justification for legally prohibiting the possibility of arbitrary treatment in that domain.

Importantly, it seems plausible that if a friend terminated a friendship for a chance of winning an iPod shuffle in a raffle, this would be wrong. It also seems plausible that not providing any explanation for terminating a friendship is wrong—that is, the fact of the friendship may morally require that a friend should receive an explanation for why the relationship is being terminated (a sort of informal procedural due process). The same sort

of things can be said about how a manager ought to treat her employees. There are many ways in which a manager might treat an employee immorally, in just the same way as there are many ways in which a spouse, parent, or friend could treat the person in the relation immorally. But this possibility alone does not justify regulating these relationships.

In the business context, the mere fact that a manager could arbitrarily terminate her relationship with a certain supplier need not mean that there ought to be a legal presumption against doing so. Few are exercised by the fact that we have the presumption of supplier at-will (or other at-will business presumptions). The critical point is that the mere fact that EAW, in principle, allows for immoral behavior is not sufficient justification to implement a legal demand for just cause or due process. Importantly, it also does not of course mean that managers are morally justified in treating people arbitrarily in employment, just as they would not be in these other kinds of business relations.

Therefore, if Werhane et al. and other critics of EAW claim that it is “morally mandatory,” or in other words, morally obligatory, for businesses to provide due process and just cause to an employee, then this is a plausible claim. If this is the claim, I will not address it further. But if critics of EAW claim that morality requires it to be legally mandatory to provide procedural due process and a just cause, their arguments cannot withstand the weight of such a thesis.

One point I have not yet touched on is the question of symmetry in the employment relation. Tara Radin and Patricia Werhane seem to think that just as managers ought to give

good reasons for termination, employees also should give good reasons.⁴² They however leave a critical bit unstated: Specifically, they do not say if employees should be *legally* mandated to provide good reasons to terminate the employment relation. It is already something of a norm for employees to provide two weeks' notice, and insofar as the employee has any kind of relationship with her immediate higher up, she may even offer an explanation for her departure. But sometimes, an employee can justifiably leave without an explanation: "I just want to stop working here" seems reason enough. But Werhane et al. would not think that "I just don't want you to work here" is reason enough with respect to firing an employee. So, I suspect it may be worth treating the employment relation asymmetrically, even as a moral matter. Conflating the legal and the moral question prevents one from noting such a point.

Concluding Remarks

Many criticisms of EAW are not well-tailored to the employment relation and highlight little that is unique about what the employment relation requires, regarding either morality or the law. Indeed some of the critics' arguments can be put in such a way that they would make no reference to the employment relation. Not treating people arbitrarily or unfairly is part and parcel of what we take morality to demand, of managers, but also of people more generally.

The defenders of employment at-will argue that the government should not intervene in structuring employment relations. Opponents of employment at-will claim that

⁴² Tara J Radin and Patricia H. Werhane, "Employment-at-Will, Employee Rights, and Future Directions for Employment," *Business Ethics Quarterly* 13, no. 2 (2003): 115.

what employment at-will allows for is immoral. What has happened is that one can simultaneously endorse the claims of defenders and opponents of EAW. This is evidence for the claim that the subject matter at hand is different.

McCall outlines the difference between an EAW regime and one that espouses a Just Cause dismissal regime (as in several European countries).

“Recall that both Just Cause and EAW allow dismissal on grounds of inadequate performance, theft, absenteeism, etc. There are, though, at least three main scenarios where Just Cause is more restrictive than EAW. These are its prohibitions on dismissal for no reason, for personal reasons that are unrelated to productivity, and for the reason that there is a more productive replacement available for a currently adequate employee⁴³”

Important for my point is that insofar as the prohibitions under Just Cause are things employers *morally* should not do, a person who endorses the legal presumption of EAW can agree that a manager should not, morally speaking, do those things.

The arguments in favor of EAW justify a claim about what governments can (or cannot) justifiably mandate. This is seen from the fact that defenders of EAW contrast their subject of concern from non-legal approaches. For instance,

⁴³ McCall, “A Defense of Just Cause Dismissal Rules,” 166.

“The critics of the contract at will all point out imperfections in the current institutional arrangements, but they do not take into account the nonlegal means of preserving long-term employment relationships”⁴⁴

Perhaps an even more telling point in favor of the claim that EAW defenders are not concerned with the possibility of immoral conduct is that some influential statements of the presumption of EAW have morally wrong reasons built into the statement: “All may dismiss their employees at will, be they many or few, for good cause, for no cause[,] or even for cause morally wrong, without being thereby guilty of legal wrong.”⁴⁵ While some academic debates involve deep and substantive disagreements, I do not think the debate around EAW has been such a debate. Instead, the debate surrounding EAW has involved talking past each other due to conflating the legal and the moral realms.

An upshot of all of this might be that the arguments business ethicists and philosophers have developed against EAW are successful with respect to how a manager should act independent of the presence of EAW as a legal presumption—this is important and tells us more about what morality requires of a manager.

The view I defend in the broader dissertation concerns the morality of certain managerial actions. I will grant that there is a legal right to fire grounded in the presumption of EAW. But we still can say that there are better and worse ways in which one can exercise this right. In this dissertation, I am not interested in the debate of whether we should have a different legal regime for employment. Nor am I interested in outlining what EAW legally allows for. This is because many other “at-will” legal presumptions, e.g., friendships,

⁴⁴ Epstein, “In Defense of the Contract at Will,” 952.

⁴⁵ *Payne v. Western & Atl. RR* (1884).

suppliers, and romances, legally allow for morally reprehensible treatment of other persons. The questions that are interesting are specific first order moral questions about the sorts of things managers should or should not use their termination power over.

I will argue certain employment decisions often perceived by managers to be *morally* justified—indeed decisions that firms often take pains to announce—are in fact not morally justified, namely, firing someone for their outside of work immoral conduct in certain contexts. I will argue that we should slow down before offering our moral endorsement for such firings, even if we think such firings ought to be legally permissible. My view concerns the moral scope of what a manager can do and I am narrowing that scope to exclude certain acts (i.e., firings) in certain contexts (i.e., Twitter trials), sometimes thought to fall within its scope.

CHAPTER 3: ACTS AS EXPRESSIONS: BLAMING THROUGH FIRING

Introduction

Many acts of firing are not acts of blaming.⁴⁶ Firing an employee because one can no longer afford to pay her salary or because she has become redundant, and so on, are not acts of blame. But in some circumstances, firing is an act of blame. Specifically, in my view, when a business fires an employee in response to allegedly immoral conduct that gives rise to a Twitter trial, this constitutes a form of blame.⁴⁷ The act of firing is, as usual, the act of terminating the employment contract, but it also is an act that expresses blame.

Supporting the contention that firing in response to a Twitter trial constitutes an expression of blame is the purpose of this chapter. To be clear, I will not be offering a positive argument for this claim, but will instead defend it against some significant worries and offer some considerations that show that the claim is intelligible and plausible. Lastly, my aim for now is not to argue that the firing in Twitter trial contexts is an inappropriate, unjustified, or a wrongful expression of blame, but rather merely to defend the claim that it

⁴⁶ Here I am concerned with *moral* blame. The term “blame” might also be used in contexts where one is referring to mere causal responsibility—for example, “John claimed his flat tire is to blame for his tardiness.” I am not concerned with mere causal responsibility.

⁴⁷ Some might find it perplexing, namely those who espouse a reactive attitudes account of blame, to say that the *business* is blaming. (For a sophisticated contemporary defense of a reactive attitudes account of blame, see R Jay Wallace, *Responsibility and the Moral Sentiments* (Harvard University Press, 1994).) The argument might be: Businesses don’t have emotions, so how could they respond through reactive attitudes that constitute blame? I will not enter into the debate concerning group agency (see, for example, Peter A. French, “The Corporation as a Moral Person,” *American Philosophical Quarterly* 16, no. 3 (1979): 207–15; Philip Pettit, “Responsibility Incorporated,” *Ethics* 117, no. 2 (2007): 171–201; Manuel Velasquez, “Debunking Corporate Moral Responsibility,” *Business Ethics Quarterly* 13, no. 4 (2003): 531–62; Manuel Velasquez, “Why Corporations Are Not Morally Responsible for Anything They Do,” *Business & Professional Ethics Journal* 2, no. 3 (1983): 1–18). When I use the term “business,” insofar as one is opposed to the idea of group agency, it should be understood merely as a placeholder for the human agent who authorizes the decision to fire.

is an expression of blame. (The argument for why it is an inappropriate expression of blame will follow this chapter.)

Preliminary Remarks

First, I will clarify some terminology. Some distinguish between two forms of employment terminations initiated by the employer: firings and layoffs. People who distinguish between firings and layoffs suggest that firings can be understood as terminating an employee for a reason that can plausibly be attributed to the employee's action (e.g., malingering), and that layoffs should be understood as termination due to external circumstances (e.g., an economic downturn, a change in the strategic direction of the firm, and so on).

In my view, the distinction between layoffs and firings is not a fruitful one. The suggestion that one is due to the employee and the other is due to external circumstances is often untenable. If during an economic downturn, the employee was more skilled/valuable/productive/charismatic, the employee may not have been laid-off; most layoffs can plausibly be described in a way that still refers to the employee's behavior or abilities. As such, I will continue to use "firings," even if, to some readers' ears, "layoffs" might more suitably capture certain involuntary employment relation terminations.

Second, I relay the scope of my discussion. In this chapter, I am not claiming all firings are acts of blame—often they are not. Nor am I suggesting that firings are the only means through which a business might express blame. This too is implausible. The claim I make is strictly that firing in response to immoral conduct that gives rise to a Twitter trial is

an expression of blame. Furthermore, firing in response to wrongdoing (or alleged wrongdoing) is an expression of blame in certain contexts, even if the manager is mistaken about whether the conduct of the employee was immoral or not.

Third, a brief roadmap is in order. I start with a brief discussion of the concept of blame. Then, I suggest that firing in response to immoral conduct that gives rise to a Twitter trial counts as an expression of blame. Next, I engage with the objection that the business is not *really* seeking to blame the employee; it is merely seeking to disassociate. In engaging with this objection, I argue that the intention to blame is not a necessary condition for expressing blame and the presence of an intention to blame is at best a contingent feature of whether something is an expression of blame. I discuss the work of Elizabeth Anderson and Richard Pildes in making this argument.⁴⁸ While addressing the objection that businesses are not really concerned with blaming, I introduce a distinction between *agent-relative expressions* and *agent-neutral expressions*. I suggest that firing in response to immoral conduct is an agent-neutral expression, and this category of expressions is largely intent insensitive.

I conclude by suggesting that even if one is not sympathetic to my defense of the claim that firing in Twitter trial contexts is an expression of blame, additional independent reason supports this claim: in Twitter trial contexts, businesses often *explicitly communicate* blame.

⁴⁸ Elizabeth S Anderson and Richard H Pildes, “Expressive Theories of Law: A General Restatement,” *University of Pennsylvania Law Review* 148, no. 5 (2000): 1503–75. For a recent critique of the force of semiotic objections, see Jason Brennan and Peter Martin Jaworski, “Markets without Symbolic Limits,” *Ethics*, no. 125 (2015): 1053–77.

The Concept of Blame⁴⁹

I am concerned with blame expressed through an act that is under our voluntary control; typically, this involves overt blame.⁵⁰ Here, I am not concerned with when one blames another, “in her head,” as it were. I am happy to grant that in response to wrongdoing, many of us will experience (perhaps involuntarily) blame in the form of anger or other negative emotions; as Allan Gibbard states, “Anger, it seems will be with us whatever we decide.”⁵¹ This sort of involuntary blame is not my primary focus; my concern is with when we overtly express blame.⁵²

As for what precisely blame is, there are many conceptions of blame discussed in the literature.⁵³ Unfortunately, as Michael McKenna aptly states, “Despite the pervasiveness of the phenomenon in ordinary life, blame is an elusive notion. It is maddeningly hard to nail down a theory that gets the extension even close to right. This is shown by the diversity of strikingly different views about its nature.”⁵⁴ The difficulties associated with theorizing about blame have even brought some philosophers to abandon the project of providing a

⁴⁹ The most prominent recent accounts of the concept of blame are by R. Jay Wallace (an account inspired by the work of P.F. Strawson), T.M. Scanlon, and George Sher. See, Thomas Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame* (Belknap Press of Harvard University Press, 2008); Wallace, *Responsibility and the Moral Sentiments*; Peter F Strawson, “Freedom and Resentment,” *Proceedings of the British Academy* 48 (1962): 1–25; R Jay Wallace, Rahul Kumar, and Samuel Freeman, “Dispassionate Opprobrium: On Blame and the Reactive Sentiments,” in *Reasons and Recognition: Essays on the Philosophy of TM Scanlon* (Oxford University Press, 2011); George Sher, *In Praise of Blame* (New York: Oxford University Press, 2006).

⁵⁰ Michael McKenna, “Directed Blame and Conversation,” *Blame: Its Nature and Norms*, edited by D. Justin Coates and Neal A. Tognazzini. New York: Oxford University Press, 2012, 119–40.

⁵¹ Allan Gibbard, *Wise Choices, Apt Feelings: A Theory of Normative Judgment* (Harvard University Press, 1992), p. 298. This citation is due to Annette C. Baier, “Moralism and Cruelty: Reflections on Hume and Kant,” *Ethics* 103, no. 3 (1993): p. 438.

⁵² This is not to say that one voluntarily or overtly intended for blame to be expressed, rather than one voluntarily or overtly intended to do the act that expressed blame. More on this shortly.

⁵³ One possibility is that the debate surrounding the nature of blame take the form of what David Chalmers calls a “verbal dispute.” Though perhaps it is not a mere verbal dispute. See David J Chalmers, “Verbal Disputes,” *Philosophical Review* 120, no. 4 (2011): 515–66.

⁵⁴ “Directed Blame and Conversation,” p. 119.

conceptual analysis of blame.⁵⁵

With that said, I am sympathetic to the thought that “Blame would not be *blame*...absent the core emotions of anger, indignation, and resentment (Rosen, Wallace, Wolf).”⁵⁶ So, my sympathies lie in an understanding of blame that resembles a broadly Strawsonian reactive attitudes account in which blame is understood to be a negative emotional response to another’s wrongdoing.⁵⁷

Two important features of such an understanding of blame are the following: (1) it involves the negative reactive attitudes (e.g. resentment or indignation) that bring about in the recipient some form of unpleasantness (“the normative force of blame—the sting it putatively ought to have when directed at one who is blameworthy”⁵⁸), and (2) there is a directedness to these attitudes (“...blame includes an attitudinal aspect, where the attitudes in question have a distinctive content and focus”⁵⁹). There remains the possibility that, in some cases, when one blames another, it does not bring about unpleasantness in the blame recipient—that is, it fails to “sting.” Still, in typical cases, it seems plausible that blame will be expected to bring about certain unpleasant effects in the blame recipient. This sort of understanding of blame seems to me to capture much of our folk intuitions surrounding the concept. In any case, I will not enter deeper into the debate about the concept of blame. It seems plausible that we can have a productive discussion of the ethics of blame, even if we do not have a fully worked out account of the concept of blame.

⁵⁵ See, Fricker, “What’s the Point of Blame? A Paradigm Based Explanation.”

⁵⁶ Victoria McGeer, “Civilizing Blame,” in *Blame: Its Nature and Norms*, ed. D. Justin Coates and Neal A. Tognazzini, 2013, 167.

⁵⁷ Strawson, “Freedom and Resentment.”

⁵⁸ Michael McKenna, “Directed Blame and Conversation,” in *Blame: Its Nature and Norms*, ed. D. Justin Coates and Neal A. Tognazzini, 2012, 121.

⁵⁹ Wallace, *Responsibility and the Moral Sentiments*, 75.

Importantly, I am claiming that when a business responds to a Twitter troll by firing its employee, it is an expression of indignation directed at the wrongdoer in a way that counts as an act of blame. Some readers might worry that given that the reactive attitudes account of blame involves certain emotions, if the person blaming through firing is not experiencing these emotions, it is perplexing how we could call it blame. However, it is a mistake to think that expressing emotions requires experiencing the emotion. Emotions can be expressed even if the agent performing the action that is expressing the emotion, is itself not experiencing the emotion. One can imagine an author of a moving fiction novel conveying emotion through her words, without having to experience the emotion at the time of penning her novel, perhaps even without ever having to experience the emotion at all. Anderson and Pildes offer a different example that emerges from debates in aesthetics: “Not everything that expresses a state of mind is caused by that state of mind. Musicians can play music that expresses sadness, without feeling sad themselves. The music they play need not express their (or anyone’s) sadness: the sadness is in the music itself.”⁶⁰ So, the agent/means/medium channeling the expression of the emotion need not have the phenomenological experience associated with the emotion.

The purpose in this dissertation is not to enter the debate about the concept of blame. It seems to me plausible that the reactive attitudes conception of blame captures the phenomenon I am concerned with—namely, an act that expresses indignation in response to an alleged wrongdoing—and I am most concerned with the ethics of subjecting another to

⁶⁰ Elizabeth S Anderson and Richard H Pildes, “Expressive Theories of Law: A General Restatement,” *University of Pennsylvania Law Review* 148, no. 5 (2000): 1508.

this phenomenon. Whether we decide to call this phenomenon “blame” is not my primary concern.

“The Business is Not *Really* Blaming” Objection

I am claiming that firing an employee in response to immoral conduct that gives rise to a Twitter trial is an expression of blame. Some might think that this claim is false. The thought might go, “businesses are not *really* trying to blame the employee—they are merely trying to disassociate.” This objection is important but ultimately mistaken.

It is worth noting that blaming and disassociating are not mutually exclusive. The manager might intend to blame *through* disassociating. For instance, the core example in Christopher Bennett’s “The Varieties of Retributive Experience” is one in which a man’s colleagues disassociate from him to express blame due to his infidelity toward a mutual acquaintance.⁶¹ In Bennett’s example, the persons disassociating intend for their colleague to know their disassociating is due to his infidelity.

