**Negligent Action and Unwitting Omission**

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*Abstract:* Negligence and omission are closely related: commonly, in cases of negligent action, the agent has failed to turn her attention to some pertinent fact. But that omission is itself typically unwitting. A sufficient condition for blameworthiness for an unwitting omission is offered, as is an account of blameworthiness for negligent action. It is argued that one can be blameworthy for wrongdoing done from ignorance even if one is not blameworthy for that ignorance.

*Keywords:* action, blameworthiness, ignorance, negligence, omission

“A workman who is mending a roof in a busy town starts to throw down into the street building materials without first bothering to take the elementary precaution of looking to see that no one is passing at the time” (Hart 1968: 147). Why, we might wonder, didn’t he look? Suppose that it simply didn’t occur to him that tossing the materials (slates, Hart says) posed a risk to anyone. And suppose that someone is indeed injured by the falling slates. Is the workman to blame for injuring the passerby?

 The case is one of wrongful action done in ignorance of its wrongness. And the ignorance is due to a failure to advert, in this case, a failure to look to see whether anyone might be walking in the street below. The need for taking this precaution is obvious. And as the case is described, there’s no reason to doubt that the workman was able to do this. What we seem to have, then, is a paradigmatic instance of negligent action—an inadvertent wrongful deed for which the agent is blameworthy.[[1]](#endnote-1)

 But cases of this sort pose a difficult problem. Ignorance of wrongdoing often excuses, unless one is blameworthy for that ignorance. And, it seems plausible to think, blameworthiness for one’s ignorance on some occasion must derive from one’s blameworthiness for something else, arguably, for some prior action or omission that resulted in that ignorance. And if awareness of wrongdoing is required for blameworthiness, then, it is plausible to think, one will be blameworthy for bringing about the ignorance only if, at the time of one’s prior action or omission from which it results, one was aware that it would or might well do so. But rarely if ever does the ignorance in which one wrongly acts result from prior actions or omissions at the time of which one had this kind of awareness. Hence, although one might wrongly bring about one’s later ignorance, rarely if ever is one blameworthy for doing so. Hence rarely if ever is one blameworthy for the ignorance in which one does wrong. And then rarely if ever is one blameworthy for inadvertent wrongful action. There is little or no negligent action.[[2]](#endnote-2)

 This line of thought relies on premises that have considerable intuitive appeal. Yet they aren’t absolutely irresistible. And one reason to suspect them is the very fact that they lead to such a radical conclusion.

 In this chapter, I’ll offer a view that allows us to avoid this conclusion. It is designed for that purpose. And the fact that it achieves that purpose is one thing to be said in its favor. Our everyday attributions of blameworthiness are fallible and sometimes mistaken. The mistakes are sometimes due to bias or ignorance of fact. But in the cases at hand, we’re not dealing with either of these factors. The fact that certain proposed principles of responsibility nevertheless convict so many of our attributions of error is reason to suspect those principles. Moral practice is often wiser than theory.

 I’ll first highlight the role of omission in cases of negligence. The role is often noted, but typically in passing and without attention to differences between actions and omissions. I’ll then advance a claim about responsibility for omissions, like those that figure in many instances of negligent behavior, of which the agent is unaware. With this claim in place, I’ll offer a proposal that enables us to avoid the radical conclusion. I’ll raise doubt about something that’s commonly asserted or assumed in discussions of negligence, namely, that one is blameworthy for wrongdoing done from ignorance only if one is blameworthy for that ignorance. Finally, I’ll look at some considerations offered in support of the radical conclusion and assess whether my proposal stands up in light of these considerations.

*1. Failure to Advert*

The workman omitted to look to see if anyone might be passing in the street below him. He failed to advert to the possibility of harm, to turn his attention to this important question.

 His case is not unusual in this respect. A failure to advert to the risk of harm is common to cases of negligence; indeed, it is often said to be a defining feature of negligent action.[[3]](#endnote-3)

In the workman’s case, adverting would have been an overt, bodily action, one that included turning his head or at least his eyes toward the street. Sometimes what is omitted is merely a mental action—directing one’s attention to some matter, raising to oneself an inquiry, asking oneself whether what one proposes to do is advisable. Whether overt or merely mental, these are actions that are as much at our command as any. Seeing, realizing, and finding an answer to one’s question aren’t actions, but looking, inquiring, and seeking an answer are.[[4]](#endnote-4)

 As the case may be imagined, the workman could have looked.[[5]](#endnote-5) Had he done so, he would have seen. And having seen, he could have avoided harming anyone—he could have refrained from tossing the slates from the roof. The availability of such alternatives is typical of cases of negligence.

 Further, the workman should have looked. Proposing as he was to toss the slates, he was obligated to ensure that he not injure anyone in doing so. And ensuring this required that he find out if anyone was walking below. To find this out, we may suppose, he had to look.

 So, he failed to advert, adverting would have prevented the harm that resulted, he could have adverted, and he ought to have done so. His omission to do so was wrong.

 But it was also unwittingly so. He didn’t realize that he was wrongly omitting to look to see if anyone was in the street. In fact, given that, as we’ve imagined, it simply didn’t occur to him to look, he wasn’t even aware that this was something he was omitting to do.

