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**Can You Escape Agency by Falling Asleep? Killing Two
Constitutivists' Problems With One Stone**

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problems with one stone**

Abstract:

In this paper, I present a new problem to constitutivism (the idea that agency grounds our practical norms) and argue that the solution to this problem also solves Enoch’s shmagency question. The problem I bring forth involves the fact that agency seems to be metaphysically escapable, such as when we fall asleep, or get hit by a truck. If this is correct, then we allow for perplexing cases in which a wrongdoing is done, but no agent is responsible, nor is any norm broken—for, what grounds responsibility and norms, our agency, has disappeared. I thus argue for a notion of agency immune to such cases (metaphysically inescapable), and argue that as long as this is true, the shmagency question is in fact moot: the content of the question of whether we have reasons to be agents in the first place will make as much sense as asking whether we have reasons to be an elf, a hobbit, or a garuda.

1. Introduction

Suppose Hannibal Lecter is about to kill Clarice Starling. He puts a knife to her throat and threatens to kill her. You, a police officer, arrive before he makes his move. You have to convince him to do otherwise. He asks, “Why should I not?”. You think for some seconds. You know Lecter is very reasonable. If you were to present him with a good argument, he may be convinced and refrain from committing yet another murder. You have studied philosophy in college and have a passion for *constitutivism*. You must argue that *norms*, including moral norms, are *grounded in agency*. You explain this theory to him in some detail. In the end, you summarize your conclusion in a rough manner: “You are an agent, agents have constitutive aims, one constitutive aim of agents is to respect morality; thus, let this poor woman go!”.

Lecter thinks for a couple of seconds. Since he is an agent, he notices he *cannot escape* this norm; worse, the moral property at hand is not some moral reality independent of him that he does not care about. *He* is the agent. And the worst of all: Lecter notices a genuine normative force from moral norms. These norms are substantial because, according to some constitutivists (Korsgaard 2009, Velleman 2009, and others), he is an agent who *cannot* escape their authority. Lecter is convinced of your argument and lets the woman go.

If Constitutivism is correct (norms are grounded in agency), this fictional situation could indeed play out. As mentioned by Lecter’s thoughts, this theory has several advantages (and others not yet cited, as the possibility of answering moral skeptics).¹ Yet, Constitutivists must answer one main objection: do agents have reason to be agents in the first place? This seems to be a very odd question. But it is a very

ingenious one: if all norms and standards come from agency, why *should* a non-agent follow them? And if there is a reason for a non-agent *to be* an agent, then not all norms are grounded in agency, as constitutivists claim. If Lecter had read David Enoch, he could claim he may become a *shmagent*, a subject who lacks the structural feature of agency that constitutivists propose (norms, standards or *aims* according to which we can assess actions). What could you, the police officer, say to Lecter then? Does Lecter have a reason not to become a shamgent?

In this paper, I will help you respond to Lecter. First, I will analyze some of the current Constitutivist responses given to this objection and show how they fail. I will argue that they all must respond to cases in which our grounds for norms (agency) disappear.

For instance, suppose Lecter sets a trap that activates while he sleeps. This trap ends up killing one of his captives who tries to escape. Lecter seems to have violated a moral norm against killing, but Constitutivists have to say otherwise. After all, not only is Lecter not an agent at that moment, but there would be no norms not to kill, since what grounds them (his agency) is nonexistent in his sleep. Thus, if Constitutivism is correct, it seems Lecter would not have done anything wrong, over and above setting the trap.

Thus, what constitutivists need is for agency to 1) continue while we are in temporary dormant states, and 2) for its norms to persist after our death. If I can show how to meet these needs, then not only will we solve these problems, but we will also be able to respond Enoch by strengthening one of the main strategies against his shmagency objection. That is, agency will be metaphysically inescapable, despite some constitutivists thinking otherwise.

1.1 Overview

In section 2, I introduce Constitutivism in some detail, along with its objection, the Shmagency question. In section 3, I present two interpretations of inescapability of agency that attempt to answer the shmagency question, and show how they fail. In section 4, I expand a suggestion from the other section, that it is a problem that we can escape from agency, as several constitutivists suppose. Afterwards, I argue in favor of a notion of inescapability of agency that is immune to these problems, and respond to objections. In section 5, I show how the metaphysical inescapability of agency solves better the shmagency question than the other interpretations. In section 6, I conclude and summarize.

2. Constitutivism

As mentioned above, Constitutivism is the view that norms are grounded in agency. That is, we have normative considerations in virtue of the mere fact we are agents. Given the simplicity of this fact, this theory seems capable of accounting for two important features of (some) norms: their universality and necessity on the one hand (sometimes called their categoricity), and their practicality (their motivational force) on the other hand. There are different ways to cash out this “mere fact we are agents”, but they all involve the thought that action or agency have a *structural feature*—a constitutive aim, principle, or standard—that can both constitute events as action just as generates standard of assessment for action. Given Hannibal is an agent, his action has some such feature that provides a standard to assess his own action. Given this standard applies to all agents and necessarily, constitutivism respects the universality

and necessity of norms. Even a psychopath like Hannibal is included, and must act rightly. Given that such standards (or norms) can motivate and guide agents, it respects the practicality of norms. After all, Hannibal's perception of failing to achieve goals he is already committed—for being an agent—can motivate him². Given these features apply to all agents, we can see how constitutivism has necessary and universal norms as well. Since Constitutivism accounts for both features, it is a good response to a dilemma between these two features that are “widely thought to have beset twentieth century meta-ethics and the theory of practical rationality in the analytic tradition”.^{3,4}

Now, what could such structural feature of actions be exactly? Let me provide some famous examples. David Velleman (2009) has argued that all actions share the common, higher-order *aim* of self-understanding (an aim about acting according to reasons that we recognize as such, that make our behavior intelligible, even if not always the correct one). A Nietzschean approach by Katsafanas (2013) claims that actions has two constitutive aims: the stable approval about one's actions, and encountering and overcoming resistances to one's ends. Michael Smith (2015) argues that our norms are grounded by the *standards* stemming from the desires of fully rational action (these same desires would be always present in ideal versions of ourselves, and of any agent, that would have exercised a sort of reflective equilibrium). A Constitutivist might then give various responses as to *which* structural feature of agency grounds norms. They might say it is “the aim of actions: self-understanding”, or “the two Nietzschean aims of action” or “the standards of desires of our ideal counterparts” and several others.

Before letting things become too abstract, let me explain another famous theory with a bit more detail⁵. Christine Korsgaard proposes all actions have the common structure of *self-constitution*. That is, what we do is an action only if it respects this *standard*: it can be attributable to the agent as a whole. First, she argues with (roughly) Kantian grounds that self-conscious agents must experience a reflective distance from their motives. Second, in order to decide how to act based on competing motives, self-conscious agents have to employ a “principle of choice”. For instance, when Hannibal decides to murder or not to murder Clarice, he could reflect and employ the principle of acting on his strongest desire, or what is “most aesthetically pleasing” or even reflecting and acting on what “generates the best consequences”. Some principles (as the first and second) produce a smaller degree of unity than others (as the third principle). Now, of course, Korsgaard argues that the Kantian Categorical Imperative is the only principle that fully unifies the agent.

In summary, since action demands self-constitution, and the categorical imperative is the only principle that unifies us, this principle is a standard of agency. Given we are essentially rational or autonomous agents, the *standards* of rationality and autonomous agency are the standards that we abide by; as expressed by the categorical imperative. I am not going to evaluate her argument for this here; I will instead suppose that this and the other Constitutivist views plausibly succeed.

An important detail to notice in any Constitutivist theory is that we can only act (or act rationally, for Smith) *if* we respect the structural features of action. In the case of Korsgaard, for instance, if we are not respecting the standards of self-constitution, that is not an action. A commonplace analogy is helpful here. Think about a *chess*

match. As long as you play chess, you aim at (or has the norm, or standard of success, the principle) checkmating your opponent (or attaining a draw at least). By lacking this aim (or failing this norm, etc.), you end up not playing chess at all. After all, a constitutive part of what *it is* to play this game is to try to win by checkmating (or attaining a draw).

You don't need to entertain this thought during most of the match, nor must it be the sole aim of playing chess. But to play chess, you must intend to win. If you intend to lose a match, you are not really playing chess—but some variant of chess since another aim of yours modifies or overrules this constitutive aim⁶. So, just as when playing chess we must have the norm of aiming to checkmate, when acting we must have the norm of aiming at self-understanding, self-constitution, etc. If you try to play chess without aiming to checkmate your opponent, you are not playing chess. If you try to act without a constitutive aim of agency, you are not acting, but doing something else (it is some other kind of event that is occurring). Thus, by the mere fact you act, you are already committed to practical norms—since action and/or agency involve those structural features. (From now on, I may use “aim” as a substitute for the structural features of agency).