But suppose the manager disavows the intention to blame. Unlike the colleagues in Bennett’s example, the manager is only concerned with disassociating and not concerned with expressing blame. The manager might fire, and never care whether the employee knows the reason for which she was fired. One might think this should count as *prima facie* evidence that the manager was not blaming, but was merely disassociating.

This is a tempting worry. One can indeed imagine a manager firing the employee without caring about the immoral conduct (perhaps it is strictly a decision in service of impression management). Perhaps the manager has performed the very same immoral act

⁶¹ “The Varieties of Retributive Experience,” *Philosophical Quarterly* 52, no. 207 (2002).

many times and simply has not been caught. This objection is worrisome but surmountable. To do so, we must briefly discuss the nature of the relationship between actions and expressions. While doing so, I introduce a distinction of significance to our investigation: the distinction between agent-relative expressions and agent-neutral expressions.

Drawing A Distinction Between Kinds of Expressions

The range of possible expressions is fairly wide and diverse: “People can express...beliefs...moods, emotions, attitudes, desires, intentions, and personality traits. They can do so not only through speech and instrumental action, but through gestures, tone of voice, a shrug may express indifference; a whisper, reverence; a swagger, cockiness; a song, joy; a sneer, contempt.”⁶² In the context of the workplace, an act of firing in response to immoral conduct might express a variety of things too. A firing might express that:

- The employee was not valued by the firm.
- The firm considers its image more important than protecting its employee.
- The firm has a zero-tolerance policy for “shaking the boat.”

On the other hand, the firing might also express that:

- The firm stands in solidarity with victims of wrongdoing.
- The firm thinks that it has a responsibility to combat unethical conduct.
- The firm is socially conscious about addressing behavior that contributes to racism and sexism in society.

Some of these are competing expressions; others are at tension with one another. So, how can I claim that firing in response to immoral conduct is an expression of blame?

⁶² Anderson and Pildes, “Expressive Theories of Law: A General Restatement,” 2000, 1506.

To see how I can do so, we must distinguish between *agent-relative expressions* and *agent-neutral expressions*. With this distinction in place, it will prove helpful for better understanding my claim.

Philosophical and legal discussions of expressive theories typically go as follows: Agent X performs act Y and in doing so expresses propositional or reactive attitudes A, B, C, or character traits P, Q, R and so on. For example, with respect to enacting a law that segregates schools, perhaps the government expresses the following sorts of things:⁶³

- a) That the government considers black people inferior to white people.
- b) That the government thinks that black people will ruin the experience of white people in contexts in which there is integration.
- c) That the government is disgusted by black people.
- d) That the government is callous.
- e) That it is an expression of contempt.

(a)-(d) involves attributions of attitudes (both propositional and non-propositional) and character traits (“callous”) to the actor in question (in this case, the government). Whereas (e) is importantly different. I’ll first discuss (a)-(d).

Someone who asserts that the government expresses any (or all) of (a)-(d) by enacting a law that segregates might endorse the following sort of principle:

Agent-Relative Expressions: The best explanation for an agent performing the act in question in the relevant context involves the agent having a particular cluster of attitudes/beliefs/traits.

One way to make sense of those who assert that an action performed by P expresses (in the agent-relative sense) some cluster of attitudes/beliefs/traits T about P is that they are

⁶³ Anderson and Pildes, “Expressive Theories of Law: A General Restatement,” 2000.

adopting as the first premise in the following argument a hypothesis about what mental states or character traits **P** must have to perform the action in a certain context:

- 1) If an agent does **X** in context **C**, then the best explanation for the agent's doing **X** in **C** is that the agent has cluster of beliefs/attitudes/traits **T**.
- 2) John did **X** in context **C**.
- 3) Therefore, the best explanation for John's doing **X** in context **C** is that he has cluster of beliefs/attitudes/traits **T**. [1,2]
- 4) If the best explanation for an agent's doing **X** in context **C** is that the agent has cluster of beliefs/attitudes/traits **T** and the agent does **X** in context **C**, the agent expresses **T**.
- 5) Therefore, John expressed **T**. [2,3,4]

So, here, John's X-ing expressed beliefs/attitudes/traits **T**. This is how we might understand the reasoning of those who assert that enacting a law that segregates expresses (a)-(d) about the government. It involves holding that the best explanation for performing the act involves the agent having certain attitudes, beliefs, or traits. I will now show how this discussion of agent-relative expressions applies to two examples due to Anderson and Pildes.

Anderson and Pildes state, "In burning the United States flag, antiwar protesters expressed the belief that United States involvement in the Vietnam war was wrong."⁶⁴ This is an agent-relative expression because it involves adopting the following hypothesis: the best explanation for a person's burning an American flag at an antiwar protest is that the person believed that the United States' involvement in the Vietnam war was wrong. Something similar can be said about this second example involving racial segregation: "Racial segregation sends the message that blacks are untouchable, a kind of social pollutant from which "pure" whites must be protected."⁶⁵ On the agent-relative understanding of

⁶⁴ Anderson and Pildes, "Expressive Theories of Law: A General Restatement," 2000, 1506.

⁶⁵ *Ibid.*, 1528.

expressions, this statement would be interpreted as claiming that the best explanation for an institution implementing laws that segregate the population is that the institution considers black people as untouchable or “impure.” The agent-relative category seems to explain several expressions that theorists claim certain actions express.

I will note a worry in passing about expressions in the agent-relative sense. The level of granularity of the expression being inferred from the act seems far too fine to be plausible. We might say, for example, an act expresses *something* negative about the agent who performed the act, but to claim it is the particular expression of “a kind of social pollutant from which “pure” white must be protected” seems to be an implausible inferential overreach.

However, (a)-(d) are not the only kinds of expressions relevant to enacting a law that segregates schools. The enacting of a law that segregates a school might also be an act that is an expression of contempt—that is, (e). And (e) is importantly different from (a)-(d). This is because (e) need not involve ascribing anything to the agent performing the act (in the way (a)-(d) do). As such, we require a different kind of principle to capture (e). We need something like:

Agent-Neutral Expressions: When an act X is performed in context C, X is an expression of T.

Agent-neutral expressions do not involve claims about the beliefs, attitudes, or traits of the performer of an action. Rather, they involve claims about the act-context complex itself.

Agent-neutral expressions involve claims about how certain contexts can make an act take on an additional significance. There are further questions about why actions in certain

contexts express certain attitudes that turn on complicated issues concerning the nature of act meaning more generally. The important point is that an agent-neutral expression need not involve any substantive inferences about the agent performing the act; rather, the act expresses what it does simply in virtue of having been performed in a particular context.

The agent-neutral category of expressions can explain several examples of expressive actions that Anderson and Pildes offer. For example, “lawmakers could pass a law that expresses contempt for blacks by denying them the right to vote, even if none of the lawmakers personally feel contempt for blacks and all are merely pandering to their white constituents.”⁶⁶ In this example, the passing of the law in that context is *itself* an expression of contempt. And this is so, independent of what we might say about the beliefs, attitudes, and traits of the lawmakers.

Another example Anderson and Pildes offer proceeds as follows: “Suppose an individual burns a piece of paper. What does that mean? If the paper is a draft card, and he burns it in the context of others doing the same thing at an antiwar rally, we understand his action to express outrage at the draft.”⁶⁷ In this situation, the burning of the draft card in the context of a protest is itself an expression of outrage (this is so, even if the person burning the card was a pyromaniac who was in it for the fun and did not care at all about the morality of the war).

An important point I should note is that an agent-neutral expression need not imply any particular set of agent-relative expressions, nor does an agent-relative expression necessarily imply any particular agent-neutral expression. The distinction between agent-

⁶⁶ Ibid., 1508.

⁶⁷ Ibid., 1507; *United States v. O’Brien* (Supreme Court 1968).

relative expressions and agent-neutral expressions highlights the importance of distinguishing between a claim that performing an act expresses something about the traits or beliefs about the agent performing that act, versus a claim about an act itself being an expression of some attitude or another. It is nevertheless worth noting that sometimes the reasoning or processes, tacit or explicit, that leads one to recognize an agent-neutral expression might hinge on certain agent-relative expressions.

In our investigation, when I say that the act of firing in response to a Twitter trial is an expression of blame, I mean expression in the agent-neutral sense. One might think that all of the following are expressed by the firm firing the employee in the wake of immoral conduct that gives rise to a Twitter trial:

- The business only cares about its profit.
- The business considers it important to promote certain moral values in the community.
- The business regards its employees as dispensable cogs in the wheel.

But these are expressions in the agent-relative sense. I will not take a stance on what the firing in response to a Twitter trial expresses in the agent-relative sense. I should also note that the kind of hypothesis involved in agent-relative expressions might be involved in creating the agent-neutral expression over time. But that is a different issue, namely, that of the causal source of the agent-neutral expression. I think each of these above agent-relative expressions are plausible and interesting, but they are not my concern here. I am only making the claim that firings in certain contexts are expressions of blame in the agent-neutral sense.

Specifically, I am defending the claim that when a firing occurs in response to an employee's allegedly immoral conduct that gives rise to a Twitter trial, the firing is an expression of blame. I am not making a claim about the beliefs, attitudes, or traits of the agent doing the firing. I am making a claim about the fact that firing in Twitter trial situations is itself an expression of blame. And with agent-neutral expressions, the manager's intention can be irrelevant. With the distinction between agent-neutral expression and agent-relative expression in hand, one can hold that a firing in response to a Twitter trial is an expression of blame, while remaining agnostic about what the firing expresses about the business itself in the agent-relative sense.

The crucial point is that whether an act is an expression of blame in the agent-neutral sense does not solely turn on the actor's intentions. The irrelevance of intentions can be brought out even more strikingly. Consider the following example in which a person intends to blame, but cannot, because the act through which he intends to express blame is not an expression of blame in the agent-neutral sense.

Suppose I arrive in Philadelphia from a faraway land. One of the distinctive cultural practices of my homeland is that blame is expressed through hugs. Our rationale for expressing blame through hugs is that the act of wrapping one's arms around another in a full embrace signals the entirety of one's blaming attitudes. It also captures that I am blaming *you*, not just something you said or did, and it also shows that I recognize you as a member of the moral community. Suppose soon after arriving in Philadelphia, I am wronged by someone. I then hug the person who has wronged me, intending to blame that person.

However, the hug does not express blame in Philadelphia.⁶⁸ It might even be understood as the opposite of what I intend; it might instead express that I am a person exuding warmth and aspiring toward reconciliation, forgiveness, and understanding. Agent-neutral expressions need not depend on the actor's intention. Sometimes, it does not depend on it at all. Sometimes, you might even *intend* to blame, but not be able to express it in the agent-neutral sense.

Back to the issue of the business not intending to blame. Suppose after reading the first page of this dissertation, the firm I refer to complains, "How could you say we were inappropriately blaming, when we weren't blaming at all? Our intention was strictly to disassociate." This raises complex questions about whether there is a way to counteract an agent-neutral expression. There are times when what our action expresses is not what we intended to express. When we do that, we might respond with, "Oh! That's not what I meant." Sometimes, such a response is plausible. But in other instances, the context and conventions surrounding the agent-neutral expression are so vivid, salient, and deeply entrenched that, even if one were to respond with, "Oh! That's not what I meant," it would be "mere words," so to speak. Our mere assertion that we intended to express something different from the agent-neutral expression of an act is in some circumstances simply not strong enough to override the strength of the agent-neutral expression.

Moreover, we might think that the reason the business is able to secure the benefits of disassociating (getting Twitter trial participants to move on, for example) is because the

⁶⁸ See Anderson and Pildes: "Even sincerely and accurately professing one's state of mind may self-defeatingly fail to express it. If a well-meaning State posted signs at public restrooms saying "Jews are welcome here," would this action, by calling attention to the religion of those welcomed, genuinely express welcome for them, or would it express an embarrassing unease over their presence?" "Expressive Theories of Law: A General Restatement," 2000, 1567.

firing is an “authoritative disavowal”⁶⁹—that is, because it *is* an act that expresses blame in the agent-neutral sense. If the Twitter trial participants knew that the business was only intending to disassociate, they may not move on and might be even more agitated.

So, one important feature of acts that express blame is that the expression of blame is not wholly determined by a person’s intentions. Acts in certain contexts are expressions of blame, regardless of one’s intentions. When a judge hands down a prison sentence, this is a form of condemnation that expresses blame, regardless of whether the judge’s intentions were entirely unrelated to blame (e.g., to help the defendant access the healthcare provided in prisons). Similarly, when a business fires an employee immediately after some immoral conduct that has received a great deal of negative publicity in the form of a Twitter trial, the act of firing is an expression of blame, regardless of whether the business had only intended to disassociate.

It is true that firing is not always an act of blame; often it is not. But in the contexts of Twitter trials, when a business fires an employee immediately after a social media storm of outrage, the act of firing is also an act of blame independent of the business’s intentions. In a Twitter trial, thousands of people condemn an employee and many call upon the employer to terminate the employee. Here are examples of tweets during the Twitter trial involving Sacco:

- “#IAC needs to fire this racist, stupid bitch!”
- “We are about to watch [Sacco] get fired. In REAL time. Before she even KNOWS she’s getting fired.”

⁶⁹ Joel Feinberg, *Doing & Deserving: Essays in the Theory of Responsibility* (Princeton University Press, 1970), 101–2.

- “I cannot stop laughing at the sheer stupidity of #JustineSacco, enjoy your time in the unemployment line...”

When there are thousands of such tweets, it creates a context in which the act of firing is no longer merely employment termination, but it also is an expression of blame in the agent-neutral sense.

On Communicating Blame in Response to Twitter trials

The question of what one is expressing is not the same question as what one is communicating. A communication is a subset of expressions. As Anderson and Pildes note, “To communicate a mental state requires that one express it with the intent that others recognize that state by recognizing the communicative intention.”⁷⁰ For example, an interviewee’s fidgeting may express nervousness, but this is not what the interviewee is seeking to communicate (usually, quite the opposite).⁷¹

Thus far, I have argued that firing in response to a Twitter trial is an expression of blame. But in instances of Twitter trials, the business not only expresses blame, it also sometimes explicitly communicates it. The firm does this by coupling the firing with a condemnatory press release. For instance, soon after Sacco’s tweet, IAC stated:

⁷⁰ It is worth noting that communications could be used as a means of concealing one’s intended purpose for performing the act. For example, one might explicitly communicate blame as the reason for firing, but the actual reason for firing might simply be that the manager does not like having a person of a different ethnicity working in his office.

⁷¹ To illustrate this point, Anderson and Pildes give the example of a shoplifter’s “furtive glances” expressing an intention not to get caught, while this being not at all what the shoplifter is attempting to communicate. “Expressive Theories of Law: A General Restatement,” 2000, 1508.

“We take this issue very seriously, and we have parted ways with the employee in question. There is no excuse for the hateful statements that have been made and we condemn them unequivocally.”⁷²

Sacco’s firing was not only an expression of blame through the act of firing, it also was coupled with an explicitly communicated form of blame. If a business claims to fire an employee for non-moral reasons related to disassociating, coupling the firing with a condemnatory press release of the sort that IAC did would be dishonest and disingenuous.

Importantly, even if the employee is friends with many of her colleagues and managers, and knows and believes that the decision to fire her is strictly a business decision to disassociate, this is not enough not to make it an expression of blame. As Anderson and Pildes state, “the “recipients” of actions also do not have exclusive control over the public meanings of those actions...”⁷³ If a business pairs the firing with a moralizing press release that accompanies the firing, or fires an employee in certain contexts (e.g., in response to a Twitter trial), then this *is* an act of blame.

But this alone does not license the conclusion I am seeking in the broader project—that businesses are acting inappropriately in blaming through firing in response to the Twitter trial. This is because the fact that an act is an expression of blame does not settle the

⁷² Despite this explicit condemnation, IAC in the next sentence states, “We hope, however, that time and action, and the forgiving spirit, will not result in the wholesale condemnation of an individual who we have otherwise known to be a decent person at core.” See Coine and Babbitt, *A World Gone Social*, 29. This is an interesting inclusion, and one that seems to be at tension with condemning “unequivocally.” The question of how including this qualification interacts with the expression of condemnation, and to what extent it can be meaningfully uttered in the same breath as the communication of condemnation, may turn on difficult issues in the philosophy of language related to the relationship between semantic and pragmatic content and meaning. For a seminal discussion of issues related to the relationship between semantic and pragmatic meaning, see Herbert P Grice, “Logic and Conversation,” in *Studies in the Way of Words* (Harvard University Press, 1989), 22–40.

⁷³ “Expressive Theories of Law: A General Restatement,” 2000, 1524.

issue of whether it is an inappropriate expression of blame. Indeed, there are many instances of blame that most think are well-justified and appropriate. The task in the next two chapters is to argue that it is morally inappropriate for a business to blame an employee through firing in response to a Twitter trial.

CHAPTER 4: DESERT, BLAME, AND THE ADDITIVITY

PRINCIPLE

Introduction

The ethics of blame emerges as a significant area of inquiry once we recognize that a person's being blameworthy (deserving blame) does not settle the question of whether we ought to blame that person.⁷⁴ Consider the following examples that illuminate the distinction between judging that blameworthy and blaming⁷⁵:

- A. *Mother*: A mother who learns that her son is guilty of theft might recognize her son to be blameworthy without blaming him.⁷⁶
- B. *Driveway*: Suppose an otherwise caring father recklessly fails to check his rearview mirror while exiting his driveway and runs over and kills his toddler. One might think him blameworthy for his recklessness, but still not blame him, given the immense emotional suffering associated with losing one's child.
- C. *Therapist*: A psychologist working in a prison might recognize that an inmate is blameworthy for murder without blaming the inmate. This might be because

⁷⁴ While most theorists seem to think that blame is a fitting, appropriate, justified, or apt response to wrongdoing, some recent theorists, notably Miranda Fricker and Marilyn Friedman, have helpfully articulated certain conditions that one must satisfy to blame another appropriately. See Fricker, "What's the Point of Blame? A Paradigm Based Explanation," March 1, 2016; Friedman, "How to Blame People Responsibly." Their suggestion is that since blaming is an action, moreover an action with corrosive effects, one can perform it more or less appropriately, and in better or worse ways. An implication of this is that the set of individuals who are blameworthy may very well be larger than the set of individuals who any one of us can permissibly blame.

