



Hart and Feinberg on Responsibility (2008)

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The definitive version of the paper is published in

M Kramer, C Grant, B Colburn and A Hatzistavrou (eds), *The Legacy of H.L.A. Hart* (Oxford: Oxford University Press 2008)
[doi: 10.1093/acprof:oso/9780199542895.003.0007](https://doi.org/10.1093/acprof:oso/9780199542895.003.0007)
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Hart and Feinberg on Responsibility

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In the 1960s H.L.A. Hart and Joel Feinberg made independent attempts to catalogue various senses of the word 'responsible' and to explore the relationships among them.¹ Both projects hovered between philosophy and lexicography. Feinberg came up with ten or eleven senses in which a person might be labelled 'responsible'. A judicious application of Occam's Razor would have enabled him to reduce the list, as Hart did, to a more

* Professor of Jurisprudence, University of Oxford. This paper is descended from material presented at the Joel Feinberg Memorial Conference in April 2005 at Georgia State University. A more recent version of part of the paper (roughly section 1 of what follows) was presented at the conference on 'The Legacy of H.L.A. Hart' in July 2007 at the University of Cambridge. Thanks to the many people who participated in the discussion at both events, especially to Jules Coleman, my commentator in Atlanta, and to Philip Pettit and James Penner who asked questions in Cambridge that gave me significant pause for thought when I came to redraft.

¹ Hart's characteristically economical treatment appeared as 'Varieties of Responsibility', *Law Quarterly Review* 83 (1967), 346, reprinted as part of the postscript to his *Punishment and Responsibility* (Oxford 1968). Feinberg meanwhile wrote three essays adding up (he says) to a 'complete ... account of the language of responsibility.' His essay 'Responsibility for the Present and Past' was never published but, according to Feinberg, its contents were largely incorporated into his 'Action and Responsibility' and 'Sua Culpa', both included in Feinberg *Doing and Deserving* (Princeton 1970). The companion essays 'Responsibility *Tout Court*' and 'Responsibility for the Future' did appear in print, but only long after they were written, in *Philosophy Research Archives* 14 (1988), 73 and 92 respectively. Feinberg apparently did not rework these two essays for their belated publication, and hence did not make any reference to Hart's 1967 essay (or to anything else published after 1966). Feinberg's remarks on how his essays were supposed to fit together are to be found in 'Responsibility for the Future' at 110.

manageable four or five. In saying this, I am not doubting that the word 'responsible' has, in idiomatic English, all the possible differences of nuance assigned to it by Feinberg. But only some are of philosophical interest. Only some of the distinctions, as Hart noticed, advance our understanding of the world and our place in it.² In mapping the language of responsibility with scant regard for this criterion of selection, Feinberg's project was more lexicographical and less philosophical than Hart's. In another respect, however, Feinberg's project was more philosophical and less lexicographical than Hart's. Both authors found connections among the various senses of 'responsible'. Both gave explanatory priority to one sense of the word (or one cluster of senses). However only Feinberg saw this as a logical priority, essential to understanding the other senses. For Hart the connections and priorities were matters of contingent association, explaining how the language had come to be used in so many senses but still consistent with understanding each separately.

In spite of these differences, the two authors took some major steps forward in common. They showed that the existing literature on responsibility, both legal and moral, was mired in confusion. Participants were often at cross-purposes, even with themselves, about which sense of the word they were using, permitting improbable claims to pass unnoticed.³ It was harder to

² Hart, 'Varieties of Responsibility', above note 1, at 346: 'Th[e] welter of distinguishable senses of the word 'responsible' and its grammatical cognates can, I think, be reduced by division and classification. ... I hope that in drawing these dividing lines ... I have avoided the arbitrary pedantries of classificatory systematics, and that my divisions clarify the main varieties of responsibility to which reference is constantly made by moralists, lawyers, historians and others.'

³ Alas, Hart's and Feinberg's blandishments fell mostly on deaf ears, and many invocations of responsibility in philosophical literature continue to help themselves indiscriminately to different senses of the word as the argument demands. A later body of literature much afflicted by this confusion concerns the justification of inequality. See, for example, John Rawls, 'Social Utility

get these claims past Hart and Feinberg. Yet the two writers also shared some misconceptions. In particular they both fell into a trap that has since been exposed by J.R. Lucas. ‘Traditional accounts of responsibility,’ Lucas observes,

are too blame-centred. People are required to own up to their misdeeds in order that they can be blamed for them. But this is a distortion. Naturally, we are most energetic in disclaiming responsibility when we are in danger of disapprobation, and therefore lawyers earn their fees in fighting ascriptions of ill-doing, but in ordinary life we are concerned not so much to blame as to understand. I want to know who is responsible, answerable, in order to have him answer my question ‘Why did you do it?’⁴

In this paper I return to some of the issues in the theory of responsibility that were investigated by Hart and Feinberg. I do so in a way that echoes and expands on Lucas’s criticism. I suggest that Hart’s and Feinberg’s problems began with their respective mistakes – their contrasting mistakes – about what I call ‘basic responsibility’ (section 1). These mistakes about basic responsibility led them each to overstate the relative importance of a different idea that I call ‘consequential responsibility’ (section 2). They both advanced, or at any rate gave succour to, the view that basic responsibility takes its importance from its relationship with consequential responsibility. This is only part of the truth, and the shallower part at that. At a deeper level, consequential responsibility takes its importance from its relationship with basic responsibility. By ‘importance’ here I mean moral importance. I

and Primary Goods’ in A. Sen and B. Williams (eds), *Utilitarianism and Beyond* (Cambridge 1982), 159–86 at 168–9; Will Kymlicka, *Liberalism, Community, and Culture* (Oxford 1989), 37–40; G.A. Cohen, ‘On the Currency of Egalitarian Justice’, *Ethics* 99 (1989), 906–944 at 922.

⁴ J.R. Lucas, ‘The Ascription of Actions’, available at <http://users.ox.ac.uk/~jrlucas/ascript.html> (accessed 16 July 2007 and held on file).

will not be interested, except incidentally, in the logical and lexical priorities that occupy Feinberg and Hart.

1. Basic responsibility

In one sense – I call it ‘basic responsibility’ – responsibility is what it sounds like: it is a kind of ability to respond. More precisely it is the ability to explain oneself, to give an intelligible account of oneself, to answer for oneself as a rational being. As a rational being, one is equipped for explanation. One has many things to explain and (depending on the sophistication of one’s rationality) many ways of explaining them. All the same, as a rational agent, one only has two ways of explaining *oneself*. The first is to offer a justification; the second is to offer an excuse.

