This paper discusses how information about existing pathologies and specifically findings from neuroscience should influence judgments concerning the moral responsibility of individuals with mental disorders. I argue that the causal contribution of brain dysfunction to immoral behaviour does not provide an excusing condition because it does not address the criteria relevant for ascriptions of moral responsibility. Rather, the relevant criteria for evaluating moral responsibility are psychological capacities. However, neuroscience plays an important role in increasing our understanding of mental disorders and specific psychological incapacities. It is also crucial in supplementing our moral imagination and bringing home the point just how different and impaired certain individuals’ psychological capacities are.

While there are positions which hold that ‘moral responsibility’ is a concept which should be dispensed with altogether, the majority position we are justified in ascribing moral responsibility to individuals and that most individuals are morally responsible while some, for example very young children, are not. It is the marginal cases which are most hotly debated. So, for example, psychopaths, drug addicts and people with significant self-control problems are seen as having diminished or no responsibility by some authors. Psychiatric and neuroscientific data are often cited as evidence to support claims of reduced responsibility. The purpose of this paper is to consider more and less helpful ways in which the empirical insights regarding mental disorders, specifically neuroscientific findings, can be fitted into discussions of moral responsibility.

I will argue that arguments purporting to show that pathological conditions excuse because they constitute conditions which are outside the agent’s control are unhelpful as they implicitly posit an untenable distinction between aspects of the agents personality and behaviour that fall under the agent’s control and those which do not. That way, metaphysical madness, or at the very least confusion lies. A more promising common strategy is to look at the individual’s psychological profile and assess whether or not it has the rational and emotional capacities which are requisite for moral responsibility. In this context, the question of the relevance of data from neuroscience is particularly important. Where neuroscientific evidence is employed, there is a tendency to take the fact that some brain-dysfunction is constitutive of the disorder to show that the normal reasons for action and grounds for accountability are not present in the individuals under consideration. In other words, the action under consideration is better explained as the result of brain dysfunction rather than as that of a culpable mental state. I will show that this is an ill-considered conclusion to draw and give some reason why it is still a tempting one.

Control and the ability to do otherwise

Discussions concerning the moral responsibility of agents with mental disorders for the most part stay clear of the metaphysical debates about free will and moral responsibility. This is unsurprising, the question whether a certain condition diminishes or waives and individual’s moral responsibility only makes sense against a background where the attributability of moral responsibility is the default assumption. However, there is a tendency for confusions from the free will debate to sneak back in.
This can be seen when we look at contributions to the debate on the moral responsibility of psychopaths. While most discussions focus on the specific capacities and incapacities of psychopaths in answering the question whether they are morally responsible, there is often the suggestion that psychopathy being a developmental disorder which is strongly heritable exempts psychopaths from the responsibility for being psychopaths. This may just take the form of a passing comment, “If the phenotypic traits of psychopaths are highly heritable, then one might be inclined to claim that their antisocial and immoral behavior is effectively determined by genetic factors beyond their control” (Glannon 2008, p.160). Alternatively, the fact that psychopathy is a strongly heritable brain disorder may explicitly be used to justify the conclusion that psychopaths are less blameworthy. The problem with this line of thought is well rehearsed, we are all products of our genes and our environment, so if one is going to have moral responsibility at all, the presence of genetic and or environmental influences on its own cannot be an excusing condition. (Alternatively we can give up on the concept of moral responsibility, a conclusion which some authors are happy to embrace, eg. Greene and Cohen (2011))

**Physical conditions as excusing conditions**

Despite the problems associated with trying to disentangle relevant causal chains from others, reflections on causal chains figure prominently in the literature on moral responsibility. One reason for this which is relevant in the context of mental disorder and moral responsibility is that pathological conditions are often taken to substitute the normal causal pathways of decision making and action. This is made extremely vivid in a thought experiment by Reznek (1997), which introduces the question whether we should hold a nasty, immoral person whose nastiness was caused by a brain tumor responsible. Taking up this example, Levy (2007) argues that we would not, because his nastiness came about ‘through no fault of his own’.

This is a very instructive thought experiment. How and why exactly are a tumour or some gross neurological anomaly supposed to constitute excusing conditions? The thought behind this appears to be that brain tumours or gross neurological abnormalities will excuse what would normally be blameworthy behaviour because the action does not bottom out in the kinds of mental states which we take to be the basis of moral blame. If it weren’t for some physical condition the individual suffers from, so the argument, they would in all likelihood behave inoffensively.

