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## *Taking Offence*

JOHN SHAND

This paper explains a phenomenon that runs counter to our moral intuitions, whereby the same act performed unintentionally may in certain circumstances be more culpable than one performed intentionally, and that therefore a person on the receiving end of such an act may be entitled to be more offended by the former than the latter. A consequence is that the oft heard excuse that the offence was ‘not meant’, as it was not done intentionally, cannot without further qualification, and perhaps not even then, count as an exculpatory claim.

What I wish to explore is something that looks rather like a paradox or is, at least at first blush, counterintuitive. Other things being equal we suppose that two actions, identical in their outward features, differ in moral culpability depending on whether they are done intentionally or unintentionally, and that the more morally culpable action is the one that is done intentionally.<sup>1</sup> In the case of offence<sup>2</sup>, I shall show that it is quite possible for the reverse to be the case, and that this requires an explanation, which I shall give.

We need to be clear about what is meant by offence here so as not to be spuriously diverted, although nothing hangs on being too precise about it, and my sense of it is a perfectly ordinary one. I am referring not to a rather abstract or elevated sense of offence as one might when talking of offending someone’s deeply held ideas or beliefs that may form their worldview. Rather what is meant is personal offence, or feeling justifiably hurt. The sort of offence that may occur when a friend lets you down.<sup>3</sup>

Let us give an easily imaginable example. Suppose you are sitting with two people you justifiably regard as your friends having a conversation and a beer. Let us call the individuals A, B, and C. You are C. A asks B if he wants another drink. B says he can’t and has to leave. It’s clear from this that A would have stayed if B had accepted the drink having also got one for himself. When A hears that B is leaving, A says he has to go and do something, something quite unconnected with B. Thus, C is left alone. It seems reasonable to suppose that C might be justifiably hurt by being left, because A was quite willing to miss doing what he said he had to while A was staying, but not while C alone stayed.

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<sup>1</sup> The law certainly seems to reflect this in presenting a hierarchy of culpability, dropping down through actions that are respectively intentional, knowing, reckless and negligent, which distinguishing *mens rea* and *actus reus*. The severity of punishment accruing to actions discriminated according to this hierarchy reflects this. Thus, one might shoot to kill because one wants someone dead (intentional); one might shoot at someone, not wanting to kill them, but just wanting to see what happens when a bullet hits someone in the head (knowing); one might run about shooting wildly but in no particular direction in a crowded place (reckless); one might fire a gun without noticing where one is firing it, or perhaps even leave the gun out for someone else to fire (negligent).

<sup>2</sup> I shall restrict myself to cases of offence, although I suspect that the argument may be generalised to other actions that may be thought morally culpable.

<sup>3</sup> A most interesting book showing how intimate relations such as friendship generate moral reasons to behave in certain ways is Diane Jeske, *Rationality and Moral Theory: How intimacy Generates Reasons* (London: Routledge, 2008).

There are two ways of looking at this. The offence might have been intended. A is fed up with C, and wanted to hurt his feelings. On the other hand, one might take solace in the fact that A did not mean any offence. That is, the action that led to the offence was unintentional, or an instance of what one might call thoughtless offence. But to necessarily take solace in this would, I think, be a mistake. The significance of this is that the claim to unintentionality cannot without further qualification be used as a blanket excuse to escape the justified moral castigation of an act. In certain circumstances the opposite is the case. Which action would be more morally culpable? Would it be when it was done unintentionally or when it was done intentionally? Rather surprisingly, I would argue that it is the unintentional offence that may be more culpable, the result of which C is entitled to be most offended by. This need not necessarily be the case, but it is interesting that it may be the case at all. Whether one should be more hurt by an instance of unintentional offence rather depends on the details of the circumstances, as I will explain. But it looks odd that someone can be more offensive when they do a certain thing unintentionally - one might say thoughtlessly - than when they do it intentionally, or deliberately, *in order* to offend.

The explanation is illuminating. If one offends someone intentionally, one is at least aware of the other person's existence and feelings. One has bothered to think about them, even though one wishes them ill. But in the case of offending someone unintentionally one has not even bothered to consider the feelings of the other person as a consequence of one's actions. This is highly offensive partly because not even thinking to consider someone's feeling is tantamount to treating them as a thing.

