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Abstract
How does age matter to moral responsibility and criminal liability? Almost no one thinks that a 3-year old is morally responsible for what she does. No one would think an 8-year old should be held criminally liable for engaging in illegal criminal action—even for something seriously harmful such as intentionally setting fire to a building or badly harming another child. Something else should happen, certainly, but not criminal prosecution and conviction and State punishment. And that's true even if we might start to think that the 8-year old can be morally responsible, or at least somewhat morally responsible, for what she does. Disagreement might start to enter in as the age increases. What do we think of a 12-year old? A 15-year old? A 17-year old? Gideon Yaffe's excellent book, The Age of Culpability, is focused on the question of why children—for these purposes, all people under the chronological age of 18—should be given a break, legally speaking, and why this should be done categorically. Yaffe argues that the fact that no one under 18 is eligible to vote is a key part of the explanation. In this paper, I raise two objections to Yaffe's account. In particular, I raise several questions about the details of Yaffe's account regarding what it is to "have a say over the law" and the way in which this makes a difference to criminal culpability.

Keywords Gideon Yaffe · Children · Punishment · Culpability · Voting · Political power

I

How does age matter to moral responsibility and criminal liability? Almost no one thinks that a 3-year old is morally responsible for what she does. No one would think an 8-year old should be held criminally liable for engaging in illegal criminal action—even for something seriously harmful such as intentionally setting fire to a building or badly harming another child. Something else should happen, certainly,

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but not criminal prosecution and conviction and legal punishment. And that's true even if we might start to think that the 8-year old can be morally responsible, or at least somewhat morally responsible, for what she does. Disagreement might start to enter in as the age increases. What do we think of a 12-year old? A 15-year old? A 17-year old? Gideon Yaffe's excellent book, *The Age of Culpability*, is focused on the question of why children—for these purposes, all people under the chronological age of 18—should be given a break, legally speaking, and why this break should be given categorically.

His full view on that question falls out of a more general theory about "the nature of criminal culpability, of desert for wrongdoing, and of the kind of participation in the law that is required to support unmitigated liability for crime" (Yaffe 2018: 10). Some basic components of this view are that: (a) there are legal reasons (distinct from moral and prudential reasons); (b) legal reasons are created and their strengths are constituted by collective social choices made through particular formal legal and political processes; (c) the precise strength of legal reasons that apply to an individual, A, is a function of how much say A had in those particular formal processes; and (d) criminal culpability consists in a failure to insufficiently regard legal reasons.

I disagree with each of (a)–(d). My main source of disagreement is simply that I am not convinced that there are "legal" reasons—as opposed to just reasons of prudence or reasons of morality. There are often, but not always, moral reasons and prudential reasons to do as the law requires. There are moral and prudential reasons for having institutions and formal legal and political processes that operate in this way, rather than that. And the deliverances and results of those processes can come to have some significant moral force behind them. And so there are often, but not always, moral and prudential reasons that ground punishment for disobeying the law. But I don't see the grounds for adding "legal" reasons (nor the corresponding notions of "legal" desert or "legal" culpability) to this mix. Accordingly, I don't think a person should pay attention to "the legal-reason-giving force of the features of one's conduct" (Yaffe 2018: 12)—this seems a Byzantine construction to add to the world of agents and reasons. Things are not made less complicated later when Yaffe offers the following view of criminal culpability: "to be criminally culpable for a prohibited act is for the act to manifest modes of recognition, weighing, or response to legal reasons discordant with the legal reasons in virtue of which the act is in violation of a norm of criminal law" (Yaffe 2018: 72–73). A simpler story would focus on whether an agent was morally culpable or morally responsible (treating these as synonyms) for engaging in criminal wrongdoing. If so, they are criminally culpable. Yaffe has reasons to make things more complicated, but they strike me as undermotivated. But others have responded to this part of Yaffe's book,[1] and I myself have complained elsewhere about earlier related views of Yaffe's regarding an individual's deliberations or "modes of transactions with reasons" as the ground of culpability (whether moral or legal) (Guerrero (2015)). Accordingly, I will mostly steer clear of these issues, interesting though they are.

[1] In particular, see Husak (2008) for a detailed discussion.

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Instead of these details, I will focus on some more general features—arguably detachable from the commitments to legal reasons—of the interesting, surprising claim that Yaffe makes regarding why those people under 18 are categorically owed a break: they can't vote.