⁷⁵ It is worth noting that this distinction is not a trivial feature of my account. Some skeptical accounts of responsibility suggest that blaming does not make sense because agents are never blameworthy. See Gideon Rosen, "Culpability and Ignorance," *Proceedings of the Aristotelian Society* 103, no. 1 (2002); Gideon Rosen, "Skepticism about Moral Responsibility," *Philosophical Perspectives* 18 (2004): 295–313. I am not defending this sort of view. Indeed, a critical aspect of my argument is that agents *are* blameworthy (and yet it can be inappropriate to blame them).

⁷⁶ I am here open to the possibility that the mother *should* blame her son. But this is not at odds with the point I am making: judging that someone is blameworthy is different from blaming.

blaming is counterproductive to therapeutic aims.⁷⁷

The reasons why one may judge another to be blameworthy, yet still think it inappropriate to blame, are diverse.⁷⁸ For instance, in *Mother*, certain familial relations may require the mother to withhold blame. In *Driveway*, perhaps compassion requires one to suppress blame.⁷⁹ In *Therapist*, successfully performing certain professional roles might require one not to blame. For our current purposes, however, what is important is that blaming a person and judging that person to be blameworthy are separable.⁸⁰

The ethics of blame is still a nascent area of inquiry with many unsettled questions, including, for example, why, if at all, hypocritical blaming is inappropriate⁸¹, how “moral standing” is a sensible notion if morality is universal⁸², and so on. Despite the lively ongoing debate, one aspect of the debate remains uncontroversial: for blame to be appropriate, one should not blame a person who does not deserve blame or blame a person beyond what she

⁷⁷ For a discussion of the unproductiveness of blame in therapeutic contexts see Hanna Pickard, “Responsibility without Blame: Empathy and the Effective Treatment of Personality Disorder,” *Philosophy, Psychiatry, & Psychology*: PPP 18, no. 3 (2011): p. 209; Hanna Pickard, “Responsibility without Blame: Philosophical Reflections on Clinical Practice,” *Oxford Handbook of Philosophy of Psychiatry*, 2013, 1134–54.

⁷⁸ Another instance in which one might judge that a person is blameworthy yet not blame her might be when one forgives. That is, forgiveness might be understood as occurring when a victim X recognizes that Y is blameworthy for wronging her, yet X nevertheless opts not to blame Y (or opts to stop blaming Y). Indeed many influential accounts of forgiveness understand the concept as involving the overcoming of resentment. But the issue of forgiveness is more complicated. For problems with accounts that understand forgiveness as involving the forgoing of resentment toward a wrongdoer, see Lucy Allais “Wiping the Slate Clean: The Heart of Forgiveness,” *Philosophy & Public Affairs* 36, no. 1 (2008): 33–68.

⁷⁹ A different interpretation of *Driveway* might be that when a wrongdoer is overcome with a high-degree of guilt for certain kinds of wrongdoings, this might render blaming inappropriate.

⁸⁰ Gary Watson puts this position as follows: “Since it is one thing to think that someone deserves to be an object of such attitudes and another actually to have these attitudes, on this view one can judge someone to be blameworthy without blaming him or her oneself.” See “Two Faces of Responsibility,” in *Agency and Answerability: Selected Essays* (Oxford University Press, 2004), 278.

⁸¹ Gerald Cohen, “Casting the First Stone: Who Can, and Who Can’t, Condemn the Terrorists?,” *Royal Institute of Philosophy Supplement* 58 (2006): 113–36; Kyle Fritz and Daniel Miller, “Hypocrisy and the Standing to Blame,” *Pacific Philosophical Quarterly* 97, no. 2 (2015): 1–22; R. Jay Wallace, “Hypocrisy, Moral Address, and the Equal Standing of Persons,” *Philosophy and Public Affairs* 38, no. 4 (2010); Patrick Todd, “A Unified Account of the Moral Standing to Blame,” *Noûs*, forthcoming.

⁸² Saul Smilansky, “The Paradox of Moral Complaint,” *Utilitas* 18, no. 3 (2006): 284–90.

deserves.⁸³ Miranda Fricker characterizes blaming someone who is not blameworthy or blaming someone out of proportion to what she deserves as being pathologies of blame.⁸⁴

We can capture this position with the following principle:

Non-Excess: It is wrong to blame a person who does not deserve blame or to blame a person beyond what she deserves.

I too believe **Non-Excess**. Consider the following example as an illustration of the principle:

Hotel: Patrick realizes his watch is missing. He frantically searches the room and becomes convinced that the housekeeper stole his watch. Contrary to what Patrick thinks, the watch is in Patrick's gym bag—he had taken off his watch before going for a swim.

Here, if Patrick blamed the housekeeper, he would wrong the housekeeper. This is so even if the housekeeper is not in any way materially harmed. An apology would be in order.

⁸³ Manuel Vargas notes it is less plausible to justify our moral responsibility practices “in terms of the efficacy of particular tokenings of praising and blaming” than in terms of the “group-level effects of justified norms that are ubiquitously internalized by members of the community and regularly put into practice.” *Building Better Beings: A Theory of Moral Responsibility* (Oxford University Press, 2012), p. 172. Importantly, “one can allow that the justification of praise and blame might derive from the efficacy of those norms in influencing us, without thereby committing ourselves to the view that every instance, or even every type of characteristic emotional reaction, thereby contributes to influencing us in the appropriate way.” *Ibid.*, 180. I am sympathetic to Vargas' line of argument on this issue, but will not discuss his view further here. I bring up this matter simply to draw attention to the different levels at which one might justify (or object to) blaming practices.

⁸⁴ “What's the Point of Blame? A Paradigm Based Explanation,” *Nous*, 2014.

In this chapter and the next, I argue that if we want to preserve our commitment to **Non-Excess**, we require the following principle:

The Additivity Principle: The appropriateness of an act of blame depends on how much others blame.

This principle has significance for the ethics of blame, and it also has implications for our understanding of the nature of desert-claims.

Many contemporary desert theorists believe the following about desert-claims: (1) they generate pro-tanto reasons to provide the desert object in question and (2) they do not generate obligations. I will claim that closely examining desert-objects that possess certain characteristics, of which, blame is a paradigm example, will show that both (1) and (2) are mistaken. This point is brought into sharp relief due to the same unique features of blame that give significance to the additivity principle.

In addition to characterizing, motivating, and defending the additivity principle, I discuss its implications for the broader project: I argue that the additivity principle provides the manager a strong reason to think that his or her act of blaming through firing constitutes an inappropriate act of blame.

Preliminary Remarks On Desert

Conceptual Dimensions of Desert

The additivity principle is the missing piece that is needed to reconcile the structural features of desert-claims with certain kinds of desert objects, of which blame is a paradigm

example. To see why, we need to examine the nature of desert. So, I start the discussion in this section by introducing the elements that constitute desert-claims.⁸⁵

My aim here is to provide enough of an understanding of the concept of desert so that we can talk sensibly about desert as it relates to this dissertation—deserving *blame*. Given that my purpose is not to offer a conceptual analysis of desert, there are significant aspects of the debate I pass over. With that said, let's first contrast desert from some neighboring concepts: eligibility, entitlement, and "ought to receive."

Suppose I have not been meeting my earnings targets due to spending my work hours loitering on the social media pages of old classmates. I might be *eligible* for a bonus but not deserve it. On the other hand, a person might be entitled to earnings associated with executing a trade but not *deserve* the earnings due to the trade execution having been a sheer fluke. Relatedly, someone might deserve something but *not* be entitled to it: a person who deserves a bonus for her skilled leadership during a recession might not be entitled to it because of some accounting rule that prevents her from receiving her bonus this calendar year. Desert also does not mean "ought to receive." We might think that destitute children ought to receive support from the well-off but not think that they deserve it.

Let's now clarify the structure and elements of desert-claims of the sort "X deserves Y."

The Subject of Desert Claims

In a desert claim of the sort, "X deserves Y," the "X" stands for the subject of the desert ascription. I am concerned with desert ascriptions where the subjects are *persons*; that

⁸⁵ My discussion regarding the conceptual structure of desert is indebted to Feinberg, *Doing & Deserving: Essays in the Theory of Responsibility*.

is, it is a person who deserves some object. Some think non-persons can be the subject in desert-claims too—for example, we might coherently say *Lyft* deserves praise for making a 1M donation to the ACLU. We might also say things like, “Enron deserved punishment.” We might even say that certain initiatives deserve our support. Some also ascribe desert to art (e.g., the *Pietà* deserves praise), nature (e.g., “*Mauna Kea* deserves our admiration”), among other things. But in this dissertation, my concern will be desert ascriptions with respect to persons.

The Desert Object

If “X” is the subject in a desert claim of the sort “X deserves Y,” then “Y” is the *desert-object*—the thing that the subject is said to deserve. There are many things—accolades, praise, awards, offices, honors, grades, punishment—that might be understood to be the desert object.⁸⁶ Some think that any object can be deserved, but others think only certain instantiations of praise and dispraise can be deserved. Yet others think that only distributable goods can be deserved. I will not get into these issues, because, conveniently, my focus will be on whether *blame* is deserved, and this is, without controversy, the kind of thing that can be deserved.⁸⁷ The desert object that is the focus of this and the next chapter is blame.

⁸⁶ Ibid.

⁸⁷ Of course, this is apart from scholars who deny the very concept of desert due to holding hard incompatibilist views. See, for example, Derk Pereboom, *Living Without Free Will* (Cambridge University Press, 2001).

Desert Bases

I have thus far construed desert-claims as “X deserves Y.” Joel Feinberg suggests that such claims are incomplete and unintelligible: a desert basis is required.⁸⁸ The desert basis is the answer to the question of: “In virtue of *what* does X deserve Y?” No one in the literature has attempted to provide an exhaustive list of possible desert bases, in part because “the bases of desert vary with the mode of deserved treatment.”⁸⁹ There are also important questions concerning the nature of the relationship between the desert basis and the desert object; for example, there is the question regarding what it takes to count as a desert basis. I will not delve into such issues. What matters for this dissertation is that acting wrongly or badly constitutes a desert basis for blame.

Introducing the Adicity of Desert:

We now have the components required to arrive at what has been called the “adicity” of desert.⁹⁰ Desert-claims, in its canonical formulation, are understood as three-part relations.⁹¹ For example:

The **manager** deserves **praise** due to her **skillful leadership**.

Here, the manager is the subject. The object is praise. And the basis for the manager’s deserving praise is her skilled leadership.

⁸⁸ Feinberg, *Doing & Deserving: Essays in the Theory of Responsibility*, 58.

⁸⁹ *Ibid.*, 61.

⁹⁰ Fred Feldman, *Distributive Justice: Getting What We Deserve from Our Country* (Oxford University Press, 2016), 36.

⁹¹ Feinberg, *Doing & Deserving: Essays in the Theory of Responsibility*.

Feinberg's tripartite analysis seems to leave out something. This omission is most salient from the lack of answer to the following question: Who should distribute the "praise," or, in other words, who is the "source," "provider," or "distributor" of the praise? To account for this gap, we might amend Feinberg's formulation to add:

The **manager** deserves **praise** from **her team** due to her **skillful leadership**.

Here, the manager is the subject. The object is praise. The distributor is the team (I will use "distributor" throughout the remainder of this dissertation. I understand its use to be interchangeable with "source" or "provider.") And the basis for the manager's deserving praise is her skilled leadership.

It is worth flagging that there is debate about whether to structure desert-claims as three or four-part relations: some think we do not need a fourth element if we could build "distributor" into the desert object (the object the person deserves is, "praise from team").⁹² While this seems plausible, other scholars think little hangs on whether we structure desert-claims as three-part relations or four-part relations.⁹³

The Normative Dimensions of Desert Claims

Many scholars believe it is important that people get what they deserve. As Shelly Kagan notes, "...it matters, morally, whether people are in fact getting what they deserve.

⁹² Feldman, *Distributive Justice: Getting What We Deserve from Our Country*, 40.

⁹³ Fred Feldman and Brad Skow, "Desert," ed. Edward N. Zalta, *The Stanford Encyclopedia of Philosophy* (Metaphysics Research Lab, Stanford University, 2016), <https://plato.stanford.edu/archives/win2016/entries/desert/>.

More particularly, it is a *good* thing, morally speaking, if people are getting what they deserve. A world in which people are getting what they deserve is a better one than a world in which they are not.”⁹⁴ But satisfying desert claims is not the only thing that matters, morally speaking. It is in principle possible that the value of desert is at odds with other moral values, and indeed it is also possible that desert-claims are outweighed by other moral considerations.⁹⁵

What is important is that “a person’s desert of X is always a reason for giving X to him, but not always a conclusive reason.”⁹⁶ For this reason, many desert-theorists accept the following:

Pro-Tanto: Desert claims generate *pro-tanto* reasons to provide the desert object.

Since providing the desert-object to the desert-subject is considered a good thing, morally speaking, but not the *only* thing that matters morally, many theorists think we have pro-tanto reasons to provide the desert-object. This is so, even when the desert-object is blame. For instance, Michael McKenna notes, “Of course, the goodness at issue here only offers *pro tanto* reasons for blaming, and so naturally could be overridden by other factors.”⁹⁷ Making a similar point about desert, but using “prima facie” terminology instead of “pro tanto,” Michael Zimmerman states,

⁹⁴ Shelly Kagan, *The Geometry of Desert* (New York: Oxford University Press, 2012), 5.

⁹⁵ Ibid., 17–18; Feinberg, *Doing & Deserving: Essays in the Theory of Responsibility*, 80.

⁹⁶ Feinberg, *Doing & Deserving: Essays in the Theory of Responsibility*, 60.

⁹⁷ Michael McKenna, *Conversation and Responsibility* (New York: Oxford University Press, 2012), 170.

“Desert is a *prima facie* matter. To say that someone morally deserves a certain treatment is in part to say that there is a moral consideration in favor of his being so treated. (That is so, even if desert in some cases imposes no *ought-to-do*; for, even where it fails to impose an *ought-to-do*, it nevertheless provides a *good-reason-to-do*.) But it is not to say that there is a conclusive moral consideration in favor of being so treated. Desert constitutes just one moral consideration, and the force of its presence or absence can in principle be overridden by other considerations”⁹⁸

Many believe we have reason (some think, *strong* reason) to provide the desert-object in question to the desert-subject, absent overriding considerations. As Serena Olsaretti says, “Most desert claims have moral force, in the sense that they are *prima facie* ought claims: the fact that someone deserves something means that she ought, other things being equal, to receive that thing, or that it would be morally better if she did.”⁹⁹

Suppose John deserves a bonus. But the firm has hit a rough patch and cannot afford to provide John the bonus. On the view of many desert theorists, the firm has a *pro-tanto* reason to provide John with a bonus, but this can be overridden by other kinds of moral considerations (e.g., reducing unfair inequalities in compensation¹⁰⁰) as well as non-moral considerations (e.g., not having the liquidity to pay it). So, keeping the *pro-tanto* qualifier allows for the overriding of desert-claims. The thought is that desert is indeed important, but not the *only* thing that is important. A wide range of desert theorists think that desert-claims provide *pro-tanto* reasons to provide the desert object.

⁹⁸ Michael J. Zimmerman, *An Essay on Moral Responsibility* (Rowman & Littlefield, 1988), 162.

⁹⁹ Serena Olsaretti, “Introduction: Debating Desert and Justice,” in *Desert and Justice*, ed. Serena Olsaretti (Oxford University Press, 2003), 8.

¹⁰⁰ Jeffrey Moriarty, “Do CEOs Get Paid Too Much?,” *Business Ethics Quarterly* 15, no. 2 (2005): 257–81.

In addition to **Pro-Tanto**, there is another feature of desert-claims that many accept:

No Obligation: Desert-claims rarely, if at all, generate obligations.

For example, while an author_{subject} may deserve recognition_{object}, such a desert-claim places no person under an obligation to provide the desert object (recognition) in question to the subject (the author).

A range of theorists seem to endorse something akin to **No Obligation**. Douglas Husak points out, “One noteworthy feature of desert judgments is that they seldom, if ever, impose correlative obligations or duties on anyone to treat the deserving party in a particular way.”¹⁰¹ George Sher too believes something like **No Obligation**, “For in many cases, what is most striking about desert-claims is precisely that they do *not* imply anything about what particular persons ought to do...we typically do not mean that anyone is obligated to take steps to provide what is deserved.”¹⁰² Sher makes the point about the difference between the normative dimensions of desert-claims and the realm of obligations even more pointedly in the following passage:

“...most desert-claims, I argue, are grounded in values rather than in obligations.

Where desert affects what persons ought to do, it generally does so only indirectly.

¹⁰¹ Douglas N. Husak, “Why Punish the Deserving,” *Nous* 26, no. 4 (1992): 449.

¹⁰² George Sher, *Desert* (Princeton University Press, 1987), 5. This citation is due to Husak, “Why Punish the Deserving,” 449. It is worth noting that there might be reason to think that Sher does not think the realm of obligations is entirely divorced from the realm of desert: “...for even if desert-claims do not themselves dictate actions, the values from which they draw their force may surely have an important influence on the obligations that do. There is no reason to expect that influence to be straightforward or direct...” *Desert*, 202. Sher occasionally seems to suggest that desert-claims place people under obligations. But when he does, it seems that he is conflating entitlement with desert.

This means that, despite appearances, desert-claims and rights-claims seldom conflict.”¹⁰³

Desert theorists commonly think it is permissible, indeed a good thing, to satisfy desert-claims, but that desert-claims do not generate obligations.

We now have most of the conceptual pieces in place to situate the discussion of the additivity principle. What I will now argue is that in thinking of the normative-dimension of desert-claims (i.e., **Pro-Tanto** and **No Obligation**), we must pay closer attention to the nature of the desert-object built into the desert-claim. I then suggest that the additivity principle comes from certain overlooked dimensions of desert-claims: desert-objects with certain special characteristics can play an important role in how we should think of the nature and structure of desert-claims for these objects. Importantly, these sorts of desert-objects (especially blame) are at odds with the standard understanding of the normative structure of desert-claims (i.e., **Pro-Tanto** and **No Obligation**).

