PhiMiSci
Philosophy and the Mind Sciences

How much nuance is too much?

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Abstract
Joshua May's *Neuroethics: Agency in the Age of Brain Science* gives a clear, engaging, and philosophically rich introduction to the subject. It is a sustained and powerful defense of a bold position within the field of neuroethics, and a demonstration of what makes that field philosophically important and genuinely exciting. Despite the book's overall excellence, I have some concerns about May's call for more nuance in thinking about the connections between mental disorders and responsibility. More nuance in this regard is unquestionably welcome given the status quo, and May's thesis of cognitive continuity is both well-supported and morally urgent; however, I worry that May's "nuanced view" overshoots the mark and incurs some significant practical and conceptual costs, which we can avoid by accepting a little *less* nuance than May recommends.

Keywords
Agency · Mental disorder · Neuroethics · Responsibility

This article is part of a symposium on Joshua May's book "Neuroethics: Agency in the Age of Brain Science" (OUP, 2023), edited by Carolyn Dicey Jennings.

1 Introduction

Joshua May's *Neuroethics: Agency in the Age of Brain Science* does everything one would want a book with its title to do. It provides a clear, engaging, and philosophically rich introduction to the field; it includes enough rigorous discussion of the empirical evidence to satisfy a reader coming from a scientific background, but not *so* much detail that readers coming from a more traditionally philosophical background will bog down in the weeds. It gives an exciting and persuasive demonstration of the ways in which neuroscience is relevant to philosophy—by shedding light on old questions and raising new and vital ones—without verging into the overheated register of "neurohype," which can sometimes make it seem like neuroscience is mere weeks away from solving not only all philosophical problems, but all human problems, period.

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Fagan, T. K. (2025). How much nuance is too much? *Philosophy and the Mind Sciences*, *6*.
https://doi.org/10.33735/phimisci.2025.11776
 https://philosophymindscience.org ISSN: 2699-0369

With deference to spacetime constraints and to the contributions from my co-commentators—and because the book gets so much right—I want to focus my remarks on one relatively narrow piece of the book where I feel things go a bit wrong, albeit in an interesting and fruitful way: chapter 4's treatment of whether having a mental disorder makes one less responsible.

2 The nuanced view: Motivations and implications

In this chapter, which further develops some ideas that he and Matt King sketched out in prior work (King & May, 2018), May presents a foil that he calls the "naïve view," according to which simply having *any* mental disorder means that one lacks full-fledged moral agency. May convincingly argues that the naïve view is both inaccurate and morally worrisome: Inaccurate because it fails to appreciate the myriad, subtle, and sometimes counterintuitive ways that psychopathologies may affect (or not affect) agency; morally worrisome because of its potential for injustice and further stigmatization of people with mental disorders, excluding (or giving permission to exclude) them from full moral agency, and perhaps from full personhood.

It's fair to say that in recent years there has been a shift toward more qualified, less categorical accounts of the relationship between mental disorder and responsible agency, but the naive view May argues against is no mere strawman. May cites David Shoemaker (2015), Nomy Arpaly (2005), and several others as representing "friendly amendments" to the naïve view, which add helpful nuance but still cling to *some* kind of general relationship between at least some forms of psychopathology and some forms of responsibility. May wants to go even further, rejecting the naïve view altogether and advocating for what he calls the nuanced view, which in admirably plain language says that "[t]here is no general relationship between moral responsibility and psychopathology" (2023, p. 98).

May gives two main reasons in support of the nuanced view. First, the symptoms of mental disorders are just as capable of *enhancing* responsible agency as they are of impairing it. Especially if one is roughly sympathetic to May's view of the capacities that freedom and responsibility require—some combination or subset of choice, control, and coherence, to use May's favored terms—it seems clear that some of these capacities can, in particular contexts, be augmented rather than undermined by the symptoms of a mental disorder. For instance, a person's OCD may make them hyper-aware of and acutely sensitive to certain morally relevant considerations; if one's responsible agency is a function of how responsive one is to morally relevant reasons, then in certain contexts a person with OCD may have higher degree of responsibility compared to neurotypicals, not a lower one. May gives the hypothetical example of a friend, Otto, who is known to obsessively check that he has locked doors, and whom you've charged with feeding your cat while you're away on vacation. If Otto leaves your door unlocked and accidentally lets in a raiding party of raccoons, you might well hold Otto *more* responsible than

