

Law Postdoc for Enhancing Responsibility Project

Applicants are sought for a law postdoc position of 2.5 year duration to work on the international interdisciplinary research project “Enhancing Responsibility: the effects of cognitive enhancement on moral and legal responsibility” funded by the Netherlands Organisation for Scientific Research (NWO). A brief description of this project’s aims and inter-disciplinary approach is contained below under the heading “PROJECT DESCRIPTION” and at NWO’s project home page (see heading “RELATED WEB PAGES” below).

Though employed at TU Delft, the law postdoc will be seconded to work at Oxford University in the UK under the supervision of Dr Imogen Goold (co-investigator). They will be part of an international interdisciplinary team of researchers that also includes Prof Miles Hewstone (co-investigator) and a psychology postdoc (also at Oxford University), and Dr Nicole Vincent (chief investigator) and a philosophy postdoc (both based in Philosophy at TU Delft in The Netherlands). The post-holder’s duties will include:

- producing an historical overview of how legal systems have dealt with the emergence of new technologies that affect standards to determine capacity;
- identification and analysis of case law and legislation to establish the law’s current stance on enhancement, and to identify what kind of reform is required;
- assisting in drafting policy recommendations.

Prospective applicants must have obtained or be about to obtain their PhD or equivalent in law, and must demonstrate excellent command of the English language. Dutch language proficiency would be valued but is not expected. The successful applicant will be appointed at grade 10 step 3 of the VSNU collective bargaining agreement. Approximate starting salary will be €2,744 gross per month + holiday pay + end of year bonus, with annual salary step increments upon satisfactory progress. Funding will also be provided for conference travel.

Further inquiries should be directed to Dr Nicole Vincent: n.a.vincent@tudelft.nl

RELATED WEB PAGES:

Project Home Page: http://www.nwo.nl/nwohome.nsf/pages/NWOP_8K6J3F

TU Delft Home Page: <http://www.tudelft.nl/>

Dr Nicole Vincent: <http://www.ethicsandtechnology.eu/vincent>

Dr Imogen Goold: <http://www.st-annes.ox.ac.uk/about/people/profile/details/imogen-goold.html>

Prof Miles Hewstone: <http://hewstone.socialpsychology.org/>

VSNU Home Page: <http://www.vsnu.nl/>

APPLICATION PROCEDURE

Applicants should **email** the following items to **Dr Nicole Vincent** at the email address shown above by **Monday, 31st October 2011**:

[1] COVER LETTER (max 3 pages). This should explain (i) your initial thoughts about how you expect to approach this project, (ii) how your background has prepared you for this research, and (iii) how your proposed approach will fit in with the broader aims of this project and your own future research plans.

[2] CV (max 5 pages). This should contain the usual information as well as contact details for 2 academic referees. Do not send written references with your application, though please ensure that your referees realise that we may contact them to obtain a written reference.

[3] TWO EXAMPLES OF YOUR ACADEMIC WRITING. These can be published or draft papers from journals or books, or chapters from your dissertation.

Applicants will be advised by email at the end of October about the status of their application.

PROJECT DESCRIPTION

We normally think that the degree of a person's responsibility co-varies (among other things) with their mental capacity. This is after all why we think that children, the senile, and those suffering from certain kinds of mental illness or retardation are less than fully responsible for what they do - i.e. because they have significant deficits in the mental capacities that are required for responsible moral agency - why children acquire more responsibilities as they grow up, and why people's status as responsible moral agents is re-established when they recover from mental illness. This "capacitarian" idea that responsibility tracks mental capacity is also the operative assumption behind a significant portion of current "neurolaw" research which aims to help the law to assess and to restore people's responsibility by using modern neuroscientific techniques to discover, detect and treat mental disorders.

But if responsibility diminishes when mental capacities are lost, and is restored when they are subsequently regained, then what would happen if a person's

mental capacities were extended even further - i.e. beyond the level that most humans can reasonably be expected to reach - through the use of cognitive enhancement technologies? Recent research suggests that drugs originally designed to treat mental disorders - e.g. Ritalin, bromocriptine, donepezil, and modafinil - can significantly improve mental performance when taken by healthy individuals. Would a person whose mental capacities were increased through the use of such drugs become “hyper responsible”, and if so then in what sense?