Classifying Desert-Objects

Let’s now revisit desert-objects. Below is Feinberg’s taxonomy of desert objects:¹⁰⁴

1. Awards of prizes
2. Assignments of grades
3. Rewards and punishments
4. Praise, blame, and other informal responses
5. Reparation, liability, and other modes of compensation

¹⁰³ Sher, *Desert*, 21.

¹⁰⁴ Feinberg, *Doing & Deserving: Essays in the Theory of Responsibility*, 62.

Feinberg's taxonomy may suffice for the purposes of classification. However, I think there is another method of organization that better illuminates the unique normative significance of certain desert objects, especially blame. Specifically, this involves classifying the objects into two categories: objects that would wrong the person who it is distributed to absent a desert-claim and objects that would not. I will explain.

I ask the reader for a moment to put aside *desert*-related questions and simply consider the nature of the objects in Feinberg's taxonomy. Consider an award of a prize absent a desert-claim. We could give somebody a prize—say a certificate, trophy, cash-prize, so on—without doing anything immoral. One would have no complaint about receiving \$10,000 in cash.¹⁰⁵ It might be peculiar or surprising to receive a prize-certificate for no reason at all.¹⁰⁶ But importantly, one needs no special justification to give somebody such an object in everyday life; sometimes, giving somebody the object *absent* any justification, might increase its significance (perhaps akin to how buying one's partner a gift without occasion might increase its significance).

Something similar can be said about giving a person a reward, praise, "good grades,"¹⁰⁷ reparation, or "other modes of compensation." These kinds of objects are good,

¹⁰⁵ Perhaps there are some exceptions: a person desiring to overcome a cocaine habit might have a complaint about receiving the cash injection given the role the cash may play in sustaining the habit. Thanks to Matthew Caulfield for raising this point.

¹⁰⁶ One can imagine instances in which giving someone a prize might, perhaps through a sort of conversational implicature, wrong them. For example, if an audience burst into applause immediately after a performance that went poorly, or if an award committee gave the first-prize to someone who made the most embarrassing mistakes, this would flout certain "conversational" maxims and thereby indicate that the applause or first-prize means something at odds with the conventional meaning of applause or a first-prize. See Grice, "Logic and Conversation." It is also worth noting that giving a prize to someone who does not deserve it might be *unfair* to the person who does deserve it. Perhaps it could be that *by* giving this person the prize, it wronged the person who *did* deserve it. Note, however, that this would be at odds with the received understanding of desert not being the sort of thing that generates obligations.

¹⁰⁷ I can imagine somebody who is simply given a good grade without it being deserved may have a complaint against the professor or teacher for not taking her job seriously. But this is a different kind of complaint, not about the receipt of the grade itself, but rather, about the professor failing to take her duties seriously.

wanted, desired, unobjectionable, etc. The critical point is that we could give the person the object (independent of questions about desert), without acting wrongly.

With other kinds of desert-objects, for instance bad grades, punishment, and blame, it would under normal circumstances be impermissible to give to a person absent a desert-claim. In other words, some kinds of objects, had we not deserved that object, it would be wrong for somebody to give it to us. This is an important fact that will complicate the received understanding of the normative structure of desert-claims.

If one were to give someone a bad grade absent a desert-claim, the person who received the grade would have a legitimate complaint of being treated badly or unfairly. Punishment is similarly noteworthy.

The feature I am highlighting is illuminated by the following well-known puzzle about punishment: What is it about criminal wrongdoing that makes treating a person in ways that would normally be impermissible (e.g., locking someone up in a small room without the person wanting to be there) instead permissible? The question is sometimes answered by referring to a desert-claim (that is, the hard treatment is permissible because the person deserves it), but the puzzle arises due to the hard treatment associated with punishment not being something we are ordinarily justified in subjecting another to. The critical point is that unlike rewards, prizes, and praise, subjecting someone to the treatment associated with punishment is generally impermissible. Absent the appropriate sort of justification, subjecting someone to the treatment associated with punishment would wrong them.

Something similar can be said about the desert-object of blame. Blaming somebody, that is, subjecting them to anger, resentment, or indignation, absent justification, is

impermissible. It would be wrong to subject somebody to the treatment that constitute blame in usual circumstances, absent a desert-claim. A significant aspect of philosophical discussions of blame concerns what it is about having acted wrongly or badly that renders treating somebody in the harsh ways associated with blaming permissible.

In sum, with certain objects, if distributed absent special justification (e.g., a desert claim), it would justifiably generate a complaint; the person is wronged, and an apology would be owed. While the general point I make applies to punishment, bad grades, and so on, blame has certain additional distinctive features we must attend to. The distinctive features that I will now discuss are an important reason why we need the additivity principle in our ethics of blame and why we will need to rethink the normative structure of desert-claims when the object is blame.

Three Distinctive Features of Blame as a Desert-Object

Incompletely Specified Set of Desert-Distributors

The first distinctive feature of blame is that it does not adequately specify the set of desert-distributors. This is not the case with many other desert-objects. For instance, when the desert-object is a prize, the desert-distributor is picked out by the very concept of a prize—it is the prize committee. Even with punishment, when we say that a person deserves punishment for assault, it is usually understood that it should be distributed by the state.¹⁰⁸

The fact that someone deserves blame, however, often fails to illuminate who should distribute it. But perhaps there is a way around this problem. As Feinberg points out, the

¹⁰⁸ I am aware that this raises questions about the conceptual possibility of parents and teachers punishing children. But absent these special circumstances, desert claims where punishment is the object, typically this implies the state, and only the state, as the desert distributor.

desert-basis sometimes tells you what the desert-object should be.¹⁰⁹ It seems as though the desert-basis can also, at least in some cases, tell you some of the desert-distributors. For example, if I deserve blame_{object} for adultery_{basis} it seems clear that at least one distributor for blame has been picked out—my spouse—by virtue of knowing the basis for my deserving blame. Still, blame is distinct from prizes and punishment in that deserving the prize (or punishment) picks out an exhaustive set of desert-distributors. Blame on the other hand is unbounded on (at least) one end in terms of specifying the desert distributors; the fact that I deserve blame from my spouse for adultery does not imply that *only* my spouse can distribute blame.

Non-Discrete

The second distinctive feature of blame is that it is not discrete, or at least it is not discrete in quite the same way as many other desert objects. If a person deserves a prize, there is a precise moment she gets what she deserves. If someone deserves a bad grade, she gets what she deserves as soon as the desert distributor assigns the grade. On the other hand, with blame, it is an act that is somehow more extended; it is not as though at one moment the person is blamed and the very next moment the blaming is done. Blaming is sometimes referred to as a process that lasts over time. Michael McKenna states, “Because the practice of blaming is part of a dynamic rather than a static process, the goodness of the activity of blaming is not located just, so to speak, in the moment of blame itself, but in its role in an

¹⁰⁹ Feinberg, *Doing & Deserving: Essays in the Theory of Responsibility*.

evolving process...”¹¹⁰ Importantly, the blame recipient is the subject of a process with no apparent expiration date.

Non-Scarce

Prizes are scarce. (Or perhaps intentionally made scarce to give the prize its significance. For example, honors would lose their significance if they were not scarce).¹¹¹ Punishment is scarce too in virtue of costs and space. Blame is non-scarce in two ways: (1) it is itself ontologically not-scarce (that is, there are not obvious limits to the amount of indignation or resentment that can be summoned), and (2) the number of possible distributors is not scarce (it is only limited by the adult population size, which importantly can change in size).

Theoretical Implications for the Nature of Desert-Claims

I will now discuss some theoretical implications for the nature and structure of desert-claims that stem from the distinctive features of blame. This will also help clarify why the additivity principle is required.

In my view, desert-claims whose object is blame often do not generate pro-tanto reasons to distribute. Moreover, there will often be desert-related obligations (namely, not to provide the desert object). This stands at odds with the received view about the normative dimensions of desert-claims (i.e., **Pro-Tanto** and **No Obligation**).

¹¹⁰ *Conversation and Responsibility*, 169.

¹¹¹ Feinberg, *Doing & Deserving: Essays in the Theory of Responsibility*.

Suppose Oriana's colleague, Jill, has acted wrongly or badly, and Oriana is wondering whether she should blame Jill. Oriana asks her friend Gastón to have coffee with her to discuss this matter.

Oriana: "Should I blame Jill?"

Gastón: "It depends. Does Jill deserve blame?"

Confident in Jill's blameworthiness, Oriana says,

Oriana: "She does."

This doesn't seem to tell Gastón everything he wants to know.

Gastón: "But does she deserve blame from *you*?"

How would Oriana learn whether Jill deserves blame from her? I am not especially concerned with the epistemic dimension of Oriana's inquiry, but rather with the moral dimension, namely: What would make it the case that Jill deserves blame from Oriana?

I propose that asking "Should *I* blame?" will illuminate the importance of recognizing that someone's deserving blame doesn't settle whether they deserve blame from one right now.¹¹² Taking on the first-person perspective will also help illuminate two theoretical results: when the object in a desert-claim is blame, it (1) often does not generate pro-tanto reasons (thus, **Pro-Tanto** is false), (2) it often does generate obligations (thus, **No Obligation** is false).

One might object that I am merely failing to account for the principle of "moral standing." However, this is not quite right. There are distinctions between eligible desert-distributors, eligible desert-distributors with pro-tanto reason to distribute blame, and the set of those who have moral standing. We should sort out some of these distinctions.

¹¹² This question also allows one to come to terms with a potential temporal dimension of the ethics of blame (i.e., Should I blame *now*?)—perhaps, there is some kind of "statute of limitations of desert." See Kagan, *The Geometry of Desert*, 11.

First, there is the set of eligible desert-distributors. For some desert-objects, the nature of the object spells out the exhaustive set of eligible desert-distributors. For example, the only eligible desert-distributors for the Nobel prize are members of the Nobel committee. (This also brings us to one clear counter-example to **Pro-Tanto** since it is conceptually confused to think that everybody has a pro-tanto reason to distribute the Nobel prize; only the Nobel committee does. If the person who deserves the Nobel prize received the \$1m from an anonymous private donor, that person did not get what she deserved.) For other desert-objects, for example, blame, the set of eligible desert-distributors are the members of the moral community.¹¹³

Second, the set of desert-distributors with pro-tanto reason to distribute blame is a subset of the set of eligible desert-distributors.¹¹⁴ More specifically, those with pro-tanto reason to blame are *any* subset of the set of eligible desert-distributors whose blaming would not result in violating **Non-Excess**. In other words, pro-tanto reasons generate up to a point (the point at which the wrongdoer receives the amount of blame she deserves). Those with pro-tanto reason to blame are a “slice” of the “eligible desert distributor pie,” but importantly, not any specific slice.

Third, the set of those who have standing to blame is a subset of the set of eligible desert-distributors, but it can be distinct from the set of desert-distributors with pro-tanto reason to blame. I should say more about the concept of moral standing.

¹¹³ Roughly, the moral community is the set of those who satisfy the conditions for full moral agency. For a detailed discussion of the boundaries of the moral community, see David Shoemaker, “Moral Address, Moral Responsibility, and the Boundaries of the Moral Community,” *Ethics* 118 (2007): 70–108.

¹¹⁴ In principle, it could be that for some egregious wrongs the threshold for the amount of blame a wrongdoer deserves is so high such that the entire set of eligible desert-distributors would have pro-tanto reason to blame. So, there are some cases in which the set of those with pro-tanto reason to blame is not strictly speaking a subset of those who are eligible distributors, but rather just is the set of eligible desert-distributors.

Some speak of blaming as an act that is part of a process. The process involves, among other things, protecting, upholding, and enforcing communal moral values. Like many processes, this is one that can be delegitimized. Moral standing might be understood as follows: when one lacks standing to blame, the act of blaming delegitimizes the blaming process in certain ways. Three categories are commonly understood to undermine standing: blaming someone for a wrongdoing that one has performed in the past in similar circumstances (call this, undermining standing through hypocrisy), blaming someone for a wrongdoing in which one was culpable (call this, undermining standing through culpability), blaming someone for something that is none of one's business (call this, undermining standing because none of one's business).¹¹⁵ And if one lacked standing yet were to engage in blaming, the blaming would in some sense stain the process. A critical point with standing is this: standing claims do not undermine the veracity of the desert claim. The wrongdoer *does* in fact deserve blame. It is simply that the person who lacks standing is not appropriately positioned to blame the wrongdoer. The desert-claim is conceptually prior to the standing claim.

In principle, the set of those who have standing to blame need not overlap with those who have pro-tanto reason to distribute blame. There might be some people who have pro-tanto reason to blame but lack standing to blame (such people's blaming would be inappropriate, not because of violating **Non-Excess**, but because it is procedurally illegitimate). Importantly, there might be some people who have standing to blame, but nevertheless should not exercise their standing. Why? Because they do not have pro-tanto reason to blame; exercising their standing to blame would wrong the person. The wrong in

¹¹⁵ Cohen, "Casting the First Stone: Who Can, and Who Can't, Condemn the Terrorists?," 2006; Todd, "A Unified Account of the Moral Standing to Blame."

such a case wouldn't merely be procedurally illegitimate as in paradigmatic cases of blaming without standing—rather, it is wrong because of violating **Non-Excess**.

Sometimes, conceptually it does not make sense for just anyone to be a desert distributor. For example, resentment is something that one could only deserve from a victim of one's wrongdoing (whereas indignation is something that is available to third parties). As such, only the victim of a wrongdoing could have a pro-tanto reason to resent a wrongdoer. As Christopher Evan Franklin notes, "resentment...is available only as a form of response to the person wronged."¹¹⁶ Moreover, even if a victim of a wrongdoing might be a member of the set of eligible desert-distributors with pro-tanto reason to distribute blame in the form of resentment, the victim might lose standing to resent due to having performed the same immoral act as the original offender (here I am assuming hypocrisy undermines standing to blame). This is an example where one has pro-tanto reason to blame but loses standing. Thus, having standing to blame and having pro-tanto reason to blame are distinct.

There is an added benefit to acknowledging the distinction between those with pro-tanto reason to distribute blame and those with standing to blame. Some cases commonly thought to fall under the scope of moral standing may be more naturally explained in terms of lacking pro-tanto reasons to distribute. As I stated, some think that a wrongdoing being "none of one's business" can undermine one's standing to blame, though few have given an account of *why* this is so.¹¹⁷ If my significant other cheats on me, we might say that a third-party bystander shouldn't blame her since the bystander lacks standing (even though my

¹¹⁶ Christopher Evan Franklin, "Valuing Blame," in *Blame: Its Nature and Norms*, ed. D. Justin Coates and Neal A. Tognazzini (Oxford University Press, 2013), 213.

¹¹⁷ For some theorists who suggest that blame is inappropriate when it is "none of one's business," see Radzik, "On Minding Your Own Business: Differentiating Accountability Relations within the Moral Community"; McKenna, *Conversation and Responsibility*, 28; Todd, "A Unified Account of the Moral Standing to Blame"; Angela Smith, "On Being Responsible and Holding Responsible," *The Journal of Ethics* 11, no. 4 (2007): 465–84.

significant other deserves blame), because it is none of the third party's business.

Alternatively, we could say that the third-party-bystander never had a pro-tanto reason to distribute *resentment* in the first place—and thus is violating a form of **Non-Excess**. It is that when one cheats on another, the desert claim generates only one pro-tanto reason, namely for the person cheated on to express resentment. Other blamers would be wronging because of violating **Non-Excess** (since no indignation is deserved). The latter seems like a better explanation than saying that we *all* could blame the significant other, but all but the victim suddenly lose standing because it is none of our business.

With the distinctions between the set of eligible desert-distributors, the set of those with pro-tanto reason to distribute blame, and the set of those with standing to blame in place, we are now better positioned to discuss why the received view of the normative structure of desert is problematic when the desert-object is blame.

The reason **Pro-Tanto** (*desert claims generate pro-tanto reasons to provide the desert object*) and **No Obligation** (*desert-claims rarely, if at all, generate obligations*) are false, at least when the desert-object is blame, is simple. There are two reasons **Pro-Tanto** is false. First, once a person is subjected to the amount of blame she deserves, the desert-claim does not generate any pro-tanto reasons. It does not make sense that the desert-claim entails that persons have pro-tanto reasons to do what would be wrong (that is, blaming someone beyond what she deserves). So, desert-claims stop generating pro-tanto reasons when **Non-Excess** would be violated. Second, with certain desert objects, it does not make sense that it generates pro-tanto reasons for anyone to provide: If the desert-object is resentment, only victims of the wrongdoing have pro-tanto reason to distribute that object. It does not make conceptual

sense for a bystander to have *pro-tanto* reason to resent (though she might have *pro-tanto* reason to be indignant).

The reason **No Obligation** is false also relates to **Non-Excess**. Specifically, if an act of blaming would violate **Non-Excess**, then obligations generate—namely, obligations *not* to provide the desert object (that is, blame). So, we might structure the normative dimensions of desert-claims as a piece-wise function of sorts: there are *pro-tanto* reasons to blame generated only up to and equal to the point at which the subject has received the amount of blame she deserves. Beyond that point, not only are there no *pro-tanto* reasons to blame, but there are obligations *not* to blame, since blaming would subject the person to more blame than she deserves.

If theorists who endorse **No Obligation** take their claim to mean that desert-claims do not generate obligations *to provide the desert-object*, then strictly speaking, I think this is plausible. (But still, one might think this too is false. If someone was being bullied, and you were well-positioned to blame the bully but did not do so, perhaps you have violated an obligation to blame that bully.) If on the other hand theorists who endorse **No Obligation** claim that desert-claims do not generate obligations simpliciter, **No Obligation** is false. If I am correct, contra Sher and others who think that rights-claims and desert-claims are different realms, desert-claims are more closely related to the realm of obligations than is commonly understood, and not merely the kind of thing that leads to a good state of affairs, that may or may not be overridden by consequentialist considerations that override the *pro-tanto* qualifier. If one's blaming would result in the wrongdoer receiving blame beyond what she deserves (in violation of **Non-Excess**), then desert-claims *do* generate some obligations, namely not to blame.