 Thus, if being to blame for a wrongful omission required being aware that one is wrongly omitting, the workman wouldn’t be blameworthy for failing to advert to the risk of injury. But is such awareness required?

*2. Blameworthiness without Awareness*

It isn’t only in cases of negligent action that we have instances of wrongful omission in which the agent is unaware of the wrongness of her conduct. We might benefit, in our thinking about negligence, from an examination of responsibility for omissions of this kind generally.

 Consider the following example. As I’m about to leave my office at the end of the workday, my wife calls to tell me we’re out of milk. My regular route home takes me right by a grocery store, and I tell her I’ll stop and buy some. Between my office and the store, I start to think about a paper I’m writing on omissions. I continue thinking about my work until I arrive home, where I realize that I’ve forgotten the milk.

 Not a big deal, but still, my wife might think, grounds for blame. We’ll lack milk for our breakfast in the morning—or someone will have to go back out to get it—and the fault lies with me. I said I’d get it, I was able to easily do so, and I didn’t.

 It seems to me that my wife would be right to think this way (though I’d hope she’d give me a break). But if I’m to blame for not getting the milk, what grounds my blameworthiness?

The case can be imagined such that there’s no prior blameworthy action—or omission—from which blameworthiness for my failure might derive. Since I was on my way out the door when my wife called, it was reasonable of me to entrust my plan to memory. I *could* have taken time to enter a reminder into my phone, with an alert to be sounded at the estimated time of my approach to the store. But in the circumstances it would have bordered on compulsion to do such a thing, and I’m not blameworthy for not doing it. Things might be different if I often forgot my plans, but I don’t. Nor am I blameworthy for thinking about my work as I drove. I commonly do this, without ill effect. And we may suppose that blameworthiness for my omission to get milk can’t be traced to blameworthiness for prior actions or omissions that led to my caring little for my wife’s interests; I don’t have that shortcoming.

As I drove near the store, I didn’t ask myself, “Is there anything I’m forgetting?” or “Did I plan to stop at the store today?” But it would be obsessive to ask myself such things daily as I drive home; and I wasn’t aware of any reason to think this day was different. Further, even if I was wrong in failing to do such a thing, I was unaware that I was wrongly omitting this. Hence, if there can’t be basic blameworthiness for a wrongful omission in which one lacks awareness that one is wrongly omitting, there can’t be basic blameworthiness for my failure to ask myself such a question. And then we haven’t found any blameworthiness from which my blameworthiness for omitting to get the milk might derive.

Yet we routinely attribute blame in such cases. Unless we want to convict a large number of our attributions of error, we’d do well to consider how my blameworthiness in this case can be basic, not needing to derive from my blameworthiness for any prior actions or omissions.

 We may suppose that I was in several respects free in omitting to stop for milk. I was free from various kinds of unfreedom: my conduct didn’t result from madness, a stroke, or anything of this sort. And I had the general abilities and the opportunity needed to get the milk.

My freedom in omitting to get the milk differs from the freedom with which one performs an action, whether that action is the making of a decision or the overt movement of one’s body in one way or another. In the case of freely acting, one *exercises* control. With respect to my omission, I *possessed* some kind of control with respect to stopping at the store. But my omission wasn’t itself any exercise of control. It wasn’t my activity of driving past the store, my thinking about my work, or any of the several events in which I participated at that time. It was simply a failure to participate in a certain kind of event—a failure to exercise control, to perform a certain kind of action that I meant to perform.[[6]](#endnote-6)

 Thus, my freedom with respect to omitting wasn’t exactly like the freedom that I exercise in performing an action. But it shares several aspects with the latter. It consists partly of my freedom from various kinds of unfreedom, and partly in my having certain powers or abilities and opportunities, particularly, in this case, all that is needed for the ability and opportunity to get the milk.[[7]](#endnote-7)

 It would be a mistake to think that, because I had forgotten my plan, I wasn’t able to get the milk. Plausibly, I retained my intention to stop on the way home for milk. The intention wasn’t conscious or occurrent. And perhaps its being conscious or occurrent was necessary for my *exercising* my ability to stop for milk. But this condition wasn’t necessary for my *having* the ability. To put the point differently, bringing out a difference in scope: perhaps I was unable to bring it about that *though I remain unaware of any plan to get the milk, I (intentionally) get the milk*. Nevertheless, given that I remained unaware of my plan, still I was able to bring it about that *I get the milk*. For one thing, I was able to bring it about that I recall my plan.[[8]](#endnote-8)

 I didn’t lack for freedom with respect to my omission. But of course I lacked awareness, awareness even that I was omitting to make the stop.

 As the case might be imagined, my forgetting my plan on this occasion was substandard. It fell below a cognitive standard, not just for people generally, and not just for me generally, but one applicable to me, with my specific cognitive and volitional powers, in the situation I was in. I can recall things of this sort in situations like this—indeed, I almost always do. I remember my plans for minutes, hours, even days! I remember them even when, between making them and carrying them out, I think about other things, including my work. And no extraordinary circumstance—no horrifying car crash, no exploding bomb, no apocalyptic news story on the radio—taxed my ability to recall mundane plans on this occasion. Further, I can reinforce my memory, as I see fit, by, for example, asking myself whether I’m remembering what I’ve planned to do. That I forgot my plan on this occasion falls below a standard that, given my cognitive and volitional abilities and the situation I was in, applied to me.