The analogy with chess also better illuminates how Constitutivism is, at least to some extent, skeptic resistant. Consider a skeptical strategy to notice this point. Infinite Regress challenges are skeptical worries that many consider salient. In the case of norms, when we have a norm, a skeptic can ask for the reason for that norm, and the reason for that reason and so on ad infinitum. Now, by saying that agency *grounds* our norms, some constitutivists may claim our reasons will bottom out and not depend on

further reasons⁷. That is, it will be senseless to ask “why should I care about following my reasons? What reason is there for it?” since *by being an agent*, one necessarily is the kind of being who “cares” about reasons. The way in which agents necessarily *care* about their own reasons is that in acting we are subject to the aim of being subject to reasons: we occupy a point of view, or position, for which reasons are authoritative (necessarily binding and applying). Hanisch (2016), using the analogy with chess, illustrates this point very well:

Whereas it makes sense for a chess player to ask, “what reasons are there to play chess in the first place?” the same kind of question cannot be asked, it seems, by an agent engaged in her most foundational activities: in order to ask for any reasons whatsoever, one must acknowledge that one is inevitably entangled in the “game” of agency [and thus reasons are binding and apply to us *as agents*].” (p.2)

Now, here is a further question: if agency and action have constitutive norms (or standards), then what kinds of norms are these? Are they instrumental norms? Are they moral norms? In what sense must these norms be necessary? Consider two examples. First, we have the norm of not killing. Second, we have the norm of wearing a tie in every club meeting. The first norm is a moral one, being necessary and universal. It is robustly normative, for you cannot escape it. The second norm is a norm of etiquette that does not have the same normative strength as the former. Additionally, this second one can be necessary in only one sense (that the first also shares): if we are committed to the result wearing a tie leads us to (e.g., lack of club punishment), then that norm is also authoritative for us. Some Constitutivist theories

attempt to account for the first and second kind of norm (as Korsgaard (2009), Smith (2015), etc.), others attempt to account only for the second (as Velleman (2009), Katsafanas (2013), Humeans, and others). In either case, all versions of Constitutivism seek to explain norms and their authority at least in the second sense.

We can classify Constitutivist theories according to which kinds of norms they intend to explain (whether only instrumental or moral as well) and also according to the extent of norms they intend to explain. The type of Constitutivism that attempts to account for both kinds of norms, and claims that *all* norms are grounded in agency, are *maximally ambitious* forms of Constitutivism. Korsgaard's theory is one such example. She believes that we can derive the core of morality from constitutive features of agency⁸. The type of Constitutivism that attempts to account *only* for the instrumental norm is a *minimally ambitious* form of Constitutivism. In this case, when we act, we simply have to respect the standard of bringing something about. For instance, if I desire A, I see that I need to do B to achieve A, and thus I do B, then I am acting. If I do something without desiring some result, as sneezing, that is not an action. Humean Constitutivist theories are examples of this minimally ambitious Constitutivism. But there are even further versions.⁹

Throughout the paper, I will tend to consider a maximally ambitious form of Constitutivism, Korsgaard's, as the main dialectical example, this for two reasons. First, since it tries to ground the categoricity of norms, including moral ones, the examples it generates tend to be more interesting. Second, since it also tries to ground instrumental and other practical norms, the less ambitious forms of Constitutivism will also be contemplated by discussing it.

2.1) Enoch's Shmagency question

David Enoch famously challenged Constitutivism's prospects. He argued that regardless of the particular differences among Constitutivist theories, this approach is fundamentally misguided. His objection relies on the thought that there are additional normative questions we face as agents that are *not settled* by grounding normativity in agency. His objection is the following: even if being authoritatively governed by a norm is constitutive of agency, this does not respond to the question whether one has a reason to *be* an agent. In other words, "it is also necessary to show that the "game" of agency is one we have reason to play, that we have reasons to be agents [—otherwise, the Constitutivist cannot give us the whole story of authoritative normativity]".¹⁰ After all, the question "do I have a reason to be an agent?" will remain open—even for less ambitious versions of Constitutivism, such as Velleman's. And since this question will remain open, we can *opt out* of this game, and *not* be subject to authoritative normativity at all. Thus, Lecter can opt out of moral norms, escaping their necessity and authority, by wondering if he *should* be an agent in the first place—there must be a reason for that first, in order to ground everything else. In other words, he may have aims that ground practical norms, aims that he already accepts; yet he may simply give up on them, just as one may give up on playing a game.

So, this seems to defeat constitutivism as a plausible foundational theory of normativity. That is, even if agency was capable of grounding *most* of our reasons and norms, it does not seem to do so in an authoritative way, but in conditional form only: constitutivists would also have to propose an *additional*, authoritative reason, for us *to*

be agents in the first place. And it is this reason for us *to be* agents that will be the most important one, for being, in the end, the one that would ground authoritative normativity—instead of the mere fact that we *are* agents¹¹.

Enoch's objection becomes more compelling when he illustrates it with a subject very similar to us but with one difference: that he does not have the constitutive aim of agency. Even if agency does not ground normativity for this "agent", he is in every other aspect like us. Enoch names this kind of subject a "shmagent" and his quasi-actions "shmactions" (that is, "actions" that lack the feature that ground practical norms and reasons). Such subject sees no reason *to be* an agent, thus being content in being a *shmagent* that does *shmactions*. Constitutivism would need to provide an answer as to why he should *act* rather than *shmactions*, and thus a reason for him *to be* an *agent*. Yet, Constitutivism cannot do it: while this theory derives norms and reasons from agency, it does not apply to the perspective of a *shmagent*. Thus, Constitutivism cannot convince him of the categorical authority of the norms of practical reason. In a similar vein, Enoch defended the view that agents can ask themselves whether they themselves have reasons to be *agents* rather than *shmagents* – whether there are authoritative reasons to *be* the kind of being that has authoritative reasons, instead of simply lacking them as *shmagents*. Thus, *even if* there are categorical reasons to be an agent rather than a *shmagent*, the fact that *there are* such reasons indicates normativity does not bottom out in agency. There will be in fact something *more fundamental* than the aims of agency, the reason for being agents in the first place.

The analogy with chess makes Enoch's objection even more appealing. Just as agency gives us norms (supposing Constitutivists are right), the game of chess does too. We can notice chess' constitutive norms by noticing that someone who is playing chess must be trying to checkmate his opponent. This aim creates constitutive norms in this activity: the correct moves, the ones we have most reason to do, are those that make it more likely for us to achieve this aim. Yet, Enoch notices, what we have most reason to do is not reducible to *this* norm. The constitutive norm of chess only informs us of the correct or most correct chess moves, not what we, all things considered, have most reason to do. There may be good reasons for me to stop playing chess after all: if I were to receive a call informing me my father is in the hospital, the norms of chess would not sway me anymore. Thus, just as I may stop playing chess, I may stop being an agent. Just as it is intelligible to ask "Do I have any reason to play chess", it is intelligible to ask "Do I have any reason to be an agent rather than a shmagent?" (Or *to be* subject to reasons and norms, instead of being the kind of being that *is not*).

2.2) The Shmagency Objection, the Shmagency Question and the Explanatory Burden

Enoch's shmagency objection has two main interpretations. The standard interpretation is the one that I presented above. The core of his objection, according to this interpretation, comes from the *shmagency question* and its related idea that there are subjects that do not instantiate the structural features of agency that ground practical norms. This possibility entails the failure in deriving authoritative norms with these theories—for, as I put before, the reason to be an agent is shown as *required* to do this work. To summarize, this interpretation is concerned with the Shmagency

Question. This interpretation can be found in authors such as Ferrero (2009), Velleman (2009), Silverstein (2015), Katsafanas (2018) and Leffler (2019).

I will call a second interpretation the non-standard interpretation. According to this interpretation, the core of Enoch's objection is rather the *constitutive move* of extracting authoritative norms from the standards of some enterprise. In the context of this second interpretation, comparisons of agency with chess or other enterprises in order to show what is distinctive of agency become more common and salient. Skeptical concerns about this move are also more common. For instance, Enoch's worry about a naturalistic fallacy in this move; whether the structural features of agency are themselves already authoritative (or whether they can provide this property to norms without being themselves authoritative); whether inescapability can have this role of transmitting authoritativeness to norms, and whether anything can be a plausible candidate of source of authoritative normativity.

This interpretation tends to also involve the shmagency question; however, the focus is with Constitutivism providing an explanation of how and why the structural features ground not only attributive evaluations but also genuine normative reasons. In summary, this is an *explanatory burden* for constitutivists to spell out how their foundational theory of normativity works (Paakkunainen, 2018). The non-standard interpretation can be seen in Smith (2015), Rosati (2016), Paakkunainen (2018) and others. (Leffler, 2019).

Enoch's "Agency, Shmagency..." (2006) and "Shmagency Revisited" (2011) do present all of the concerns mentioned above. However, what is distinctive of his shmagency objection is what is involved with the standard interpretation only. That is,

his shmagency question problem, as spelled out by this interpretation, is what is new. This is why I will focus only on the shmagency question problem. Additionally, the problems, even if usually presented together, and sometimes responded together, are independent. One can show that reasons to be an agent are not required for constitutivism, despite not showing what exactly is the source of normativity (Paakkunainen (2018), for instance, has done this in the first half of her paper, and I hope to do this here as well). Alternatively, one can plausibly respond to all of the explanatory burden (as plausibly, Velleman (2009) has done) and yet fail to answer the shmagency question. Ultimately, a defense of Constitutivism should address both, but there is nothing strictly new in the explanatory burden, and I do not have a positive foundational theory of normativity myself. Thus, I will only concern myself here with the shmagency question and suppose that there is a plausible theory that can respond the explanatory burden—Smith (2015) and Paakkunainen (2018) seem great candidates for that.

2.3) The Various Shmagency Questions

Finally, there are multiple versions of the shmagency question. If the question is asked by *agents*, it is the internal version. It is an agent that asks “Do I have reason to be an agent rather than a shmagent?”. This version also seems to lead to the absurd thought that we are not always under the jurisdiction of practical norms—a point I will explore later. And since he can escape moral norms, they do not seem to be robustly normative, i.e., authoritative, necessary or universal, anymore.¹² If the question is asked by *shmagents*, it is the external version. This points more clearly to the idea that

not all norms are grounded by agency, since even shmagents might have such reason. Additionally, Enoch also emphasizes what I will call the *objective* version: the question “Do I have a reason to be an agent?” can be understood as concerned merely with the content and the rationale behind the challenge, instead of worried about who states it. Just as it does not matter if someone can in fact embody a skeptical position (for what in fact matters is the problem such possibility entails), so does it not matter whether any subject can pose the shmagency question.