But that cannot be enough. Just as we are all a product of our genes and our environment, so all our mental states will be dependent on and realized by brain states, at least under the common assumption of physicalism, as is often pointed out. (cf. e.g. (Arpaly 2005)) Generally, we do not take the mentalistic explanation of behaviour and the assumption that these mental states would not exist but for their corresponding physical states to be in conflict with each other. So what makes this case different in such a way that an explanation in terms of brain dysfunction seems to be more informative or more fundamental than one in terms of mental states?

The first thing to notice is that while most people will agree that in principle, physiological and mentalistic descriptions and explanations of behaviour need not be in competition, in practice, we may be tempted to see one explanation as more fundamental and therefore as replacing the other. This is what eliminativist strategies which prophecy that neuroscience will lead to the demise of all ascriptions of moral responsibility rely on. Here, some intellectual discipline is called for. Either the
eliminativist project is embraced and the notion of culpable mental states is rejected altogether. If, however, eliminativism is not a convincing project generally, then we should stick to the psychological level of description when assessing moral responsibility. A brain explanation should then not replace a mental one in special cases just because there is an interesting brain story to be told.

A further reason why we may be inclined to privilege brain explanations is that a brain oriented description does sometimes (causally) explains behaviour or mental states which are not equally amenable to an explanation in more mentalistic terms. This is the case when for example a depression resulting from thyroid dysfunction is diagnosed. Here, an explanation in terms of biochemical processes may be more illuminating than one in terms of experiences and beliefs. But in most cases, a biological explanation does not simply supersede a description in more mentalistic terms. More importantly, it does not mean that we should not take descriptions at the level of beliefs and desires seriously if these can be made sense of and reflect understandable concerns, follow normal inference patterns and means ends reasoning. In the case of morally wrong behaviour, we normally look at the beliefs and desires which were crucial to an individual’s committing a certain act. Excusing factors are classically delusions or other belief states which led to an individual’s not knowing what they were doing or not understanding the moral quality of the act they committed.

What are the implications for the tumour example? If we take the mental level of description seriously, then the existence or lack of brain tumours will only be relevant if it is correlated with corresponding mental deficits. These can take different forms, be they self-control deficits, deficits in understanding and rationality, aka problems with reasons responsiveness, or even deficits in empathy. Whether the person with the evil-making tumour is morally responsible will depend strongly on how the example is fleshed out. If mental capacities which we take to be necessary for moral responsibility and moral agency are present, then the tumour does not excuse. If, on the other hand, immoral behaviour is accompanied by other psychological problems and the individual shows clear impairments in decision making, there will be grounds for excuse. Moral responsibility is attributed on the basis of mental states and psychological dispositions. If the individual is psychologically sound enough to be subject to attributions of moral responsibility, then that is sufficient, no matter what their brain looks like. This also seems to be the direction a lot of neuroethical research is taking. For example in 2007 Levy still takes amygdala dysfunction to be of paramount importance in constructing an argument to the effect that psychopaths have diminished moral responsibility. His 2013 paper on the moral responsibility of psychopaths on the other hand does not refer to brain anomalies at all, but builds its argument entirely on the psychological capacities psychopaths lack.

Does this mean neuroscience has no role to play in our ascriptions of moral responsibility? No, that would amount to throwing out the baby with the bathwater. Neuroscience contributes to our understanding of mental disorders, and a better understanding of mental disorders is a crucial to evaluating the moral responsibility of people suffering from them. Furthermore, they play an important role as an aid to our moral imagination as has already been pointed out by Arpaly (2005). Often, we have difficulties imagining incapacities we ourselves do not have and a corresponding

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1 Cf. Miller 2010, who has got his metaphysics in a knot but is right about the practical implications
2 It should be noted that the scenario where there are several psychological impairments is also far more realistic, the existence of a tumour which only affects morality is in all likelihood a philosophical fiction.
tendency to think that people exhibiting this incapacity are only faking it. Being informed about abnormalities on the brain level which correspond to the observed behavioural abnormalities may make it easier to accept that the people under consideration are indeed incapacitated in relevant ways. However, care is needed here, too. At the current level of brain research, the psychological deficits need to be very well established for it to be possible to pinpoint corresponding brain anomalies. This means that a behavioural diagnosis remains primary in establishing psychological disorders, even if it is supported by corresponding findings about the brain.