 The point here concerns a standard that is neither a moral obligation nor an ideal.[[9]](#endnote-9) It isn’t an obligation, because remembering isn’t an action, and it isn’t subject to obligation.[[10]](#endnote-10) And it isn’t a mere ideal. Even if I had lacked normal powers of recall, or had encountered on my drive a gruesome accident that wrenched my attention from all things mundane, still it would have been ideal that I recall. In contrast, the standard appealed to here is one whose applicability is sensitive to an individual’s own cognitive and volitional capacities and to the situation that individual is in.

 I suggest, then, the following sufficient condition for basic blameworthiness for a wrongful omission that isn’t intentional and of which the agent is unaware. Provided that the agent has the capacities that make her a morally responsible agent,[[11]](#endnote-11) she is blameworthy for such an omission if she is free in failing to do the thing in question and if her lack of awareness of her obligation to do it—and of the fact that she isn’t doing it—falls below a cognitive standard that applies to her, given her cognitive and volitional abilities and the situation she is in.[[12]](#endnote-12)

 I regard it as one thing in favor of such a view that it will accept as correct many of our everyday judgments about omissions of which the agents are unaware. We take agents in many such cases to be blameworthy for their failures to act. If their blameworthiness had to trace back to blameworthiness for some prior actions or omissions at the time of which they were aware that the subsequent omissions would or might well take place, few of our attributions of blameworthiness in such cases would be correct. The proposed view avoids such a radical verdict of widespread error.

 Still, we’ll need to see whether there are forceful objections to it. I’ll proceed as follows. First I’ll show how the proposal can contribute to an account of blameworthiness for negligent action. I’ll then consider whether writers arguing for the radical conclusion about negligence raise points that undermine an account that relies on the proposal here.

*3. Culpable Ignorance*

The workman omitted to look, before tossing the slates, to see if anyone was passing in the street below. And he ought to have done so. His failure to advert was wrong.

He was unaware that he was wrongly omitting to advert. But if the proposal from the preceding section is correct, it might still be the case that he’s blameworthy for this omission. We may suppose that he had capacities that sufficed for his being a morally responsible agent. We’ve supposed that he was free with respect to his omission. And it’s plausible to suppose that his lack of awareness of his obligation to look, and of the fact that he was omitting to fulfill that obligation, fell below a cognitive standard that applied to him, given his cognitive and volitional abilities and the situation he was in. He was perfectly able to ask himself whether it was advisable to toss the slates without first looking, and capable of realizing that indeed it was not advisable.

Thus, granting for the moment the acceptability of the proposal, we may see the workman as blameworthy for failing to take the obvious precaution. This gets us a step closer to satisfying a requirement imposed by the argument for the radical conclusion: that to be blameworthy for wrongful action done from ignorance, one must be blameworthy for that ignorance—or, as it is often put, one’s ignorance must be culpable.

The requirement is widely accepted.[[13]](#endnote-13) For the time being, I’ll suppose that it’s correct to do so. We haven’t yet seen how the workman might satisfy it.

If indeed the workman is blameworthy for failing to advert, the ignorance in which he tossed the slates resulted from an omission for which he is blameworthy. But he was unaware that such ignorance would or might well result from that omission; indeed, he was unaware of the omission! Hence, to see his ignorance as culpable, it seems we must reject a second requirement of the argument leading to the radical conclusion: an agent can be blameworthy for ignorance, we must say, even if the agent wasn’t aware that prior blameworthy actions or omissions from which the ignorance results would or might well result in that ignorance.

Reflection on the case of the forgotten milk supports this view, at least to the extent that the case supports the proposal from the preceding section. If, by the time I arrive home without the milk, no one is able to go out again to get some, then a result of my omission is that the next morning we’ll have no milk for breakfast. To the extent to which it’s plausible that I’m blameworthy for failing to get the milk, it’s plausible as well that the lack of milk at breakfast is my fault. This lack results from my blameworthy omission. I wasn’t aware at the time of the omission that this lack would or might result.[[14]](#endnote-14) But I might nevertheless be to some degree blameworthy for it. For it is substandard, too, that I failed to see that what I was doing would have this result. In failing to see this, I fell below a cognitive standard that applied to me, given my cognitive and volitional capacities and the situation I was in. Tracing blameworthiness for some outcome back to a blameworthy omission seems not to require that, at the time of that omission, one was aware that that outcome would or might well ensue.

Thus, there is reason to think that, if the workman is blameworthy for failing to advert, he can be blameworthy for his lack of awareness that in tossing the slates he might well injure someone, despite the fact that he was unaware that such ignorance would or might well result from his failure to advert. For it is faulty or substandard of him not to see that such ignorance would likely result from his failure to advert.

More needs to be said about this point. But I want to look more closely at something else, something I’ve so far taken as given, namely, that to be blameworthy for wrongful action done from ignorance, one must be blameworthy for that ignorance. Perhaps it can be made out that the workman is blameworthy for the ignorance from which he acts. But it isn’t so clear that we have this feature an all cases of negligence.

