



Discussion

COULD HAVE DONE OTHERWISE

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COULD HAVE DONE OTHERWISE

BY

ROBERT CUMMINS

HARRY Frankfurt has argued that an agent may be culpable on account of an offense even if that agent could not have done otherwise. ("Alternate Possibilities and Moral Responsibility," *Journal of Philosophy*, 66.23, December 4, 1969.) Let us call the principle Frankfurt attacks the Culpability Principle, and formulate it as follows:

(Culpability Principle): an agent *x* is not culpable on account of an offense *o* if *x* could not have done otherwise than perpetrate *o*.

(Frankfurt uses 'responsible' rather than 'culpable.' I prefer 'culpable' simply because it is more specific, and subject to less ambiguity. The substitution does not affect the argument.) Frankfurt attacks the Culpability Principle by offering a counter-example. I argue that an admittedly substantive reformulation of the principle meets the counter-example, and sketch one welcome and one unwelcome implication of the required revision.

II

Frankfurt's counter-example has the following general form. B knows that A is planning to perpetrate *o* (or likely to perpetrate *o*). B looks on this with such favor that he formulates a contingency plan: should A show signs of backing out at the last minute, B will take steps to bring it about that A perpetrates *o* anyway. In the event, A perpetrates *o* without B having to take any such steps, and in fact without realizing that B has any interest in or knowledge of the case at all. For instance, suppose A is debating whether to warn C that C's private airplane is defective. A has five minutes to telephone C before C takes off. B secretly monitors A's calls: should A try to contact C, B will cut the wire. In the event, A does not attempt to call C, and B does nothing.

Frankfurt claims about such cases that they demonstrate that someone can be culpable on account of an offense even though that agent could not have done otherwise. I agree. When we judge that an agent is culpable on account of an offense, we judge that that offense was, in James Wallace's useful phrase,¹ fully characteristic of a moral defect in the agent. For if, as Austin recommended, we consider what would excuse an agent from culpability, we find that an excuse is something that, one way or another, breaks the connection between the moral character of the offense and the moral character of the agent. If the defendant didn't know the gun was loaded, then the homicide is not a manifestation of murderousness (though defendant may *be* murderous and show it on another occasion). And if the defendant didn't jump in after the drowning child because she knew she could not swim, her failure does not manifest callous indifference. But in the sort of case Frankfurt described, the offense *is* fully characteristic of a moral defect in the agent: A's failure to warn C of the defect in C's aircraft *is* a manifestation of *mens rea*. This is precisely what makes these cases persuasive: the agent stands to offense exactly as in paradigm cases of culpability.

This sort of counter-example is so simple we may begin to wonder what made the Culpability Principle seem so plausible in the first place. The answer is clear: if A could not have

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