To conclude this section, desert-claims in many circumstances will not generate pro-tanto reasons to distribute. Desert-claims will also often generate obligations not to distribute the desert-object in question. **Pro-Tanto** and **No Obligation** are false when the desert-object is blame. In the next section, I will discuss how taking the additivity principle into consideration will prevent a prospective blamer from acting wrongly by blaming a person beyond what she deserves.

Situating the Additivity Principle

The additivity principle derives its significance from certain distinctive features of blame and the need to preserve **Non-Excess**. I have discussed the distinctive features of blame (that it has an incompletely specified set of distributors, it is non-discrete, and it is not scarce); now I will discuss how the additivity principle relates to preserving **Non-Excess**.

Let's start with how the additivity principle relates to how a business should respond when an employee is at the center of a Twitter trial. Returning to the example involving Sacco, let's consider two possibilities. First, suppose Sacco's conduct is not wrong and she does not deserve blame. In this case, if the business blames her through firing, then the business acts wrongly (and so too do the other participants in the Twitter trial), because it is wrong to blame someone who does not deserve blame (in virtue of **Non-Excess**).

The second possibility is more interesting: Suppose Sacco's conduct is wrong and she does deserve blame. At first blush, it seems that she is an appropriate target of blame. Nevertheless, the fact that she deserves blame does not settle whether one ought to blame

her.¹¹⁸

Some scholars have acknowledged, when the desert-object is punishment, the fact that the desert-subject deserves punishment does not mean we should punish her. In other words, supposing desert-claims justify the hard treatment associated with punishment, still, this does not mean we should punish the deserving person. As Douglas Husak asks,

“Suppose we are convinced that a particular criminal C deserves a punishment p. Should p be imposed, all things considered? What reasons, if any, need to be given to conclude that the punishment that is deserved should actually be inflicted?”¹¹⁹

The questions he asks are relevant because, in his view, consequentialist considerations can override the moral importance of the criminal getting what she deserves. He suggests that even retributivists must evaluate certain consequentialist considerations, for example, the suffering that fulfilling a desert claim might impose on “dependents or third parties.”¹²⁰ In the language of desert-claims, certain consequentialist considerations can override the pro-tanto reason to punish the subject.

To be clear, the fact that desert-claims regarding punishment do not provide decisive reason to punish the person need not mean that the person doesn’t deserve punishment, or that we have done away with desert: “If the drawbacks of punishing a deserving offender

¹¹⁸ Manuel Vargas notes this possibility: “sometimes blaming will be (locally) very costly, and perhaps even costly enough that it makes sense to maintain that one should not blame those who deserve it.” Though on Vargas’ view it is unlikely that this is often (or uniformly) the case. See Vargas, *Building Better Beings: A Theory of Moral Responsibility*, 242.

¹¹⁹ Husak, “Why Punish the Deserving,” 447. Unfortunately, in this very same article, Husak states that, even if we decide not to punish the deserving, “the informal expression of attitudes of blame would still be appropriate.” He seems to fail to see the relevance of his arguments for expressions of blame. *Ibid.*, 460.

¹²⁰ Husak, “Why Punish the Deserving,” 449.

were too great, it would be mistaken to conclude that, all things considered, he did not deserve to be punished after all. What is outweighed is the value of treating him in accordance with his desert.”¹²¹ The point is simply that the fact that someone deserves something, does not conclusively tell us how to act (that is, whether we should provide the desert-subject the object she deserves).

Just like with punishment, there may be consequentialist considerations that tell against blaming someone who deserves blame. Some of these consequentialist considerations are discussed elsewhere in the literature. However, there can also be decidedly non-consequentialist considerations that tell in favor of not distributing blame. These arise in virtue of **Non-Excess**.

Given that blaming someone who does not deserve blame or out of proportion to what she deserves would wrong that person, one must consider how much blame *others* have subjected the person to. Returning to the second scenario involving Sacco, even if Sacco deserves blame for acting immorally, this does not settle whether one ought to blame her. The manager must pay attention to the additivity principle:

The Additivity Principle: The appropriateness of an act of blame depends on how much others blame.

We require this principle to preserve our commitment to **Non-Excess** and to prevent us from violating obligations that **Non-Excess** gives rise to.

¹²¹ Ibid., 452.

If we want to preserve **Non-Excess**, there are significant implications for a prospective blamer. I am claiming that prospective blamers must pay attention to the additivity principle, that is, the extent to which others are blaming. This is because whether one's own act of blame will violate **Non-Excess** depends on whether the wrongdoer gets the amount of blame she deserves from others.

The dependence relation in the additivity principle must be clarified. This is because there is no directionality built into the principle, and the principle is consistent with saying that the more that others are blaming, the more your blame is appropriate—a claim I do not endorse. We might then amend the principle to say that the appropriateness of your act of blame depends *inversely* on how much others are blaming. But this still does not capture what is at stake. If you are the second person to blame someone for some serious wrongdoing, it does not mean that your act of blame is less appropriate than the act of blame performed by the first person to blame.

My view is that whether your blaming would subject another to blame that she does not deserve, or to blame beyond what she deserves—that is, whether you will violate **Non-Excess**—depends on facts about the extent to which others have already contributed to the amount of blame P deserves and how much others will contribute to the amount of blame P deserves. Insofar as others have given the wrongdoer the amount of blame she deserves, then one's added act of blame would be wrong because of violating **Non-Excess**. Even if others have not yet given her what she deserves but are about to give her the amount of blame she deserves (for instance, just as you are about to blame), then this again would result in your blaming being wrong. So, more precisely, the appropriateness of an act of blame

depends on whether the contributions of others to the amount of blame P deserves would render your added act of blame to be one that contributes to blame beyond what P deserves.

One feature that can make it the case that somebody is blamed beyond what she deserves is the extent to which others have contributed, or will contribute, to the amount of blame the person deserves. Suppose that, while seated on a train, Sanjay angrily berates Jinsoo in a way that is immoral. We might think that the other passengers in the vicinity ought to blame Sanjay, perhaps even think that it would be wrong for them not to blame Sanjay.¹²² Once these neighboring passengers have blamed Sanjay, there is the further question of to what extent it would be appropriate for other passengers in the train car to blame Sanjay. Should the remaining passengers in other train cars now cross over into the train car with Sanjay and proceed to blame him, and then, when he exits onto the platform, should the remainder of the people on the platform, the turnstile attendant, and custodial staff, blame him as well? And then, once he leaves the station, he passes the honey roasted peanut vendor, the Halal food truck personnel, and several taxi-cab drivers waiting for passengers: should they all blame him too? Answering these questions affirmatively is implausible.

In the case of Twitter trials, the business is already aware that the employee has been harshly blamed by thousands of people. The knowledge of this fact should provide strong reason for the business to come to see that its added blame will be undeserved and thus wrong.¹²³ There must be a limit to how much blame a person should be subjected to in

¹²² Note, this would be contrary to the received understanding of desert-claims that hold **No Obligation**.

¹²³ Even readers—I have in mind those who espouse some version of T.M. Scanlon’s conception of blame that understands blame in terms of altering relations—who find it implausible that blame is additive have good reason to endorse my conclusion. What is important is that additional acts of blaming alter the context, meaning, and significance of blame. And the meaning and significance of your act of blaming changes in

response to the sorts of wrongdoing I am considering. To think that the blame one can be subjected to is limitless in intensity and duration seems to undermine a fundamental aspect of desert in blame; it renders unintelligible the notion that persons deserve certain amounts of blame for certain acts.

One may object to the discussion thus far with the following counterexample: Suppose Jeff insults Ross on Ross's social media page. Many of Ross's friends observe this insult and subject Jeff to blame. Ross has not yet blamed Jeff. Does this mean that Ross could not now blame Jeff? No. But nevertheless, the objection may illuminate a limit of my argument.

I am assuming that the business is not the victim of the employee's wrongdoing. We might think victims of wrongdoing maintain special standing to express blame through resentment regardless of the extent to which others have blamed the wrongdoer.¹²⁴ This would be just as true if the business were the victim of the employee's wrongdoing. An alternative would be to treat resentment as a distinct desert-object from indignation; that is, while others may have already satisfied the desert-claim whose object is indignation, the desert-claim whose object is resentment remains unfulfilled and can only be fulfilled by victims of the wrongdoing. This too would be true if the business were the victim of the employee's wrongdoing.

It is now worth returning to an implication of the claim I make earlier in the dissertation—that firing in response to a Twitter trial constitutes an expression of blame—to illuminate possible boundaries of my argument. For my argument to work, the act of firing

response to what other people are doing. For Scanlon's discussion of blame, see *Moral Dimensions: Permissibility, Meaning, Blame* (Belknap Press of Harvard University Press, 2008).

¹²⁴ Cohen, "Casting the First Stone: Who Can, and Who Can't, Condemn the Terrorists?," 2006.

must be an expression of blame. If an employee acted immorally outside the workplace and *only* the business was to learn of this conduct and were to covertly fire the employee in a way that does not generate press and does not qualify as blame, my argument would not tell against this (though there may be, I think, good moral standing related reasons for the business not to fire the employee). So, the argument I have given in this dissertation is not an argument against firing as such, but rather, against blaming inappropriately (which can be expressed through firing).¹²⁵

Relatedly, if the business waited out the Twitter storm, so to speak, and then fired the employee discreetly (through somehow cancelling the implicature that the employee is being blamed through firing and not combining the firing with a condemnatory press release) then this too would be something that my argument might allow for (insofar as the business's act of firing would not be an act of blame).¹²⁶ So, the business is not forever joined at the hip with the employee once a Twitter trial occurs—the option to disassociate may be available insofar as the firing does not take place in a context that would make it an act of blame.¹²⁷

Finally, suppose the marginal blame that the business adds through firing contributes only an amount of blame up to and at most equal to what the employee deserves at the time of firing. Firing the employee would nevertheless be morally reckless. This is because the

¹²⁵ While my current concern is with outside of work immoral conduct, if my arguments end up holding force for inside of work immoral conduct too, I would not see this as an unfortunate outcome. Still, some might find it plausible that the business maintains special standing to blame through firing with respect to inside of work conduct in a way similar to how victims of wrongdoing might maintain special standing to express resentment.

¹²⁶ It is worth noting that I am only discussing a limit on my thesis; I am *not* making a positive assertion in support of firing. This is a bold enough claim that would require at least as much justification as the thesis I defend.

¹²⁷ There are other interesting questions in the vicinity. Could it be that a company that purports to respect its employees has an obligation to stand up for, or protect its employee, let alone fire her? I cannot argue for this thesis here, but it seems to me one that is worth exploring.

business cannot control how much additional blame will fall upon the employee after the firing. In other words, the firing may not be the final act of blame that hits the mark for precisely how much blame is deserved. The act of firing is likely to generate further publicity and may invite more blame, and in this sense, the business's blame might very well have been a part of the collective set of blaming acts that together exceed what the employee deserves.

In this chapter, I have claimed that the additivity principle can provide non-consequentialist reasons not to blame somebody who deserves blame since doing so would wrong that person. The additivity principle provides the manager a strong reason to think that his or her act of blaming through firing in response to a Twitter trial constitutes an inappropriate act of blame. In the final chapter, I will explore the nature of the additivity principle and its connection to the ethics of blame in greater detail.

Chapter 5: On the Nature of the Additivity of Blame and the Ethics of Blame

Introduction

At its core, the additivity principle follows from a well-acknowledged aspect of blaming: it is a communal practice. What has not been adequately acknowledged is what this means for prospective blamers.

The facts that communities come in different shapes and sizes and that they also can change in shapes and sizes are normatively relevant features in thinking about the appropriateness of blame. Like with other communal activities, blaming can involve collective action or coordination problems. Blame gives rise to a distinct set of issues that are less significant in the context of punishment; in state-imposed punishment, there are established conventions about who may distribute punishment, when to distribute punishment, and through what medium to distribute punishment. This is not so with blame: individual blamers act without considering how the rest of the community is responding to a wrongdoer and often fail to account for how their behavior contributes to the community's treatment of the wrongdoer. Embracing the additivity principle allows us, as individuals, to be sensitive to the fact that blaming is a communal practice.

In this chapter, I aim to offer a more detailed characterization of the additivity principle by discussing some of its implications, making some clarifications with respect to how it relates to other moral concepts, and engaging with some objections. In doing so, I hope to move us a small step closer to an understanding of the nature and ethics of our blaming practices more generally.

The Harms in Blame

The general point I make with the additivity principle resembles one Derek Parfit makes in a different context:

“It is not enough to ask, ‘Will my act harm other people?’ Even if the answer is No, my act may still be wrong, because of its effects. The effects that it would have when it is considered on its own may not be its only relevant effects. I should ask, ‘Will my act be one of a set of acts that will *together* harm other people?’ The answer may be Yes.”¹²⁸

Similarly, when deciding whether to blame, it is not enough to ask, “Does the person deserve blame?” Even if the answer is “yes,” my blaming that person may still be wrong when considered in view of whether and how much others are blaming. In deciding to blame, it is not enough to ask whether the person deserves blame; one must also consider whether and to what extent others are blaming.

One might object to my appealing to Parfit in this way. That is, Parfit is concerned with *harms* brought about due to the joint effects of our acts, whereas the focus of our discussion is blame. While this is of course correct, the critical underlying insight still stands—the morality of an act is affected by what others do. Moreover, there is reason to think that there are significant harms associated with blaming too.

Many philosophers recognize the fact that blame is harmful. Derk Pereboom notes, “...often expressions of moral anger have harmful effects...Frequently expressions of moral anger are intended to cause physical or emotional pain. Partly as a result of these problems, moral anger often has a tendency to damage or destroy relationships. In extreme cases, it can

¹²⁸ Derek Parfit, *Reasons and Persons* (Oxford Paperbacks, 1984), p. 86.

provide motivation to take very harmful and even lethal action against another.”¹²⁹ Roger Wertheimer writes, “We reject condemnations of us, for they are rejections of us. The condemned is cut off, cast down, distanced, dissociated, denied a proper station. Consider what it means to condemn a building, declare it unsafe for folks to be around, and shut it off from human society.”¹³⁰ Lastly, Christopher Bennett notes, “Social animals as we are, it can be tremendously distressing when others act as if we are not there, refuse to speak to us, or act only rudely towards us. We are deprived of (at least part of) our place in the social world, and for the vast majority of us, that is something tremendously important.”¹³¹

While most philosophers acknowledge there are harms associated with blame, Michael McKenna has argued that the harms associated with blame are not especially significant. He grants that there are harms with overt blame due to “the negative emotions associated with public sanctions and the like,” but seems to think that the harms are not especially worrisome.¹³² In defending this view, McKenna contrasts the harms in blaming with the harms in punishing, and notes, “In short, the harm in blaming, even at its most extreme, is simply not nearly as severe as the harm that is possible in punishing nor are the welfare interests that are threatened nearly as threatening to one’s overall well-being. For example, unlike blame, punishment might expose one to the possibility of a shortened life, absorbing physical pain, living in a less desirable social and physical environment, a minimized level of financial security, and so on.”¹³³ I find this a peculiar way to deflate worries regarding the harshness of blame.

¹²⁹ Derk Pereboom, “Free Will, Love and Anger,” *Ideas Y Valores* 141 (2009): 172. This citation is due to McKenna, *Conversation and Responsibility*, 148.

¹³⁰ Roger Wertheimer, “Constraining Condemning,” *Ethics* 108, no. 3 (1998): 494.

¹³¹ Bennett, “The Varieties of Retributive Experience,” 151; McKenna, *Conversation and Responsibility*, 139.

¹³² McKenna, *Conversation and Responsibility*, 142.

¹³³ *Ibid.*

I will discuss three worries with McKenna's position. First, a problem with McKenna's thought that the upper limit in the harms associated with punishment is significantly higher than the upper limit of the harms associated with blame is that on many accounts of punishment, what it is for the state to punish an individual *is* to express societal blame. If this is correct, the upper limit of the harms associated with punishment is just the same as the upper limit of the harms associated with blame.

Putting this point aside, there is a further problem: McKenna's analysis fails to make an "apples-to-apples" comparison, so to speak—this is the second worry. He compares the harms associated with a medium of punishment (e.g., incarceration, community service, lashes, and so on) with the harms associated with being subjected to an expression of blame (independent of its medium of expression), rather than with the harms associated with a medium used to express blame (e.g., a tweet, frown, shout, firing, and so on), and it is not clear this comparison is intelligible.

Perhaps the following two comparisons would be more intelligible: the first involves comparing the harms associated with a particular medium of blame with the harms associated with a particular medium of punishment, and the second involves comparing the harms associated with being subjected to an expression of blame (independent of the medium) with the harms associated with being subjected to punishment (independent of the medium). But these comparisons are also problematic.

This is because there are likely strong interaction effects between the harm associated with a particular medium used to express blame and the harm associated with the expression of blame itself. Something similar holds true for punishment. Thus, it is difficult to speak in general terms about the harms in an expression of blame without accounting for the medium

that is used to convey the expression of blame.

I will now discuss the third worry with McKenna's claim: pointing out that the harms associated with punishment are more severe than the harms associated with blame is unmoving. The fact that there is something worse than X says little about how bad X is in the first place. While I am open to the possibility that the upper limit of the harms associated with punishment, is greater than the harms associated with the upper limit of blame, this does little for the fact that the harms associated with blame can be severe, indeed even when it is below its upper limit.

Moreover, even if the upper limit on the harms associated with punishment is higher than the upper limit on the harms associated with blame, there is still a significant range in which the harms associated with both overlap, and a certain range in which the harms associated with blame may very well be greater than the harms associated with punishment.