 In the case of the forgotten milk, I was unaware that I was wrongly omitting to stop and get the milk. But there might not have been any blameworthy prior actions or omissions from which blameworthiness for this ignorance could derive. If there isn’t, then it seems that I’m not blameworthy for this ignorance. It’s substandard of me to lack this awareness; the lack is a fault. But one has faults for which one isn’t to blame. It nevertheless seems (to me at least) that I’m blameworthy for failing to get the milk.

 What we seem to have, then, is a case of negligent omission in which, despite not being blameworthy for one’s ignorance that one is wrongly omitting, one is blameworthy for the omission. Other cases reinforce the impression.

 Imagine that Bob arrives at his daughter’s school at a quarter to three to pick her up. As he routinely does, he parks in a spot where parking is prohibited from 3:00 to 4:00; a car parked there during this hour would block the school buses. Bob’s pickup has never taken longer than a couple of minutes. But today it does—it takes half an hour, due to (what turns out to be) an administrator’s mistaken insistence that Bob’s daughter has misbehaved badly. By the time Bob has sorted the problem out and returned with his daughter to his car, the bus drivers are furious about the delay. They blame Bob for holding them up.[[15]](#endnote-15)

 Bob ought to have returned to move his car before sorting things out with the administrator. He wrongly failed to do so. Is Bob blameworthy for the omission?

 It seems plausible that Bob is to blame for delaying the buses, and that he’s to blame for this because he’s to blame for the indicated wrongful omission. But he was unaware of the wrongness of what he was doing—and even of the fact that he was omitting to move his car. Was he blameworthy for that ignorance?

 There are various things that Bob could have done to ensure that he was aware that he needed to get back to his car. He could have set a timer on his phone before he left the car. He could have asked himself, every few minutes while he was inside the school, whether there was anything he was forgetting to do. But it would be excessive, even obsessive, for Bob to do either of these things on a daily basis. Perhaps, given that he stayed longer on this day, he was, unbeknownst to him, on this day under an obligation to take one or another of these measures. But it isn’t obvious that this is so.[[16]](#endnote-16) Perhaps Bob’s failure to do one or another of these things wasn’t wrong. And then perhaps he isn’t blameworthy for failing to do any such thing, and then not blameworthy for being unaware that he needed to get back to his car. In sum, it might be that Bob is blameworthy for omitting to move his car despite not being blameworthy for his ignorance of the need for him to do so.

Suppose that, contrary to what I’ve suggested, it *was* wrong of Bob not to take some measure to ensure that he remember to move his car before three. He was unaware that he was wrongly omitting to take any such measure. Unless we can see him as blameworthy for this ignorance—and it is hard to see how he could be—we can’t see him as blameworthy for *this* wrongful omission without accepting that one can be blameworthy for an unwitting wrongful omission despite not being blameworthy for one’s ignorance that one is wrongly omitting.

If there are cases of negligent omission of this sort, then there might be cases of negligent action in which the ignorance from which the agent acts, although substandard, isn’t culpable. If so, then one might be blameworthy for acting from nonculpable ignorance.

 Consider the following case. One evening as I arrive home from work, I walk around the car to drop something in the garbage can, and I see that the right rear tire is very low on air. My wife, I recall, has a can of Fix-a-Flat in her car, but she won’t be home until very late, so I make a mental note to ask her for it in the morning. I also write myself a reminder and leave it on the dresser. The next morning, when gathering my things from the dresser, I fail to notice the note, and I don’t recall the problem with the tire. Before I reach work, the tire flattens completely. I’m delayed and miss a meeting, with the consequence that several people have to rearrange their schedules to meet on a later day.

 I took reasonable measures to ensure that I remember to fill the tire with air. There are further things I could have done—tape a reminder to the steering wheel, disable the car by disconnecting the battery—that I didn’t do. But it would have been excessive, even obsessive, to do any such thing. I failed to remember, but remembering isn’t itself something we’re obligated to do. My lack of awareness of the risk of driving my car resulted from my failure to do one or another of these things, but it doesn’t seem that I was blameworthy for not doing any of them, and hence it doesn’t seem that I was blameworthy for that lack of awareness.

 Still, I knew that the tire needed fixing, and my failure to recall this fact was faulty or substandard. On this occasion I fell below a cognitive standard that applies to me. I have the cognitive and volitional capacities to remember such things in situations of this sort. I failed to manifest them on this occasion.

I was unaware, that morning, that what I was doing risked inconveniencing my colleagues. It seems plausible that I’m not blameworthy for this ignorance. Yet, it still seems to me that I’m blameworthy, if only to a small extent, for driving the car as it was—a negligent action—and for missing the meeting and inconveniencing the others—consequences of my negligent action.

 Despite its appeal, the idea that blameworthiness for negligent action requires that one be blameworthy for the ignorance from which one acts seems to me questionable. I don’t claim to have shown it mistaken; my verdict on the flat tire case can be disputed. But this case, together with the preceding ones of negligent omission, put the idea in some doubt.

 Note that the alternative I’ve proposed allows that ignorance of wrongdoing is often an excuse. It can be so when it isn’t substandard, when it isn’t due to the agent’s failure to meet cognitive standards that apply to her, given her cognitive and volitional capacities and the situation she is in. Thus, the view I propose doesn’t subject agents to a moral counterpart of the law’s (rarely imposed) strict liability, which can impose penalties even when an agent’s cognitive state is in no way substandard.