Despite variance of perspectives, all these versions of the challenge have the same objective. That is, they attempt to show that constitutivists’ move of grounding practical norms in constitutive features of agency is normatively arbitrary¹³. The aim of action seems to be non-authoritative. The shmagency question demonstrates that we need a further reason for this aim (and thus to be agents) in the first place.¹⁴ I believe each version of the challenge is interesting¹⁵, and thus constitutivists need to find a response to each of these questions to succeed. In the next section I will explore the main solution to the shmagency question, and how it deals with each of these versions of the challenge.

3) Responses to Enoch’s objection

So, how can Constitutivists respond to the question of whether we have reasons to be agents in the first place? A common answer from Constitutivists is to say that, in some sense, agency is *inescapable* and thus the question is moot. Unlike playing chess, one

cannot *stop being an agent*, for instance. The authority of agency would then be grounded in the inescapability of agency.

There are different ways to account for this idea. Some seem better than others. In this section I will explore two of the main responses based on two senses of inescapability of agency. One response will be that Enoch's shmagency question is moot since agency is our plight. We are condemned to act, and thus the structural features of agency always give us reason to act according to them (for they are standards, etc. that we already accept, and cannot opt out). Another response is that agency is dialectically inescapable. That is, the perspective of an agent is the only one from which practical questions (such as whether we have reasons to be an agent) make sense.

3.1) The first sense of Inescapability of agency

Here is the first sense of inescapability:

Inescapability as Plight: For Korsgaard, there are no alternatives to action, for agency “is our plight”; we are “condemned to choice and action”¹⁶. Attempting to avoid acting will be itself an action, and thus subject to standards such as the categorical imperative. Furthermore, one cannot choose not to act. After all, choosing not to act is still something that you do.

According to this interpretation, after Lecter asks whether he has a reason *to be* an agent in the first place, you can offer the following response. You can say that he *cannot* escape agency. Whatever Lecter chooses to do, it will be an action. He can thus

act in a way that satisfies the structural features of agency (aim, principles, etc.) or in a way that he does not. Murdering Clarice Starling would lead to the latter option. Letting her go would lead to, for instance, self-constitution if he were to decide to act based on the categorical imperative as a principle of action. (For, as we saw before, Korsgaard considers the categorical imperative as the only principle that can fully unify the agent, thus satisfying a standard dictated by our agency). Given he is an agent, moral norms have robust normativity. There is a genuine force in favor of Hannibal letting her go, exactly for the *inescapable* standards (or aims, etc.) that agency imposes over us.

This interpretation has a huge flaw, however. Agency seems to be metaphysically *escapable*^{17,1819}. Whenever we fall asleep, we escape agency. Sometimes this happens unintentionally, as when we are eager to read the next page and finish a book chapter, but we fail. Other times this happens intentionally, as when we pop a few sleeping pills. In these cases, our loss of agency is temporary, for we become agents again as we wake up. But in some cases, we lose our agency permanently, as when we get into a coma to never wake up again. We also lose our agency permanently when we die. We may lose our agency (escape it) in death either intentionally or unintentionally. We may simply, unfortunately, get hit by a bus. Or we may simply, unfortunately, throw ourselves at a bus. In all of these cases, agency seems to be escapable, we temporarily or permanently lose it. And the problem here is that our norms do not seem to be universal and categorical anymore. The analogy with chess becomes too close. We may simply give up on playing chess, just as we can give

up on being an agent—thus shirking from the normative phenomena that agency is supposed to account for.

One can try to say that agency is *still* our plight, and inescapable, since we can only escape it *intentionally*. However, the second and fourth examples (sleeping pills and suicide) show otherwise. Thus, we *can*, intentionally or unintentionally, escape agency. So, this suggestion does not solve the problem. The force of such counterexamples seems to have convinced several of the current participants of this literature that agency is escapable²⁰. In the internal sense of the shmagency objection, constitutivism fails: an agent can intelligibly ask whether he should be an agent since he *can* escape agency. How does this apply to our main case? Lecter can opt out of being an agent, and there is nothing that you, the police officer, can do. He will not be convinced by anything but a norm with genuine authoritative force. But since he can escape moral norms, they do not seem to be robustly normative, or universal, anymore. This lack of this desiderata makes Constitutivism sound false to him. He kills Clarice then.

Yet another possibility for the plight interpretation is to say that agency is our plight *as long as we are agents*. That *while we are agents*, we have these norms ruling over us. The problem with this second suggestion can be seen through further examples. Silverstein mentions the case of having the plight of being in my office²¹. While I am in my office, I have to follow the norms of residing there. Yet, the fact that I can stand up and leave indicates that there is no special sense of inescapability in being in my office. Those norms had no genuine authority over me (if such notion requires inescapability), for I can escape them. Thus, just as I can ask whether I have

reason to be in my office and then be subject to its norms, I can ask whether I have reason to be an agent and then be subject to its norms. In this case, the example of chess can once again be used against Constitutivists: just as you can give up on chess, you can give up on being an agent (such as taking a pill to fall asleep, sacrificing oneself, etc.). This shows that such norms are *not* inescapably authoritative and universal over us then. For this interpretation to work, agency and its features must be *quite different* from chess. But they do not seem to be—we can escape practical norms just as we can leave a chess match.

In this subsection we saw that a way to respond to Enoch’s shmagency objection is to claim that agency is inescapable in the sense of being our plight. We are condemned to act. However, this fails to satisfy the intuition of being robustly normative (shared by Lecter and Enoch), since it is possible to escape it²². It does not seem to be different from chess. In section 4, I will argue how there are even further problems for constitutivists, if we can escape agency. For now, let us consider, in the next subsection, another response to Enoch’s shmagency question, that agency is dialectically inescapable.²³

3.2) The second sense of inescapability of agency

Dialectical Inescapability: Agency may be metaphysically escapable, but what matters is that “there is no standpoint outside of agency from which we can intelligibly ask normative questions” (Silverstein, 2015. P.3). There is thus a deep connection between agency and reasons, and it is this aim of agency that

is inescapable for agents. This interpretation is held by at least Silverstein (2016), Ferrero (2018&2019) and Velleman (2009).²⁴

According to this second interpretation of inescapability, the normative standards can only be issued and understood from within the standpoint of agency, thus the question “why be an agent?” applies only *within* agency. We can see how this is a plausible response to Enoch’s shmagency question by seeing how it deals with the internal and the external version. (In fact, it is in the context of this response that this distinction is usually brought up).

Let us first suppose that an *agent* asks whether he has a reason to be an agent. In this internal version, the question is still dictated by agency’s Constitutivist standards—the question is apt only if it is in the market for reasons, and it must be a question posed by an agent to have this feature. Thus, to ask the question in an intelligible way is to presuppose the truth of Constitutivism; to pose the Shmagency question in the internal sense is self-defeating for agents. In other words, if an agent asks the question, that is already a move in the “game” of *agency*, needing to respect its standards, and thus the question only invokes normative features because they are grounded by agency.

What about the external version? Let us suppose that it is a shmagent that poses the question. In this case, since we are *agents* (a premise Enoch concedes), this question would then be rendered moot. That is, the external version of the shmagency objection not only does not apply to us but also seems to be unintelligible. To unpack this point, notice that Enoch would also concede that *only agents* are part of the normative realm (in the most ambitious versions of constitutivism), and in this case a

shmagent would, at most, request for shmreasons²⁵, which are simply not normative. So, what is the meaning of when a shmagent asks for shmreasons to be an agent? Given the absence of the normative aspect, it seems to either be an unintelligible question, or to be a question that takes normativity to be merely motivational or something similar—a point most constitutivists would certainly deny. The external question is irrelevant then.

The response to the external version of the shmagency question seems to be a good response, and is usually understood as such. On the other hand, there is some controversy of whether dialectical inescapability is a good response to the internal version of the shmagency question (I will address one objection to this later²⁶). Let us suppose for now that this sense of inescapability also provides a good response to the internal question. Still, just as for Korsgaard, this response fails for allowing us to escape from agency. After all, given this possibility, this response seems to undermine the possibility of authoritativeness of the aims of agency, or at least their universality. If agency is escapable, then it does not seem so different from chess. Both enterprises are escapable, and thus not universal, and thus not authoritative. Silverstein (2015, p.13-15) has a prima facie plausible response to this—which, I believe, ultimately fails. But before addressing that, I will show the difficulties that the last version of the shmagency question present to the two interpretations of inescapability.

3.3) The objective shmagency question

Paakkunainen thinks that the versions of the shmagency question listed thus far are not the strongest ones.²⁷ Instead of using the internal or the external version, merely varying with who (an agent or a shmagent) poses the question of whether she has reasons to be an agent, we can interpret the objection based on Enoch's "Shmagency Revisited" (2011). There, he defends the shmagency question with a focus on the content, and the rationale for the challenge itself²⁸. Who—or even what kind of being— can raise that question is irrelevant. There are reasons for actions and practical norms even if no one is thinking about them (and plausibly, independently of perspective, for the structural features of agency ground norms independently of what we think). Let's consider Enoch's paper-skeptical philosopher to understand this point.