For instance, would cognitively enhanced people acquire new responsibilities that they otherwise wouldn't have had? Might they, as a consequence, be legitimately blamed when they fail to discharge those greater responsibilities? And would that increase the likelihood that they will subsequently be held responsible (i.e. liable) when things go wrong? On a different note, if cognitive enhancers indeed improve mental performance, then might it become morally and legally obligatory for people in some situations to cognitively enhance themselves? For instance, given how much is at stake in an operating theatre, on a military battlefield, and in long-haul flights, it could be argued that surgeons, soldiers and aeroplane pilots have a moral duty to take cognitive enhancers to ensure the highest performance possible, and that in some situations they would be negligent or even reckless if they didn't enhance themselves.

The development of cognitive enhancement drugs raises two related problems, stated here in the form of questions. First, may some people, in virtue of what is at stake in the performance of their professional roles, be legitimately expected to cognitively enhance themselves - even if they would rather not do so - and would their failure to do this constitute negligence or even recklessness? Second, once a person becomes cognitively enhanced, may they be then legitimately expected to observe a higher standard of care than non cognitively enhanced counterparts, and should their breaches of such higher standards attract regulatory, civil and criminal sanctions?

To address these questions, this project involves close interdisciplinary collaboration between researchers in philosophy, law and psychology.

PHILOSOPHY:

The law at present has no concrete answers to the above questions, and so it is initially the task of moral philosophy to provide conceptual clarity and moral guidance about how these questions should be addressed.

Conceptual analysis will play a crucial role in the philosophers' work, for instance (but not only) in the context of disambiguating the effect of cognitive enhancement on people's status as fully responsible moral agents, from its effect on their status as responsible or irresponsible people, on what their responsibilities might be, what outcomes they are viewed as responsible for in either a causal or a moral sense, and what they should take responsibility for as well as how society may hold them responsible. Important ambiguities exist in the capacitarian idea that responsibility tracks capacity - these ambiguities stem from the fact that beyond narrow philosophical usage, the term “responsibility”

has plural meanings - and before we can ascertain whether responsibility tracks hypercapacity (as well as capacity), these ambiguities must first be resolved.

But given the novelty of this topic - i.e. cognitive enhancement and responsibility - philosophers' moral intuitions are unlikely to be a better guide to how the above questions should be answered than anybody else's moral intuitions. Furthermore, values also play a critical role in how these questions should be answered, for instance because a conception of human flourishing informs what it is reasonable to expect of professionals. After all, maybe a profession or a society that expected that much from its members (i.e. to modify their own brains through the use of drugs) would be expecting too much? Hence, the philosophers will also employ the method of wide reflective equilibrium, systematically sieving through- and reconciling a range of lay and professional moral intuitions as well as moral and legal principles, to arrive at a more reasoned and transparent set of recommendations.

The philosophers will work closely with the psychologists (see below) in the design of questions for the three empirical stages of their research, and with the legal researchers (see below) to draft documents that inform policy and professional associations' codes of conduct. This will help to ensure that the policy recommendations about how the law needs to be modified to prepare itself for dealing with cases concerning cognitive enhancement (or what sorts of regulatory frameworks should be put into place to ensure that problems do not arise) will reflect the values of a representative range of groups in society.

LAW:

The legal component of this project will play two distinct roles -- one, to gather data about legal principles and considerations which will feed into the philosophers' use of the method of wide reflective equilibrium; but two, to also identify how to prepare Dutch and British law (and more broadly, European law) to deal with such cases in an effective, efficient, consistent and just fashion.