Justification is direct rational explanation. ‘Why did you do that?’ is the question. The justificatory answer is: ‘Because I had undefeated reasons to do it; because all things considered it was the right thing to do.’ Excuse, by contrast, is oblique rational explanation. The question is still ‘why did you do that?’ but the answer is more qualified. ‘True, I didn’t act for undefeated reasons, but I had undefeated reasons for being so afraid or enraged or confused or upset that that was how I acted. My action was unjustified, but my being disposed to act that way was justified.’ Needless to say, not every justification or excuse is a successful one. We often make misguided attempts at justification or excuse, citing reasons that we fondly imagine to have more force than they really have. We may also offer what we now admit to be inadequate justifications or excuses, citing reasons that, we now acknowledge, did not have the force that we treated them as having when we acted. All of this is consistent with our being basically responsible agents. Our responsibility, in this sense, does not lie in our ability to provide successful justifications and excuses, or even credible justifications and excuses. It lies in our ability to provide justifications and excuses full stop. Basically responsible agents can’t always give a rationally

acceptable account of themselves, but they can always give a rationally *intelligible* one.

You may think that this unduly narrows the range of explanations that we should count as self-explanations. Surely one can also give neurophysiological self-explanations (I blinked because of tardive dyskinesia), physical ones (the wind blew me sideways), psychiatric ones (depression drove me to self-harm), psychoanalytic ones (I had repressed anger towards my father that I took out on my children), and a whole raft of others? One can indeed. But in these cases – the psychoanalytic explanation is perhaps a borderline case – one does not explain oneself as a rational being. One explains oneself *away* as a rational being. One casts oneself in the role of object rather than subject; one explains oneself (including one's reasons) in terms of facts that are not reasons, or are not figuring in one's explanation as reasons. They are not reasons, or are not figuring as reasons, because one was not guided by them *qua* facts.⁵ They influenced one other than in virtue of one's appreciation of them. Maybe one was moved by them, but one was not motivated by them.

Let me illustrate. Suppose A hit B so that B knocked C over. One interpretation: A hit B so that B fell, and as he fell he knocked C over. A rival interpretation: A hit B, provoking B to knock C over; for some reason, he mistook C for A. B has a rational explanation for his having knocked C over in the second version of the story, but not in the first. In the first version B figures, but he does not figure *qua* rational agent. He might as well have been a fridge. Does it follow that, in the first version, B is not basically responsible? Yes and no. So far as we know from the story he is, in general, a basically responsible agent. But he is not basically responsible for having knocked C over. At least, he is not basically responsible for having knocked C over unless the

⁵ For elaboration see John Gardner and Timothy Macklem, 'Reasons' in J. Coleman and S. Shapiro (eds), *The Oxford Handbook of Jurisprudence and Philosophy of Law* (Oxford 2002).

story of his falling has an untold complication: unless there was some action ϕ such that, if only B had ϕ ed in the course of his falling, he would have averted C's being knocked over by him.⁶ If there was such an action – such as pushing C out of the way, or shouting ‘watch out C!’ or blocking his own fall – then B was still, in (not averting) his knocking C over, occupying his role as a rational agent, an agent subject to reasons. We can then ask what reasons he had, or took himself to have, for (not having averted) his having knocked C over. We can ask for a justification or an excuse. In asking for such a justification or excuse, we are treating A as basically responsible for (not averting) his having knocked C over. His (not averting) his having knocked C over was a manifestation of his rational agency even if his falling in the first place was not.

Ordinarily, if knocked over by another human being, we treat him or her as basically responsible for knocking us over. We begin by asking: ‘Why did you do that?’ That is because (barring special circumstances) human beings are basically responsible agents. This is a conceptual claim. Being basically responsible is neither a necessary nor a sufficient condition of being human. But it is a defeasibly necessary condition. It is necessary subject to exceptions. Anyone who thinks of the exceptions as anything other than exceptional, even if they are very frequent exceptions, does not fully grasp what it is to be human.⁷ So ‘Why did you do that?’ (asked with the expectation of a justificatory or excusatory answer) is the apt, as well as the usual, reaction to being knocked

⁶ This proviso is sometimes rendered as ‘unless B could have done otherwise than knock C over.’ But this is misleading. For B to be basically responsible for having knocked C over it is not necessary for ϕ ing to be an action which B had either the capacity or the opportunity to perform. All that is necessary is that if B had ϕ d (even *per impossibile*) C would not have been knocked over.

⁷ See Hart's own discussion of defeasibility in ‘The Ascription of Responsibility and Rights’ *Proceedings of the Aristotelian Society* 49 (1948), 71–94, an article which he later (in my view over-hastily) disowned.

over by a human being.⁸ It remains an apt question even if the human being in question was pushed. But there are two kinds of special circumstances in which, even though the question remains apt, a justificatory or excusatory answer is not apt. There are two kinds of exceptional cases in which the defeasibly necessary condition for being human is defeated. Sometimes, as we saw, the addressee is not basically responsible *for* having knocked one over. Sometimes, on the other hand, she is not basically responsible *tout court*. Some human beings are not responsible agents because – for a period of their lives, or throughout their lives – they lack the ability to provide rational explanations for anything that they do.

It is tempting to think that, inasmuch as they lack basic responsibility, children and mentally ill people belong in the second category. They lack basic responsibility *tout court* for as long as their condition continues. No doubt that is true of babies and small toddlers. But from an early age normal human children begin to ask ‘why?’, and soon afterwards learn to expect the same question to be asked of them, by way of request or demand for self-explanation. This is the stage at which they acquire a sense of themselves. From this stage on, what is at issue is only how much of what they do they are basically responsible for, not whether they are basically responsible *tout court*. As their grasp of the world grows so does the repertoire of actions that they

⁸ Compare my discussion of defeasibility in the concept of law in ‘Nearly Natural Law’, *American Journal of Jurisprudence* 52 (2007), 1–23. There I argued that the fact that law defeasibly creates moral obligations should not lead one to think that it presumptively creates moral obligations. That is because law is an instrument, the value of which depends on the use to which it is put. Human beings, by contrast, are of ultimate value and respecting this value means treating them, presumptively, as fully human, i.e. as not belonging to one of the exceptions in which their humanity, or an aspect of it, is defeated.

understand themselves to be performing, and with it the range of actions that they can properly be asked to justify or excuse.⁹

