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Criminal Group(s): the idea of responsibility and culpability

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Part 1

Theoretical Considerations

Introduction

- Corporate Realism – ascribes to the state and other associations the ontological status of individuals (Gierke)
- Corporate Personality – individuals as associations *writ small*. Individuals have similar status to associations and to be awarded similar ethical status. (Parfit)
- Debt to Locke and Hume

The thrust of my argument is that when determining criminal culpability we too readily ignore technical arguments concerning the ontological status of person(s).

Psychological Principle of Personal Identity

Bundle Theory = personal identity, over time, consists in the relatedness between a series of mental states at different moments (Grice, Parfit, Quinton)

Ego Theory – personal identity grounded in the underlying substance of the ego (Descartes)

Person in Locke

In Locke a person is something which has a particular mental faculty or state of being. Mental states mattered to Locke as his view was moral.

“ a thinking intelligent Being, that has reason and reflection, and can consider it self as it self, the same thinking thing, in different times and places; which it does only by that consciousness, which is inseparable from thinking, and as it seems to me essential to it.”

J. Locke, *An Essay Concerning Human Understanding*, Book II, Chapter 27. (Oxford: Oxford University Press, 1975), p.335.

The Lockean Tripartite Scheme – (1) idea of thinking substance (2) idea of a person (3) idea of man

Substance, Man and Person

- (1) Perfect identity. The identity of substance is identity in what Butler called “the strict philosophical sense of the word.”^[1] A singular substance at T is identical at T1 if, and only if, it continues to exist as numerically the same, unchanged and discrete particle. This criterion presumes that there is some indivisible substance, either of material or immaterial nature. But applied to a number of monadic particles, it implies, according to Locke, that if one particle were removed or added, it were no longer the same body or mass. A mass or body remains identical, however, if the same parts were “differently jumbled.”^[2]
- (2) Organic identity. The idea of man refers to a living body of which the parts are organised so as to sustain a continued life. In this sense, the idea of a man is not different from the idea of animal or vegetable. Both are living and growing organisms. For Locke, the identity of a man is the continuation of the same life “by constantly fleeting particles of matter, in succession vitally united in the same organized body.” So, while the parts can be replaced, a living body remains identical as long as the body parts sustain the same life.
- (3) Personal identity. The identity of a person refers to the “sameness of a rational being.”
- ^[1] J. Butler, “Of Personal Identity”, in: J. Perry (ed.), *Personal Identity*, pp. 99-105, at pp. 100-101, originally in *The Analogy of Religion* (1736).
- ^[2] J. Locke, *Essay Concerning Human Understanding*, p. 330.

Parfit: Psychological connectedness and psychological community

Connectedness refers to the direct psychological links between two person-stages. If I could remember an experience I had twenty years ago, then there is one such link. Locke seems to have thought that connectedness is a necessary condition of personal identity through time. However, as his critics noted, psychological connectedness is not a transitive relation.^[1] Neo-Lockeans have since tried to amend this criterion in order to overcome this difficulty. The solution usually advanced grounds the criterion in the continuity of mental states rather than just the direct connectedness between them.^[2] Parfit, however, points out that continuity refers to an essential overlapping chain of strong psychological connections.

On this view, each connection is like a strand in a rope. While most strands do not touch each other directly, they are all indirectly connected into one rope. Hence, Parfit defines the criterion of personal identity - or what he refers to as "Relation R" - in terms of "psychological connectedness and/or psychological continuity."^[3]

- ^[1] See T. Reid, "Of Mr. Locke's Account of our Personal Identity", pp. 114-115, and the discussion in D. Parfit, *Reasons and Persons*, p. 206.
- ^[2] See H. P. Grice, "Personal identity". A. Quinton, "The Soul", sets out a similar idea explaining the relatedness between 'soul-phases'.
- ^[3] See D. Parfit, *Reasons and Persons*, p. 216. A further objection holds that the Lockean criterion presupposes personal identity. For example, if I remember a past experience, then we presume that I had that past experience. But this presumption may be false. For solutions, see for example D. Parfit, *Reasons and Persons*, pp. 220-222; S. Shoemaker "Persons and their Past", *American Philosophical Quarterly* 7 (1970), pp 269-285; J. Perry, "Personal Identity, Memory, and the Problem of Circularity", in: J. Perry (ed.), *Personal Identity*, pp. 135-155; S. Shoemaker and R. Swinburne (eds.), *Personal Identity* (Oxford, Basil Blackwell, 1984), pp. 80-88.

Person and State/ Comparing Persons to Associations in Parfit

Comparing persons to associations, Parfit writes:

“In 1881 the French Socialist Party split. What happened? Did the French Party cease to exist, or did it continue to exist as one or other of the two new Parties? Given certain details, this would be an empty question. Even if we have no answer to this question, we could know just what happened.” [\[1\]](#)

And elsewhere he argues:

“Talk about successive selves can easily be misunderstood, or taken too literally. It should be compared with the way in which we subdivide a nation’s history. We call this the history of successive nations, such as Anglo-Saxon, Medieval, and Tudor England.” [\[2\]](#)

Persons, in other words, should not be contrasted with groups. We are merely associations of a particular kind.