One of the important reasons McKenna underestimates the severity of the harms in blame is that he fails to adequately consider the fact that there are *many* possible blamers, and that the blaming could continue indefinitely. Being subjected to blame through firing in response to a Twitter trial that has excited worldwide indignation can result in one no longer finding work in one's vocation, one having trouble forming new relationships¹³⁴, and one having difficulty looking others in the eye; this together may be more harmful than when a state punishes one by mandating a certain amount of hours of community service. Thus, attempting to understand the harms associated with blame by comparing it to the harms associated with punishment seems unhelpful.

¹³⁴ For example, many nowadays learn about their dates prior to going on the date through an internet search. Seeing that a prospective date has generated outrage from millions may disincline one to give that date a chance. See Ronson, *So You've Been Publicly Shamed*, 2015, 80.

To conclude this section, the harms associated with blame should not be understated. Recent studies support the fact that a person who is the object of blame, in virtue of the alienation and rejection that is fundamentally tied up in the practice of blaming, might experience the blame as he or she would a physical harm. That is, certain social pains are phenomenologically *and* physiologically akin to physical pains associated with assaults and injuries. Psychologists Naomi Eisenberger and Matthew Lieberman state, “We have recently proposed that physical pain—the pain experienced upon bodily injury—and social pain—the pain experienced upon social injury...share neural and computational mechanisms.”¹³⁵ Other scholars have shown that painkiller medications such as Tylenol, typically prescribed for physical pains, are similarly effective in reducing the severity of the experience of social pains.¹³⁶

When Justine Sacco learned that Sam Biddle (the Gawker journalist who displayed her tweet to his many followers on Twitter and in effect initiated the Twitter trial) said that he expected Sacco to be “fine eventually, if not already,” she stated,

“Well, I’m not fine, I’m really suffering. I had a great career and I loved my job and it was taken away from me and there was a lot of glory in that. Everybody else was very *happy* about that. I cried out my body weight in the first twenty-four hours. It was incredibly traumatic. You don’t sleep. You wake up in the middle of the night

¹³⁵ “Why Rejection Hurts: A Common Neural Alarm System for Physical and Social Pain,” *Trends in Cognitive Sciences* 8, no. 7 (2004): 294.

¹³⁶ C. Nathan DeWall et al., “Acetaminophen Reduces Social Pain: Behavioral and Neural Evidence,” *Psychological Science* 21, no. 7 (2010): 931–37.

forgetting where you are. All of a sudden you don't know what you're supposed to do."¹³⁷

It is terribly difficult to be at the center of a Twitter trial, and we have good reason to think one is seriously harmed as a result.¹³⁸

Does the appropriateness of an act of blame depend on how others are acting?

One might object to the additivity principle as follows: "It is not that the appropriateness of an act of blame depends on how much others are blaming, it simply depends on whether the person (still) deserves blame. That is, blaming is inappropriate because the person no longer deserves blame. No reference is needed to any other person." The objection is that the appropriateness of an act does not depend on how much others are blaming, but it simply depends on whether it is still true that blame is deserved. This objection is compelling, but ultimately off the mark. Two points in response.

¹³⁷ Ronson, *So You've Been Publicly Shamed*, 2015, 79–80.

¹³⁸ Another reason Twitter trials might be morally problematic pertains to equality understood as comparative fairness. That is, it is sheer luck that a particular person is caught in a viral Twitter trial. Many have said, written, or done, things that could easily have spurred a Twitter trial. And given how bad it is to be subjected to a Twitter Trial, this luck factor becomes more important.

One might think that it does not matter that it was sheer luck that this person got caught in a Twitter trial. For instance, in the case of speeding on the highway, it does little good to say to the police officer, "Well everyone else was speeding too! It is sheer luck that I got caught." However, one might think that the highway-speeder getting penalized does get what he absolutely deserves, but that it is nonetheless *comparatively* undeserved or unfair. To bring the point out, suppose the speed limit is 60mph and I am driving at 65mph. It could be that, as a matter of absolute desert, I deserve some punishment. Nevertheless it seems to me that if I was driving at 65mph, and *everybody else* was driving on the highway at 90mph, and it was *only* I that got punished, as a matter of comparative unfairness, the unfairness is extremely bad. A similar analogy might hold with regard to Twitter trials. If this is the case, those who are participating in the Twitter trial are contributing to something bad because of how comparatively unfair it is. For more on equality as comparative unfairness, see Larry S Temkin, *Inequality* (Oxford University Press, 1993).

First, the truth of the desert claim is often contingent on facts about other people having already distributed the desert object. Consider the claim that “Peter deserves a bonus.” This claim is not true across all times. At $T_1 \dots T_4$ it could be true, but not from $T_5 \dots T_n$. What changed at T_5 ? Peter’s manager gave him his bonus. This fact about how another person has acted impacts whether the desert-claim is still true. Another person’s (the manager) actions makes it the case that the present-tense desert claim is false (that is, at T_5 it is false that Peter deserves a bonus). Something similar holds when blame is the desert-object.

Second, there are cases in which what you should do depends on how others are acting, *even when the desert-claim remains true*. This is so when multiple individuals are independently deciding whether to blame a desert-subject at a given moment. If $P_1 \dots P_n$ all plan to blame Emma (who deserves blame) at T_1 , then whether you can permissibly blame Emma at T_1 depends on whether the summation of the amount of blame $P_1 \dots P_n$ plan to distribute is equal to or greater than the blame Emma deserves. If it is equal to or greater than what she deserves, your decision to blame her at T_1 would violate **Non-Excess**. Importantly, such a case is compatible with the objection; it is true Emma deserves blame, yet the appropriateness of your act depends on how others are acting.

How does additivity relate to proportionality and necessity?

Some might wonder how the additivity principle relates to the concepts of proportionality and necessity. I will consider each of these concepts in turn.

Is the additivity principle merely an injunction to pay attention to proportionality?

Proportionality relates to the additivity principle, but it is not identical with it. Before clarifying this issue, I must first distinguish two senses of proportionality. The concept of proportionality is used in different ways in theorizing about self-defense/war and in theorizing about blame (and punishment).

In self-defense/war, the concept of proportionality—let’s call it “proportionality_{defense}”—is a forward-looking concept. It concerns a judgment that involves comparing the consequences of performing a defensive act with not performing that act.¹³⁹ It is a *prospective* requirement that focuses on comparing “the relevant bad effects that defensive action (including war) would cause, either directly or indirectly, and the relevant good effects that it would cause—in particular, the prevention of harms that would otherwise be caused by others,” to the status quo state of affairs.¹⁴⁰

With respect to blame, the concept of proportionality, as it is usually employed, is a backward-looking concept. Let’s call it “proportionality_{retrospect}.” It is *retrospective* because it concerns comparing the nature of a past wrongdoing with the nature of the harm to be imposed through an act of blame.¹⁴¹ It concerns the importance of ensuring that a prospective blaming response stands in a “fitting” or “aptness” relation to the wrongdoing. There is a long-standing debate around how to calculate proportionate_{retrospect} responses to wrongdoing that I will side-step. Importantly, proportionality_{retrospect} concerns the extent to which a harm that is to be imposed on the wrongdoer through blaming “fits” the wrongdoing.

¹³⁹ For a defense of the view that proportionality does not merely pertain to consequentialist but also involves accounting for various deontological principles see Jeff McMahan, “Proportionate Defense,” *J. Transnat’l L. & Pol’y* 23 (2013): 29; Thomas Hurka, “Proportionality and Necessity,” in *War: Essays in Political Philosophy*, ed. Larry May and Emily Crookston (Cambridge University Press, 2008).

¹⁴⁰ McMahan, “Proportionate Defense,” 4. I should note that there are complicated questions concerning how to understand the baseline counterfactual that one is making the comparison with respect to that I will ignore.

¹⁴¹ *Ibid.*, 22.

While the importance of making proportionality_{retrospect} judgments about an act of blame is acknowledged in the literature, in my view, satisfying the proportionality_{retrospect} requirement alone is inadequate. This is because satisfying the proportionality_{retrospect} requirement does not account for the fact that many individually proportionate_{retrospect} acts can subject someone to blame beyond what she deserves. The fact that *many* people can blame a wrongdoer is a significant oversight in contemporary theories of blame and desert.¹⁴² A series of proportional_{retrospect} acts can wrong the blame-recipient by subjecting her to blame beyond what she deserves. If we want the following sentence to be intelligible—"I did not deserve *that much* blame"—then we must account not just for individual proportionality_{retrospect}, but also for the additivity principle.

Consider a case in which no blame has yet fallen upon the wrongdoer. On the received understanding of the ethics of blame, the reasoning about what to do might go as follows: so long as my act of blaming is an individually proportionate_{retrospect} response to the desert-subject's wrongdoing (and I meet certain other conditions, for example, possessing standing to blame), then it is appropriate for me to blame the wrongdoer. But the additivity principle dictates that it is insufficient for me to consider the proportionality_{retrospect} of my act of blaming: this is because even if my act is proportionate_{retrospect} to the wrongdoing, if several others were to blame (in a manner that might be individually proportionate_{retrospect} responses to wrongdoing), we might subject the desert-subject to blame beyond what she deserves. So, the additivity principle requires us to consider how much others will blame. The additivity principle is a nod to the fact that blaming is a communal practice.

¹⁴² A notable exception is Linda Razdik's work. For her discussion of the effects of multiple blamers on proportionality, see "Moral Rebukes and Social Avoidance," *Journal of Value Inquiry* 48 (2014): 658. For a brief mention of the effects of social media on proportionality, see her footnote number 19 in her "Gossip and Social Punishment," *Res Philosophica* 93, no. 1 (2016): 200.

There is a different concept in the self-defense/war literature that is also worth considering in relation to the additivity principle—namely, the requirement of *necessity*.

Bombings: Suppose a country will drop a small bomb on a city. Further suppose doing so satisfies proportionality_{defense} because the net-good (or bad) that comes about due to it (perhaps because it is sufficient to avert the achievement of the unjust cause) is significantly greater than the net-good (or bad) that comes about due to not dropping the bomb. However, if *every* country made (and acted on) this judgment about dropping the small bomb on the city, this would clearly be a mistake.

It would be a mistake because it fails to satisfy the requirement of necessity, among other reasons.

One worry with appealing to necessity in the context of blame is that it is not clear that blame is ever necessary.¹⁴³ The worry is that employing the concept of necessity would prove too much with respect to blame. This is because the claim that “blame is never necessary” captures the thought that blaming is not obligatory. Let’s call this sense of necessity, “necessity_{obligatory}”. While necessity_{obligatory} might not apply in relation to blame insofar as blame is never obligatory, there are other senses of necessity that may fare better.

Seth Lazar notes, “In ordinary English, for H to be necessary to avert T, it must be impossible to avert T without H.”¹⁴⁴ Let’s call the ordinary language sense of necessity, “necessity_{ordinary}”. So, later bombings would not be necessary_{ordinary}, because when an act is

¹⁴³ I will not take a stance on whether it is never necessary; such a claim would require significantly more argumentation. For a prominent recent defense of the view that we ought to do away with some of the hostile attitudes associated with blame, especially anger, see Martha C Nussbaum, *Anger and Forgiveness: Resentment, Generosity, Justice* (Oxford University Press, 2016).

¹⁴⁴ Seth Lazar, “Necessity in Self-Defense and War,” *Philosophy & Public Affairs* 40, no. 1 (2012): 14.

overdetermined, as it is by hypothesis, it is not necessary_{ordinary}. This follows simply from what it means for some outcome to be overdetermined. Necessity_{ordinary}, however, is widely agreed to be an inadequate conception of necessity with respect to an ethics of self-defense/war because in defense contexts, “different options have different prospects of success and involve different incidental harms.”¹⁴⁵ The concept of necessity—let’s call it “necessity_{defense}”—in self-defense/war involves comparisons between various available means of achieving a defensive goal.¹⁴⁶

Roughly, the requirement of necessity_{defense} is violated when there is a means of achieving a defensive goal that is at least as likely to be achieved but is less harmful or bad.¹⁴⁷ The added bombings would also violate necessity_{defense}. This is because, for later bombings, there is a less bad alternative just as likely to secure the defensive aim—namely, not dropping the bomb.¹⁴⁸ In **Bombings**, as with necessity_{ordinary}, violating necessity_{defense} would stem from the success of the defensive aim being overdetermined with added bombings.

It is not immediately clear how to conceptualize necessity_{defense} (or for that matter necessity_{ordinary}) with respect to blame for two important reasons. First, while scholars working in self-defense take pains to make clear that the standing presumption is that one cannot physically attack another, and even in the face of a threat, one must meet certain

¹⁴⁵ Ibid., 15.

¹⁴⁶ Necessity_{defense} and proportionality_{defense} are closely related but are still distinct. If in **Bombings**, there was an even smaller bomb that would have been sufficient to avert the achievement of the unjust cause with just as much likelihood, then necessity_{defense} would have been violated even though proportionality_{defense} would have been satisfied.

¹⁴⁷ While I think this statement of necessity will suffice for our current purposes, it is worth noting that the topic is significantly more complex. For various counterexamples to this notion of necessity see Lazar, “Necessity in Self-Defense and War”; Jeff McMahan, “The Limits of Self-Defense,” in *The Ethics of Self-Defense*, ed. Christian Coons and Michael Weber (New York: Oxford University Press, 2016).

¹⁴⁸ It would also be disproportionate_{defense} because the net-good that comes about due to dropping the bomb is far outweighed by the net good that comes about due to not dropping the bomb.

demanding requirements (of which *necessity_{defense}* and *proportionality_{defense}* are crucial to satisfy, and often *difficult* to satisfy) for physically attacking another in defense to be permissible, scholars in the blame literature do not seem to go to great lengths to caution against blaming.

Many scholars in the blame literature presume in favor of blaming in response to wrongdoing. For example, McKenna states, “Absent any defeaters, the presumption is that the (potential) blamer is normatively warranted *just because* the agent blamed is blameworthy.”¹⁴⁹ Maura Priest, notes, “It is...uncontroversial, in the usual circumstances, that wronged parties can aptly blame their wrongdoer.”¹⁵⁰ Others think blaming is something that we have a right to do: “That there is a right to blame is an assumption that [R. Jay] Wallace, [Macalaster] Bell, and others in the literature (e.g. Smith, 2007) seem to share.”¹⁵¹ It seems clear that many in the literature think blame is an appropriate response to wrongdoing, and do not speak of it as something that must first meet an especially demanding set of moral requirements. This makes it such that many blame theorists are unlikely to see *necessity_{defense}* as a relevant requirement, since the presumption in response to wrongdoing seems in favor of blaming, rather than seeing blame as something that should only be done as a last resort.

The second reason it is difficult to conceptualize *necessity_{defense}* in blaming contexts is that it is not obvious what the defensive goal of blame is. One possibility is offered by Christopher Evan Franklin. He argues, “blame is essential to defending and protecting the

¹⁴⁹ *Conversation and Responsibility*, 28.

¹⁵⁰ “Blame After Forgiveness,” *Ethical Theory and Moral Practice* 19, no. 3 (2016): 619

¹⁵¹ Kyle Fritz and Daniel Miller, “Hypocrisy and the Standing to Blame,” 19.

objects that give rise to moral values.”¹⁵² So, the defensive aim of blame might be to protect objects (“humans, nature, and animals are among the valuable objects at the heart of morality”¹⁵³) that generate moral values. A critical question is, protecting from what? In Franklin’s view, it is protecting them from freely performed acts of wrongdoing, which on his view, express that the object in question is less valuable or not valuable.

However, the wrongdoing has already happened so it is not clear how necessity_{defense}, a prospective requirement, is applicable. Perhaps then, the thought is that, while the wrongdoing and expressive disvaluation have already happened, the threat of the expressive disvaluation succeeding in actually *disvaluing* the object remains. I will refer to this threat as, “the threat of disvaluation.”¹⁵⁴

Franklin correctly recognizes the importance of answering the question of why defending against the threat of disvaluation must “go beyond sadness and grief to the dark attitude of blame.”¹⁵⁵ For if non-reactive emotions will avert the threat of disvaluation just as well, then blame would fail to satisfy necessity_{defense}. He offers the following example as an illustration of why he considers blaming to be an essential response to the threat of disvaluation:

“In experiencing and expressing blame toward me for insulting your wife, you too are expressing a judgment concerning her value. In particular you are standing up for

¹⁵² Franklin, “Valuing Blame,” 2013, 213.

¹⁵³ Ibid., 216.

¹⁵⁴ One significant worry with applying the self-defense concepts of necessity_{defense} and proportionality_{defense} in the context of blaming is that the success conditions are unclear. In other words, what would it look like for the objects that give rise to moral values to be “defended and protected” *successfully*. In self-defense contexts, it is reasonably clear when the threat has been averted. This is not so with the threat of disvaluations. And some scholars think that the likelihood of success is another requirement for defensive action. See Daniel Statman, “On the Success Condition for Legitimate Self-Defense,” *Ethics* 118, no. 4 (2008): 659–86.

¹⁵⁵ Franklin, “Valuing Blame,” 2013, 217.

your wife and defending her value in the face of a challenge, making clear that you value her and that my actions are inconsistent with her value as a person. Moreover, by responding in this way, you are protecting your wife's value. You are making it clear to her and others that she is of value, and this is the first step in protecting her from further mistreatment...To fail to blame me would be to fail to take your wife seriously, implying that what I did was "no big deal.""¹⁵⁶

This is puzzling. If one's wife, after being insulted, turns to one and says, "Just ignore him. Let's get out of here," it would be odd if defending her from the threat of devaluation nevertheless required one to blame the insulter. If one were to ignore one's wife's request and still be blamed, she might appropriately become irritated. She might say, "My value didn't need protecting; your blaming him was decidedly unnecessary_{defense}. More than that, your failing to take seriously that I asked you not to confront him was disrespectful." Moreover, there are many people whose comments and behavior we should not gratify with a response. Not acknowledging an insult is often a far more fitting response to the insult—it can sometimes even deflate the insult of its force. Responding with the negative reactive sentiments to an insult may very well be an acknowledgement of the insult's plausibility.

If blaming in response to the threat of devaluation is simply posited to be necessary_{defense} to avert the threat, as it seems Franklin does, then this is a trivial result.¹⁵⁷ Moreover, it is a result that simultaneously deflates the concept of necessity_{defense}. Positing

¹⁵⁶ Christopher Evan Franklin, "Valuing Blame," *Blame: Its Nature and Norms* (Oxford: Oxford University Press, 2012), 2013, 218.