Mental illness normally affects basic responsibility in much the same localized way. No doubt some extreme psychotic disorders remove basic responsibility *tout court* for as long as they last. But those who suffer less extreme disorders that involve localized delusions or compulsions lack basic responsibility, if at all, only for those actions of theirs that are owed to their delusions or compulsions.¹⁰ Only when they act in the thrall of their delusions and compulsions do they lose their ability to offer rationally intelligible explanations of what they did. There are no facts they can point to either as reasons for doing as they did or as reasons for their being disposed to do it. There are only imagined facts. D had not left the door unlocked and had no reason to suppose that he did. He had checked twenty times already. Yet he kept going back for another look. Nothing would shift his belief that the door was unlocked. Nobody was spying on E and she had no reason to suppose that they were. The CCTV cameras were not tracking her movements. Yet still she insisted that they were, and insisted on wearing a disguise in the street. Nothing would convince her to go out undisguised. These examples should put to rest the impression (which may have been given by the example of B's fall) that questions about one's basic responsibility for what one did arise only if, as in B's case, there is some doubt about whether one really *did* it. The compulsive and delusional actions just mentioned are undoubtedly the actions of D and E respectively. Yet D and E

⁹ Of course, it may be better, for independent reasons, not to institutionalize this by subjecting children to court appearances and such like. The aptness of a certain reaction does not yet establish that the law (or any other particular agent) is aptly-placed to have that reaction. For detailed discussion see R.A. Duff, *Answering for Crime* (Oxford 2007).

¹⁰ This point is well explained by Anthony Kenny in his *Freewill and Responsibility* (Oxford 1978), 82-3.

are not, as their stories stand, basically responsible for those actions. The only facts in terms of which they will ever be able to explain what they did are not reasons for having done it ('I was in the grip of delusions'). Meanwhile the only 'reasons' they can invoke – and they are reasons only in a peripheral sense – are not facts but figments of their fevered imaginations ('the cameras were tracking my movements').¹¹

I have consciously echoed Feinberg in drawing the distinction between being responsible *tout court* and being responsible *for* some particular action. Feinberg tries to classify many of the numerous senses of the word 'responsible' under these two headings. The main pitfall of this approach should already be apparent from what I have said. Basic responsibility is responsibility in a sense that straddles the divide between responsibility *tout court* and responsibility *for*. It cannot be classified under one heading or the other. In trying to classify it under one heading or the other, Feinberg ends up discussing basic responsibility twice, without realizing that it is the same thing he is discussing. He discusses it once under the heading of 'responsibility *tout court*', where it turns into a kind of *competence*. And then he discusses it again under the heading of 'responsibility *for*', where it becomes (or is assimilated to) a kind of *liability*. Both discussions are severely distorted by their forced separation. I will say something in the next section about Feinberg's mutation of basic responsibility into a kind of liability. Here I want to show how basic responsibility is distorted – and

¹¹ Sometimes (e.g. in criminal law textbooks) denials of basic responsibility based on infancy or mental illness are mistaken for excuses. It is not hard to see why. Both excuses and denials of responsibility, if successful, are exculpatory, and distinguishing the two kinds of exculpation can be tricky at point of application. Conceptually, however, the two kinds of exculpation could not be more different: making a successful excuse is a way of exculpating oneself by asserting, as opposed to denying, one's basic responsibility. See my *Offences and Defences* (Oxford 2007), 131–2 and 177–82.

made to seem less basic than it really is – by the other mutation, its mutation into a kind of competence.

Competences, in Feinberg's lexicon, are abilities of a special kind. They are abilities to perform actions with a normative significance (or 'normative abilities' for short). For example,

the police chief (unlike the justice of the peace) lacks the competence to perform marriages. ... [I]t is not simply that the police chief lacks the knack, or the ability, or the technique to marry people; rather he lacks the qualifying characteristics, under the law, that would give legal effect to his words.¹²

Marrying people involves the exercise of a normative power, so one lacks the ability to marry people if one lacks that normative power. The power in turn is conferred by a norm. That norm creates the competence. All competences are relative to the norms that create them. Not all norms that create a competence are, however, power-conferring norms. As Kelsen points out, and Feinberg agrees, one may also lack competence under a duty-imposing norm.¹³ One lacks competence because, although one has the ability to do what the norm requires or forbids, one's doing it does not qualify as conformity with or violation of the norm, and hence has none of the normative consequences of norm-conformity or norm-violation. Hence:

Dogs, infants, and lunatics lack the competence to commit murder in the same way that ... a citizen may lack the legal 'standing' to become a plaintiff when his personal interests have not been directly hurt.¹⁴

Dogs, infants, and lunatics have the ability to kill, and perhaps to do so deliberately. They may, in other words, have the ability to act in ways that, if they were not dogs, infants or lunatics, would

¹² 'Responsibility Tout Court' above note 1, 88.

¹³ Kelsen, *General Theory of Law and State* (New York 1945), 90-1.

¹⁴ 'Responsibility Tout Court' above note 1, 88.

qualify as murder. But they still lack the ability to murder, which is a normative ability. And this, says Feinberg, is the same kind of ability that one lacks if one lacks responsibility *tout court*:

It is not simply that the non-responsible person [*tout court*] is unfit for responsibility judgments [i.e. judgments of ‘responsibility for’]; rather he is totally disqualified from them. The rules make it impossible for anyone of his description to ‘play the game’ at all.¹⁵

Notice that, if Feinberg is right about this, responsibility *tout court* becomes responsibility in a derivative sense. One needs an independent analysis of what counts as being responsible *for* something (for example, as a kind of liability to be reproached or punished) in order to identify which norms one is incompetent under if one is not responsible *tout court*. The competence being conferred is the competence to be responsible for things (whatever that may turn out to mean). This feature of what Feinberg says may lead you to suspect that, in these passages, he is not trying to understand basic responsibility at all. For the responsibility he is discussing is responsibility only in some derivative sense, not responsibility in the basic sense that interests us. But I think Feinberg is trying to understand basic responsibility. His mistake in characterising it as a competence explains his mistake in concluding that it is not basic.

Whenever someone has a competence, in Feinberg’s sense, the exercise of that competence supervenes on the exercise of some other (non-normative) ability or abilities.¹⁶ To murder one must (*inter alia*) kill; to conduct a marriage one must (*inter alia*) hold a ceremony; to make a contract one must (*inter alia*) communicate an intention; and so on. Feinberg’s analysis leaves open the question of what the relevant non-normative ability or

¹⁵ ‘Responsibility Tout Court’ above note 1, 87.