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you would a different friend with a lower, more typical level of attentiveness to the lockedness of nearby doors (2023, p. 101). At least in this context, Otto's OCD functions more like a special talent or expertise than a disability.[1] Although, in his brief discussion of the "Otto" example, May takes care to note that Otto's OCD *itself* is not what enhances his responsibility; rather, it is the "specifics of certain *symptoms* and *circumstances*" that do so (2023, p. 101, emphasis in the original). This subtle but important point encourages us to be cautious in comparing Otto's case to that of someone with an expertise or skill. Even if the symptoms of a mental disorder and the dispositions of a well-cultivated skill might sometimes issue in similar patterns of behavior, there may be good reasons to treat those behaviors differently with regard to responsibility.

One might reasonably object to the idea that Otto, in this context, is any more responsible than another friend without his obsessive compulsion would be (call this hypothetical friend Quinn). Would Otto really be more blameworthy than Quinn? If each was responsible for a lapse leading to damages like those May describes, should Otto pay more than Quinn?[2] Lacking the space for a full-scale defense, I offer two short replies that I think are in the spirit of May's position. First, I would argue that questions about appropriate sanctions or punishments (even informal ones) are downstream from questions about blameworthiness, and the fitness or fairness of some punishment depends on factors beyond blameworthiness alone. If so, the claim that Otto is more responsible and more blameworthy than Quinn, in the hypothetical pair of cases we are considering, can be sustained without having to accept any further claims about, say, the relative amount of damages each person might be (morally) obliged to pay. Second, and more substantively, I would insist that Otto really is more blameworthy than Quinn for a door-locking lapse of this kind because, other things equal, it is *easier* for Otto to avoid such a lapse than it is for Quinn. The specific combination of Ottos's circumstances and the OCD that shapes his cognitive and volitional capacities means that, relative to Quinn, he has an easier time attending to the morally relevant features of the situation. Therefore, to use Dana Nelkin's (2016) framing, Otto's "quality of opportunity" to avoid a harmful lapse is better than Quinn's, and consequently he bears more responsibility than Quinn, other things being equal. The basic motivating idea here, which seems intuitive and widespread in practice, is that difficulty can affect one's degree of responsibility (and hence degree of praiseworthiness or blameworthiness). It is why we might give someone a break for missing an appointment when we know they're juggling an extraordinary number of other demands; or why we might praise a person's resolve in sticking to their dietary goals more

[1] The classic joke from the late comedian Mitch Hedberg comes to mind here, even if it loses something in transposition from stage to page: "If you had a friend who was a tightrope walker and you were walking down the sidewalk with him and he fell, that would be completely unacceptable."

[2] My thanks to an anonymous referee for pressing this point.

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highly when we know they had to pass up their favorite (off-limits) food, rather than something they have an easy time turning down.

May's brief but evocative example of Otto calls attention to another important question: why we are so asymmetrically focused on the harms and deficits that mental disorders can cause and so comparatively inattentive to the ways they can sometimes benefit and enhance human life. May's book provides a helpful corrective; in a thought-provoking passage from chapter 4, he points out that we often default to a narrow use of the term "symptom" as necessarily indicating an *undesirable* effect of some disorder or disease. From that narrow perspective, of course, it will seem almost unthinkable that a mental disorder could have symptoms that enhance responsible agency, since enhancement is good and symptoms are bad. May helpfully gestures toward the broader and more neutral meaning of "symptom" as simply indicating any effects associated with a condition, whether they are undesirable or not. It's this broader sense of "symptom" we should keep in mind when thinking about the potential impact of mental disorders on responsibility (2023, p. 102).