*4. Non-Forgetting Cases*

Most of the cases on which I’ve focused involve forgetting. At some point, an agent is aware of some risk or bad outcome that will ensue if she doesn’t do a certain thing, but she forgets, and at the pertinent time she’s no longer aware of this. Cases of this sort, I’ve argued, raise doubt about the alleged requirement that the ignorance from which one acts (or omits to act) must be culpable if one is to be blameworthy for negligent action or unwitting omission.

 But of course there are cases of negligence involving no such forgetting. The workman doesn’t forget that there might be people passing in the street; it simply doesn’t occur to him to look to see if this is so. And one might think that the requirement of culpable ignorance remains in force in this range of cases.

Negligence is commonly distinguished from recklessness in terms of one’s awareness of the risk of harm: in the former, one lacks such awareness; in the latter, one acts despite being aware of this risk. Often in cases of forgetting, the agent was at some time aware that action or omission of a certain kind would bring about or risk some bad outcome. Such cases, it might be said, should be grouped with those of recklessness. It might thus be objected that there’s no lesson to be learned from them about negligence.

 Douglas Husak (2011) has observed that the boundary between negligence and recklessness is “murky and blurred” (202), in part because the notions of belief and awareness are underdeveloped. There are times when one is unable to recall something that one nevertheless knows. I might not be able to name, at the start of our conversation, all of those who pitched for Atlanta last night, though the names might come to me before we’re done. My recollecting isn’t a matter of relearning, but of becoming aware of something I already know, and hence already believe. In other cases, it’s unclear whether one has a certain belief, as one satisfies some criteria for belief but not others. And it is less than fully clear just what kind of awareness might distinguish recklessness from negligence. We often act with an awareness of things that we aren’t explicitly or attentively entertaining. A batter with two strikes will commonly be aware of this fact, though he’d better not be focusing on it.[[17]](#endnote-17)

 Husak reserves the label “true negligence” for cases in which the agent is *never* aware of the risk she creates (or not until it’s too late to avert it), though a reasonable person in her situation would have been aware (2011: 201). I have no quarrel with distinguishing these cases from those that involve forgetting.

 We should, however, attend to the question of *which* beliefs, however tacit or dispositional they might be, it is plausible to attribute to agents in the forgetting cases. It is plausible that, while Bob is talking with the administrator in the school, he believes that he parked his car in a certain place at a quarter to three, and plausible as well that he believes that a car parked in that place past three will block the buses. And he might even notice at some point that he’s been talking to the administrator for twenty minutes. But he might fail to draw an obvious inference: that his car is blocking the buses. A failure of this sort is something that often occurs when beliefs are nonoccurrent. Similarly, in the case of the flat tire, I might believe the night before that the tire needs air, and that if I drive without filling it, I’ll risk missing my meeting. Perhaps I retain these beliefs while on my way to work, despite their not being occurrent. And certainly, while driving, I believe I’m driving. But, again, we may imagine that I don’t infer that what I’m now doing risks missing my meeting. (It might be that I don’t draw the inference because I don’t now believe that I failed to fill the tire with air. There are countless things I don’t do that I don’t believe that I don’t do; about most of them I have no beliefs at all.)

 Thus, while the forgetting cases resemble in some way cases of recklessness, they also resemble in some way cases of negligence. In many of them, there is some pertinent time at which the agent doesn’t have any belief—occurrent or otherwise—that she is engaged in doing something that is wrong. Her activity has some wrong-making feature that she doesn’t believe it to have. If we can be blameworthy for what we do in cases of this sort, without being blameworthy for this ignorance, that is an important fact, however we wish to classify these cases.

 It is worth considering, as well, whether there might be non-forgetting cases of negligent action in which the agent is blameworthy for wrongdoing but not blameworthy for the ignorance from which she acts. My recipe for constructing the forgetting cases was, roughly: imagine that an agent’s failure to remember some plan or fact is substandard, but suppose that she was under no obligation that she failed to fulfill to do anything to ensure that she recall this plan or fact. Perhaps there are similar cases in which an agent is never aware of a wrong-making feature of something she does, her ignorance results from a substandard failure to draw an inference or notice some fact, but she was under no obligation that she failed to fulfill to see to it that she draw this inference or notice that fact. In the interest of brevity, I’ll leave open the question of whether there might be such cases.[[18]](#endnote-18)

*5. Arguments for the Radical Conclusion*

My procedure has been to examine cases, advance judgments about the agents in them, and contest the radical conclusion on the grounds that it conflicts with these judgments. But, of course, one might contest the judgments on the grounds of the same conflict. And if arguments for the conclusion are compelling, one would be right to do so, however plausible my judgments about the cases might at first seem.