¹⁶ It may do so indirectly. Sometimes one exercises a competence by exercising another competence.

abilities might be in the case of those who are responsible *tout court*. He does this deliberately. According to Feinberg, as according to Kelsen, the non-normative abilities that must be exercised to exercise a normative ability can conceivably include absolutely any non-normative ability that is specified by the norm that creates the competence. There is nothing in the analysis of responsibility *tout court* (or indeed responsibility in any other sense that Feinberg discusses) that tells us who among us is responsible *tout court* and in virtue of what non-normative abilities. So there is nothing to rule out the possibility of a norm under which, for example, only babies and the seriously psychotic are responsible *tout court*. After all, they have abilities that the rest of us lack, notably the ability to be seriously and persistently oblivious to reason. Why shouldn't responsibility *tout court* be associated with these abilities? Why shouldn't there be a norm conferring on babies and the seriously psychotic – but not on the rest of us – the status of responsible *tout court*?

The natural answer is: Because babies and the seriously psychotic, unlike the rest of us, are not responsible *tout court*. Unlike the rest of us, they are not the kinds of beings on whom norms can confer competences, because they are not the kinds of beings whose actions can be regulated by norms. One's actions can be regulated by norms only if one is the kind of being who can be guided by norms. Guidance by norms requires guidance by reasons. It requires that one have the ability to justify or excuse one's actions, meaning at the very least the child-like ability to point to a norm as a reason for doing as one does, even if not the more mature ability to point to further reasons why one uses that norm. Babies and the seriously psychotic lack even that child-like ability to justify or excuse. And there is nothing that any norm can do to confer it upon them.

If this answer is sound then responsibility *tout court* is not, basically, a competence. Rather it is an ability which one needs if one is to have any competences. It is a powerful objection to Feinberg's account of responsibility *tout court* that we cannot even

make sense of the natural answer, never mind vindicate it, using his analysis of responsibility *tout court*. For on his analysis it makes no sense to give the fact that babies and the seriously psychotic are not responsible *tout court* as the reason why no norm can make them so. For on his analysis, being responsible *tout court* is simply a competence that is conferred by a norm.

There is, however, a possible way of reengineering the natural answer that seems to make sense of it in Feinbergian terms. One might point out – as Feinberg himself does – that responsibility *tout court* figures in both moral and legal (or more broadly institutional) thought. Morally, babies and the seriously psychotic are not responsible agents because the moral norms that confer the relevant competence – whatever the competence turns out to be – do not confer that competence on babies and the seriously psychotic. We cannot change these norms because we cannot change morality. We are stuck with it. Legal and other institutional norms, however, can be changed by human beings. Conceivably such institutional norms may confer the relevant competence – whatever it turns out to be – on anyone, on the strength of any abilities at all. Why shouldn't there be a legal norm conferring on babies and the seriously psychotic, but not on the rest of us, the status of responsible agents?

Well of course there are plenty of reasons why not. They include, for example, moral reasons. When people give the natural answer – 'because babies and the seriously psychotic, unlike the rest of us, are not responsible *tout court*' – they mean *morally* responsible. They are giving a moral reason why babies and the seriously psychotic shouldn't be held responsible *tout court* in law. They are assuming some further moral norm according to which only the morally responsible should be held legally responsible. They are not making a conceptual claim that implicates the very idea of responsibility *tout court*. The claim is not that babies can't conceivably be responsible *tout court*, but only that it's a very bad idea to make them so. That is because

responsibility is a competence and it can be conferred by a norm. The norm may still, of course, be criticized for its immorality.

This is a bad reconstruction of the natural answer because it turns it on its head. We hold people responsible in two senses of 'hold'. Often, indeed, we select the word 'hold' precisely so that we can equivocate between these two senses. Sometimes we hold a person responsible in the ('constative') sense of coming to the conclusion that she is responsible. Sometimes we hold a person responsible in the rival ('performative') sense of making her responsible: we confer responsibility on her by an exercise of our normative powers.¹⁷ As we will see in the next section, responsibility in some senses of the word can certainly be conferred. Basic responsibility, however, cannot be conferred. One cannot assume it, impose it, be relieved of it, be exempted from it, or otherwise subject it to the exercise of a normative power. That is true of basic responsibility *tout court* and also basic responsibility *for* things. This is a conceptual constraint. No norm, and hence no person armed with a normative power, can confer a non-normative ability. The law enjoys no exemption from this constraint. There may be legal norms that instruct others (e.g. officials) to treat some people who are not basically responsible as if they were basically responsible. But these norms do not make those people basically responsible. Instead, they create a legal fiction of basic responsibility. Why must it be regarded as a fiction? We already know the natural answer: Norms – legal, moral, or otherwise – cannot conceivably regulate the actions of those who cannot be guided by norms.¹⁸ *Qua*

¹⁷ The performative/constative distinction is introduced by J.L. Austin in his *How to Do Things with Words* (Oxford 1962), 5. Austin found it hard to maintain the distinction and later abandoned it. This collapse came of a mistake in the way he originally drew the distinction. See note 33 below.

¹⁸ This is one of several small truths that is often inflated to yield the large falsehood that 'ought' implies 'can', i.e. that no norm can conceivably require one to do what one lacks the ability to do.

norms, they must be interpreted as regulating the actions of possible norm-users, and in this case the norm-users in question must be those who have occasion to treat some (other) people as if they were basically responsible, since those who are so treated are *ex hypothesi* not possible norm-users, in that they are not basically responsible.

It is often assumed that, because the law is made by human beings, and is thus capable of grave immorality, it is capable of any ridiculous thing at all. But this is a confusion. Law is no more capable of defying its own nature than is anything else. Legal systems are by their nature systems of norms and something that purports to regulate the actions of someone without basic responsibility is (to that extent) not a norm, and so cannot be a legal norm. The law, being made up of norms, is capable of regulating only the actions of the basically responsible among us. So there is no such thing as *legal* basic responsibility. When we speak of basic responsibility as 'moral responsibility' (and we sometimes do) this should not be taken to suggest the existence of some legal counterpart called 'legal responsibility'. If anything, we should understand it to mean just the opposite. 'Moral' here just means 'whatever the law (or anyone else) may try to say'. For the incidence of this responsibility is a matter over which the law, whatever its pretensions, has no possible control.