Imagine a philosopher that argues we shouldn't philosophize by writing papers because doing so is, for instance, intellectually corrupting. Writing books, instead, is how we can achieve philosophical progress. The frenzy of our era in writing papers leads to philosophical superficiality. Interestingly, this philosopher argues for this point *with* a paper. Her argument seems to be somewhat incoherent then: is not her argument also superficial, and self-defeating? Perhaps this indeed shows a problem for this philosopher, for she is being practically incoherent. Nonetheless, Enoch says (2011), the very content of the argument is *not* undermined. It *still* shows a problem to us. It shows that *we* should use another medium for philosophy. We need to deal with this argument, if we want to continue writing philosophy papers. It is beside the point whether there is someone, or whether there can be someone, embodying the argument. We see this all the time with other skeptical arguments. Skepticism about the external world continues to be an interesting problem, even if no one ever defended it.

Likewise, it does not matter if there ever was a paper skeptic, or if there ever can be someone embodying the shmagency question. The challenge continues.

This I what I called before as the *objective version* of the shmagency question²⁹. This version of the question is a problem for both interpretations listed thus far. Even if agency is our plight, the reason to be an agent seems independent of our perspective. Even if agency is dialectically inescapable, it is an issue that the shmagency question can be “posed” without any perspective—that despite anyone’s consideration of whether we should be agents, there must be such reasons for us to plausibly ground practical norms. Thus, even if the internal version is solved (what we supposed thus far) together with the external one (what seems to be the case), the objective version of the question is still a problem.

Perhaps using the dialectical interpretation, one can claim (as Velleman (2009) that a question or a consideration is normative *only if* it is issued by agents. But this is a very controversial claim, given we can simply imagine other beings with different structures but that seem to reason, act, etc., and thus are plausible candidates of possessing practical norms despite being shmagents. That is, there could be “sophisticated shmagents”: subjects that seem to have reason despite standing outside agency, and are thus able to ask the shmagency question (Leffler, 2019).³⁰ Velleman would have at least the burden of proof in showing that such subjects *cannot* exist. This objection seems to also plausibly work against the dialectical inescapability response to the internal shmagency question. If these subjects can exist, then the shmagency question is not necessarily self-defeating.

3.4) Accepting shmagency?

Let me present another unsatisfying answer to the problems so far that may, nonetheless, lead us, in the end, to their solutions. There is a response inspired by Silverstein (2015, p. 13-15) that can *prima facie* help the interpretations of inescapability from above.

First, notice that all of the problems above come from the fact that it is possible for us to *escape* agency and become shmagents (which is why we must have a reason to be agents instead). After all, as I suggested before, the possibility of shmagency ends up undermining the authoritativeness of practical norms that constitutivists seek. The possibility of escaping agency makes a further reason for us to be agents a requirement to guarantee this authoritativeness. Additionally, it also seems to be a problem that norms won't be universal, for there may be shmagents at some point in time³¹.

Yet, Silverstein concedes to the counterexamples of the inescapability of agency. We are not bound by norms after falling asleep, or dying. Agency is thus escapable in a metaphysical sense. There is a very good justification for that. The intuition that norms must always apply to us, at all times, is countered by the fact that in some circumstances we may have *more reason* to be outside the jurisdiction of norms. We may have more reason to escape agency and become shmagents.

Let me cite some examples. Silverstein mentions we may have reason to go to sleep at the end of an exhausting day, or to render ourselves unconscious to be immune to torture or blackmail, or even jump on a grenade to save one's comrades³². Thus,

there are times in which it's better for us not to be agents. There are times in which it's better to actively *give up* pursuing the aim constitutive of agency. After all, by giving up on agency and its aim, we may *not hinder* our chances of achieving this aim, but rather improve our chances of achieving it by ceasing to pursue it. Practical norms are still universal (for applying to all agents), and if they are escapable, there are good grounds for that.

Even if this response plausibly works for the desideratum of universality, how could this be used to account for the authoritativeness of practical norms? Supposing Velleman is right that there can only be practical norms from inside agency (and thus putting the sophisticated shmagent objection aside), Silverstein can provide further reason to deny that the authoritativeness cannot be accounted for with the existence of shmagency. Just as before, if agency is the only perspective from which normative questions can be posed, then the internal, external and—arguably—even objective version will be answered. After all, there are only reasons from within agency.

This position is then strengthened if Silverstein (2015) is also right that norms can still be authoritative even if we leave their jurisdiction:

More generally, we do not challenge the authority of a norm by pointing out that it sometimes recommends that we remove ourselves from its jurisdiction. Of course that norm will not apply to us so long as we remain expatriates, but as soon as we return—as soon as we become agents and take up the practical question of what to do—we will find ourselves under its authority once again.
(p.12)

This initially seem like a convincing point: our norms govern our actions, and dormant states, or death, do not allow for action. So, norms must govern us only when we *can* in fact act. When we are outside the jurisdiction of norms, there is nothing that could be done wrong anyways.

These further points inspired by Silverstein can only function by relying on the controversial idea that norms can only be issued from agency. Instead of disputing this idea, I believe there is an easier way of solving this dispute than to rely on that claim.

We should notice that these points, and in fact both kinds of inescapability, have a presupposition that leads to dire consequences. It is supposed that, when we are outside the jurisdiction of norms, there is nothing that could be done wrong anyways. I strongly disagree. There is much that can be done wrongly when we are outside the jurisdiction of norms (if they are grounded in agency), when we are not agents. Some of our actions begin while we are awake, but end when we are asleep, or dead. Other of our actions, surprisingly, begin only when we are not there anymore. And in both cases, we can then have the following unacceptable consequences if we can be outside the jurisdiction of practical norms and of agency. Some very important norms can be broken when no agent made that the case (even if a person did), for there was no agent to break norms at that point in time. Additionally, wrongdoings can be done exactly when no norm exists because that person is currently a shmagent. If that is the case, it becomes even difficult to assign responsibility in this moment. It seems that non-agents are plausibly exculpable. I will argue for these points in the next section.

In summary, both versions of the inescapability of agency explored here fail to answer the objective sense of the shmagency question if there can be such problems

while we are shmagents (outside the jurisdiction of norms). The two interpretations of inescapability also plausibly suppose things that are already in dispute (that all questions are only normative if issued by agents), or at least have to answer why there cannot be other beings with different structures but that have practical norms (sophisticated shmagents). Given Silverstein's answer leads to such absurd problems raised outside the jurisdiction of norms, even the internal version of the shmagency question will fail for those interpretations of inescapability. That is, even if we have a reason to become shmagents, or even if we can have a robust normativity with norms being escapable, this will lead to unsurmountable problems. I will explore these problems, and how to solve them, in the next section.

Section 4) Can you, in fact, escape agency by falling asleep? Why Constitutivists should not accept this

As we saw above, agency as inescapable in the sense of plight does not seem to answer the shmagency question. We can fall asleep, or die, or get into a coma, and etc. But these counterexamples not only show an incapability to answer the shmagency objection in the objective sense—or at the very least to very controversial ways of doing that. Rather, these examples also show an additional problem: that some norms cannot apply to us, or even cease to exist.

Let us begin with this example. Suppose Lecter murders Clarice and is able to run away from you. As an agent, he of course should not have, for he is infringing the structural features of agency (aim, principles, standards, etc.). He is not fully unifying

his agency by infringing the principle of the categorical imperative (or he is not satisfying the aim of self-understanding, etc.) as mentioned above. However, Lecter falls asleep shortly after his horrendous action. During his slumber, we may think: 1) Lecter is responsible for killing a person, and 2) he clearly broke a practical (and moral) norm. But as Constitutivists, we may wonder: are 1 and 2 true?

As 1 suggests, he *seems* to be responsible for killing a person, but he is not an agent at this moment³³. So, how can a non-agent be responsible? It seems absurd that we assign blame and responsibility to non-agents. If a thunderstorm—or even a wild animal—kills a person, we may figuratively say that it is *responsible* for the murder, but the de facto meaning of that tends to only be in a causal sense. We obviously don't literally hold it as responsible. If that is the case, how can a sleeping person, who is also clearly a non-agent, be responsible?

Additionally, is it true that he broke a practical norm (2)? Remember that Constitutivism is the idea that structural features of agency ground practical norms. But if that is the case, which norm could there be if, as a non-agent, no norm is grounded? That is, as long as Lecter sleeps and is not an agent, *no norm* seems to exist anymore. After all, norms ceased to exist just as Lecter's agency ceased to exist. Thus, given there is no agent to ground practical norms, *no norm can be seen as broken* at this moment in time, since there is no norm in the first place. At that point, it also seems unintuitive for us to claim “What Lecter did was wrong [for, in the end, he broke a practical norm]”³⁴.

Consider this analogy to understand this point. You are currently sitting in a chair, wondering if you can arrest Lecter or not while he sleeps. Suddenly, however,

the atoms that ground this chair cease to exist. What happens to the chair then? The chair also ceases to exist. What happens to your action of sitting? Well, you will probably start falling instead of sitting. In a similar vein to the idea that the chair ceases to exist, so does Lecter's agency when he falls asleep. And in a similar vein to your action of sitting ceasing to occur, so does the fact a norm is broken ceases to occur while Lecter was asleep. At this point in time, it even seems difficult to arrest Lecter for what he did³⁵.

Now, plausibly, these issues seem solved when Lecter wakes up. You will then be able to arrest Lecter. After all, he will be an agent again, who clearly violated a currently existing norm. We can see this point by continuing the analogy. If the atoms that ground the chair start to exist again, the chair will come back to existence. Likewise, if the ground of practical norms, agency, pops into existence once more, so will practical norms. Additionally, just as now you are able to sit with the existence of the chairs' atoms, now you are also able to justifiably arrest Lecter with the existence of his agency. After all, the norms that were broken by Lecter now come to existence again.