 I’ve observed that, in typical cases of negligent action, agents fail to advert to the risk of harm, and they are free with respect to that failure, and free as well to refrain from their wrongful actions. One argument advanced in support of the conclusion claims that the freedom required for responsibility includes awareness, awareness that’s lacking in the cases in question. Michael Zimmerman urges:

Think of Sam, a shopper. Walking down the high-street, he passed a certain department store. Had he gone in, he would have been its millionth customer and won a fabulous prize; but he knew nothing of this, and walked on by. (1986: 205)

Sam was perfectly able to walk into the store. And he had an opportunity to win the prize by doing so. He was free to walk in and thereby win the prize, and free as well to walk on by and thereby fail to win it. He was thus in what Zimmerman calls *standard* control of his winning the prize. But since he had never adverted to the possibility of winning it and was therefore ignorant of this possibility, he lacked what Zimmerman calls *enhanced* control with respect to winning the prize. (Presumably, enhanced control with respect to *A*-ing requires that one be aware that one has an opportunity to *A*.) Zimmerman argues:

And it seems that, not only standard, but enhanced control is required for moral responsibility. At least, the absence of such control in this case appears to be the very reason why we would want to absolve Sam of all blame for not winning the prize. (205)

It would be unfair of Sam’s wife to berate him for not winning the prize. “In an important sense, it was beyond his control” (205).

 The argument, it seems, is meant to be an inference to the best explanation. But the explanation offered is not the best. If some weaker principle explains why Sam is excused, then, other things being equal, that principle offers a better explanation, because it is less likely to overstate what’s required. And such a weaker principle is available.

 Presumably there was nothing substandard in Sam’s lack of awareness of the fact that, by walking into the store, he could win a fabulous prize. In failing to be aware of this fact, he fell below no cognitive standard applicable to him, given his cognitive and volitional capacities and the situation he was in.[[19]](#endnote-19) A weaker principle that excuses failures due to ignorance, when the ignorance manifests no such fault, suffices to explain why Sam isn’t blameworthy, and why it would be unfair of his wife to blame him. Appeal to a principle requiring enhanced control for responsibility is an overreach, and thus the appeal provides a worse explanation.

 We can reinforce this objection by considering a variation of the case. Imagine that Sam had read in that morning’s paper that the store would soon reach its millionth customer and would award the prize when it did. As the article (which Sam read to the end) explained, when the store reached its millionth customer minus one, a manikin in the store’s window would have its hand raised in a wave to passersby. As Sam walked by, the manikin’s hand was raised in a wave. Sam failed to put two and two together; he’d forgotten what he’d read in the paper. In this case, his wife might have a beef with him. Zimmerman’s proposed requirement doesn’t explain why the two cases seem different.[[20]](#endnote-20) The alternative that I’ve proposed does.

 A second argument, from Gideon Rosen, concerns a category of action that overlaps with, but isn’t coextensive with, negligence. Often when one acts wrongly, one not only lacks awareness that what one is doing is wrong but also believes that it is perfectly all right to do it. And just as one can be blameless for one’s ignorance, one can be blameless for having such a belief. With this group of cases in view, Rosen argues that “it is unfair to blame someone for doing something if he blamelessly believes that there is no compelling moral reason not to do it” (2003: 74). In support, he offers two claims:

It is unreasonable to expect people not to do what they blamelessly believe they are entitled to do, and it is unreasonable to subject people to sanctions when it would be unreasonable to expect them to have acted differently. (74-75)

(Rosen puts the point here in terms of sanctioning, but he holds that one is blameworthy just in case it’s fair that one be responded to with reactive attitudes such as resentment, and he takes these attitudes, even when unexpressed, to be a kind of sanction.)

Whether it is reasonable to expect someone to do a certain thing can be an epistemic matter, a matter of whether, on one’s evidence, it is likely that the person will do that thing. Alternatively, it can be a normative matter, a matter of whether someone can be held to a norm requiring her to do that thing.

The first claim is certainly true when the expectation in question is taken to be of the first sort. But the claim is then plainly irrelevant, for the expectation at issue in the second claim has to be taken to be a normative matter. There’s nothing unfair per se in holding someone blameworthy should she do something that your evidence shows it highly likely she’ll do. What is unfair is holding someone blameworthy when she hasn’t violated any norm applicable to her.[[21]](#endnote-21)

But, now, it isn’t at all clear that the first claim is correct, on a normative understanding of the expectation at issue. Certainly moral obligations don’t cease to apply to me simply because I blamelessly but falsely believe that what I’m doing is all right; my action might still be wrong. And if holding someone to a norm is simply taking that norm to apply to that person, then the first claim is plainly false. Holding someone to a norm might be taken to be more than this; it might be understood as regarding her as blameworthy should she violate that norm. But with the first claim understood in this way, it doesn’t support the thesis in question; it *is* that thesis. As far as I can see, there’s no understanding of the two claims on which, together, they support the thesis in question.

Neil Levy advances a different thesis with a similar purpose. He maintains that “it is only reasonable to demand that someone perform an action if performing that action is something they can do rationally; that is, by means of a reasoning procedure that operates over their beliefs and desires” (2011: 128). Distinguishing between normative, external reasons, and motivational, internal reasons, Levy argues that what it is rational for an agent to do is a matter of her internal reasons. An agent who does what she has most external reason to do, despite taking herself to have better reason to do something else, acts akratically, Levy says; she suffers a failure of practical rationality. And “it is not reasonable to expect agents to do anything they can do only by way of a failure of practical rationality” (128).