Is it a legalistic bias in his thinking about responsibility that leads Feinberg to mistake basic responsibility for a competence? Perhaps. There are some signs of that bias in his work. But I think there is also another factor at work. In representing basic responsibility as a competence, Feinberg is straining, and in the process overstraining, to avoid an opposite and no less grave mistake to which Hart, in his explanation of basic responsibility, falls victim. 'In most contexts,' says Hart,

the expression 'he is responsible for his actions' is used to assert that a person has certain normal capacities. ... The capacities in question are those of understanding, reasoning, and control of conduct: the ability to understand what conduct legal rules or morality require, to

deliberate and reach decisions concerning these requirements, and to conform to decisions when made. Because ‘responsible for his actions’ in this sense refers not to a legal status but to certain complex psychological characteristics of persons, a person’s responsibility for his actions may intelligibly be said to be ‘diminished’ or ‘impaired’ as well as altogether absent.¹⁹

It is surely basic responsibility that Hart has in mind here. He calls it ‘capacity-responsibility’. He gets some features of it right. He is right to think of it as an ability. He is right to think that it is an ability to use reasons (including norms), and he is right to think that this entails an ability to be guided by those reasons. But the contrast with which the passage ends – between responsibility as a legal status and responsibility as a set of psychological characteristics – is seriously misleading. True, basic responsibility is not a legal status. But it is, in a sense, a moral status. As Hart himself observes, morality cannot *but* give salience to the ability in question. Why is this? Hart says (lamely) that it is because of how ‘morality is at present understood’.²⁰ But in fact the explanation goes a lot deeper. Let me explain.

A basically responsible agent not only has the ability to offer justifications and excuses for what she does. She is also aptly disposed to offer justifications and excuses for what she does, and such justifications and excuses are aptly expected of her. What, you may wonder, makes these dispositions and expectations apt? In answer it is tempting to imagine a division of labour between empirical questions and moral ones. First there are some non-normative abilities that human beings normally possess (‘certain complex psychological characteristics of persons’). Then there is some moral norm that makes these abilities salient for some purposes (such as the acquisition of a liability to punishment or a duty to atone or apologize). This norm confers a moral status – in

¹⁹ ‘The Varieties of Responsibility’, above note 1, 360.

²⁰ ‘The Varieties of Responsibility’, above note 1, 362.

the sense of a competence – on normal human beings by virtue of their possession of their normal abilities. At this point the question becomes: Should we think of our basic responsibility as our being competent under the moral norm (Feinberg's answer) or should we think of our basic responsibility as our possessing the 'complex psychological characteristics of persons' that the moral norm makes salient (Hart's answer)?

Where basic responsibility is concerned there is no such division of labour and no such question, so both answers are mistaken. No moral norm, nor any other reason, makes it apt for us to explain ourselves rationally. The ability to offer justifications and excuses, to put it another way, is an ability that does not need a case to be made for its own exercise. It makes its own case. Imagine someone who asks: 'Why should we use reasons?' The question can only be interpreted as a demand for reasons. So it answers itself. If one isn't already disposed to use reasons then what is the point of asking for one?²¹ As rational beings (beings who are able to use reasons) there is nothing else for us to do but use reasons. We are stuck with them. As soon as we appreciate their existence – as soon as we begin to ask our parents 'why?' – they exert their inescapable hold over us. The hold is not just empirically but conceptually inescapable. One can't conceivably have the ability to use reasons, while leaving open whether one should do so. That points to the sense in which being basically responsible is a moral status. It is not something that is relevant to what we should do because of some norm that makes it so. It is relevant whether it is mentioned in any norms or not. So even if we abolished all the practices (trial, punishment, reparation, recrimination, atonement, etc.) to which our basic responsibility is supposed to be relevant, and so rendered moot all the moral norms regulating those practices, we

²¹ I am here adapting the argument used by John Finnis in 'Scepticism, Self-Refutation and the Good of Truth', in P.M.S. Hacker and J. Raz (eds), *Law, Morality, and Society* (Oxford 1977).

still wouldn't have expunged the pervasive moral importance of our basic responsibility. It would still be apt for us to explain ourselves using reasons, even if nothing further turned on it.

You may say that I am guilty, here and more generally, of an equivocation. Let it be true that, as rational beings, we cannot but use reasons in the sense that we cannot but be guided by them. Surely it is quite another matter to claim that we cannot but use them again, after we have been guided by them, for the purpose of accounting for what we did? There are surely two distinct uses of reasons here, and two distinct abilities. Which of these abilities is our basic responsibility? Is it the ability to *have* justifications and excuses, or is it the ability to *offer* them?

We do not need to choose. It is one and the same ability, the ability known to the ancients as *logos*. Those who are able to use reasons are aptly disposed, and aptly expected, to use them for whatever they are there to be used for. And they are there to be used both for guidance and for explanation. Of course, the explanation itself is another action, and it also calls for guidance by reasons. The reasons that guide the act of self-explanation are not only the reasons that are mentioned in it – the ones that do the explaining – but also those that bear on whether the explanation should be given, and if so in what spirit, and to whom, and so on. No doubt there are occasions when one has no duty to offer any justifications and excuses. Sometimes, perhaps, one has a duty not to do so. And no doubt, even when duty-bound to do so, one is sometimes justified or excused in hesitating or refusing to offer one's justifications and excuses, such as they may be. Nevertheless, as a rational being, one is aptly disposed and aptly expected to offer them.

2. *Consequential responsibility*

In a second sense – I call it 'consequential responsibility' – those who are responsible are those who are singled out to bear the adverse normative consequences of wrongful (or otherwise

deficient) actions.²² The consequences in question are normative in two ways. First, they are changes in someone's moral or legal (or otherwise normative) position. Second, they are effected by someone's violation of a norm (moral, legal, or otherwise). In other respects they are very varied. Someone may acquire a duty or permission to punish the responsible person or remonstrate with her or engage in other so-called 'blaming' responses. The responsible person herself may acquire a duty to make reparation or restitution, or to apologize or atone. She may lose a right to reparation or restitution from another. She may also acquire a duty to justify or excuse the action. Here we can already see a connection between basic responsibility and consequential responsibility. A duty to self-explain, to exercise one's ability as a basically responsible agent, may be among the normative consequences of a wrong one commits. In a way, as Lucas suggests, this is the most natural normative consequence of all, for it gives normative salience to an action that is already apt for human beings, by their nature, to engage in.

Both Hart and Feinberg prefer to talk of 'liabilities' where I talk of 'normative consequences'. Indeed Hart talks of 'liability-responsibility' rather than consequential responsibility. I find this both too narrow and too broad. Too narrow, because a liability in one person corresponds to a normative power in another.²³ Yet not every normative consequence of a wrong action involves the acquisition or exercise of a normative power. For example, while in some cases the normative consequence of F's wrong action might be G's acquiring a power to impose a duty to repair

²² The label 'consequential responsibility' is owed to Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, Mass. 2000), 287. Talk of consequential responsibility is sometimes extended, by analogy, to take in the welcome normative consequences of supererogatory (or otherwise admirable) actions. I will ignore this extension here.