So, it seems to be a problem that people escape (or lose) their agency when falling asleep. By considering 1 (that Lecter is responsible for killing a person), we see that it seems at least unintuitive to hold *non*-agents as responsible for what *agents* have done. (In fact, we tend to exculpate wrongdoings based on mental illnesses, for instance, in analogous terms). By considering 2 (that Lecter broke a practical norm), we see that Lecter's infringement of norms seems to cease to exist when what grounds it ceases to exist too. If agency is so escapable, it even seems that you can only arrest

Lecter when he is once more awake—for he is then an agent, that can be fully held responsible, and because the practical norms have now come to existence again.

Plausible objections to 1 and 2 thus arise from the fact that Lecter's agency can disappear. I will further expand and justify these objections in the next subsection. This will be done in two ways. First, by exploring variations of the Lecter case—such as if he kills *while* asleep, or if he gets into a permanent coma. Second, by responding to a simple solution to the problems at hand: that these problems can be solved by simply referring to the past.

4.1) Why referring to the past is insufficient and variations of the Lecter case in dormant states

Above I started to argue that Constitutivism is in trouble if agency can disappear. Since it disappears when people fall asleep, it is difficult to point out that Lecter 1) is responsible for killing a person and 2) broke a practical norm as he fell asleep. Now, there seems to be an obvious response to these issues. It does not matter that Lecter is currently asleep, one can say. Rather, what matters is that he broke a norm *in the past*. And *when* he broke it, that norm was active, and he was responsible. I like this response, and my answer to cases of agency disappearing will involve it. However, I will argue now why this response is insufficient by itself.

Consider three points to notice why a mere reference to the past is insufficient. First, while in a temporary dormant state, Lecter is plausibly exculpable. This can be noticed based on the idea that not only the norms that he broke in the past ceased to

exist, but the very agent responsible for breaking them also did. Let's consider the norms side first. During his slumber, the immoral actions he committed before are plausibly not classified as such anymore, given the current inexistence of practical norms. That is, he may be awarded a good excuse since killing is not a wrong action anymore. Since the existence of this excuse is unacceptable, referring to the past is insufficient here. Now, on the responsibility side, Lecter seems to be plausibly excused from his earlier actions because, while he sleeps, *he is not the agent that committed those violations, or an agent at all*. In this moment, we can at most say that *there was an agent responsible* for the killing. But Lecter is not that one, or an agent all. So, even by referring to the past, Lecter is still plausibly temporarily exculpable. Thus, given killing is not wrong anymore (for it is the agent who generated the actions that should be held responsible) and given that Lecter isn't the agent that caused the killing or an agent at all while he sleeps, Lecter thus seems to be plausibly exculpable for murder in this moment.

While these problems appear in the moment that Lecter is asleep, it may be thought that they are solved when Lecter wakes up again. After all, he then becomes an agent again and, in this case, killing becomes wrong again, and we can point to him as *the* agent that caused the killing, and that should be held responsible. Or so may be thought. After Lecter wakes up again, however, none of these facts are guaranteed given the second reason as to why referring to the past is insufficient. That is, it is still unclear why the responsibility of his actions transmits from one agency to another, or that they are the same agency at all.

Let's consider this second reason in detail. Imagine that after Lecter murders Clarice, he takes some sleeping pills, and falls asleep, to then wake up again. Lecter's agency *before* his slumber was certainly responsible and generated a set of actions X, including the killing. Nonetheless, his agency *after* his slumber was responsible for and generated a set of actions Y. Why assume that both agencies are the same? If the first *ceases to exist* at one point, that does not seem to be the case. Why should we accept a continuity of agency despite its annihilation? Furthermore, if agency is not so continuous, why think that his post-slumber agency (that produced actions Y) is also responsible for the products of his pre-slumber agency (that produced actions X)? What guarantees this transmission of responsibility from one agency to another? This is all unclear and deserves a response. It seems plausible that both agencies are simply disconnected. On the other hand, if his agency is always the same, for it is the kind of odd thing to cease to exist, and return once again, a similar question arises. The mystery of how responsibility and other properties of agency are maintained throughout its annihilation should also be answered.

Third, a mere reference to different times will not be helpful in solving more complex cases than the one explained thus far. Here is a variation of this same case: instead of killing and falling asleep, Lecter sets up a deadly trap that activates *only during the moments he is asleep*. Unbeknownst to the danger, Clarice ends up a victim of this device. Lecter clearly killed Clarice. However, was killing an action of his in this case? Did he do anything wrong? The action of killing happened when there was no agent (since Lecter was asleep). Thus, we cannot even say that Lecter broke a norm *before (!)*, as the version above allowed. Rather, when the wrongdoing happened, there

was no norm to be broken, for there was no agent to ground it. Lecter didn't do anything wrong, or is responsible for this action, since he is not an agent when it occurs, it seems. (A related problem also arises: it seems you cannot justifiably arrest him during that moment³⁶).

We can imagine even more problematic variations of the case. Besides killing Clarice only in his dormitive state, Lecter may have not merely fallen asleep. Rather, he may have gotten into a permanent coma. So, there is no possibility of connecting a future post-slumber agency of his to the responsibility of his killing before his slumber, or to some retroactive breaking of norms. After all, Lecter's coma continues until his death. There will be no agency to ground his norms in the future, or to plausibly transmit the properties of his pre-slumber agency to a future one. He will never be an agent anymore. Just as the first version, Lecter is plausibly exculpable in this case. Using the resources of the second version, this is made extremely plausible, given he never broke a norm in the first place (for he killed *while* in coma and is in a state that seems to be exculpatory). Yet, this version makes things even worse for the constitutivist because, given his permanent coma, there is *no possibility* of Lecter's action becoming wrong again, or that we will be able to hold him responsible in the future. We will have to continue treating him as exculpable, without the possibility of change. He is not to blame, responsible, or broke any norms in producing Clarice's death, nor will any of that be true of him in the future.

Let me summarize the problems constitutivists have to face if agency disappears in dormant states based on all the counterexamples of Lecter. An agent like Lecter will be exculpable of his crime (not responsible), will not have broken any

norms (in the past, present or future), and it is also mysterious how, even if the first two facts problems are solved, a transmission and maintenance of responsibility and other normative properties can occur with agency's temporary annihilation. Now, if agency were shown as subsisting during our dormant states, none of these problems would arrive for the constitutivist. I will argue that this is indeed how agency works in the next subsection.

4.2) Why agency does not disappear in dormant states

Here, I want to argue for a slightly different notion of agency, one that continues even in temporary dormant states. I will call it *permanent agency*, in opposition to the *intermittent agency* we saw thus far. I will give two positive arguments for this notion. As I said earlier, this will also help me illustrate how to solve these issues I raised for the constitutivist.

Why shouldn't agency disappear in dormant states? There are two positive reasons for this. First, that is not the way we see other similar concepts. For instance, we do not see personhood as disappearing when we are sleeping, or temporarily in a coma—but it does seem to disappear in death. That can be the way in which agency also works. In fact, other evaluative and normative concepts seem to work in a similar vein: someone is praiseworthy, human, blameworthy, evil, good, selfish, kind, or rational *even* while asleep! Since all these evaluative and normative concepts that refer to a specific individual do not disappear in our sleep, so should agency not disappear. Even other similar concepts that refer to individuals are also not seen as disappearing

when we fall asleep, such as intentions. It is implausible that I lose my intention to go to the airport tomorrow (or my belief that I will go there) just because I fell asleep. Thus, just as all these other concepts, agency does not disappear in our slumber.

Second, agency, as a capacity to act, and thus a disposition/power/potentiality³⁷, has its interaction with our dormant states much better explained by something like Aristotle's triple scheme of powers, or other dispositional frameworks. I will then explain three dispositional possibilities, beginning with Aristotle's, to show this. One of Aristotle's most well-known distinctions is that of actuality and potentiality³⁸. Very roughly, they refer to different alterations in the world. Things are capable of change, thus reaching different states³⁹. For instance, while an acorn is the current state of a thing, it can *potentially* achieve another state: that of an oak tree. It will be then *actually* an oak tree. A piece of wood is also *potential* cinders, and if this potency is actualized, it is *actually* cinders.

Based on the distinction of actuality/potentiality, Aristotle, however, makes a further distinction, which has been called in the literature as the triple scheme.⁴⁰ Besides the states mentioned above, some things also have further states: first potentialities, second potentialities/first actualities and second actualities. This further distinction is made clear with examples. A common example to explain this is that of speaking languages. The capacity to speak Portuguese has three different states: it can be seen as a first potentiality (when someone can learn Portuguese), as a second potentiality (when someone knows how to speak Portuguese but does not exercise it) and as an act (when someone is actively speaking Portuguese). Likewise, can agency be a capacity/potentiality in these senses: it is a first potentiality (while asleep, we have

the potential of waking up and acting), a second potentiality (while awake we have the potential of acting) and a second actuality (while acting we are doing this actively).

The conclusion is that agency does not disappear when we fall asleep since it is a first order potentiality, that can be actualized when we wake up, and further actualized when we act.^{41,42} Not everyone accepts Aristotelian metaphysics, however. I will thus explore two other dispositional possibilities that better explain what happens with agency in our dormant states than the alternative of its annihilation. As a second option, we can use Barbara Vetter's framework of iterated dispositions/iterated potentialities (dispositions for further dispositions).