His answer to the focal question of why kids are categorically owed a break is that "kids are not full citizens… that is why they are reduced in criminal culpability; the status of citizenship is a necessary condition for holding someone to the standards of culpability applied in cases of unmitigated criminal responsibility" (Yaffe 2018: 15). Yaffe notes that the rationale he offers "has the implication that there is a very good reason to link two things: the voting age, and the age at which people who commit crimes are to be treated as adults" (Yaffe 2018: 12).

Yaffe's explanation of the connection between not being able to vote and having reduced criminal culpability is roughly as follows (this is my reconstruction):

1. LESS SAY: all kids have less of a say over the law than adults, because they can't vote.
2. LESS OWNERSHIP: so, the legal reasons for them to refrain from violating the criminal law are less their "own".
3. WEAKER REASONS: so, the legal reasons for kids to refrain from violating the criminal law are weaker.
4. LESS CULPABLE: so, kids are less criminally culpable than adults, and are so not fully criminally culpable, when they violate the criminal law—because the legal reasons against them doing so are weaker.

As noted above, Yaffe wants to frame all of this in terms of legal reasons, rather than moral ones. Here we can see why. Imagine running a similar argument just replacing "legal reasons" with "moral reasons." The thought then would be that, in addition to whatever other moral reasons there might be for complying with the criminal law, in democratic countries, those who participate in making the laws (or who are entitled to do so) have *additional* moral reasons stemming from democratic ownership or authorship. Kids lack these additional reasons. So, they are owed a break.

The problem with this "moralized" version of the argument is that we should balk at accepting any of (2), (3), and (4), and particularly at the transition from (3) to (4). Surely the moral reasons against (say) murder are already as strong as they can be—or at least so strong that they will completely swamp these kinds of democratic authorship considerations. This might explain why he wants to keep sharp boundaries between the legal and moral reasons, and run things just in terms of siloed legal reasons.

The basic idea is that children do not have a say over the law or they have considerably less say, so they do not satisfy this necessary condition of holding a person to the full standard of criminal culpability. Importantly, this explanation can ground a categorical difference between those above and below the voting age. No one under 18 is able to vote—and that is true *whatever* else is true of them

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in terms of their maturity, psychological capabilities, free will in performing the action, knowledge of right and wrong, and so on.

In what follows, I will raise two challenges to Yaffe's view, challenges that arise even if we accept Yaffe's notion of legal reasons.

First, I will take issue with the intuitive datum—the explanandum—regarding kids and the criminal law. There is a worry that Yaffe has offered an explanation for something that isn't true—that all kids *deserve* a break, categorically—and that he has given reasons that obscure the real reasons that some kids should be given a break. As I suggested in the beginning, it seems that our intuitions regarding moral responsibility and culpability get much murkier as people become 15, 16, and 17-years old, and that many will reject the idea that the reason that everyone under 18 should get a break, legally speaking, is because they all deserve to get a break, or because they all differ in terms of culpability when compared to those on the other side of 18.

Second, I will raise several questions about the details of Yaffe's account regarding what it is to "have a say over the law" and the way in which this makes a difference to criminal culpability.

II

There is of course much evidence that might be martialed to support the idea that people—many people, in many different societies—believe that children should be treated differently than adults by the law, and particularly by the criminal law. And there are arguably further common complexities here: infants and toddlers and young children should be treated differently than adults, but also differently than adolescents. Children who have gone through puberty are different than children who have not. Additionally, the universal view is not just that children should be treated differently than adults, but also that they should be treated *more leniently* in various ways: punished less, punished differently, perhaps not punished at all, given more chances, and so forth. I'm not sure there's very much common ground beyond some of these banalities, however.

Here are some claims that I imagine would get significant, but not universal endorsement by, say, twenty-first century Americans:

> No Bright Line: 16 and 17 year-olds who rape, kill, or torture, and who are fully morally responsible for those actions, don't deserve a break under the law; they should be treated like 18 year-olds and those above 18.
> It's Just Epistemic: some 16 and 17 year-olds are just like adults, and don't deserve a break, but it is difficult to determine which ones, so we should just use broad categories.

Now, I don't think either of these would get universal endorsement. Nor do I think Yaffe's main target would:

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> Categorical Break: all kids—everyone under 18—should be given a break under the law.