Note that there need be nothing unreasonable in overtly expressing a demand to someone who, prior to one’s doing so, doesn’t much want to do the thing one demands. Expressing the demand can alter the agent’s beliefs and desires, thereby changing what it is rational, in Levy’s internalist sense, for the agent to do.

Relatedly, if an agent sees little reason to do a certain thing and yet we expect (in the normative sense) her to do it, we don’t thereby expect her to bring it about that *she does that thing while seeing little reason to do it*. If she’s capable of seeing that she ought to do it, and able to do what she sees she ought to do, then, despite her current beliefs and desires, she’s capable of doing the thing non-akratically. It needn’t then be unreasonable of us to regard her as subject to the obligation, and responsible for violating it if that’s what she does.

 Rosen, like Zimmerman, offers examples in support of his position. But, again, the recommended judgments (in at least some of the cases) can be supported with a principle weaker than the one put forward. Consider:

In the ancient near East in the Biblical period the legitimacy of chattel slavery was simply taken for granted. No one denied that it was bad to be a slave, just as it is bad to be sick or deformed. The evidence suggests, however, that until quite late in antiquity it never occurred to anyone to object to slavery on grounds of moral or religious principle. So consider an ordinary Hittite lord. He buys and sells human beings, forces labour without compensation, and separates families to suit his purposes. Needless to say, what he does is wrong. (2003: 64-65)

As Rosen fills in the details, it’s plausible that the lord is blameless for believing there’s nothing wrong with what he does. And if this is correct, Rosen claims, then the lord is blameless for buying and selling human beings. The example, he says, supports the thesis that one is blameless for wrongdoing if one blamelessly believes that one is doing nothing wrong.

 Suppose we agree with Rosen that the Hittite lord is blameless for believing there’s nothing wrong with slavery. If that is the case, then something further seems to be true: in so believing, the lord doesn’t fall below any cognitive standard that, given his cognitive and volitional capacities and the situation he is in, applies to him. As Rosen puts it, “Given the intellectual and cultural resources available to a second millennium Hittite lord, it would have taken a moral genius to see through to the wrongness of chattel slavery” (2003: 66). The lord’s failure to do so isn’t substandard.

 We can, then, agree with Rosen about the lord’s excuse without accepting that blamelessly believing that one is doing no wrong excuses. And we can thus agree without accepting that to be blameworthy for wrongdoing done in ignorance (of its wrongness), one must be blameworthy for that ignorance.

 Admittedly, this last principle has considerable intuitive appeal. And I don’t find it clear that the judgments about cases that I’ve offered are more compelling. But in the face of these judgments, the principle stands in need of support. I don’t see that the support has been provided. This chapter may be taken as a challenge to do so.[[22]](#endnote-22)

**Notes**

1. 1. Some writers (e.g., Rosen [2004: 605]) distinguish *culpable* negligence from the broader category of negligence. I follow others (e.g., Sverdlik [1993: 137]) in taking behavior to be negligent only when the agent is blameworthy for it. [↑](#endnote-ref-1)
2. 2. Zimmerman (1986, 1997, 2008: ch. 4) argues in this fashion, as does Levy (2011: ch. 5). Rosen (2004) argues in a similar way for the conclusion that we’re rarely justified in taking someone to be blameworthy for wrongdoing done from ignorance. (Rosen requires that the agent have been aware of the wrongness of the prior act or omission that led to the ignorance, and that the resulting ignorance be foreseeable; it isn’t clear that he, like Zimmerman, requires actual foresight of that ignorance. Smith [1983], like Zimmerman, requires actual foresight of the risk of subsequent unwitting wrongdoing if blameworthiness for a prior act or omission resulting in such wrongdoing is to transfer to that later behavior.) In section 5 I address some aspects of Zimmerman’s, Levy’s, and Rosen’s arguments.