Things have potentialities to possess properties. Potentialities themselves are properties. So, prima facie, things should have potentialities to have potentialities. And the latter potentialities might themselves be potentialities to have potentialities. So there is nothing to prevent things from having potentialities to have potentialities to have potentialities, or potentialities to have potentialities to have potentialities to have potentialities... and so forth. I will call any such potentiality an iterated potentiality. (Vetter, 2015, p.135)

Let me begin exemplifying this framework with this example: water may have the disposition for the further disposition to break. Water has the disposition to turn into ice, which is an *immediate manifestation*. When it is ice, it may then break, which is its *ultimate manifestation*⁴³. The ability of speaking languages also works in this framework. A non-native speaker has the disposition to learn it for the further disposition to speak it with someone. When she learns it, it is an immediate manifestation of this disposition. When she has learned the language and is currently speaking it, this is an ultimate manifestation. Likewise, when we sleep, we are disposed to wake up which further disposes us to act. Waking up is an immediate

manifestation of our agency. Acting is an ultimate manifestation of our agency. Thus, agency does not disappear when we fall asleep because it is an iterated disposition/power. Just because at some point it is not immediately, or ultimately manifested does not mean that it then ceases to exist. As Turyn says, “Glasses remain fragile even if they do not break on any given drop” (Turyn, 2020, p.1). Likewise, agency subsists in our slumber⁴⁴.

A third way of having a more intuitive explanation of how sleep affects our agency is even simpler. We can simply say that agency is masked when we fall asleep. In the literature of dispositions, a mask is something that prevents a disposition from either partially or fully manifesting⁴⁵. For instance, a glass wrapped in bubble wrap may not break when it falls on the floor, despite its fragility. Thus, likewise, agency is explained as a disposition that is not manifested while we are asleep *because our dormant states are masks to agency*. This disposition thus subsists in our sleep, which is also a more plausible explanation of what happens to agency in our dormant states than its mere annihilation⁴⁶.

Now that I have put my two positive arguments forward, we can see that agency does not disappear in our dormant states, or that it is permanent. And by that we can also understand that agency is inescapable in a specific sense—a sense that will help us answer Lecter’s cases and the shmagency question later. This is the interpretation of inescapability of agency I am defending:

Agency as Metaphysical Inescapable: agency is inescapable, or permanent, in the sense that we can either be agents or inexist. Since agency is a disposition or power, we are agents at least as long as we are alive.⁴⁷ Additionally, since actions are

manifestations of this disposition, they will likewise share of the structural features of agency.

With this sense of inescapability of agency in mind, I will explore in the next subsection how the mere fact that agency does not disappear as we sleep can get rid of the various Lecter cases.

4.3) How permanent agency solves Lecter cases

Before, I argued that if agency is intermittent, then the constitutivist is susceptible to a series of problems. An agent like Lecter will be exculpable of his crime (not responsible), will not have broken any norms (at any point in time), and it is also mysterious how a transmission and maintenance of responsibility and other normative properties can occur with agency temporarily ceasing to exist.

Let's see the difficulties Constitutivists have to face with the most problematic variation of the Lecter case⁴⁸. If Lecter killed someone by setting up a trap that activates only while he sleeps and got into a permanent coma, he would 1) seem plausibly exculpable for not being the agent that caused Clarice's death, or an agent at all. Also, there is no point in time in which he committed those actions with the norms still in place (since he is not an agent as they happen). Thus, 2) he did not break any norm, at any point in time. Finally, 3) even if the first two problems are solved, it is still mysterious how Lecter's responsibility and norm-breaking can be maintained while he is not an agent and how they can be transmitted from his pre-slumber agency to his post-slumber one.

I say, given Lecter's agency is permanent, there is no such mystery to be solved (~3). Since his norms remain as long as he is alive (or his actions continue to exist), then we can definitely say that he broke norms at one point in time (~2), with his agency (or actions) not failing to ground the norms. Finally, the justification for him seeming exculpable was that he was not an agent during his dormant states (~1), which is not true anymore.

We can say that he is an agent at those points for two reasons. First, that is also how other similar concepts that apply to individuals work (personhood, humanity, etc.). Second, the interaction of agency with our dormant states have better explanations than the annihilation of agency when such states occur. Agency still exists as a first order potentiality that can be actualized when we wake up and further actualized when we act; or it is simply a iterative disposition that currently is not immediately or ultimately manifested; or agency is simply masked by these states—and perhaps even other alternatives. Whichever of these alternatives is best is besides the point, for what matters is that they all serve as better explanations than the alternative temporary annihilation of agency.

4.4) Responding to objections to permanent agency

In this section, I will respond to three objections to permanent agency: A) that constitutivists can use non-individual agency to guarantee that Lecter will be breaking norms, B) that constitutivists can have the subsistence of the grounded even with the

ground disappearing, and C) that death is a problem for permanent agency grounding norms.

Let's start with A. Some Constitutivist may say that at least one of the issues of Lecter's cases do not arise for her since the agency that grounds norms is *not* individual agency. Rather, it is every agent that simultaneously grounds practical norms, or it is the collective agency of all humanity that does so. In this case, even if Lecter killed while asleep and got into a permanent comma, the norms would still be grounded by every other agent or by a collective agency⁴⁹. Thus, Lecter would still have broken practical norms with his murder (~2).

I don't think this will be possible. If a multitude of agencies or a collective agency is what grounds practical norms, we will have a variation of Lecter's case that applies to them. Instead of merely Lecter falling asleep, we can have Lecter, and the whole of humanity falling asleep. In this case, all multiple agencies will cease to exist simultaneously, and if Lecter kills at that point, he will not have broken any norm. If it is a collective agency that does it, it is plausible to suppose that, since individual agency ceases to exist when we fall asleep, if every member of humanity fell asleep, then this collective agency would also temporarily cease to exist as well.

Objection B was that it is possible for the grounded to subsist even with the absence of what grounds it. That is, even if the ground disappears, there may be a grounding relation that allows the grounded to subsist. In this case, there is no issue of an absence of norms, as the Lecter example suggested. The norms continue even when he temporarily ceases to be an agent. Surely, as Thomas Aquinas defends, some causal relations are accidental and not essential (ST I-II, Q.1, art. 4). The causal relationship

of grandfather and grandson is such that the latter subsists even when the former dies. Thus, there can be a similar accidental grounding relation as well that could be used for the grounding of practical norms.

Yet, I believe that this objection is mostly born of a misunderstanding of the notion of grounding. Such possibility would be plausible for causation, and not grounding. In fact, distinguishing grounding from causation is even how grounding tends to be explained⁵⁰. So, using such a distinction of causation to explain another kind of grounding is a mistake.

To this it can be argued, however, that there are theorists who defend that there is only a nominal distinction between grounding and causation (e.g., Wilson, 2012, as cited in Bernstein, 2016), or that grounding should be illuminated by appeal to similar features of causation (e.g., Schaffer, 2016, as cited in Bernstein, 2016). In this case, a grounding relation in which the grounded subsists even with the annihilation of its grounds is possible; as mentioned, this would be a kind of accidental grounding relation.

I believe Bernstein (2016) has produced several convincing arguments against the identification of grounding with causation, or to severely limit the use of causation in illuminating grounding. Instead of mentioning her arguments, to strengthen my response to this objection, I will suppose that she is wrong for the constitutivist who tries to disagree with her. In fact, I will even suppose that grounding is, for instance, in the end, a kind of causation, and we can thus have this accidental grounding relation. Yet, even in this case, the other issues generated by the Lecter examples continue. That is, in this case, it may be true that the norms subsist even when he killed someone

while asleep. Nonetheless, Lecter may still be plausibly exculpable, given that he is not an agent at that point in time (1). It is also still unclear how the transmission of responsibility and norm-breaking properties would occur (3). After all, the agent that had these properties ceased to exist. So, even if there is accidental grounding, this is insufficient to answer the problems from the Lecter examples.

Objection C claims that death is a problem for the idea that permanent agency grounds norms. Here is another variation of the Lecter case to show that. Lecter sets up a trap, but no one falls into it as he gets into a coma. In fact, much after he died, no one has fallen to this trap yet. 20 years after Lecter's death, however, Clarice's son is brutally murdered by it. Lecter has been dead for 20 years now. How can we say that he killed Clarice's son then? How can we say that he is responsible for it? Lecter's agency, of course, ceased to exist long ago with his death. So how can he say that there are still norms 20 years after what grounds it ceased to exist (2), and that Lecter was the agent responsible for them (1)?

As mentioned earlier, we must refer to the past sometimes. If someone simply dies, for the most part, her norms cease to exist. Usually, that is unproblematic, for most of our actions end before it. When judging previous actions, other people have no issue to assign responsibility, blame and agency. They can simply say things like "Lecter *was* responsible", "Lecter *was* the agent that caused this" and "Lecter *broke* a norm at that point". This new version of Lecter's example, however, does not allow this to happen. Lecter was responsible, was the agent that caused a death, and broke a norm *now* (20 years later).

I believe this is not a problem for constitutivism, however. After all, Lecter's action of "setting up a trap" is a part of the larger action of "killing Clarice's son" (Thompson, 2008). These are not two discrete separate events. And it is not only agency that has structural features that ground practical norms. Rather, manifestations of agency (actions) also do. In this case, even if Lecter's action of killing Clarice's son occurred much after his death, it still must respect its structural features, standards or aims. Thus, even if agency, as a first order disposition, for instance, disappeared long ago, it may still occur as an actualization long after that⁵¹. There may also be other ways of solving this issue. But in either case, this problem is not restricted to Constitutivism. It is a real question how to assign responsibility, and other properties, to temporally distant actions. In this case, it is reasonable to expect that if Constitutivism fails in answering this problem, so would other metaethical theories. Yet, I don't believe that this will be the case.⁵²

Section 5) Permanent Agency as a Solution to Enoch's Shmagency

Question

If agency is indeed permanent as I have defended thus far, I believe we will also have a better way of solving the shmagency question objection. Remember that both the plight interpretation of inescapability, and the dialectical interpretation had, at first, the issue of going against the intuition that norms must always apply to us, for being universal and necessary. It was then suggested, following Silverstein, that sometimes we have reasons to stop being agents (e.g., in order to save someone or to avoid

torture). This could be plausibly used to counter that intuition. However, we can now see that if this suggestion is allowed, it leads to several issues based on the fact that agency can disappear in our dormant states (as expressed by the Lecter cases). Thus, this intuition is still a problem for those interpretations. If agency is permanent, however, we can simply satisfy the intuition that robustly normative practical norms must be inescapable. In fact, it will satisfy one of Lecter's desiderata better than trying to counter it.