The second line of support May gives for the nuanced view is less counterintuitive but equally compelling: It's simply the idea that when the symptoms of mental disorders *do* diminish agency—which is only sometimes—they do so in ways that resist generalization. Even if we can identify an individual case in which a person's mental disorder diminishes their responsibility, or excuses them from it altogether, that will be the result of a highly complex interplay of symptoms and circumstances. Whatever judgment we make in this particular case may tell us very little about this person's agency at other times and in other situations, and even less about the agency of *other* persons who have been given the same diagnostic label. Even if we can safely conclude that Aisha's schizophrenia mitigates her responsibility for some specific act she performs while in the middle of an "active phase" of hallucination, we probably can't draw many safe inferences about whether Aisha is responsible for acts she performs at other times, let alone about other acts by other people with schizophrenia. Psychopathology is too heterogeneous, May argues, for anything short of the nuanced view to be plausible (2023, p. 108).

Thus motivated, May's nuanced view entails his corollary thesis of cognitive continuity: "Neurotypical individuals and people with psychopathologies are more alike psychologically than they are unalike; their psychological differences are primarily a matter of degree, not kind" (2023, p. 109). One wonders just how much weight the word *primarily* is being made to bear in that sentence, but never mind. May is driving at a larger point with clear and important ethical implications: Because we are already inclined to assess the responsibility of neurotypical individuals on a case-by-case basis, cognitive continuity suggests that we should take the same case-by-case approach to people with psychopathologies. Although some psychopathological symptoms can (sometimes) diminish agency and hence respon-

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sibility, May says, "that is not categorically different from neurotypical mental life" (2023, p. 109).

When dealing with neurotypical people in our lives, we frequently mitigate blame when we think their judgment or control has been impaired by difficult circumstances or challenging life conditions—and yet we do so while continuing to regard them as (otherwise) fully responsible agents. May simply asks that we stand ready to do the same for people with mental disorders, since what distinguishes the challenges they face from those faced by neurotypical people is "largely a matter of frequency, persistence, and severity" (2023, p. 115). Between the extremes of full exculpation and unmitigated blame, there is plenty of room to mitigate assessments of responsibility with nuance and compassion while maintaining the basic respect inherent in treating people with mental disorders as responsible, accountable members of the moral community.

3 Too much nuance?

Again, I should stress that I find most of this chapter (and the book as a whole) highly congenial. May's emphasis on cognitive continuity, the idea that human minds are more alike than different, strikes me as not only well-founded but morally urgent. When we take notice of the wide variation in how a single person's mental disorder can impact their agency from one time to another, we can more easily see the variation *between* people within that single diagnostic category. And when we recognize that psychopathology is "heterogeneous any way you slice it," as May says, we can more easily see parallels with the heterogeneity of neurotypical people, helping to dissolve the sharp and stigmatizing boundaries we may have drawn, in our minds and our culture, between neurotypical people and "others." Less stigma, more compassion, a greater recognition of the autonomy and dignity of people who are not (always) neurotypical, and all while retaining and refining our ability to assign lower levels of responsibility or blameworthiness in those cases where we are justified in doing so. What's not to like?

Well. Nuance is a good thing, but as with all good things, one can have too much of it. That's my worry in a nutshell about May's view in chapter 4, and I'd like to offer two brief points in defense of the idea that *some* modest generalizations can be made—and indeed, should be made—about the relationship between certain mental disorders and responsibility.

The first point is more practical and epistemological. May argues that we should "evaluate responsibility on a case-by-case basis, not based on categories of mental disorder. The relevant phenomena to focus on are symptoms, such as impulsivity, delusions, hallucinations, anxiety," and so forth (2023, p. 99). May is surely right that it is the symptom, and not the category, that does the work of impinging upon a person's agency. But in making these case-by-case assessments, even as we keep the focus on symptoms and seek nuance, we can find real value in the use of diagnostic categories and the generalizations they entail. When we are

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trying to evaluate a person's responsibility for some act, learning that they have been diagnosed with a particular disorder can raise our credence that specific impairments of agential capacities were present at the time of the act, suggest an explanation for *why* those impairments were present, and direct our inquiries toward further questions that might settle the matter more accurately.

