

## If We Shouldn't Punish Psychopaths, May We Still Blame Them for Bad Character? Perhaps Not.

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**Date :** November 27, 2015

Dana Kay Nelkin, [Psychopaths, Incurable Racists, and the Faces of Responsibility](#), 125 *Ethics* 357 (2015).

[Dana Kay Nelkin](#)'s recent work brings together an important dilemma in the criminal law and a key distinction within it. The result is that our understanding is furthered on both scores. The dilemma is psychopathy. Psychopaths lack affective capacity. They cannot appreciate the wrongfulness behind criminal law's prohibitions. Without this ability, is it fair to criminally blame and punish them? Although the Model Penal Code specially exempts psychopathy from its definition of mental illness, many theorists believe that appreciating moral reasons is a prerequisite to just punishment.

Now, for the distinction. One move that some criminal law theorists will make is to argue that although we have a judgment that someone has a bad character, the person has not committed a culpable act and hence cannot be punished. If a person enjoys killing and becomes an executioner, not because she wants to inflict deserved punishment but because she wants to kill, ought we to think that she is unjustified or instead that she is just a bad person behaving justifiably? If a driver fails to notice a pedestrian because he is checking out his reflection in the mirror, is this vanity criminal negligence or bad character? The distinction between criminal blaming and character assessing is one way that we can sort cases that seem bad in one respect and yet not properly the object of criminal sanction.

Nelkin's task is to take up philosopher [Gary Watson](#)'s recent employment of this distinction with respect to psychopaths. To Watson, we blame the psychopath for his cruelty although we do not hold him morally accountable. The former character assessment is "attributability" responsibility, whereas the latter responsibility (and the kind required for criminal responsibility) is "accountability" responsibility. Watson's critics to this point have contended that attributability responsibility is all that is necessary for moral (and therefore criminal) accountability. The critics offer the example of the "incurable" slave owner who cannot appreciate the moral demands made by his slaves. Surely, say the critics, the slaves will not only find the owner has a bad character but is also accountable for his actions.

Nelkin believes that the unification of attributability and accountability can be resisted and that Watson's dichotomy rightly classifies the slave owner case. But more importantly, she thinks both sides of the debate are wrong. She denies that psychopaths have bad character.

At first it seems extremely implausible that a psychopath could have anything but bad character, and in particular, it seems hard to believe that we cannot blame a psychopath for being cruel. Some psychopaths take pleasure in others' pain. If that is not cruelty what is?

The argument I found most compelling was the argument from kindness. Nelkin asks the reader to imagine a creature who simply enjoys seeing others have a good time. The creature does not take others' interests as reasons for his actions. If he furthers their enjoyment, it is to further his ends, not theirs. Nelkin argues that, whatever we may wish to say about this creature, we would be reluctant to say that he is kind. The inability of the creature to appreciate these positive reasons prevents our characterization of the conduct as kindness. So, too, Nelkin argues that there exists "a considerable gap between lack of respect on the one hand and *dis*respect on the other." (P. 366.)

But if the psychopath is not a case for the distinction Watson draws, is there a class of people to whom his distinction applies? Enter the slaveowner. Nelkin maintains that these individuals *if they truly cannot grasp the moral demand that is being placed on them* cannot be deemed accountable. However, because they have the capacity to appreciate moral

demands—a capacity the psychopath lacks—we can still attribute their wrongful conduct to them, and in this sense, they can be blamed for their characters.

There is much more to Nelkin's carefully argued work. It has the subtlety of a skilled philosopher, and she masterfully distinguishes different judgments about individuals that our intuitions may run together. Whether one wants to think further about psychopathy or to explore the distinction between holding someone accountable and blaming him for his character, reading Nelkin's piece is sure to pay dividends.

Cite as: Kimberly Ferzan, *If We Shouldn't Punish Psychopaths, May We Still Blame Them for Bad Character? Perhaps Not.*, JOTWELL (November 27, 2015) (reviewing Dana Kay Nelkin, *Psychopaths, Incurable Racists, and the Faces of Responsibility*, 125 *Ethics* 357 (2015)), <http://crim.jotwell.com/if-we-shouldnt-punish-psychopaths-may-we-still-blame-them-for-bad-character-perhaps-not/>.