¹⁵⁷ To be fair to Franklin, his discussion is not explicitly in the context of trying to make sense of self-defense concepts in relation to blaming. But the task he is concerned with—investigating why blame is valuable and good, despite its harsh features, especially when there are other less harsh responses to wrongdoing available—fundamentally parallels the kinds of considerations that are relevant to questions concerning proportionality and necessity in self-defense. Moreover, he *does* explicitly speak of "defending" and "protecting" in his discussion.

blame's necessity_{defense} in response to the threat of disvaluation eliminates the need to make comparisons between possible responses to the threat, an essential component of the requirement of necessity_{defense}. Importantly, there *are* comparisons to be made.

Franklin's account fails to accommodate the possibility that one can engage another in a rational discussion concerning the wrongness of the act rather than blame the person. One can protect what one values through rational discourse and persuasion without having to bring on board the negative features of blaming. Sadness, regret, guilt, confusion and other non-hostile responses to wrongdoing are also available. It is important to recognize that not all threats of disvaluation ought to be treated equally. Many threats of disvaluation will simply fall flat; others will be unsuccessful because the person who was threatened with the expressive disvaluation has high self-assuredness, self-security, and so on. Blaming, in many circumstances, will not satisfy necessity_{defense} with respect to the threat of disvaluation.

The important feature of attacking in defense is that if there is no necessity_{defense}, then it is not an act of justified defense, but rather, it is an impermissible act. I propose something similar is true of blame. In justifying blame, theorists sometimes point to the need to defend certain communal moral values. Yet in defending these communal values through blaming, we often forget to consider whether our response to wrongdoing is a defensive response or whether it is a response that wrongs. The additivity principle helps one be attune to the fact that one's act of blame may be unnecessary_{defense}. The line between blaming to defend values when a person deserves blame and wronging by blaming someone beyond what she deserves is perhaps a thin one, but of significant moral consequence.

Consider the following situation as an illustration of the additivity principle and its relation to the concepts of necessity and proportionality:

Eager Physicians: On a transatlantic flight, a cabin-crew member announces a request for any available medical personnel. Several doctors on the flight proceed to the galley to help. A passenger is in anaphylaxis due to reacting to peanut particles from the refreshments distributed moments ago. The passenger requires one dose of epinephrine. The flight has several epi-pens in the first aid kit.

Now, suppose the enthusiastic physicians all believe the following: “this person needs epinephrine.” Each of them believe that an EpiPen injection would be a “proportionate_{retrospect}” response to anaphylaxis. Should all of them administer an EpiPen? This clearly would be a mistake. This is because additional doses of epinephrine are unnecessary_{defense} (and unnecessary_{ordinary}). Each of the physician’s judgment about whether it would be appropriate to administer an epi-pen depends on whether the other physicians are doing so.

Suppose after one of the physicians administers the epi-pen, another physician on the flight (a physician who disregards the “additivity principle of EpiPen”) injects the person with another dose of epinephrine. In such a case, the physician is not only failing to help the person, but she would also be *assaulting* the person (in the same way as if you or I were to go up to some unknown person on the street and send epinephrine coursing through his or her body.)

One may object that whether the physician should inject epinephrine does not depend on how other doctors are acting; it simply depends on whether the person still requires epinephrine. In other words, the objection would be that the doctors need not pay

attention to the “additivity principle of EpiPens.” This is not quite right. The physicians should consider additivity, since without doing so, all the physicians might simultaneously inject the person with the “right” amount of epinephrine, but this would together subject the anaphylactic patient to a fatal dose.

With respect to blaming on social media, Jon Ronson’s characterization seems apt: when blame on social media is “delivered like remotely administered drone strikes nobody needs to think about how ferocious our collective power might be. The snowflake never needs to feel responsible for the avalanche.”¹⁵⁸ Paying attention to the additivity principle means that some of us can step back. When we call for wrongdoers to account for their conduct through blaming, the additivity principle requires us to acknowledge that there may be limits to the number of people who can permissibly conduct the audit.

Other-Defense Cases

Suppose there is a person with a pistol raised and credibly threatening to shoot and kill five innocents. In most plausible theories of self-defense (more precisely, theories of other-defense), if I was walking by and observed this, I would be justified in shooting to kill the threatener. Similarly, if I could avert the threat by swinging a bat at the threatener’s knees and gaining control of the weapon, shooting an arrow at that threatener, or taking some such other incapacitating measure to neutralize the threat, I would be justified in doing so. I also would be justified in tackling the threatener, tying him up, and so on. If performing these latter options that are less harmful than killing the threatener ensures that he would no

¹⁵⁸ Jon Ronson, *So You’ve Been Publicly Shamed* (Picador, 2015), 56.

longer pose a fatal threat to five innocents, I should do the least harmful of these options rather than killing the person.

The reason I bring up the various ways in which one might respond to the threatener is to illuminate something distinctive about the wrong in blame. What are the ways in which one is justified in acting to prevent wrongful blame from falling upon another? I would not be justified in shooting prospective wrongful blamers, just so that they do not blame a person beyond what she deserves. Nor would I be justified in shoving them, or kidnapping them, or taping their mouths to prevent them from blaming. I may not even be justified in stepping on their toes to prevent them from blaming. If they are blaming through firing, I am not justified in destroying the employer's head-quarters. If they are blaming on the internet, I am not justified in planting a virus on their computers or disabling their routers.

This brings us to an interesting feature of blame. While it is wrong for a person to blame someone beyond what she deserves, there is little that others are entitled to do to prevent this wrong from happening. This is unlike typical cases discussed in theorizing about other-defense. With wrongful blame, I cannot justifiably do much to protect another person from it besides (a) blaming the wrongful blamer, (b) expressing non-reactive attitudes, or (c) using rational persuasion to get the prospective wrongful blamer not to blame. With respect to (a), we might think that a person's having the intention to subject another to wrongful blame is wrong and deserves blame. Blaming such persons might get them to change their minds about blaming, perhaps through blame's "proleptic mechanism."¹⁵⁹ With respect to (b), expressing sadness, regret, and so on, would be justified if it prevents the person from wrongfully blaming. With respect to (c), we might also persuade the prospective blamer of

¹⁵⁹ Bagley Benjamin, "Properly Proleptic Blame," *Ethics*, forthcoming; Fricker, "What's the Point of Blame? A Paradigm Based Explanation," 2014.

the wrongness in blaming someone beyond what she deserves using the kinds of arguments I have discussed in this dissertation and through other modes of rational persuasion.

We may be limited to (a)-(c) until we learn more from science about the nature of the harm in blaming. As stated earlier in this chapter, psychologists Naomi Eisenberger and Matthew Lieberman have shown that social pains are instantiated in the body in the same way as bodily harms, and that pain-killer medication is effective with respect to alleviating these social pains just as they are with bodily harms. If the findings of these scientists are correct, this has puzzling implications: If blaming another has morally analogous physiological effects in the blame recipient as a physical assault, then just as we are justified in shoving a person to prevent that person from physically assaulting an innocent, are we justified in shoving a person to prevent that person from wrongfully blaming another? It seems far-fetched to think that harms caused by social injuries, as real as they may be, would justify third-party intervention through physical means. Nevertheless, we would need some explanation of why we ought to treat preventing harms due to blame differently from preventing similar harms due to physical injury.

One might think that the fact that little can be done by third-parties to prevent someone from wrongfully blaming another—one might not even be justified in flicking a person to prevent that person from wrongfully blaming another—shows that the wrong in blaming someone beyond what she deserves is a minor one. I think this is not the correct lesson. I think it is seriously wrong, for example, to blame the housekeeper for stealing one's watch when the housekeeper did not do so. Indeed, wrongfully blaming the housekeeper for stealing one's watch may be worse than flicking the housekeeper's arm. It is not that the wrong in blaming is minor. Rather, it is that there are different considerations that matter

with respect to what third parties can permissibly do to prevent the wrongful blame from falling upon someone. We can simultaneously assert that blaming a person who does not deserve blame or blaming a person beyond what she deserves is seriously wrong, without having to assert that others are justified in preventing this wrong from occurring through the kinds of means that they may be justified in using to prevent an unjustified physical harm.

Bernard Williams Style Cases

Suppose a wrongdoer has already been subjected to the amount of blame she deserves. Any further acts of blame would be wrong. However, you have good reason to believe that if you do not blame her, then others will subject the wrongdoer to blame far beyond the amount of blame she would be subjected to were you to blame her.

This is a difficult situation. Since the wrongdoer has already received the amount of blame she deserves, if you blamed her, you would act wrongly because of **Non-Excess**. If you fail to blame her, others will violate **Non-Excess**, but much more egregiously; others will subject the wrongdoer to blame far beyond what she deserves, and importantly, far beyond what she would be subjected to were you to blame her.

This situation resembles a case Bernard Williams employs to demonstrate how following the prescriptions of consequentialism can undermine one's integrity. The case goes as follows: a man is told that unless he kills a specified innocent person, twenty innocent people will be killed, including that specified innocent person.¹⁶⁰ The choice set involves doing what is wrong versus being causally involved in allowing some far greater wrong to

¹⁶⁰ Bernard Williams, "A Critique of Utilitarianism," in *Utilitarianism: For and Against* (Cambridge University Press, 1973), 77–135.

come about, including the wrong one would have done. Williams's thought is that if one must opt for the choice favored by consequentialism—that is, performing a wrongful act P to prevent some greater wrongful acts Q from coming about (where Q includes P)—this would be crippling to one's integrity.

Similarly, while you would act wrongly by blaming a person beyond what she deserves, if you fail to do so, you would allow that person to be subjected to a much greater amount of wrongful blame. While I will not answer what one ought to do in Williams's case, or the Williams style framing of a blaming scenario, I will try to illustrate some of the unique dimensions of blame that such a case makes salient.

Things become complicated when we consider blaming through firing. Suppose Elizabeth has three employers—Alpha Corp., Beta Corp., and Gamma Corp. Elizabeth is working multiple jobs to make ends meet. Suppose a Twitter trial has erupted in response to Elizabeth's allegedly immoral conduct. Further suppose that Elizabeth has already been subjected to the amount of blame she deserves by the Twitter trial participants. The managers at Beta Corp. and Gamma Corp. plan to blame Elizabeth through firing, unless Alpha Corp. fires her. But Elizabeth's manager at Alpha Corp. correctly believes that blaming through firing would be wrong since it would blame Elizabeth beyond what she deserves.¹⁶¹

Elizabeth might plead with the manager at Alpha Corp., "Please fire me! I need these other jobs. If you don't blame me through firing, *both* of my other employers will blame me through firing!" This seems to be a powerful reason to fire. Would the employer still be

¹⁶¹ While the case I have offered resembles the Williams case, it is distinct in that the firing is not overdetermined in quite the same way as the death of the innocent in Williams's case. This is because if Alpha Corp. decides not to fire, while the employee will be fired from Beta Corp. and Gamma Corp., the employee still has her job with Alpha Corp.

blaming wrongly? The employer would seem to violate the moral prescriptions of **Non-Excess** (not blaming someone beyond what she deserves). However, if you were not to blame her through firing, and her other two employers fired her, she might complain, “If you were simply not so self-centered about preserving a pristine moral record, then I would still have my other two jobs.” The possibility of such a response seems to feature powerfully in what the manager ought to do.

There might be some reason to think that when blame is *invited* by a person, it is no longer blame; thus, Alpha Corp. would not be wrongfully expressing blame (though it would still be firing). This, however, gets me into trouble. In Chapter 3, I argued that the act of firing is an expression of blame independent of the intentions of the actor. Alpha Corp.’s firing of Elizabeth would still be recognized as an act of blame. Moreover, convincing Beta Corp and Gamma Corp. not to blame through firing may *require* the firing to be understood as an act of blame. Thus, it may be a mistake to claim that because Elizabeth is inviting the blaming through firing from Alpha Corp., it is no longer an act of blame.

A better understanding of the situation would be as follows: Whether the act of firing is an expression of blame is not something that an idiosyncratic arrangement can override. Nevertheless, we might think that there is a further question about how this added act of blame should be understood as contributing to the amount of blame the wrongdoer deserves. I will now turn to this issue.

The Amount of Blame a Wrongdoer Deserves

An assumption in the discussion thus far has been that there is a certain amount of blame a person deserves for a wrongdoing. What I have not touched on are the different routes through which one might arrive at the amount of blame a person deserves, or the different factors that impact the extent of the contribution of an act of blame to the amount of blame a person is subjected to. A full exploration of this topic is outside the scope of this project, but I will nevertheless touch on the kinds of things that can affect contributions to the amount of blame a person is subjected to.

One factor that impacts how an act of blame contributes, morally speaking, to the amount of blame a person deserves is the extent to which the wrongdoer welcomes the blame to prevent some greater wrong from falling upon her. We might think that if Alpha Corp. fired Elizabeth, since Elizabeth was inviting the blaming through firing to prevent Beta Corp. and Gamma Corp. from wronging her, Alpha Corp.'s blame would not accrue to the amount of blame Elizabeth deserves (or would be accrued at some significantly discounted rate).

I think it is plausible that the blame Alpha Corp. distributes through firing should not count toward the total amount of blame Elizabeth is subjected to. This is in part because Alpha Corp.'s blaming is somehow inauthentic when it is so fervently desired and invited by Elizabeth. One reason we might think that Alpha Corp.'s blaming should not enter the calculus about how much blame Elizabeth has been subjected to is that other moral practices associated with wronging another do not seem apt. For example, apology and forgiveness do not seem appropriate with respect to Elizabeth and Alpha Corp. It would be odd if after pleading with Alpha Corp. to fire her, Elizabeth were to demand an apology from Alpha Corp. for blaming her through firing. Moreover, there are other instances of blaming we

might think should not accrue toward the amount of blame a wrongdoer is subjected to, despite thinking that they are still acts of blame. For example, if children were to blame a wrongdoer, we might think that their acts of blaming do not contribute, for moral purposes, to the amount of blame the wrongdoer is subjected to, but still think that they are acts of blame.

In addition to (1) whether the wrongdoer invited the blame to avoid being subjected to some greater wrong (as in the case involving Elizabeth and Alpha Corp.), several additional factors may bear on the amount of blame an act contributes: (2) the duration of the blaming, (3) the number of blamers, (4) the type of hard treatment (5) the publicity of the expression of blame, and (6) the nature of the relation between the blamer and desert-subject. So, we might think of the amount of blame a person is subjected by an act is some function of (1), (2), (3), (4), (5), and (6). (I do not mean to suggest that these considerations exhaust the variables that would go into the function of how much blame a person is subjected to.) I will briefly discuss some of these variables in this function, though in doing so, I will admittedly raise more questions than I will provide answers. My hope is that raising these questions will be an important first step toward illuminating just how complex the topic of blame is and how much more research is needed on the topic.

The question of how to understand the duration of the blaming (that is, (2)) is a difficult question. For instance, in Twitter trial contexts, is the duration of the blaming only the discrete moment at which a blamer publishes her Tweet that condemns the wrongdoer, or is it how long the condemnatory Tweets remains on the internet? Both options seem implausible. We might instead think of its duration as lasting as long as the tweet retains its expressive force, however we might cash that out. What about the business's blaming

through firing? The act of firing happens in one moment. But its blaming significance seems to last longer. Perhaps the duration of the blaming through firing might be understood as lasting until the employee secures another source of employment. But this too is problematic; an employee at the end of her career may simply choose to retire. How to understand the duration of an act of blame raises difficult and unresolved questions about the metaphysics of blame. The important point is that, other things being equal, the duration of the blaming seems to impact positively the amount of blame a person is subjected to.

(3), the number of blamers who have already blamed also seems to affect the amount of blame a person is subjected to. There are two features worth noting regarding the number of blamers. Other things being equal, we might think that if there have been n instances of blame, the $n+1$ th act of blaming contributes less to the amount of blame the wrongdoer is subjected to than the n th instance of blaming. This captures the thought that the marginal contribution of blaming acts decreases with each additional act of blaming. With honors, scarcity is thought to make the honor more valuable. The flip side of the coin is, with blaming, there might be some reason to think that when there is an abundance of blamers, each act of blaming contributes less to the amount of blame than the previous act of blame.

On the other hand, an important dimension of blaming another is thought to be that it *alienates* the wrongdoer from the community. An $n+1$ th instance of blaming has an alienating effect greater than the n th instance of blaming. As more members of the community subject you to blame, the more you are alienated, and we might think that this alienating dimension relates positively to the amount of blame to which a wrongdoer is subjected. So, we might think that even though in Twitter trial contexts the relation with a blamer on the internet may be minimal and the millionth person to blame you contributes

less blame than the tenth person to blame you, the alienation effect with later acts of blaming may be more significant. Alienating a person is among the most serious responses communities have in response to wrongdoing. Importantly, there is no particular person that decides when to bring about this alienation effect. It simply happens as the number of members in the community who distance themselves from the wrongdoer through blaming increases.

With (4), it seems clear that the hardness of the treatment through which blame is expressed matters for how much blame an act contributes (as discussed at the start of this chapter in relation to Michael McKenna's views regarding the harms in blaming). Expressing blame through a frown or a passive aggressive silence is likely to contribute less to the amount of blame a person is subjected to than expressing blame through firing. The business's treatment in firing can be harsh: the employee is deprived of his or her means, community, and vocation.