It is often infeasible to know precisely what symptoms a person may have been experiencing at the time they performed some act, or precisely how those symptoms may have impinged on that person's agency. In cases involving people we know well, where we have an extremely detailed and accurate sense of their agency in various circumstances, we might have the solid footing to make such inferences. But in cases where the person is essentially a stranger and the stakes of ascribing full responsibility are high—say, in a criminal trial where potentially severe and formal punishment hangs in the balance—we are on much shakier ground. Jurors tasked with assessing a defendant's responsibility for an act that may have occurred months or even years ago cannot realistically marshal the time, resources, and psychological expertise required to examine specific symptoms unmediated by diagnostic categories. Even if we regard them as an imperfect proxy for more nuanced and granular information about symptoms, the heuristic value of what diagnoses can constructively signal to jurors and courts shouldn't be overlooked (Jefferson, 2022). And this heuristic value would not exist if there were not *some* general relationships that held between certain psychopathologies and responsible agency.

The second point is more conceptual. I worry that May's nuanced view and cognitive continuity thesis risk obscuring the rough but important distinction between agency-affecting symptoms for which a person is responsible and those for which they usually aren't. In arguing that we should extend to the psychopathological the same amount of nuance and consideration we already offer the neurotypical, May notes that "[w]e recognize that individuals sometimes make impaired decisions while grappling with a divorce, bereaving the death of a loved one, or operating on little sleep due to a colicky newborn" (2023, p. 109). And indeed we do! But we also recognize—or we should recognize—that there is a difference between making a certain (perhaps impaired) decision *while* grappling with a divorce and making that decision *because* one is grappling with a divorce. And there is a further difference, or so I would argue, between a decision impaired by grappling with a divorce and a decision impaired by a mental disorder.

We must distinguish cases in which an agent *has* the cognitive and volitional capacities needed for normative competence, but (for whatever reason) fails to exercise them at the relevant time, from cases in which an agent's capacities are not present or functioning (at the time in question) robustly enough to be exercised. An example or two, even briefly sketched, may help to illustrate this distinction. If Jason succumbs to peer pressure and cheats on his taxes, in the absence of a mental disorder, he is (fully) responsible for tax fraud. The fact that peer pressure might present a "challenge" for Jason's agency—causing him genuine stress, anxiety, and

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fear of damaging friendships—doesn't carry much weight in assessing his responsibility, because his cognitive and volitional capacities for navigating these sorts of challenges are within the neurotypical range. If Marc makes a similar decision after caving to peer pressure, it is at least *suggestive* to know that Marc has been diagnosed with intellectual disability, the symptoms of which often impair social judgment, risk evaluation, and executive function, leaving one highly susceptible to manipulation by others (American Psychiatric Association, 2013, p. 34). Even if this information doesn't settle the question of Marc's responsibility, it surely casts his act in a different light from Jason's.

If Riley is disposed to impulsive acts of violence because they're a hotheaded jerk, full stop, then they are responsible for the harmful effects their heightened impulsivity may cause. If Morgan is similarly disposed, but for reasons that can be plausibly linked to a disorder that has seriously agency-diminishing effects, that fact at least raises doubts about how responsible she may be for the effects of her heightened impulsivity. This is not because the disorder automatically excuses anyone labeled with that diagnosis from responsibility, but because the diagnosis directs our attention toward the likelihood that Morgan, through no fault of her own, lacks full normative competence and therefore lacks a fair opportunity to avoid the relevant sort of wrongdoing (Brink, 2021). These examples—admittedly short and sketchy—suggest a crucial if not always clear distinction between an agent who possesses the cognitive and volitional capacities needed for normative competence but fails to exercise them, and an agent who (at the time in question) does not possess those capacities robustly enough to qualify as normatively competent.