What about the other shmagency questions? If the question "Do I have reason to be an agent rather than a shmagent?" is asked by an agent, the plight interpretation and the dialectical interpretation will have the already mentioned issue of lacking universality in their norms (or, alternatively, will lead to the problems of section 4). My interpretation, that claims that agency is metaphysically inescapable in the sense of being permanent, does not have this problem. When an agent asks that, the question is absolutely moot. There is no possibility for that agent to become a shmagent. In fact, it would be akin to asking "Do I have reason to grow wings and fly away?", or "Do you have reason to be an elf (to then become immortal)?". Perhaps it would be nice to fly through the sky after growing wings, or to not have to worry about death. This is unfortunately impossible, however. Likewise, the internal question involves an impossible reason for action, being thus utterly irrelevant to us. We are already agents, and committed to the practical norms that the structural features of agency dictate to us.

Now if the question is asked by a shmagent, it might be plausible to appeal to the dialectical interpretation of inescapability. A shmagent can only ask for

shmreasons. So, what is the meaning of when a shmagent asks for shmreasons to be an agent? Given the absence of the normative aspect, it is either an unintelligible question, or is a question that takes normativity to be merely motivational or something else—a point most constitutivists would certainly deny. This question is also moot then. This response seems to plausibly work, although it requires more than necessary. Perhaps *there can be* shmagents with different structures and that yet have reasons and practical norms (being sophisticated shmagents). Additionally, that all questions (such as the shmagency questions) are only normative if issued by agents is what is at dispute.

I am not denying that the dialogical inescapability interpretation may also be a sufficient response to deal with the external shmagency question. Rather, instead of dealing with these issues, there is a simpler way to answer the external shmagency question. If a shamgent poses that question, whether that does involve practical norms or not despite her being an agent is irrelevant. After all, we cannot become shmagents. It is impossible to move from agency to shmagency for agency is permanent. We are either agents, and under practical norms grounded by the structural features of agency, or we don't exist. Thus, the question is practically moot to us, and we need to commit ourselves to much less with my sense of inescapability.

Finally, let me clarify how the objective version of the shmagency question is responded, and how the other interpretations fare. As the paper-skeptic example illustrates, standards besides those of agency can plausibly help answer whether we should be agents, just as standards besides those of chess may help answer whether one should play chess. So, it seems that if agency is our plight, or if agency is

dialectically inescapable, we may still have reasons to be shmagents. If agency is our plight, we may have reasons to escape it. Some obligations, as agency in the sense of plight, can be rejected. We may then just take some pills and fall asleep. If agency is dialectically inescapable, it is beside the point who raises the challenge, and we likewise may have reasons to cease to be agents. With this second interpretation, it is not enough to say that shmagents can't pose that question. Even if the question can only be asked by agents, it won't change the fact that I might have this reason, just as the paper-skeptic argument is not defeated because he argued for it using a paper.

It is not enough to say, as Velleman (2009), that the challenge is "internal" in the end. After all, what matters is whether there really is a reason to be a shmagent. And to claim that the shmagency question can only be answered based on the standards of agency is what is at issue (or, at the very least, needs further backing). Finally, for both interpretations, if there is the possibility of escaping agency, agency is not robustly normative, and worse, we are led to all the issues I brought up with the Lecter examples.

On the other hand, I think that there is a good response to be given with the metaphysical inescapability interpretation. When the challenge is posed in an objective way, we, agents can wonder whether we have reasons to be shmagents. We can say that it would be very nice to be shmagents, just as it would be very nice to acquire superpowers or to time travel to the past. But all of that is clearly impossible. Nothing travels faster than the speed of light, we are all normal human beings, and we are all agents. And as agents, we have structural features that ground our practical norms, or

we don't exist. Thus, if asked by an agent, by a shmagent, or if the shmagency question is not asked at all, it continues to be moot for suggesting the impossible to us.

What all of this can help you in our initial question, how to answer Lecter? I believe that at this point, we can have a good grasp of what your response to Lecter could be. After defending your preferred Constitutivist theory (Korsgaard's, Smith's, etc.), Lecter may still ask why he should comply with the practical norms that agency grounds. You can then answer that Lecter should do so because, given he is already an agent with the structural features, he already agrees with those norms. To this, Lecter may object based on David Enoch's shmagency question. You can then use the responses I just mentioned, which can be roughly summarized as follows. The question "Do I have a reason to be an agent?" is completely moot to Lecter or to any of us since we will always be agents at least as long as we live, and our actions are subject to the practical norms as long as they occur. The practical norms that agency grounds are thus inescapable. Since Lecter is philosophically reasonable, he lets Clarice go.

6) Conclusion

In this paper, I defended that a presupposition of many Constitutivists, that agency is escapable in dormant states, leads to unacceptable consequences. If that is the case, someone like Hannibal Lecter can set up a trap that kills a person only while he is in a coma. In these circumstances, 1) he seems plausibly exculpable for his crime; 2) he did not break any norm at any point in time; 3) even if the other issues are solved, a

transmission and maintenance of responsibility and norm-breaking properties is mysterious. These absurd consequences can be negated when we notice that agency is metaphysically inescapable (we are agents as long as we live). There are two reasons for this. First, agency works as other concepts that refer to individuals, subsisting even in dormant states. Second, several other pictures of agency as dispositions or powers are much more plausible than to suppose that agency ceases in these states.

Now, after accepting that agency is metaphysically inescapable, we can respond to Enoch's shmagency question to Constitutivism in a more plausible way. After all, all versions of the shmagency question will be responded to, we will not have the issues with the Lecter's cases, we will be able to maintain the intuition that practical norms are substantively authoritative for being inescapable, and the possible existence of other beings with practical norms will be irrelevant. All of this merely because the very possibility of us becoming something that is not an agent is moot. The question of whether we should be agents rather than shmagents is then shown as akin to the question of whether we should be elves rather than humans or whether we have reasons to grow wings and fly away. It makes no sense, or is downright impossible in the best of cases.

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¹ See Ferrero, 2019, p.2

² Some versions of constitutivism see the motivational force stemming from agency in different ways (Christine Korsgaard (2009) and David Velleman (2009), as we will see, understand it as a psychological non-optionality in the practical point of view).

³ Hasse and Mayer, *Varieties of Constitutivism*, 2019, p. 95.

⁴ There are some new Humean and Nietzschean versions of Constitutivism that do not account for the universal and necessary features of norms. I will approach the possibility of having these weaker versions of Constitutivism shortly.

⁵ The following reconstruction is heavily based on Katsafanas' (2018) reconstruction of Korsgaard.

⁶ In fact, as Katsafanas claims "describing the agent simply as playing chess in these cases [as intending to lose] elides important details. It's as if we describe the person interviewing for a job as talking —it's true, but it leaves out further aims that she has, aims that modify the activity in significant ways, and thereby require that someone who analyzes the features of the activity describe it more precisely." (Katsafanas, 2018, p.3).

⁷ There is considerable reason for disagreement here. For that, see Schwarz, 2021.

⁸ Katsafanas, 2018, p.11; introduction.

⁹ To mention an intermediary constitutivism, between the minimally maximally ambitious forms, we have Velleman's theory. His theory permits us to extract some norms that favor morality, despite not requiring or guaranteeing it (Katsafanas, 2018, p.12).

¹⁰ Enoch, 2006, p. 186, as cited in Silverstein, 2015, p.2.

¹¹ Although I didn't make this explicit, it should be noticed that one of the things that Enoch is skeptical about is the constitutive move. That is, that the engagement with an enterprise (such as chess, or agency) implies in normative pressure to respect the standards of this enterprise (this respect may come as a necessity, or it may come as a merely a choice in opposition to losing oneself, for instance). Enoch claims that just as with chess, we can simply use other rules and start to play shmess, or even (if inescapably obliged to play it) merely grudgingly respect its aim of winning, despite not making any true effort to do so. I will discuss more of this shortly in the body of the text. For a discussion of the constitutivist move, see Ferrero, 2018.

¹² I believe this is a problem to even version of constitutivism that attempt to ground only instrumental norms. After all, even instrumental norms in specific circumstances may be authoritative in the sense above. When you commit yourself to the end, for instance, it seems that you must commit yourself to the means (in most cases).

¹³ Alternatively, all of the versions of the shmagency question attempt to show that the constitutive move (roughly, that a standard being constitutive of an enterprise gives reason to comply with the standards of this enterprise) is what is normatively arbitrary. That is, these standards require an additional justification, or reason, to follow them in the first place, to be agents. For a discussion of one formulation of the constitutivist move, see Ferrero, 2018.

¹⁴ This should be applied to even minimally ambitious versions of Constitutivism. Any instrumental norm is dependent on what grounds this norm: our agency (and its structural features). And it seems that if we have no reasons *to be agents*, so will our instrumental norms not be properly backed—if the first reason in our chain of reasons falls, so will all other reasons.