²³ See W.N. Hohfeld, *Fundamental Legal Conceptions* (New Haven, Conn 1989), 58-9.

on F, in other cases the normative consequence is simply that F acquires a duty to repair without G's having any power over the incidence of the duty. A case in the second class does not, strictly speaking, involve a liability, but it does involve a normative consequence. On the other hand, not all liabilities are normative consequences. My insurer, for example, may have a liability to pay for storm damage to my house. Paying for this damage may be the insurer's responsibility in another sense (Hart calls it 'role-responsibility'²⁴ and for Feinberg it is a kind of 'responsibility for the future'²⁵). But this is not consequential responsibility. That is because the liability to pay is not a normative consequence of any norm-violation by anyone. The storm did no wrong and indeed was not capable of doing wrong (for it lacks basic responsibility). Would it be different if I were insured against vandalism rather than storm damage? Perhaps. It would depend, I think, on whether the insurer's liability is based on the fact that vandalism is a wrong, an action that violates a norm. Of course, my insurance policy is probably indeterminate on this score. Never mind that. What matters is that not every liability, whether legal or moral, involves adverse normative consequences in the sense that interests us here. In what follows I will treat Hart's and Feinberg's references to liabilities as if they were references to normative consequences. Indeed Hart and Feinberg make clear that this is what they have in mind, i.e. they admittedly use 'liability' in a stipulative sense.

So is being consequentially responsible just the same thing as being punishable, reproachable, bound to make amends, etc.? Is the responsibility in each case to be identified with the normative consequence? Feinberg's treatment of what he calls 'retrospective responsibility' ('responsibility for the ϕ ing' where the ϕ ing is something already done) fragments into several sub-discussions,

²⁴ 'The Varieties of Responsibility', above note 1, 347-8.

²⁵ 'Responsibility for the Future', above note 1, 95-9

and sometimes, without realizing it, he ends up back at basic responsibility again, itself sometimes taking on some of the appearance of a liability. But here he seems to be talking more straightforwardly about consequential responsibility:

To say of a person, after the fact, that he is responsible for something may mean ... He is liable (properly subject) to some further response (overt blame, punishment civil suit, praise, reward, etc.) for it.²⁶

Here Feinberg treats the responsibility as entailing the liability. Hart, having previously endorsed much the same view,²⁷ abandons it as oversimplified. Being responsible in the relevant sense does not entail being liable to certain responses, although the relevant ideas of responsibility and liability are 'very closely connected'.²⁸ What is the very close connection? To be liable-responsible, says Hart, is to meet 'a certain range of conditions' of liability - 'mainly, but not exclusively, psychological' conditions - 'it being assumed that all other conditions are satisfied.'²⁹ In extra-legal (or 'moral') contexts, says Hart, the relevant liability is usually an exposure to permissible blaming responses by others, also known as 'blameworthiness'.³⁰ Some people indeed talk interchangeably of 'moral responsibility' and 'blameworthiness'. But to be morally responsible in the relevant sense is not to be blameworthy, says Hart. Rather, it is to meet 'a certain range of conditions' of blameworthiness. There are additional necessary conditions of blameworthiness which are not conditions of moral responsibility for the blameworthy act. That is true, Hart adds. even though we discuss the conditions of moral responsibility for the blameworthy act as conditions of moral responsibility only

²⁶ 'Responsibility for the Future', above note 1, 110.

²⁷ Hart, *Punishment and Responsibility* (Oxford 1968), p196

²⁸ 'The Varieties of Responsibility', above note 1, 350.

²⁹ 'The Varieties of Responsibility', above note 1, 351.

³⁰ 'The Varieties of Responsibility', above note 1, 358.

when we concede (at least for the sake of argument) that the other conditions of blameworthiness are met.

Hart's proposal certainly seems to be an improvement on Feinberg's. In the wake of some misadventure, one may intelligibly say 'I am responsible for that' or 'I take responsibility for that' in a way that already raises the spectre of normative consequences while leaving open (for further discussion) whether any normative consequences actually arise, and if so which ones (punishability? a duty to repair? a lost right to redress? etc.). But then, we may ask, how is this consequential responsibility supposed to differ from basic responsibility, the possessor of which (according to Hart) also meets 'a certain range of conditions' of liability which are 'complex psychological characteristics'? Hart makes his list of (possible) conditions of consequential responsibility longer than his list of (actual) conditions of basic responsibility. He includes, for example, conditions of causal as well as psychological types. That is important, and I will return to it shortly. But Hart's main proposal for distinguishing basic responsibility from consequential responsibility is this. To talk of responsibility in the consequential sense is already necessarily to raise a question of blameworthiness or punishability or some other normative consequence. Whereas one may intelligibly talk of basic responsibility (Hart's 'capacity-responsibility') even 'where no particular question of blame or punishment is in issue' and 'simply to describe a person's psychological condition.'³¹

We already know, from our discussion of basic responsibility, that this contrast is exaggerated. Basic responsibility is a moral status. While the law might not reflect it correctly in attaching normative consequences to actions, morality cannot but do so. So isn't it the case that, in sound moral thinking at least, basic responsibility and consequential responsibility tend to converge?

³¹ 'The Varieties of Responsibility', above note 1, 360.

Not quite. Here are some important differences between the two that emerge from our discussion of basic responsibility and that remain even once Hart's exaggeration is exposed.

(1) Being consequentially responsible is being in a certain kind of normative position for a certain kind of reason. Being basically responsible, by contrast, is having a certain kind of ability. In some cases, to be sure, it is part of one's normative position *qua* consequentially responsible that one is required or permitted to exercise one's ability *qua* basically responsible. The most natural normative consequence of wrongdoing, as I said, is that one acquires a duty to explain oneself by offering a justification or excuse for what one did. Often, indeed, this is the first normative consequence of wrongdoing, in the sense that one's exposure to certain other normative consequences of wrongdoing, such as punishment, depends on how well one performs one's duty to self-explain. Nevertheless the duty to self-explain is not one's basic responsibility and is not entailed by it. The basically responsible have an ability that they are, as I said before, aptly expected to use. Indeed it is rationally defensible, all else being equal, that they use it. But it is quite another question whether they are required or permitted to use it, and in what circumstances, and addressing themselves to whom, and so on. These are questions of consequential rather than basic responsibility. A hallmark of the difference is that consequential responsibility may be responsibility *to* someone, such that one owes one's self-explanation to that person, or (put another way) that that person has a right to one's self-explanation.³² Basic responsibility cannot be responsibility to someone, even though it can, *pace* Feinberg, be responsibility for something.