 These writers have different overall positions on responsibility. Levy argues for a general denial of responsibility, and Rosen for a general skepticism; Zimmerman holds neither of these views. (Thanks to Steve Sverdlik for suggesting that this difference be noted.) [↑](#endnote-ref-2)
3. 3. See, for example, the characterizations of negligence provided by Alexander and Ferzan (2009: 69), Hart (1968: 137), Sverdlik (1993: 137), and Zimmerman (1986: 199). Moore and Hurd (2011) dissent, holding that negligent action can involve advertence to the risk of harm. (They distinguish such negligence from recklessness by the magnitude of the risk.) [↑](#endnote-ref-3)
4. 4. Alexander and Ferzan (2009: 69) gloss ‘advert’ as “be aware of.” Being aware of something isn’t an action that one might perform. But turning one’s attention to something is, and the literature on negligence usually treats adverting as an action of this sort. Dictionaries (for example, the *Oxford English Dictionary*) support this construal. [↑](#endnote-ref-4)
5. 5. Hart (1968: 149-52) emphasizes the importance, in cases of negligence, of the agent’s ability to advert. Others who do so include Duff (1990: 156) and Sverdlik (1993: 142). [↑](#endnote-ref-5)
6. 6. I defend this view of omissions of this sort in Clarke 2012. [↑](#endnote-ref-6)
7. 7. I develop a view of freely omitting to act in Clarke forthcoming. [↑](#endnote-ref-7)
8. 8. Alexander and Ferzan claim that, when one is not adverting to a certain thing, “one has no control at such moments over what one is adverting to or is conscious of: try thinking of what you are not thinking of, but should be!” (2009: 83). Here’s a way to make the attempt: ask yourself whether there’s something you should be thinking of that you’re failing to consider. [↑](#endnote-ref-8)
9. 9. Zimmerman (1997: 413) considers that the “ought” that is expressed when we say that a negligent agent ought to have known a certain thing might be either an obligation or an ideal. My suggestion is that the relevant norm is of a third kind. [↑](#endnote-ref-9)
10. 10. One can be obligated to act so as to ensure that one remember something. But as we’ve imagined the case at hand, it doesn’t appear that I was under any such obligation. [↑](#endnote-ref-10)
11. 11. What I have in mind here are ordinary adult capacities for practical deliberation, decision, and intentional action, and an ordinary capacity to recognize and respond to specifically moral reasons. [↑](#endnote-ref-11)
12. 12. My suggestion here is influenced by the view that Sher (2009) advances of responsibility without awareness. He argues that an agent can be blameworthy for wrongdoing done in ignorance if the ignorance is due to the agent’s failure to meet a standard applicable to her, and he holds that which standards are applicable depends on the agent’s cognitive abilities. [↑](#endnote-ref-12)
13. 13. Rosen (2003: 64, 2004: 300, 2008: 600) and Zimmerman (1997: 414, 2008: 175) explicitly endorse this requirement. In distinguishing ways of being blameworthy for wrongdoing done from ignorance, Smith (1983, 2011) considers only cases in which the agent is blameworthy for that ignorance. FitzPatrick (2008), though offering a forceful reply to Rosen (2004), nevertheless takes this requirement as given. Talbert (2013) rejects the requirement, though only for cases of moral ignorance, in which the agent is mistaken about moral principles. [↑](#endnote-ref-13)
14. 14. Perhaps I was aware when I promised to stop for milk that if I failed to do so, we’d have no milk for breakfast. But it’s not clear why this should matter, since I lacked this awareness at the time of the omission. [↑](#endnote-ref-14)
15. 15. The case is patterned after Sher’s Hot Dog example (2009: 24). I’ve made several changes. For one thing, I wanted a case in which none of the actions or omissions leading up to the negligence appeared to be wrong. [↑](#endnote-ref-15)
16. 16. Might it be argued that if Bob was obligated to move his car before three o’clock, then he was obligated to perform one or another action to ensure that he remember to move it before three, since if one is obligated to do a certain thing, then one is obligated to take necessary means to doing that thing? (Dana Nelkin and Steve Sverdlik both raised this question in correspondence.) It isn’t generally true that it’s necessary to doing what one intends to do that one take measures to ensure that one remember to do that thing; commonly one just remembers. And in Bob’s case, simply remembering would have been good enough. It isn’t entirely clear, then, how to apply the alleged principle of obligation in this case. (Nelkin made the same point.) [↑](#endnote-ref-16)
17. 17. The example is Husak’s (2011: 209). [↑](#endnote-ref-17)
18. 18. Rosen’s Kleinbart case (2008: 605-9) is worth considering in this regard, though Rosen judges that Kleinbart isn’t to blame for his boorish behavior. Steve Sverdlik suggested that a case of failing to notice a stop sign might fit the bill. It would have to be a case in which the driver was looking as attentively as one is obligated to do. Mightn’t one nevertheless fail to notice? [↑](#endnote-ref-18)
19. 19. Alexander and Ferzan reject blameworthiness for negligent behavior on the grounds that “at any point in time we are failing to notice a great many things, and we are misinformed or uninformed about many things. An injunction to notice, remember, and be fully informed about anything that bears on risks to others is an injunction no human being can comply with, so violating this injunction reflects no moral defect” (2009: 71). But the principle I’ve suggested doesn’t find the agent blameworthy when her lack of awareness isn’t substandard. [↑](#endnote-ref-19)
20. 20. In defense of Zimmerman’s view, one might propose that, in the variant case, Sam seems to be blameworthy only if we suppose that he is blameworthy for some prior actions or omissions that, he knew or expected at the time, would or might well result in his subsequent failure to put two and two together. But the proposal is implausible. It is unlikely that there are any such witting prior actions or omissions in Sam’s case, and yet he still seems blameworthy. [↑](#endnote-ref-20)
21. 21. Perhaps this isn’t quite correct, since one can be blameworthy for doing the right thing for a very bad reason. But perhaps in such a case there’s some norm concerning responding to reasons that is violated. [↑](#endnote-ref-21)
22. 22. Thanks to Susan Wolf for helpful discussion of the issues addressed in this chapter. For their comments on earlier versions of the chapter, many thanks to Al Mele, Dan Miller, Dana Nelkin, Michael Robinson, George Sher, Steve Sverdlik, Jan Willem Wieland, Michael Zimmerman, and the audience at the 2013 Free Will and Moral Responsibility Conference at Florida State University. I’m grateful to the National Humanities Center for a fellowship for the period during which the chapter was written. Earlier work on responsibility for omissions that contributed to this chapter was supported by a grant from the Big Questions in Free Will project, funded by the John Templeton Foundation. The views expressed here are, of course, my own and do not necessarily reflect the views of any funding organization.

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