That's fine, of course. Perhaps Yaffe is just trying to argue for Categorical Break, or to present the best philosophical case he can for it. But to the extent that he is trying to vindicate something like our common understanding or common rationale, I think he runs into some trouble. Because I also think that these two further claims would get significant endorsement:

> Lessened Moral Culpability: the reason that kids should generally get a break is that they are less morally responsible and less morally culpable than adults, even when they do the same things as adults (there might be several different reasons for this).
> Intrinsic Features: the reason that kids should generally get a break (either most of them, or all of them), is due to intrinsic (or at least non-conventional) features of being a kid—rather than merely conventional features of being a kid in this particular society.

Chapters One and Two of Yaffe's book raise objections that put pressure on the ability to endorse all three of Categorical Break, Lessened Moral Culpability, and Intrinsic Features. But it is not at all clear that the one of these that we'd want to hold on to would be Categorical Break. I imagine many people would prefer to opt instead for It's Just Epistemic. Yaffe has us instead give up both Lessened Moral Culpability and Intrinsic Features. But that seems a high price to pay.

Is there a way that Yaffe can salvage either Lessened Moral Culpability or Intrinsic Features on his account? It seems to me that the most he can say is that for some (but not all) kids, they might deserve a break *both* (1) because of intrinsic features of being a kid (they are less mature, less capable of regulating their behavior, less able to identify right and wrong, more impulsive), and these same things also lessen their moral culpability; and (2) because of their not having a say in the creation of law. So, he could capture some of our intuitions by pointing to this different (much more familiar) kind of explanation that would apply to some kids, maybe most kids, but not all kids. But his basic story about not having a say affects the supposed legal reasons of all kids, and the strength of those reasons, and that in turn affects their level of "criminal" (or legal) culpability if they violate the criminal law. This story applies to reduce the criminal culpability of all kids equally and categorically.

One worry about this "multifactor" account is that Yaffe's categorical reason and definition of "criminal culpability" might threaten to "crowd out" the reasons relating to moral culpability and intrinsic features of being a kid. If his account relating to "criminal culpability" became the official story, it might threaten to limit leniency in ways that would be objectionable. Specific showings of immaturity or impulsivity might be treated as irrelevant, and the breaks we are willing to give would be set at the level of the most sophisticated, most adult, almost 18-year old kids. This is not a result Yaffe would welcome, but I worry about the ability of the more familiar reasons to stay in the picture if his became the official story.

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The bigger worry, however, is about the specifics of that story. Let me turn to that now.

III

As noted above, Yaffe's explanation of the connection between not being able to vote and having reduced criminal culpability is as follows

1. LESS SAY: all kids have less of a say over the law than adults, because they can't vote.
2. LESS OWNERSHIP: so, the legal reasons for them to refrain from violating the criminal law are less their "own".
3. WEAKER REASONS: so, the legal reasons for kids to refrain from violating the criminal law are weaker.
4. LESS CULPABLE: so, kids are less criminally culpable than adults, and are so not fully criminally culpable, when they violate the criminal law—because the legal reasons against them doing so are weaker.

The core idea relies on a notion of ownership and influence in making the law what it is, and the effect this has on the reasons that exist for a person, as well as the strength of those reasons. This is an interesting suggestion, but it raises many questions. Beginning at the end, we might ask: why should we focus only on the strength of my *legal* reasons for not violating the criminal law when deciding how culpable I am for violating it?

As noted above, Yaffe introduces what he calls "criminal" culpability and says this is connected to legal reasons and not other kinds of reasons—or at least this is how I understand what he is saying. But why should we think that the culpability that we care about—let's assume it is this "criminal" culpability—when thinking about when breaks are owed is connected only to the strength of legal reasons against doing the action? In cases of *malum in se* crimes (crimes that are morally bad, apart from any conventional rule against them—such as murder, rape, aggravated assault, etc.), especially, it seems that we all have reasons aplenty that have nothing to do with our "ownership" of them. Related to this, we might ask: why does the strength of *legal* reasons to comply with a law decrease if we have less ownership over the law? Why is it that the *legal* reasons are the only ones that matter for assessing criminal culpability?

Part of this returns us to the question of what legal reasons are. Yaffe tells a story about a tiddlywinks club to illustrate the idea that sometimes when we have had a part in creating a rule, we have a special kind of reason to follow that rule. Let me start with a similar example. Imagine that there are ten of us. We regularly play pick-up basketball together. We form a little association, with various rules. We all agree to be a part of the association, and to be governed by its rules.

