

Criminal Responsibility and the Living Self

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Abstract Behaviour, including criminal behaviour, takes place in lived contexts of embodied action and experience. The way in which abstract models of selfhood efface the individual as a unique, living being is a central aspect of the ‘ethical-other’ debate; if an individual is modelled as abstracted from this ‘living’ context, that individual cannot be properly or meaningfully linked with his or her behaviour, and thus cannot justly be understood as responsible. The dominant rational choice models of criminal identity in legal theory involve at least a partial abstraction of this ‘unethical’ type by prioritising the rational will over the more fluid dimensions of lived reality. From a phenomenological perspective, an approach of ‘restlessness’ is proposed which precludes the development of settled or general abstract categories, and can thus move us closer to an ethical understanding of living individuals on a theoretical level. Although such a move may initially seem to threaten criminal justice with an irrational nihilism, by maintaining awareness of the irreducibility of ‘living’ reality a restless theoretical understanding of moral selfhood may be able to shape or underpin the attribution of responsibility in more practical or substantive contexts without succumbing to meaninglessness.

Keywords Criminal responsibility · Selfhood · Autonomy · Phenomenology · Alterity · Kant

The Abstract and Living Self

Behaviour, including criminal behaviour, takes place in lived contexts of embodied action and experience. If an individual is modelled as abstracted from this ‘living’ context, then that individual cannot be ‘ethically’ linked with his or her behaviour, and thus cannot justly be understood as responsible. The primary issue with this ethical injustice relates to the division between a self that is abstractly autonomous and a self that exists in a lived context of emotionally embodied reality. This issue is central in the ‘ethical-other’ debate

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