It might be said, however, that someone cannot be culpable for something they do merely thoughtlessly. But this is to miss a second layer of responsibility for one's actions. Although we are all entitled to act thoughtlessly in certain circumstances, and attract little in the way of moral opprobrium, perhaps because there are circumstances that mean we may be forgiven for our lack of thought (perhaps we are highly distracted through hearing some bad news), there are other cases where a hypothetical is in place whereby we *should* have not failed to be thoughtful in such circumstances. This is often overlooked when people recognise their bad behaviour, but excuse themselves by saying that they did not mean it; by which they claim they did not intend it. But this only works as an excuse, and frees the person from moral culpability, if it is supposed that they might not be reasonably expected to be thoughtful in such circumstances.

Whether they might be reasonably expected to be thoughtful operates in an objective and a subjective manner. Respectively there is the question of whether a decent person ought to have been thoughtful in those circumstances, and there is the question of whether that individual ought to have been thoughtful in those circumstances. The objective and subjective manner may be either separate or compound. It might be that one is morally culpable through thoughtlessness in only an objective or in only a subjective, sense; but it might also be that one might be morally culpable in both senses.

So why is C entitled to be so offended, to feel justifiably hurt? We should note that the degree of offence and hurt - a kind of rudeness - is not erased by whether A on having the action pointed out would be mortified, or at least himself upset, to know that C was so hurt and offended by his action. He might even apologise. The recognition on A's part does not wipe away the action and its moral culpability; although it may do something to help C forgive A, it is unlikely things could ever be the same again unless A

has a very good excuse for the thoughtlessness involved in his action. The sense in which things cannot be the same as before involves seeing that A's action cannot properly be seen as a *mistake*. It is not comparable to someone trying to do something, but getting it wrong. Rather it is such that given certain other things are in place - that A is C's friend - that it should simply not have happened. In a sense, given that A is C's friend, it should be *impossible* that it should happen while it still be accurate to say that A is C's *friend*. A might forget C's birthday. But it's hard to see how he could forget not to be offensive; it just *de facto* should not arise. The very occurrence of the act reflects upon the relationship between A and C, and shows that, contrary to what seems to be in place, A may properly speaking not consider C as a friend at all. This is why C is entitled to feel so offended: it's not only that it should not have happened in a moral-normative sense, there is also a way in which it should not have happened in a factual sense. If A really was C's friend, not only should A not have done what he did morally, there is a sense in which it *could not* have happened. It's not the kind of thing a friend could do if he were a friend. The correctness of the identity of being a friend involves not being *able* to make a mistake that would give offence in that way. This shows how the identity of friendship, the expectations that flow from its correct designation, are inextricably bound up to certain kinds of behaviour, the contrary of which removes the correctness of the designation.

To present an even more graphic example, there are circumstances in which someone may be considered more morally culpable by walking on someone lying on the floor as they cross a room *and not noticing* or intending to do so, than if they deliberately went over and stamped on the person - supposing the force and result of the action to be the same. At least in the latter case the person on the floor is considered as a person with feelings, albeit, there is a desire to create very bad feeling in that person. But to not even notice that you have trodden on another human being, to treat them like a carpet, may surely be considered more culpable unless there are special explanatory circumstances<sup>4</sup>. It indicates a level moral depravity perhaps beyond even that of callous indifference to the feelings of another.

To not take account of another's feeling when one should may be a reflection, and a poor reflection at that, on one's character, unless external consideration exculpate one; and insofar as one is responsible for one's character, one is responsible for the acts that follow from it; one is thereby morally responsible and perhaps culpable, if such an act is a matter of moral concern.

In summary the resolution of the oddity that an unintentional act may be, although need not necessarily be, more offensive than an intentional one, is that to offend someone unintentionally - to hurt their feelings - is to offend another without *even taking into considerations* the feelings of the other, when clearly one *should* do so and one is morally culpable in not doing so.

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<sup>4</sup> One may simply be blind, in a room thick with smoke, have artificial legs.