[\[1\]](#) Parfit, D. (1987) *Reasons and Persons*. Oxford: Clarendon Press.p. 260.

[\[2\]](#) Parfit, D. (1987) *Reasons and Persons*. Oxford: Clarendon Press.p. 306.

The Extreme Claim

Parfit's analysis puts associations and individuals back on a par. Associations are constituted by numbers of individuals bound together by a particular relation. And this means that associations have no identity in the strict sense. However, this fact does not differentiate associations from persons. For, as we have seen, persons are in turn constituted by a number of person-events and person-stages bound together like the strings in a rope.

According to Parfit, both claim is in principle defensible, and thus, his own positioning remains obscure, straddling both views. When confronting the effects of reductionism on prudence, responsibility, punishment and obligations of commitment he adopts a decidedly moderate stance. However, there is less trace of this moderate stance in his treatment of justice. While it is clear that Parfit's overall agenda is to show that practical reason ought to become more impersonal, it is not entirely transparent whether these implications must be understood in an "extreme" or "moderate" way.

He writes on p. 312 of *Reasons and Persons*: "Though we are not forced to accept the Extreme Claim, we may be unable to show that it should be rejected. There is a great difference between the Extreme and Moderate claims. But I have not yet found an argument that refutes either."

The Argument in Sum

1. No Gierkean egos
2. Associations are not super-associations, but individuals are miniature associations.
3. Bundle theory of identity.
4. Personal identity is based on the psychological relatedness between intentional episodes or person-stages. A continuous person is an association between beliefs, desires and intentions at different points in time, not some “further fact” that exists underneath them.
5. Like associations, the good of an individual is not valuable in a fundamental sense, but only insofar as this contributes to the well-being of person-stages. Moreover, the extremist claims that we should reject notions of desert, responsibility and obligation.
6. The analogy between groups and associations, then, appears to hold up in spite of everything. But, it will be objected, does it actually strengthen the case for corporate personality? For although individuals are like groups, it is also obvious that this is a Pyrrhic victory. The problem is that we have leveled down rather than up. We may only have shown that the idea of a person should be expunged from rationality and morality altogether.

Part 2

Practical Examples

1st Example

Murder

In the spate of recent knife murders of young people where members of the gang were given a murder sentence even though they did not commit the murder "common venture".

English criminal law uses a concept known as the "common venture" where the defendant foresees what his co-adventurers might do and is equally guilty with them if he helps them in some relevant way (e.g. by driving them to the scene of the crime) - it will not be necessary in those circumstances for the prosecution to prove that he actually intended the other persons to commit the offence (e.g. he will be guilty of murder if he drove the other to the scene of a bank robbery knowing that they were armed and might well commit murder in the course of that robbery.) The law states that a defendant "makes himself a hostage to fortune" by assisting those individuals he knows to be armed. He will not be guilty of conspiracy to murder if no one gets killed (because he did not agree to anyone being killed and did not personally intend that to be the result), but he will be guilty of murder if his co-adventurers go on to commit it (because he foresaw what they were capable of and helped them nonetheless). Case law has, however, made an exception for cases where A knows that B might use a particular weapon to cause injuries (e.g. a cosh) but, to his surprise) B uses a knife or gun to kill the victim. Of course if A knows that B has a knife and it is indeed a knife which is used to kill a third party, then A cannot rely on the "more dangerous weapon" argument and so can be guilty of being a party to the murder if he foresaw B's intention to use it. The problem currently is that the law is framed in terms of armed robbery and organized crime where intentionality is fairly straightforward but currently "common venture" is being used to convict young people in street gang cases, mainly involving knives.

In the USA the felony murder rule similarly represents one of the few cases in criminal law where intent is waived.

2nd Example

The Policing of Demonstrations

Example

<http://www.guardian.co.uk/uk/2009/apr/11/video-g20-ian-tomlinson>

During the recent G20 newspaper seller was killed has indeed landed the police in a lot of trouble - the law relating to crowd control will have to be looked at in the light of that, possibly unlawful form of false imprisonment of demonstrators and passers-by.

Mr. Tomlinson was not a demonstrator but only a newspaper seller trying to get home and wishing to get through the police cordon. The police employed a system of so-called "kettling" which entails splitting demonstrations up into smaller groups and then containing them, aggressively if necessary, in a confined space. This method prevents demonstrators from getting to the destination point to hear speeches, for example. In a "kettle" no water or toilet facilities are allowed and any so-called problem demonstrators can be easily dealt with, certainly more so than in a bigger group. The important thing here for us to consider is the operational doctrine of the Metropolitan Police that any person around during a demonstration shares it aims. All persons, in the Metropolitan Police scheme, should be treated as demonstrators in the vicinity of a demonstration, even people like Mr. Tomlinson who are not part of any protest.

The law relating to crowd control will have to be looked at in the light of the Tomlinson case (inquest now ongoing), in terms of the possible unlawful form of false imprisonment of demonstrators and passers-by.

Much the same too could be said of the way the public authorities treat membership of organisations, notably ecological and Islamic ones.