The hardness of the treatment matters because it is bad in and of itself, but it also makes the expressed blame more noticeable and salient. If the blamer wants her blame to be heard with a high probability, then she will express it through some unquestionably harsh treatment. There is some room for blame not to be heard with a frown or a cold shoulder which also allows for some plausible deniability. With less harsh mediums through which one might express blame, the person might not notice or might simply attribute the treatment to something entirely apart from blame. Thus, the hardness of the treatment makes the blame more *salient*; it is akin to a dye that illuminates various parts of a cell. So, we might think that amount of blame an act contributes is also a function of the salience of that

act. There is also the plain point that some hard treatments will be conventionally understood as a more intense expression of blame.¹⁶²

(5), how publicly the blame is expressed seems to have a positive impact on the contribution of an act of blame too. In other words, when acts of blame are performed in public venues, we might think that the amount of blame contributed is greater than had similar acts of blame been performed in a non-public venue. (This of course also relates to the point regarding salience in the past paragraph). So, an act of blaming through firing, when coupled with a press release, may contribute more to the amount of blame a person is subjected to than an act of blaming through firing that is not coupled with a press release. Given we are social creatures, the more public an act of blame is, the more it may contribute to the amount of blame.

(6), the relation of the blamer to the wrongdoer also raises interesting problems. Blame, even the most delicately delivered blame, might fall on one like the weight of many thousands of acts of blame, when delivered by one's mother. On the other hand, a similar act of blame by a distant third-party might contribute only a minor amount of blame, other things being equal. Additionally, the length of the relationship might matter. If an employee is blamed through firing after only one week of working at the firm, this act of firing may contribute less to the amount of blame a person is subjected to than had the person worked at the firm for decades.

While this discussion moved quickly, the point I am making is simple: acts of blame can contribute differentially to the total amount of blame to which a wrongdoer is subjected. It also should be clear that there is much more research to be done on the factors that

¹⁶² Feinberg, *Doing & Deserving: Essays in the Theory of Responsibility*.

impact a particular act of blame's contribution to the amount of blame a wrongdoer is subjected to.

Concluding Remarks

Suppose that the appropriateness of an act of blame does not depend on how much others blame—that is, suppose the additivity principle were false. In other words, whether an act of blame is appropriate in no way depended on whether (or the extent to which) the person in question has already received blame. (This does not mean there are no other things that might nevertheless make blaming inappropriate, for example, standard consequentialist considerations and standing related considerations). If the additivity principle were false, this would imply that one wrongdoing, however major or however minor, can subject a person to blame from a limitless number of people for an indefinite amount of time.

Such a community is constituted with members with no grip on, awareness of, or interest in whether their acts of blame would subject a person to wrongful blame beyond what she deserves. This world is the one that many contemporary theories of blame and desert allow for. There is another world we might consider, one in which we encourage individual actors to recognize their being situated in a community, and understand that the appropriateness of blaming depends on how other members of the community are acting—this is a world that embraces the additivity principle.

To put the point simply: whether you should blame depends on how others are acting. There are cases in which the additivity principle would tell you not to do something even if it is proportionate for you to do so as an individual. Another way to think about the additivity principle is that it is a sort of global proportionality—just because an act is

proportionate for you to do (if no one else on the planet but you and the wrongdoer existed), the fact that there *are* other people who exist who also might blame, of course should affect what one should do. The additivity principle is one that we, as individuals, should pay attention to so that we, as a community, do not commit injustices. It is a sort of warning for us to pay attention to how our act might influence the aggregate impact of our community on another member of the community.

There is no invisible hand of blame. We do not arrive at the right amount of blame through a natural process as we might a state, market, or other evolutionary process.¹⁶³ Another way to think about what I have been arguing for is this: because there is no invisible hand to bring us to the appropriate amount of blame, we must each, as individuals, pay attention to our role in helping the community avoid subjecting another member of the community to wrongful blame. Unfortunately, many regard blame as though it is the kind of thing that can be explained through an invisible hand process—where each person blames as she sees fit and that the appropriate amount of blame will somehow come about. Our moral theories cannot act as if there is only one possible person who can perform the act. The fact that there are many possible candidates for performing an act of blame gives certain kinds of reasons to everybody. It gives reasons to recognize that our being part of a moral community matters in deciding how to act.

¹⁶³ Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic books, 1974).

APPENDIX

Marilyn Friedman's Account of Responsible Blaming

Marilyn Friedman is one of the few scholars who has attempted to articulate a set of conditions in response to the question of “how to express blame responsibly.”¹⁶⁴ So, I want to briefly discuss her account. My purpose is not to conduct a full engagement with her account, but rather, to focus on one aspect of her account that is problematic. I will start with a brief characterization of her account.

Friedman aptly notes,

“[I]n addition to asking what conditions a person should meet to be a legitimate recipient of blame, we should also ask what conditions a person should meet to engage responsibly in the act of morally blaming others...If the recipient of blame must meet certain criteria to be blameworthy, does not the blamer have to meet certain criteria to be blamer-worthy?”¹⁶⁵

The point is that blame can have certain unseemly and harsh dimensions, so one ought to wield it with care.

On Friedman's account, for an agent to blame another responsibly, the act of blaming must meet at least the following three necessary conditions: “warrant, commitment, and responsiveness.”¹⁶⁶ The Warrant condition concerns one's justification in thinking that “the wrongdoing really occurred, the blame recipient did it, and the blame recipient was a

¹⁶⁴ Friedman, “How to Blame People Responsibly,” 271.

¹⁶⁵ “How to Blame People Responsibly,” p. 272.

¹⁶⁶ *Ibid.*, 272.

morally competent agent.”¹⁶⁷ The Commitment condition requires one “to comply with the specific moral norms to which one holds others.”¹⁶⁸ Last, the Responsiveness condition requires that the blamer have an “openness to dialogue with the blame recipient about the blame charges and flexibility in being able to adjust one’s blame if appropriate as a result of that dialogue.”¹⁶⁹ On Friedman’s account, these three conditions are necessary conditions but are not exhaustive or jointly sufficient conditions for responsible blaming.

There is much I find attractive about Friedman’s account. However, her responsiveness condition is worrisome. In describing the responsiveness condition, Friedman states, “A blame recipient may deny having done the act of which she is accused, offer excuses or justifying reasons, argue that she was not morally responsible for her behavior under the circumstances, or...challenge the authority or standing of the blamer to blame her.”¹⁷⁰ The trouble, however, is that the responsiveness condition pertains to conduct *after the blaming has already occurred*. Thus, it is not clear how “responsiveness” could be a necessary condition for responsible blaming.

Moreover, once the wrongdoer has gotten the amount of blame she deserves, the mere fact that the blame recipient is afforded an opportunity to respond to the blame (and the blamer could then potentially acknowledge that the instance of blaming in question was unjustified) does little because the blame recipient was *already wronged*. The wrong would occur at the moment the blame recipient is blamed beyond what she deserves; in other words, the moment **Non-Excess** is violated. That the blamer can come to see that the

¹⁶⁷ Ibid., 274.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid., 275.

blame was misplaced through a dialog with the blame recipient, and the blame recipient has a voice in the dialog, does little for the fact that the blamer thought that the blame recipient was the sort of person who would do that wrongful conduct in question and wronged the blame recipient through blaming her when she did not deserve blame.¹⁷¹

Friedman suggests an analogy between the blame dialog associated with her responsiveness condition and a court hearing. She suggests, “The blame may not be deserved, and until it is confirmed through a dialogue that allows the recipient to reply to the charges, there is a sense in which the blame recipient is presumptively “innocent before the moral law” and owed a hearing.”¹⁷² But since this “hearing” is scheduled after the blaming has already occurred, to extend the analogy, the blame recipient has already served her sentence (or is already serving her sentence), and one is deciding after the fact whether she should have served it (or should be serving it) in the first place. The wrong has already been done.

Even if one is sympathetic to Friedman’s responsiveness condition as a requirement for responsible blaming, such a condition is especially problematic in the context of a business blaming through firing. Once the firm has blamed the employee through firing, it is much more difficult to provide the target of blame an opportunity to respond to or challenge the criticism and engage the blamer (the firm) in a conversation. The employee

¹⁷¹ While my primary concern in this dissertation has been with acts that are under our voluntary control, there might be something to be said for us to reduce even instances of involuntary, unexpressed, blame. Beyond the well-rehearsed therapeutic reasons for reducing the incidence of reactive attitudes within oneself, there may be moral reasons to reduce unexpressed blame too. Perhaps this is due to the possibility that unexpressed blame might instantiate itself behaviorally in subtle and difficult to perceive ways in how we treat the person. It strikes me as plausible that we should strive to reduce (somehow) the presence of involuntary, unexpressed, blame with respect to persons who do not deserve it.

¹⁷² Friedman, “How to Blame People Responsibly,” 275.

lacks a clear target to respond to or challenge (either with respect to the content of the criticism or the standing of the agent delivering the criticism). This is a less significant problem in interpersonal condemnation. For instance, when a person blames me, I have someone to address; I can reject his standing to blame, his understanding of the situation, the merits of his normative claim, and so on. But when a business blames by firing an employee, the recipient of the blame does not have the opportunity to engage in a dialog or challenge the criticism—there is no clear person to engage with in a moral conversation.

Lastly, when there are millions of wrongful blamers, the “responsiveness condition” seems to place an onerous demand on the blame-recipient; having to engage in a dialog with millions of blamers, and to have to defend oneself against each of the accusations, simply for the opportunity to have blame that was undeserved in the first place disavowed, seems to be an extremely unfair implication of the responsiveness condition.

That the blamer after a dialogue can “revise the original blaming accusation” or stop blaming the (former) blame recipient misses the point.¹⁷³ While having the dialogue after the wrongful blaming has occurred is surely better than *not* having the dialogue, this is akin to a person being exonerated for a crime on the basis of DNA evidence after completing only half of his fifty-year sentence. No part of that sentence should have been completed.

The question of what sort of norms ought to guide our behavior after blaming has already occurred is an interesting and important question. But this question is distinct from the question of how we can reduce instances of wrongful blaming from occurring. The additivity principle can help us from wrongfully blaming another in the first place.

¹⁷³ Ibid., 276.

How to Distribute the Pie

I want to gesture at some issues pertaining to, for lack of a better term, distributive fairness, that may arise due to the communal nature of our blaming practices. We might hold the following kind of view:

Fraction: The deserved amount of blame, Z , that the wrongdoer could be permissibly subjected to should be assigned according to some fair rule among the members of the community.

So, we might think once we assign the amount of blame the wrongdoer deserves among the members of the community, the members of the community have pro-tanto reason to distribute only their assigned amount of blame (that is, their assigned fraction of Z).

Unfortunately, **Fraction** has serious problems. Let's suppose that a fair rule is an egalitarian rule of sorts, one that requires assigning the amount of blame into equal shares. Suppose also Anthony has performed some morally heinous act for which he deserves X amount of blame. Further suppose that there are five members of the moral community $[P_1 \dots P_5]$. According to **Fraction**, the amount of blame each member of the community has pro-tanto reason to distribute is $X/5$ (since the amount of blame Anthony deserves is X , and X is assigned evenly between the five members of the community).

But suppose a large batch of birth-control medication that was shipped out to pharmacies was accidentally filled with control group pills with no active chemicals. The population of the community rapidly expands to $[P_1 \dots P_{500}]$. (I of course grasp how fanciful this turn of events in the example is, but I think it will help highlight an interesting feature of blame). Now, according to **Fraction**, the amount of blame each member of the community

has pro-tanto reason to distribute is $X/500$ (since the amount of blame Anthony deserves is X and X is divided evenly between the five hundred members of the community).

This result is problematic because no person in the community would have pro-tanto reason to blame Anthony in any full-throated manner, despite his having performed a heinous act. This is because each person is assigned to blame Anthony a tiny fraction of the amount of blame he deserves. It would be odd if the most one could do in response to an egregious act is a slight furrow of one's eyebrows to express blame. The problem with **Fraction** might be that it fails to account for the possibility that after a certain point, the amount of blame a person deserves does not divide up in the right sort of way. Perhaps if we split up the amount of blame a person deserves too finely, we lose the very thing we were dividing up. The thought might go, for blame to be blame it needs to be disbursed at a certain level of intensity and is not divisible below a certain point. I am reminded of examples discussed in the broader moral philosophy literature concerning splitting a bottle of water among many thirsty individuals in a desert. If we divide the water across too many individuals, none of the individuals get the benefit of the water.

A similar problem arises in the other direction. Suppose Anthony has performed some minor immoral act for which he deserves Y amount of blame. Further suppose that there are 100 members of the moral community $[P_1 \dots P_{100}]$. According to **Fraction**, the amount of blame each member of the community has pro-tanto reason to distribute is $Y/100$ (since the amount of blame Anthony deserves is Y and Y is divided evenly between the one hundred members of the community). But suppose, tragically, a fatal contagious disease infects the community killing a large portion of the community—only $[P_1-P_5]$ remain.

Now, according to **Fraction**, the amount of blame each member of the community has pro-tanto reason to distribute is $Y/5$ (since the amount of blame Anthony deserves is Y and Y is assigned evenly between the five members of the community). Now we would need to say that strictly because of the population change, each member of the moral community has pro-tanto reason to distribute *twenty times* the amount of blame as before. When fewer individuals are responsible for distributing all of the blame, they would have to express it much more harshly and much more intensely. Perhaps there are moral limits to how intensely one person should blame another; maybe it is inappropriate for any one member of the community to blame another member of the community too harshly or intensely. Alternatively, perhaps it is just not possible for a fewer number of people to subject the wrongdoer to the entirety of the blame he deserves; one might think that getting past a certain threshold of blame requires a level of alienation that only comes with having many people blaming.

This discussion has assumed that we ought to recalculate the shares of blame at each time slice where there is a change in the composition of the moral community. Perhaps this is not the case: once the distribution is made, perhaps the result is final. We might think, so much the worse for subjecting the wrongdoer to the amount of blame he or she deserves, in cases of population decreases. With respect to population increases, we might say, blame is not the sort of thing that each member of the community needs to get a turn with; if you arrive on the scene after the distribution has been decided, no blaming for you.

If we *do* want to say that we should reassign the blame at each time slice when there is a change in population size, we also face the question of what to do when some portion of

the population has used up their fair share and then the population changes in size. Does this mean they have blamed more than they should be entitled to? How should we then assign the remaining amount of blame?

I will not be able to answer these questions here, but it does seem to me an important area of inquiry, especially given the communal nature of our blaming practices.

What if the manager is justified in firing in response to a Twitter trial?

Suppose one thinks that my arguments in the dissertation are misguided and that managers can, without any moral fault, fire employees for off-duty conduct that gives rise to Twitter trials. We may then face the following question: Should those who have been at the center of a Twitter trial be unable to work? I think an affirmative answer to this question would be a bad result.

One might suggest that I am guilty of a similar mistake I attacked Werhane and others for earlier: that is, just because there is a *possibility* that the terminated employee will be unable to work again, legally speaking, it does not mean that this is what ought to happen, morally speaking. This line of objection is difficult to make sense of in this context.

Let me clarify. I am not making a claim about what would be legally permissible. Nor am I offering a hypothesis about the likelihood of an employee who was at the center of a Twitter trial never being able to work again. Rather, I am making the point that *if* one thinks that firing in response to a Twitter trial is morally unproblematic, one should also be

committed to the thought that not hiring someone for having been in a Twitter trial is morally unproblematic. This is because the moral flexibility associated with hiring someone is greater than the moral flexibility associated with firing.

If this is so, those who reject my view would need to be comfortable with saying the following: An employee's having done a single immoral act that gives rise to a Twitter trial, could justifiably serve as a decisive reason not to hire that person for any prospective employers. If it did in fact ultimately serve as a decisive reason against hiring the person, and the person who was at the center of the Twitter trial was never able to work again, neither prospective employers (nor the past employer) would have done anything wrong in allowing for this scenario to come about. This is the worry I am highlighting associated with holding the view that firms are justified in firing an employee in response to a Twitter trial. To be clear, I am not suggesting that this scenario is likely to occur, but rather, I am illustrating a theoretical implication associated with holding the view that managers are justified in firing an employee in response to a Twitter trial.

If one wants to reject my view, but also wants to hold that it would be wrong for future employers not to hire a person on the grounds of having been in a Twitter trial, one would need to reject the (I think plausible) premise that the moral flexibility associated with hiring is greater than that associated with firing. One who wants to reject this premise might offer the following kind of example: If John and Ben are friends but then Ben betrays John, we might think that John would be morally justified in terminating the friendship. We might also think that it would be wrong for Rob, Brian, Amy, and others who Ben encounters in

the future to judge Ben not worthy of friendship, because of his having betrayed John. I think this line of thought is misguided.

Perhaps we are morally required to keep an open mind with respect to people who we have heard negative things about; however, it would be odd if there is a moral requirement to befriend any *particular* person. There is a much stronger moral prohibition against arbitrarily terminating a morally valuable relationship than there is a moral requirement to form such a relationship.

Another objection to the worry I am highlighting might go as follows: there is *always* a risk of those who are fired not being able to find work, not just those who were at the center of a Twitter trial. Furthermore, if a person (suppose one who was not in a Twitter trial), through sheer bad luck, was never able to work again, we do not find the need to say that any particular employer acted wrongly in allowing for this unfortunate situation to come about. I feel the force of this response, but I think it is not quite right. This is because the reasons for why a person is not hired factor importantly into whether someone is morally responsible.

There are certain reasons not to hire an employee that seem morally troubling. These include the reasons pertaining to the constitutionally protected classes, but not just such reasons. For example, suppose a manager is convinced that Tina is by far the best among the candidates for the position of a software engineer: she is the most talented, personable, and so on. The manager decides against hiring Tina *only* for the fact that he does not find her attractive. Here, it seems that the manager has done something wrong. If every job Tina applied to ended up not working out only because the hiring managers did not find her

attractive, we might properly say that these prospective employers acted wrongly due to their role in bringing about the situation Tina is in.

Given the importance of work, it would be an unfortunate result if those who have once acted immorally in a way that brought about a Twitter trial are no longer able to work, and that there is no one morally responsible for this result. I am not suggesting that it is likely that they are going to be unable to work; rather, *if* they are unable to work, there would be no complaint with respect to any employer that would have otherwise hired the person. Moreover, many think those who have performed serious crimes should be permitted to reintegrate into society, and some even think we owe it to such persons to help them with reintegrating into the workforce. If we do indeed owe it to such persons to help reenter the workforce, it would be odd to think that a person who was once at the center of a Twitter trial, for some comparatively less serious immoral conduct, could no longer work, without either past or prospective employers having done anything wrong.

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