

How Should We Judge People For Their Past Moral Failings?

The recent allegations of sexual assault against Supreme Court nominee Brett Kavanaugh have further divided the nation. Among the questions the case raises are some important ethical ones.

Not least among them is the question of moral responsibility for actions long since passed. Particularly in light of the #MeToo movement, which has frequently involved the unearthing of decades old wrongdoing, this question has become a pressing one.

[As a philosopher](#), I believe this ethical conundrum [involves two issues](#): one, the question of moral responsibility for an action at the time it occurred. And two, moral responsibility in the present time, for actions of the past. [Most philosophers seem to think](#) that the two cannot be separated. In other words, moral responsibility for an action, once committed, is set in stone.

I argue that there are reasons to think that moral responsibility can actually change over time – but only under certain conditions.

Locke on personal identity



Portrait of John Locke. [Skara kommun/Flickr.com](https://www.flickr.com/photos/skara-kommun/), CC BY

There is an implicit agreement among philosophers that moral responsibility can't change over time because they think it is a matter of one's "personal identity." The 17th-century British philosopher [John Locke](#) was the first to explicitly raise this question. He asked: What makes an individual at one time the very same person as an individual at another time? Is this because both share the same soul, or the same body, or is it something else?

Not only is this, as philosopher [Carsten Korfmacher](#) notes, ["literally a question of life and death,"](#) but Locke also thought that personal identity was the key to moral responsibility over time. [As he wrote,](#)

"Personal identity is the basis for all the right and justice of reward and punishment."

Locke believed that individuals deserve blame for a crime committed in the past simply because they are the same person that committed the past crime. From this perspective, Kavanaugh the 53-year-old would be responsible for any of the

alleged actions that he committed as a young adult.

Problems with Locke's view

Locke argued that being the same person over time was not a matter of having the same soul or having the same body. It was instead a matter of having the same consciousness over time, which he analyzed in terms of memory.

Thus, in Locke's view, individuals are responsible for a past wrong act [so long as they can remember committing it](#).

While there is clearly something appealing about the idea that memory ties us to the past, it is hard to believe that a person could get off the hook just by forgetting a criminal act. Indeed, [some research suggests that violent crime actually induces memory loss](#).

But the problems with Locke's view run deeper than this. The chief one is that it doesn't take into consideration other changes in one's psychological makeup. For example, many of us are inclined to think that the remorseful don't deserve as much blame for their past wrongs as those who express no regret. But if Locke's view were true, then remorse wouldn't be relevant.

The remorseful would still deserve just as much blame for their past crimes because they remain identical with their former selves.

Responsibility and change

Of late, [some philosophers](#) are beginning to question the assumption that responsibility for actions in the past is just a question of personal identity. [David Shoemaker](#), for example, argues that responsibility doesn't require identity.

In [a forthcoming paper](#) in the [Journal of the American](#)

[Philosophical Association](#), my coauthor [Benjamin Matheson](#) and I argue that the fact that one has committed a wrong action in the past isn't enough to guarantee responsibility in the present. Instead, this depends on whether or not the person has changed in morally important ways.

Philosophers generally agree that people deserve blame for an action [only if the action was performed with a certain state of mind](#): say, an intention to knowingly commit a crime.

My coauthor and I argue that deserving blame in the present for an action in the past depends on whether those same states of mind persist in that person. For example, does the person still have the beliefs, intentions and personality traits that led to the past act in the first place?

If so, then the person hasn't changed in relevant ways and will continue to deserve blame for the past action. But a person who has changed may not be deserving of blame over time. The reformed murderer Red, played by Morgan Freeman, in the 1994 film, ["The Shawshank Redemption,"](#) is one of my favorite examples. After decades in the Shawshank Penitentiary, Red the old man hardly resembles the teenager that committed the murder.

If this is right, then figuring out whether a person deserves blame for a past action is more complex than simply determining if that individual did, in fact, commit the past action.



Brett Kavanaugh giving his opening statement before the Senate Judiciary Committee. [Saul Loeb/Pool Image via AP](#)

In the case of Brett Kavanaugh, some commentators have, in effect, argued that his recent Senate testimony displayed the persisting character of an [“aggressive, entitled teen,”](#) although there are those [who disagree](#).

What I argue is that when confronted with the issue of moral responsibility for actions long since passed, we need to not only consider the nature of the past transgression but also how far and how deeply the individual has changed.

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