Version one: because I am the one who always complains, I am given the power to make all the rules (everyone else is relatively relaxed). I make it the

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case that we will observe Rule X: all fouls are called only by the person to whom they happen, not by any teammates of that person or members of the opposing team. Then, with the game underway, I call a foul on someone who hits the arm of my teammate, when my teammate said nothing. This is a clear violation of Rule X, which I just implemented. There are a lot of things we might say about this. It definitely seems right that even if all ten of us have strong pro tanto reasons to comply with the rules, I have an *additional* reason or a different kind of reason. I don't think this is about ownership over the rule or complicity, though. It's something more like moral reasons against *hypocrisy* or moral reasons against making an *exception* of oneself. What gall, we might say. What a jerk, we might say.

Now consider version two: we each get a say, and indeed we each have a strictly equal say in that all of us get a vote and all rule decisions have to be made unanimously. We vote, and implement Rule X. Again, during the game, someone violates Rule X, trying to call someone else's foul for them. This is pointed out to them and they remain insistent. Again, there are many things we might say, but a natural one would be: but we just *agreed* to these rules; we talked about it, and this is what we settled upon. You can't just immediately renege on the agreement. You *consented* to be governed by these rules. So, again, it seems that there are clear additional reasons here. It's different than if these were just the rules posted in the gym. There are reasons stemming from the fact that you agreed, you consented, we together agreed, and so on. Lots of additional reasons.

I am skeptical that these have to do with ownership over the rules or complicity in having created them, however. There are other kinds of moral reasons that are present. We just agreed to this. We will never get anywhere if we keep going back on the agreements we made. Reasons against hypocrisy and exceptionalism as noted above. And so on.

But the main point is that these seem to provide additional *moral* reasons, not affect the strength of the *legal* reasons. Perhaps this is just a question of clarification. The fact that I created the rule, the fact that I agreed to the rule, the fact that we agreed to the rule—all these facts can seem to affect the reasons I have to follow various rules by providing additional, content-independent *moral* reasons. But in what sense are these *legal* reasons?

In the special case in which we are together not just making rules for a game, but making laws for a nation, I can see how some of us might have special *moral* reasons to comply with the law: we had a hand in making it what it is! How galling when a lawmaker breaks the very law that she authored! How hypocritical! But these continue to sound, at least to my ear, like moral reasons, not legal ones. I continue to feel little grasp on the notion of a *legal* reason, as distinct from moral or prudential reasons.

Let me continue by asking a few questions about ownership of the law, or complicity in the law, and the reasons that ownership or complicity might provide that are distinctive, and appropriately treated as categorically different than (and not just to be weighed against) moral reasons.

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IV

First, let me begin with an observation. Almost all extant criminal law has been on the books in substantially the form that it is prior to the adults who currently live in the jurisdiction coming to live as adults in that jurisdiction. That follows from the fact that adults move in and out of legal jurisdictions all the time (raise your hand if you've spent 20 consecutive years living in the municipal, county, and state jurisdiction that you currently reside in!), along with the fact that much criminal law is old. Combine this with the fact that each of us is one of only hundreds of thousands of people in most of the jurisdictions in which we live. It is hardly as if the ten of us got together to work out what the law should be. So, the sense of ownership that is in play in the case of perfectly ordinary adults is already very, very weak. So weak, that it verges on the metaphorical, rather than anything causal. This seems like a substantial problem, which I will return to soon.

Before getting to that, though, let me ask: why can't I come to have ownership over a rule or law through personal *identification* with the values behind that rule or law, rather than through having had some kind role in causing it to exist or having had an entitlement to play such a role? Particularly given how incredibly small that role will be for most individuals? Is this an alternative route to ownership? Could ownership in this sense balance out lack of ownership in the other, causal sense?

Consider two people:

The first person, Jack, is a 17-year old who grew up in a racist household, and who embraces those racist views. He is a big supporter of the legally codified disparity in punishment for powder and crack cocaine (call this cluster of laws and sentencing ranges *L*), on the grounds that crack cocaine is used only by "seriously bad people." He is aware of the racial dimension to L, the racial differences in who uses powder and crack cocaine, and he supports those aspects of L as well. He is completely behind those laws. He is also a big supporter of very harsh laws against drug use in general. He isn't very politically active and L was passed before he was born, but he identifies with it, agrees with it completely (he's actually printed out posters about it and puts them on his wall), thinks it represents what America is really about, and so forth.

The second person, Joe, is a 22-year old who is an active opponent of L, fighting tooth and nail to overturn it, and all other laws criminalizing drugs. He has spent his adolescence and young adulthood campaigning against these laws, rejects what they stand for, thinks they are antithetical to what America is really about, and so forth.