¹⁵ There are other questions raised in Enoch's 2006 and 2011 paper worth pursuing to defend Constitutivism. For instance, Enoch mentions a kind of is-ought-gap point: it doesn't seem true that any ϕ I do can be a good answer to whether I should ϕ , or a good answer to whether I have good reason to care about it (Enoch, 2011, p. 215). Since constitutivists tend to be committed to existence internalism about reasons, this would also plausibly point out reasons we do not care about. Finally, there is the more general question that non-naturalists can raise: can agency in fact account for authoritative normativity (for no natural property seems to do the job)? While these questions are worth pursuing, I believe they are all orthogonal to what I take to be the core of Enoch's challenge, the shmagency question. I will restrict myself to that question here.

¹⁶ Korsgaard, 2009, pp. 2. 1, as cited in Silverstein, 2015, p. 6.

¹⁷ Silverstein, 2015, p. 6-8.

¹⁸ This is taken to instantiate the force of the original shmagency objection from Enoch (2006). Some, as Silverstein (2015, p. 8), Ferrero (2018), believe that it is acceptable to leave the jurisdiction of practical norms. Section 4 of this thesis can be seen as a direct response to that idea, and why that is not the case.

¹⁹ This critique of Korsgaard's plight comes from Ferrero (2018).

²⁰ Ferrero (2018), Silverstein (2015), Katsafanas (2019) and Leffler (2019), for instance, certainly agree with this sense of escapability of agency. Velleman (2009) probably accepts this as well. A notable exception is probably Hanisch (2015, p.5), who in a note mentions that his argumentation will depend on Silverstein being wrong that agency is inescapable in any relevant sense.

²¹ Silverstein, 2015, p.7.

²² This interpretation comes from Enoch (2006).

²³ Other kinds of inescapability not approached here can be seen in Ferrero (2018) and Paakkunainen (2018), as they nicely summarize all the ones proposed so far.

²⁴ For the purposes of this paper, Ferrero's standpoint of agency, Velleman's reasons as constitutive of agency and Silverstein's denial of the inescapability of agency can be grouped as one position. For all of them, it is the perspective of agents that has a deep connection with reasons (even if agency itself may be escapable). Only in this extended sense that for them agency could be said to have inescapable constitutive norms.

²⁵ This point is made by Silverstein, 2015, p.13-15.

²⁶ The objection I will address soon is that of sophisticated shmagents from Leffler (2019). I believe this objection can also be a good one against Velleman's other response to the internal question, a kind of virtuous circularity (2009). See Paakkunainen (2018) for a different response against Velleman's circularity.

²⁷ Paakkunainen, 2018, p.454-460.

²⁸ Paakkunainen, 2018, p.455-460.

²⁹ As Paakkunainen (2018, p. 456) notices, this sense of the question seems to be the one that Enoch in fact intends with his objection.

³⁰ This idea comes from Leffler, 2019. He calls this problem, *the problem of normativity for shmagency*. Sophisticated shmagents are intelligent, knowledgeable, and perform actions for what seem like reasons, and are plausibly reasons. After all, they can deliberate, reflect about what to do, and prefer different courses of actions in different contexts. So, they seem to have reasons, and practical norms, despite not being agents. They could then pose the shmagency question, which means agency does not ground all practical norms.

³¹ As mentioned before, if agency is escapable, we also plausibly lose one of the factors that makes agency different from chess, thus making the burden of explaining the constitutivist's positive foundational theory more difficult.

³² Silverstein, 2015, p.10.

³³ Although problem 1 works especially well for Constitutivists, I believe it is a problem that must be answered well outside Constitutivism.

³⁴ The fact there is another hurdle to arrest Lecter justifiably is also problematic. As mentioned, while he sleeps, he didn't break any norm, and thus we aren't justified in arresting him at this moment. We can, of course, wake him up to *then* justifiably arrest him. Yet, the mere fact that this is necessary is very

odd.

³⁵ One can say that we can still blame Lecter for what he did in the past, for he broke a norm before. I will consider this justification in great length in the next section. For now, however, it suffices to say that in this version of the Lecter example, he has at least an additional excuse for his crime. A third person could defend Lecter by saying “who cares that Lecter violated a norm in the past? There is no such norm now!”. This is clearly unacceptable. Additionally, the problems raised by 2 will occur with another version of the example I will discuss also in the next subsection.

³⁶ Notice that we’re only justified in arresting someone if this person might be a suspect of being the agent who committed a crime, a lawbreaker. As a non-agent while he is asleep, Lecter is not the sort of being capable of committing crimes, or breaking any norms (as laws). He shouldn’t be arrested then. To be precise, we should wait for him up to wake up. Now, of course, we can simply arrest him for other reasons. Yet, these might be the wrong reasons for arresting him. So, it seems that we cannot justifiably arrest him during his slumber.

³⁷ I will be using these three terms interchangeably. There is some controversy as to which one takes preference, and whether one is a species of the other, or whether they are in fact interchangeable. For simplicity however, as others have done (e.g., McKtrick, 2021) I will use it interchangeably.

³⁸ In fact, this is also one of Aristotle’s novel distinctions, that allowed his notion of power to do much that the notions of his antecessors couldn’t (Stump, 2013).

³⁹ Not everyone agrees that dispositions refer to different states, but I am saying so for simplicity.

⁴⁰ For instance, Burnyeat (2002) and Fuentes (forthcoming).

⁴¹ Of course, one can say that waking up is already an action. However, if that is the case, it does not change the fact that it is an action that works as a potentiality for further actions (as I will show in the body of the text with Barbara Vetter’s framework). We need to wake up to do other actions.

⁴² It should be noticed that sleeping works here as a first potentiality since I am referring to action, but it can also work as different stages of the triple scheme. For example, Fuentes compares two passages that indicate sleep to work as a second order potentiality for Aristotle when referring to knowledge (p.18).

⁴³ The ability of speaking languages also work, as before. Someone that does not know Portuguese can have the disposition of learning it to then have the disposition of speaking this language (a disposition for a further disposition). If someone can already speak this language, this person merely has the disposition to speak this language. If Portuguese is currently being spoken, this disposition is manifested.

⁴⁴ A further example of an iterated disposition, that works with Aristotle’s triple scheme is that of an unripe apple. This fruit is disposed to become red when it ripens; it thus also has the further disposition of being perceived as red to a normal observer. (Vetter, 2015, p.136).

⁴⁵ Masks interfere with the causal chain that would normally cause the disposition to manifest if uninterrupted (Turyn, 2021, p.1).

⁴⁶ There are some frameworks of One weakness of this argument is that there may be some competing frameworks of dispositions in which the problems continue. To mention a fourth possibility that does not seem appealing to the constitutivist, dispositions can be more specific. For instance, the “disposition to break-when-dropped-while-wrapped-in-bubble-wrap is distinct from the disposition to break-when-dropped simpliciter” (Turyn, 2021, p.2-3). Thus, agency when we are asleep may be a different disposition from agency when we are awake. This possibility has, however, the issues of existing several agencies then, each of which would ground different norms. This means that there will still be at least the same problem of maintenance and transmission of norms. Additionally, we tend to think of people as having *one* agency, for being *one* agent.

⁴⁷ I say “at least” for agency subsist throughout our lives in the vast majority of cases, but not all. That is, we can think of even more complicated cases (e.g., someone is in a permanent comma, and that may be cured only if a new technique is developed), but also for most of them we can just say that agency is a iterated disposition with *additional* dispositions for it to be ultimately manifested or it is a disposition with *more* masks, etcetera. However, I understand that there may be cases in which there are masks or dispositions that make a manifestation of agency *truly impossible*. In such cases, I say it wouldn’t be a disposition anymore. If, however, we die, and our dispositions can or are still manifested, then we are still agents in an extended sense. Additionally, if our actions continue to occur, the actions will also be under the jurisdiction of our practical norms, as I will argue when responding to an objection in subsection 4.4.

⁴⁸ This variation of the Lecter case is the one that most strengthens my argument against Constitutivists, yet I presented the other variations for they may make it more explicit why some responses are insufficient, and some variations may even offer other challenges.

⁴⁹ Notice that the other problems would continue, however. Since Lecter would still cease to be an agent then, the problem of plausible exculpability to him would continue. An unclarity about the transmission of responsibility would also remain as well. After all, we would need an explanation about how a collective agency or multiple agents maintain responsibilities that aren't theirs while someone sleeps, and then are able transfers to that specific agent when he wakes up.

⁵⁰ For instance, in the Stanford Encyclopedia explanation on grounding (Ricki and Trogdon, 2021) or in Fine (2012).

⁵¹ One could also try to solve the other issues generated by Lecter's example with intermittent agency based on the idea mentioned here. That is, based on the idea that some actions extend through long periods of time, sometimes much after agency's annihilation. In this case, for instance, one could try to say that when Lecter killed someone as he was sleeping, for instance, we can still say that a norm was broken given that this action still falls under the structural features that ground practical norms. I believe this defense is still insufficient, however. After all, the other two problems will continue. Lecter will still be plausibly exculpable, given he is not an agent, so it is odd to assign actions to him. Additionally, it will still be a mystery how that action that exists without agency can have its properties transmitted to an agency that will come to existence later. A solution in the case of actions extending after death would be to say that agency as a manifested disposition continues. This would, however, defeat the attempt of having an intermittent agency, since also in the case of sleep agency in this way would continue. Since I already believe agency is permanent, agency continuing as manifested disposition is something I can easily accept, also allowing me to solve this case.

⁵² Another attempt that wouldn't work to solve the case of Lecter dying is, as mentioned when responding to A, by appealing to non-individual agency as the ground for practical norms. As in A, I believe this can solve the issue of the subsistence of norms. However, it is not enough. The other two problems would continue: the transmission of responsibilities, etc. will still be mysterious (3) and Lecter will be plausibly exculpable for not being an agent.