(2) Because consequential responsibility is imposed by a norm (by the moral or legal or other norm that attaches the normative

³² We sometimes reserve the word 'accountability' for that case. See my *Offences and Defences*, above note 11, 194–200.

consequence in question), the conditions of consequential responsibility may vary. Here I am thinking of the *material* as opposed to the *conceptual* conditions of consequential responsibility. Freedom of the will is often said to be a condition of moral responsibility, in the sense that nobody is consequentially responsible in morality (usually expressed as ‘morally blameworthy’) without it. This proposal strikes me as misguided in numerous ways. But put that aside for now. The point for now is that even if freedom of the will is a condition of consequential responsibility in morality, it is not a conceptual condition. Those who disagree about whether freedom of the will is required for moral responsibility are not thereby committed to disagreeing about the very concept of moral responsibility that is pertinent to their disagreement. One may agree on the conceptual conditions but disagree on the material conditions. This divide between material conditions and conceptual conditions can and must be drawn in respect of consequential responsibility, but it cannot be drawn in respect of basic responsibility. That is because the material conditions of basic responsibility are among the conceptual conditions of basic responsibility. This fact explains why Hart tries to analyze the concept of basic responsibility *exclusively* in terms of its material conditions, i.e. as a set of ‘complex psychological characteristics of persons’ without any built-in moral implications. That is a mistake, as we saw. But it is a mistake that reflects an insight. The material conditions of basic responsibility, unlike those of consequential responsibility, are conceptually determined and remain constant across all norms. That is one important way in which basic responsibility earns its name.

(3) The third difference is a consequence of the second. As already pointed out, basic responsibility cannot be assumed, imposed, assigned, transferred, excluded, etc., where this implies the exercise of some normative power over its incidence. The law, for example, cannot make one basically responsible when one is not, nor can it stop one from being basically responsible

when one is. It can at best conjure up a fiction of one's basic responsibility, or lack of it, for certain purposes. Consequential responsibility, on the other hand, can be given or taken away or otherwise altered by the law, or by other authorities, without any hint of a fiction. It differs from basic responsibility in being incurred under and by virtue of a norm, viz. a norm that attaches certain consequences, under certain conditions, to the violation of another norm. Such a consequence-attaching norm may in principle be created or revoked by an authority. By the same token such a norm may be created or revoked by promising, contracting, agreeing, and so on. So consequential responsibility, unlike basic responsibility, may be either self-imposed or other-imposed. Consider familiar utterances such as 'I hold you responsible', 'I accept responsibility', and 'I won't be held responsible'. When these refer to consequential responsibility, these are typically performative utterances which are intended to bring the world into line with themselves, to make themselves true by effecting some change of normative position. Whereas, when they refer to basic responsibility, the same utterances can only be interpreted as constative, intended to capture the truth that holds quite apart from the utterance.³³

(4) The fourth difference is in turn a consequence of the third. As we saw already, one is only ever basically responsible for one's own actions (including, of course, one's own actions of contributing to the actions of others). This explains why, as Hart says, the expression 'he is responsible for his actions' is normally used to refer to basic responsibility.³⁴ On the other hand, one may be consequentially responsible for the actions of others without contributing to those actions. This mode of

³³ I am borrowing John Searle's way of drawing the distinction from 'How Performatives Work', *Linguistics and Philosophy* 12 (1989), 535-558. Searle overcomes the destructive errors made by Austin in his original attempt to capture the distinction (see note 17 above).

³⁴ 'The Varieties of Responsibility', above note 1, 360.

consequential responsibility is known to the law as ‘vicarious’ responsibility. One acquires it by voluntary undertaking (promising, contracting, agreeing or consenting to acquire it) or by entering into certain relationships or positions of which it is an incident (e.g. being an employer, being a parent, being a government minister). Because the identity of the responsible person in cases of consequential responsibility is not a foregone conclusion, talk of consequential responsibility, unlike talk of basic responsibility, performs a finger-pointing or allocative function. It answers a ‘who?’ question. It assumes (at least *arguendo*) that there are some adverse normative consequences to be borne by someone, and it answers the question of who is to bear them.³⁵

This prompts a friendly reformulation of Hart’s explanation of the concept of consequential responsibility. We may say: A is consequentially responsible if and only if, in the event of wrongdoing, some or all of the normative consequences of that wrongdoing will be A’s to bear. This reformulation allows us to see what unites the superficially miscellaneous ‘certain range of conditions’ that, according to Hart, count as material conditions of consequential responsibility. Consider the material conditions under which one bears some specified normative consequence of wrongdoing. Now subtract the fact that it was wrongdoing, and hence the material conditions of its being so. What are left are the material conditions of consequential responsibility (relative to that particular normative consequence). So the ‘psychological’ and ‘causal’ conditions that Hart mentions are material conditions of consequential responsibility only if they are not among the material conditions of the action’s being wrong. This is an important restriction. Some but not all wrongs are causal wrongs (i.e. one does not commit them except by contributing, often in

³⁵ This yields a connection between consequential responsibility and justice, justice being the moral virtue of allocators. See Gardner, ‘The Virtue of Justice and the Character of Law’, *Current Legal Problems* 53 (2000), 1.

a specific way, to a certain result). Some but not all wrongs are intentional wrongs or advertant wrongs (i.e. one does not commit them unless one means to commit them or, as the case may be, unless one realizes that one is committing them). Where wrongs of these types are concerned, certain ‘causal’ and ‘psychological’ conditions are not, *pace* Hart, material conditions of consequential responsibility for wrongdoing, because they belong to the material conditions of the wrongdoing itself. (Of course, some of them may still be material conditions of responsibility in some other sense. The causal conditions, for example, may be material conditions of what Hart calls ‘causal responsibility’, which is not under discussion here.³⁶)

If this is true, we have a puzzle. Hart relates consequential responsibility to basic responsibility in the following way. Of the conditions of basic responsibility, he writes:

These [also] constitute the most important criteria of moral liability-responsibility, though it is characteristic of most legal systems that they have given only tardy recognition to all these capacities as criteria of legal responsibility.³⁷

So, for Hart, the conditions of basic responsibility figure among the material conditions (‘criteria’) of consequential responsibility, at least in morality. But haven’t we just seen that this cannot quite be true? The material conditions of consequential responsibility exclude the material conditions of wrongdoing. But don’t the material conditions of wrongdoing include the conditions of basic responsibility? One cannot commit a wrong unless one can violate a norm and one cannot violate a norm unless one is the kind of being – a basically responsible being – who can be guided by norms. Surely it follows that the material conditions of consequential responsibility also exclude the

³⁶ ‘The Varieties of Responsibility’, above note 1, 348-9.

³⁷ ‘The Varieties of Responsibility’, above note 1, 360.

conditions of basic responsibility. This conclusion may seem counterintuitive. For it breaks an obvious link that one expects to find between the two senses of responsibility, viz. that consequential responsibility depends upon basic responsibility.