Even if we grant that of course there are ways in which Joe has entitlements that Jack lacks, it seems strange to say that Joe has more *ownership* of L than Jack does. Let's say that they both then go on to violate the drug laws. Do we still want to tell the LESS OWNERSHIP → WEAKER REASONS → LESS CULPABILITY story in the way that Yaffe suggests? If anything, it seems plausible to be inclined to something like that story, but going in the opposite direction: Joe is less culpable for violating those laws (which he has fought tooth and nail) than Jack is (who has gleefully supported them as they are imposed against others).

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A thought related to this: Yaffe's discussion of complicity suggests that even consistent political losers—who never get their way, politically speaking—are just as complicit as those whose preferences are actually driving law and policy. So, we might ask: why do political losers, political minorities, those who do not get their way politically speaking, count as complicit? Even if they do everything they can to contest what ends up becoming the law? Why is this an attractive theory of complicity, particularly for this context? It seems necessary to get the categorical difference between those under 18 and those over 18 that Yaffe wants, but I'm not convinced, particularly when this point is combined with the above point about the incredibly small role that any of us have played in causing the criminal law to be what it is in the jurisdictions in which we live.

Let me present a final, related challenge for Yaffe's view—the challenge that goes most to the heart of the account. According to Yaffe, the first claim, that everyone under the age of 18 has less of a say over the law, is true because children lack the following entitlements and freedoms:

1. entitlement to exert influence over the law.
2. entitlement to be free of reasonable obstacles to the exercise of that entitlement.
3. actual freedom from the obstacles of which one is entitled to be free.

Children are not entitled to vote. Furthermore, we couldn't easily extend the vote to them, at least not all of them, as there are good reasons to allow parents and others to continue to limit what children can do, where they can go, who they can associate with, and even where they can speak and what they can say—all things that it would be objectionable to limit for other full co-citizens. Yaffe is right about this, and it is a nice point.

And Yaffe is clear that there are other people besides children who do not have a say over the law in the full way required—people who are currently incarcerated, people who have lost the right to vote for having been convicted of a felony—and he thinks they, too, may be owed a break. And he thinks that a certain category of the poor—those who face obstacles to voting that they are entitled to be free from—also have a diminished say in a way that should lead to them getting more of a break.

The problem is that once we start taking seriously the way in which children and others have a diminished say in politics, it starts to seem that many other people also have a diminished say in ways that seem relevant to questions of ownership and complicity in the law that is actually created. There is a worry that Yaffe has built his account around a fantastical and mythical conception of electoral representative democracy—a conception which is and should be exposed as elite propaganda, and which we should challenge, rather than forward, at every opportunity.

The fantasy is that, because many of us are entitled to vote for various political representatives every 2, 4, or 6 years, that there is a significant sense in which we (a) all have a say over what is done, politically, and over what the law is; and (b) that this say is in some interesting or significant sense comparable for all adults;

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so that (c) it makes sense to see us all roughly equally complicit in what is done, politically. This is pure fantasy. As we all know, a single vote for an elected official is an infinitesimally small contribution to what legislation ends up existing. Intervening in the middle: corporate-controlled media coverage of candidates, the millions and millions of dollars it costs to mount a viable campaign, the billions of dollars spent by lobbyists attempting to control various legislative outcomes, the opinions and preferences of the socioeconomic elite who control media, multinational corporations, and legal, and political institutions, and so forth. The wealthiest, most educated, and most socially powerful people in our society play a hugely outsized role in determining what the law is, particularly in the details.[2] Furthermore, in a representative democracy, rather than a direct democracy, elected officials have vastly more political power than the rest of us. And if we are considering what the content of the law is, then judges, prosecutors, and other legal professionals also have a very disproportionate amount of power to exert causal influence over the law. I am sure Yaffe knows all of this. Even children know this. But it is easy to lose sight of that when he says things like "[i]n short, to have a say over the law is to have a real and meaningful opportunity to exert influence over it" (Yaffe 2018: 165) while talking about all of us, and the entitlements we have to vote.

It is perhaps even objectionable to assert that each of us, in virtue of the right to vote, "have a say" over what the law is. Does a grain of salt "have a say" in the direction of the wave crashing to shore? But let us concede even that.

Surely, if we buy any part of the LESS SAY → LESS OWNERSHIP → WEAKER REASONS → LESS CULPABILITY story, if we feel its pull in thinking about the difference between children and adults, parity of reasoning should have us acknowledge the dramatic ways in which 'say' and corresponding 'ownership' and 'complicity' also vary within the adult population. Even if all enfranchised adults in a political community have a say, they certainly don't all have an equal say.