I am by no means advocating a return to the unadulterated naïve view. But I do worry that May's nuanced view, pushed too far, has some significant practical and conceptual costs. If we wish to avoid those costs, we should be willing to accept some modest generalizations between (some) mental disorders and the capacities that enable responsible agency. Interestingly, May himself provides what I find to be a useful scheme for making some of these general claims: a pair of "cross-cutting distinctions," originally appearing in an article coauthored with Matt King (2018) and reintroduced in *Neuroethics: Agency in the Age of Brain Science*. One distinction is between disorders marked by *episodic* symptoms, which tend to appear in discrete occurrences, and those marked by *static* symptoms, which tend to persist over time (even if they may wax and wane in severity). The second distinction is between disorders whose characteristic symptoms tend to have *global* effects on agency and those with more *local* effects, impairing a particular task domain or range of agential capacities but leaving the rest of one's normative competence basically intact.

To my mind, this pair of distinctions seems a helpful frame for making the very sort of generalizations that May seems otherwise keen to reject. At the risk of oversimplifying, my own view of responsible agency lies broadly within the reasons-responsiveness tradition; the symptoms of a mental disorder can undermine one's

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capacities for reasons-responsiveness and hence diminish one's responsibility. But because mental disorders can vary so widely in their impact on these capacities—from one diagnostic category to another, from one person to another, and from one time to another—we can use May and King's cross-cutting distinctions to sort mental disorders that are especially likely to undermine reasons-responsive agency from those that are comparatively unlikely to do so. Specifically, mental disorders with characteristically *global* and *static* effects on the relevant capacities, as opposed to those marked by local or episodic effects, are those with the strongest relationship to responsible agency. We can insist, contra May, that there *is* a connection between mental illness and moral responsibility, but we can still allow for nuance in tracing the complexities of that connection.[3]

To illustrate how this might work, consider a few examples from this chapter of the book: May cites narcolepsy as an example of a disorder with episodic symptoms, since its associated loss of consciousness occurs discretely, and kleptomania as an example of a disorder with local (rather than global) impact on agency, since it "presents as strong urges to steal, but…leaves other elements of an agent's psychology relatively untouched" (2023, p. 106). By contrast, schizophrenia is a disorder that May describes as having, at least in its more severe forms, "global effects on agency but [being] often more static" (2023, p. 106).

This all strikes me as a perfectly good way of saying why schizophrenia is, *in general*, more closely relevant to questions of responsibility than, say, narcolepsy or kleptomania. The impact of schizophrenia on agency is often global and static, whereas the impact of narcolepsy tends to be global but episodic, and that of kleptomania tends to be static but local. Noticing these general relationships doesn't require us to automatically excuse people with schizophrenia from responsibility, stigmatize them, or deny them full personhood and membership in the moral community. We can remain compassionate and sensitive to the nuances of how schizophrenia can impinge upon agency while acknowledging that a person with severe schizophrenia is grappling with something profoundly different from the agential challenges faced by a neurotypical person, or even a person with narcolepsy or kleptomania. We are more alike than we are different, more cognitively continuous than not; but where real and significant differences exist, we shouldn't ignore them.

4 Conclusion

Even if these objections are on target, they are relatively minor complaints about May's push for more nuance in thinking about the connections between mental disorders and responsibility. Although I think he may push a bit too far in that direction, it is unquestionably the right direction to be pushing. And although I have

[3] For more robust articulations of the kind of approach I find congenial, see, e.g., Kozuch and McKenna (2015), Brink (2021), and Jefferson (2022).

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other minor quibbles, I'm happy to say that the book is a triumph. May manages to cover a huge array of issues within the field of neuroethics in a relatively short space, but these wide-ranging discussions don't feel disjointed or patched together. Rather, they converge to reveal a picture of human agency as "less conscious and reliable" but "more diverse and flexible" than we might have thought (2023, p. 263). In motivating that picture, May marshals both compelling philosophical argument and heaps of neuroscientific evidence, and he does so in a voice that is careful, approachable, and always humane.

Neuroethics is a young area within philosophy, and many outside its relatively small cohort of practitioners still regard it with skepticism. Those already on board will find May's book fascinating, and for those who are unsure but open-minded, it is the perfect introduction. It is a sustained and powerful defense of a bold position within the field of neuroethics, and a demonstration of what makes that field philosophically important and genuinely exciting.

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