Or does it? The possibility remains that basic responsibility is a material precondition, even though not a material condition, of consequential responsibility.³⁸ I will call this 'the rudimentary link' between basic and consequential responsibility. What it means is that one must be basically responsible, or at least assumed to be basically responsible, for the question of one's consequential responsibility to arise in the first place. Only then do we move on to see whether the material conditions of consequential responsibility itself are satisfied.

Does the rudimentary link hold? It seems that it must. What is more, it is a conceptual link. For there to be wrongdoing that has normative consequences there must (conceptually) be a wrongdoer. And a wrongdoer, as we saw, must (conceptually) be a basically responsible agent. This simple answer, however, does not stay simple for long. Aren't there cases in which a fiction of basic responsibility may, with moral propriety, be sustained in the law (or in other institutional settings), so that the advertised precondition of consequential responsibility may be treated as satisfied when really it is not? And what about the fact that consequential responsibility, unlike basic responsibility, may be vicarious? Here F is the wrongdoer but G is consequentially responsible. Whose basic responsibility, F's or G's, is supposed to satisfy the advertised precondition in such a case?

These are troublesome questions. But they are questions about the justification of particular norms. These are not the questions that I want to emphasize for present purposes. Instead I

³⁸ For a similar suggestion see R.A. Duff, 'Law, Language, and Community: Some Preconditions of Criminal Liability', *Oxford Journal of Legal Studies* 18 (1998), 189. I also leave open the possibility that basic responsibility is a precondition, rather than a condition, of wrongdoing.

want to focus on the implications of the rudimentary link for the way we think, more generally, about the moral importance of basic responsibility and consequential responsibility. A common thought is that the rudimentary link points to a way of explaining the moral importance of basic responsibility. The moral importance of basic responsibility stems from its role as a precondition of (morally defensible) consequential responsibility, which is morally important because of the independent moral importance of the various adverse normative consequences that fall within its scope. These consequences are morally important because of their unwelcomeness to the person who is subject to them. They threaten her interests. The explanation begins, in other words, with the interests that people have in not being punished, made to apologize, etc. and works back from there to the moral importance of their basic responsibility. This I have elsewhere called the 'Hobbesian story'.³⁹ It turns one's own responsibility, both consequential and (therefore) basic, into something to be *ceteris paribus* avoided, shirked, disclaimed, etc.

But one may equally reverse the whole explanation. One may equally argue: The moral importance of those adverse normative consequences that fall under the aegis of (morally defensible) consequential responsibility is, at least in part, owed to the fact that they have basic responsibility as a precondition of them. Think again about what it means to 'hold people responsible'. As I said, this turn of phrase may be interpreted performatively in relation to consequential responsibility, but only constatively in relation to basic responsibility. Yet notice that, even read in context, the turn of phrase is often ambiguous between these two very different interpretations. This ambiguity, it seems to me, is not obfuscating but revealing. It reflects the fact that one very powerful reason to hold someone consequentially responsible (performative 'hold') is that in the process one holds

³⁹ *Offences and Defences*, above note 11, 179.

him basically responsible (constative 'hold'). One asserts H's basic responsibility, in other words, by imposing consequential responsibility on H. This connects with the thought, sketched above, that human beings are defeasibly basically responsible. From this it follows that one treats H as a human being only if, in the absence of defeating conditions, one treats H as basically responsible. And that in turn yields a case for imposing consequential responsibility on H when H is indeed basically responsible, i.e. in the absence of defeating conditions. For imposing consequential responsibility on H is asserting H's basic responsibility which is also affirming of H's humanity. This is true, by the way, even if the consequential responsibility that one imposes on H is of a type, like the duty to repair or the duty to retribute, that is relatively unaffected by H's justifications and excuses. The affirmation of H's humanity does not lie in linking her consequential responsibility to her *success* in explaining herself (although that is sometimes required for independent reasons, as in the case of punishment and other blaming responses). Rather it lies in recognizing her *ability* to explain herself, her basic responsibility, by making her a candidate for consequential responsibility. This is possible, in turn, because the rudimentary link holds between basic and consequential responsibility. Here is what I elsewhere called the 'Aristotelian' story.⁴⁰ It makes one's own responsibility, both basic and (therefore) consequential, into something to be prized, asserted, claimed, etc.

I still tend to think, as I did when I first applied these labels, that both stories are sound but that the Hobbesian story has enjoyed an ascendancy in modern thought that has been too much at the expense of the Aristotelian story. This, I think, is also Lucas's complaint. Feinberg and Hart are both, in their different ways, apt targets for the complaint. We already know that Feinberg gives a logical priority to consequential

⁴⁰ *Offences and Defences*, above note 11, 179.

responsibility. He explains basic responsibility as a competence to fall under norms, including moral norms, of consequential responsibility. This points to consequential responsibility as the source of basic responsibility's moral importance. For any competence takes its moral importance from the norms that it is a competence to fall under. The more morally important the norms, the more morally important the competence. Hart, of course, does not fall into the same trap in the same way, for he does not understand basic responsibility as a competence. Yet he falls into the same trap in a different way. He understands basic responsibility to be a composite ability (correct) that is not in itself a moral status (incorrect). Since for him it is not in itself a moral status, it takes such moral importance as it has from something else. From what? Hart's only suggestion is that it takes its moral importance from the fact that it is a material condition of consequential responsibility according to 'morality [as] at present understood'.⁴¹ So Hart, like Feinberg, helps to maintain the ascendancy of the Hobbesian story.

3. Two varieties of responsibility

I have restricted my attention to just two of the several philosophically interesting 'varieties of responsibility' (to borrow Hart's phrase). I have restricted my attention to basic responsibility and consequential responsibility. I have not asserted that basic responsibility is logically the more basic of the two, in the sense that one cannot grasp the nature of consequential responsibility except in terms of it. I have merely rejected the opposite view as set out by Feinberg. Nor I have I argued that basic responsibility is morally the more basic of the two, in the sense that the moral importance of consequential responsibility is entirely derived from that of basic responsibility. Rather, I have

⁴¹ 'The Varieties of Responsibility', above note 1, 362.

suggested that there is a two way street here. The Hobbesian story and the Aristotelian story both explain part of the truth. So why – you may want to be reminded – is basic responsibility called ‘basic’? There is more than one explanation. But the main explanation is that so much in our moral lives – indeed everything that makes our lives moral lives – turns on our possession of it. We are moral agents only insofar as we are basically responsible. This is what makes the Hobbesian story of the importance of basic responsibility more shallow than the Aristotelian. For it reduces to a specialized role in selecting people to bear adverse normative consequences something which, properly understood, goes to the very heart of all distinctively human life and experience.