Of course, one can attempt to stipulate a relevant boundary, to simply draw a line and say: "the right to vote and the full ability to exercise that vote is all that is needed to trigger full complicity and full co-equal ownership so as to block any break-getting." But that seems arbitrary and unprincipled. Why should we think that ownership and complicity over the laws will be had in anything like equal share amongst all adults who can vote (who aren't incarcerated, are citizens, etc.)? Is there a way to embrace this without going in for an absurd, dewy-eyed view of electoral representative democracy? Won't most of us have considerably less say, and correspondingly less ownership, over what the law is than the social and political and legal and corporate elite? Why doesn't this reduced say and reduced ownership convert to being owed a break if we then violate these laws—laws over which any one

[2] There is a lot of relevant empirical work on this topic. Gilens (2012) has demonstrated that US policy is mostly responsive to the preferences of the highest income Americans, if there is a conflict between those preferences and the preferences of the working- and middle-classes. Hacker and Pierson (2011) argue that a main source of the increase in income inequality over the last 30 years in the United States is the capture of American politics by the economic elite, and the ability of these elites to determine the policy outcomes they favor. And so on.

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of us has no or almost no control? The basic worry is that if Yaffe goes in for anything at all realistic about influence and entitlement to influence the content of the law, this will leave almost everyone in most electoral representative democracies with lessened culpability.

In the book, Yaffe focuses on not just actual influence, but *entitlement* to influence. But even if we go in for what strikes me as an undermotivated focus on entitlement to influence as somehow connecting to eventual complicity, there still seem to be worries. I am entitled to vote, as are the Koch brothers. But they are also entitled to use their billions of dollars to influence politics. I am entitled to use my billions of dollars, too, but there is a significant obstacle to my doing so: I don't have billions of dollars. Yaffe's account suggests that we should then ask: is this a *reasonable* obstacle to my influencing politics in the way that they can? Why would it be? I'm not entirely sure how to evaluate the claim that it is a reasonable obstacle. Furthermore, why does the reasonableness of the obstacle affect eventual facts about complicity? The fact is, they own the legislation in a way that I do not. Leaving the Koch brothers to the side, consider elected officials. I am entitled to vote, as is California Senator Dianne Feinstein. But, once elected, on the strength of her personal $94 million-dollar fortune, Dianne Feinstein is entitled to do all kinds of things to affect the content of laws that I am not entitled to do. Doesn't she have much more say, and correspondingly more ownership and complicity for the law? Aren't I owed a break—aren't we all—as a result?

Having raised this as an objection to Yaffe's view, it's perhaps worth pivoting to consider it not as an objection, but as a call to further radicalize the view, embracing its full and significant implications. Perhaps we should continue the story in this much more expansive way, so that if a person has had considerably less say over the law, then that the person is owed a break in terms of the enforcement of the law against that person.

I worry about this direction, however, because I am not convinced by the initial story about legal reasons and culpability. It seems that the moral reasons against *malum in se* criminal laws remain independent of this whole story about ownership, complicity, and culpability, and those reasons are sufficient to ground full culpability for violation of those laws. (One might also worry about the prospects for successful democratic systems that operate by majoritarian norms if it is hard to enforce the law against those who do not support or own the laws in the relevant causal sense.) But when I think about other laws—drug possession laws, for example—it is not absurd to think that those of us who are opposed to those laws, and had little or no say in their creation, are owed a break. Perhaps that's because these are unjust laws that shouldn't be enforced severely against anyone, but there would at least be something attractive about having them enforced more severely against their architects than against their opponents (it bears mentioning that in practice, things are almost always the reverse).

A final comment, returning us to children and the law. It is worth noting that the core intuition that kids are owed a break seems much stronger than the conclusion that many of us (those who are relatively less politically powerful) are owed a break. And that remains so even if we embrace what I've said above about having an unequal say. This doesn't show that Yaffe is right about how to draw the complicity

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and ownership lines, or that we should accept the stipulation that an entitlement to vote and participate in politics is all that is required to ground ownership and complicity. Rather, it seems to suggest that the intuition that kids are owed a break has a completely different foundation—perhaps focused on more familiar considerations like maturity, relative autonomy and moral responsibility, and so forth—even if that foundation is such that it cannot ultimately undergird a categorical break.

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