Although the law currently has no concrete answers to the questions that animate this research, history provides ample examples of how the introduction of other enabling technologies affected standards of care (e.g. x-rays, pagers, GPS systems, etc), what role professional associations and the general public played in moulding new standards, and how these technologies and their subsequent use came to be regulated. Furthermore, the topic of how mind- and mental capacity altering drugs affect responsibility is not new to the law. For instance, in some jurisdictions alcoholic self-intoxication and the subsequent diminution of mental capacity is viewed as a partial mens rea defense, while in others self-intoxication is viewed as an aggravating factor. Some legal systems medicate transgressors who have subsequently become incompetent in order to restore their mental capacities so that they can be held responsible for what they did (e.g. so that they can stand trial, be punished, or as a condition of their release). Finally, prescription drugs are heavily regulated - these regulations can be found in relevant legislation - and human rights legislation also protects the interests of individuals from the overbearing demands of society.

A historical study of relevant areas of Dutch and British law will be conducted to ascertain what legal issues and principles should be taken into consideration when thinking about novel cases that involve cognitive enhancement technologies, and this will in effect provide “raw material” for the philosophers’ use of the method of wide reflective equilibrium. This study will also determine what legal mechanisms might already be in place that can be re-deployed in these novel cases, or that might constrain how the law can deal with them, and to identify most urgent needs for legal reform.

The law researchers will collaborate closely with the philosophers to address public policy questions, and to help professional associations that represent the three professions that will participate in the psychology studies (see below) - i.e. pilots, surgeons and soldiers - to incorporate adequate provisions into their codes of conduct.

PSYCHOLOGY:

The psychologists’ main input into this project will be to uncover the moral intuitions of lay people and professionals about cognitive enhancement and responsibility -- intuitions which will feed into the philosophers’ use of the method of wide reflective equilibrium, and which in turn will inform the law researchers’ recommendations in regards to public policy and codes of conduct.

Two main theoretical approaches from psychology will inform the proposed research - attribution theory and prospect theory - and these will inform each of the three complementary methods of empirical research: interviews, web-based surveys and experiments. Our subjects will be drawn from the three cited professional groups (i.e. surgeons, pilots and soldiers) as well as lay people, drawn from both the UK and The Netherlands.

First, semi-structured interviews will explore such questions as under what circumstances do professional groups think it is reasonable of others to ask them to take cognitive enhancement drugs, whether lay people think it is reasonable to ask professionals to take cognitive enhancement drugs, and whether professionals fear that they will be coerced into using these drugs by administrators/senior officials (or, in the case of surgeons, by informed patients who have been consulting “league tables” on the performance of enhanced versus un-enhanced surgeons). The data from these interviews will be analyzed using content-analysis.

Next, web-based surveys using Qualtrix software will be designed with input from the previous stage, and we will explore the main issues raised in greater depth, so that important issues can be identified for use in the later experiments. Questions will investigate such things as moral intuitions about the use of cognitive enhancers and their consequences, the acceptability of use of cognitive enhancers to maintain optimal performance under fatigue versus to boost performance beyond natural limits, and lay conceptions of blameworthiness for (not) taking cognitive enhancers in the case of accidental outcomes.

Finally, because the variables to be manipulated in the experiments will be determined, in part, by the findings of the interviews and the web-based surveys, we can not at this stage outline a full set of studies that will be followed slavishly in the experiments. However, focusing on the methodology, all the experiments will involve random allocation of subjects (approximate $N = 20$ subjects/condition in between-subjects factorial designs, thus 80 subjects in 2-factor designs, and 120 subjects in three-factor designs, etc) from the three professional groups, who will read short scenarios, and be asked to make various moral judgments. We will also collect data from lay persons, who will serve as a control group. These studies will be analyzed through factorial analyses of variance (and in some cases covariance), followed by mediation analyses and structural equation modeling, to ascertain the impact of manipulated variables (e.g. use versus non-use of cognitive enhancers x gain vs loss framing of outcome) on outcomes (e.g. attributions of responsibility, proposed penalty) via mediating variables (e.g. personal attributions of control, perceived causality, and perceived recklessness).

The philosophers will be closely involved in the design of the moral questions at each of the three empirical research stages undertaken by the psychologists, and in the interpretation of the results.