“Attempted negligence” is a category of criminal offense that many jurists and philosophers of law have deemed conceptually incoherent.[[1]](#footnote-1) In his *Attempts: In the Philosophy of Action and the Criminal Law,*[[2]](#footnote-2)Gideon Yaffe challenges this dismissal, anchoring his argument in cases of what he calls “mental self-management”[[3]](#footnote-3) in which agents plan to bring about that they perform unintentional actions at a later time. He plausibly argues that mental self-management-type attempted negligence is possible. However, his account raises the question whether such attempts can be successful: whether, in other words, attempts to perform unintentional actions at a later time could issue in actions that are, indeed, *unintentional.* Intuitively, at least, it would seem that we should answer in the affirmative. However, that answer poses problems for a plausible and widely held account of intentional action. Al Mele, responding to Yaffe’s account, has pointed out this problem without, I think, providing a satisfactory resolution.[[4]](#footnote-4) This paper explores the problem and resolves it. The solution, I argue, involves a two-step approach: first, we must introduce a modification on the standard view of intentional action in the form of an additional necessary condition, and then we must distinguish between two kinds of intentions: intentions *to* and intentions *to bring about.*

In section 1, I summarize Yaffe’s argument for the possibility of mental self-management-type attempted negligence and show how his application of a standard account of intentional action to these cases commits him to denying the possibility of *successful* attempted negligence. In section 2, I address Al Mele’s recent response to this problem, arguing that his proposals fail to establish the possibility of successful attempted negligence. I propose another way of accounting for the possibility of successful attempted negligence with only minor revisions to the standard account of intentional action. In these cases, I argue, agents fail to act intentionally because they render themselves, through their acts of self-management, unaware that they are successfully executing their intentions. In section 3, I argue that to intentionally bring about that one A’s does not entail that one intentionally A’s because of the distinction between intentions *to bring about* A and intentions *to* A. I offer an account of the intention to bring about that one A’s and defend it against some objections. Finally, in section 4, I offer some concluding remarks on the application of my account to questions of criminal liability.

1. ***Attempted Negligence and the Standard View***

In this section, I explain my worry about Yaffe’s account of attempted negligence. Yaffe successfully argues that cases of mental self-management establish the possibility of attempted negligence. However, his account also commits him to the claim that such attempts, even if possible, cannot succeed. That is, while agents can *attempt* negligent actions, if their attempts successfully bring about the intended actions, those actions will not be unintentional (and this entails thatthey will not be negligent). This seems quite counter-intuitive, as I illustrate with another example. Moreover, I argue, the problem is not unique to Yaffe insofar as the account of intentional action that underlies his analysis is standard in the philosophical literature. The section concludes by setting the stage for my solution to the problem in sections 2 and 3.

Yaffe’s defense of attempted negligence is motivated by a case of mental self-management from a paper by Al Mele:

Ann is promised $10,000 for offending Bob unintentionally, and she knows that there is no reward for intentionally offending him. Wanting the money, Ann wants to offend Bob unintentionally. . . . Ann knows that she tends to offend Bob unintentionally when she is extremely busy: when she is preoccupied with her work, for example, she tends, without then realizing it, to speak more tersely than she ordinarily does to people who phone her at the office; and, when Bob calls her, her terse speech tends to offend him. Knowing this, Ann decides to undertake an engrossing project (writing a paper on intentional action), believing that her involvement in it will render her telephone conversations at the office sufficiently terse that, on at least one occasion when Bob calls (as he frequently does), she will unintentionally offend him. . . . She intends to bring it about that she offend Bob unintentionally by implementing the strategy just described.[[5]](#footnote-5)

Notice that it is plausible to suppose that at the moment Ann embarks on her engrossing writing project, two things are true about her. First, Ann intends to unintentionally (negligently)[[6]](#footnote-6) offend Bob. This seems uncontroversial: Ann’s plan is to unintentionally offend Bob by throwing herself into an engrossing project, and that is the course of action she has settled upon. Hence, Ann intends to unintentionally offend Bob because an intention is plausibly a kind of action-plan that plays certain motivational and deliberative roles including, importantly, the role of settling what an agent will do, all else equal.[[7]](#footnote-7) Now, when an intention motivates an attempted action, that intention informs the proper characterization of an agent’s attempt. If an intention to A appropriately causes an agent to attempt an action, the agent will be attempting to A. Combining this principle connecting intention and attempts with our first claim about the content of Ann’s intention, we can conclude that Ann is attempting to unintentionally offend Bob.

If this is right, then cases of mental self-management demonstrate the possibility of attempted negligence because Ann is attempting an unintentional (negligent) action. The basic thought here is that agents can attempt negligent actions by intentionally performing actions that will (according to their plans) alter their mental states such that they will, at some point in the future, perform unintentional actions.

However, even if cases of mental self-management demonstrate the possibility of attempted negligence, they raise the further question whether such attempts will *succeed*: whether, in other words, an attempt to perform an unintentional action will issue in *unintentional* action if all goes according to plan. I think this is an intuitive view, and I will have more to say about why I believe this shortly. However, Yaffe takes the opposite tack. On his view, if everything goes according to Ann’s plan, she will have caused the result (offending Bob) *intentionally*: “when all goes as planned, Ann *intentionally* offends Bob.”[[8]](#footnote-8) But if that’s true, then Ann’s plan can never be fully successful on its own terms: what Ann does will never match the content of her plan. According to this interpretation of the case, Ann intends and attempts to unintentionally offend Bob, but if all goes according to plan, Ann will *intentionally* offend Bob. Put another way, Ann’s attempt will be self-defeating: if she actually succeeds in carrying out her attempt up to the point where she offends Bob, then she will fail to carry out her attempt, because she will have offended Bob intentionally.

This seems like a counter-intuitive result. Another example might help to pump the intuition. Suppose that Carl, a sprinter, wants to beat his fastest recorded time and thinks that he will run fastest when he isn’t trying to beat his recorded time. He knows, too, that he has an equally deeply entrenched and powerful phobia of dogs, and he is familiar with a particular house in his neighborhood where a certain very mean dog patrols the perimeter of the yard. With a friend who operates a stopwatch, he approaches the first house, sees the dog, and bolts in utter terror. The friend times the first 100 meters, but Carl keeps running until he is safely ensconced in his house, only then remembering his friend, the stopwatch, and the whole scheme. I think we want to say here that Carl intended, at some point before he saw the dog, to beat his recorded time; that he intentionally brought it about that he beat his recorded time (see section 3 below); but that while he was running, he was not intentionally beating his recorded time; *a fortiori*, he was not trying or attempting to beat his recorded time.[[9]](#footnote-9) It doesn’t seem at all implausible, then, that Carl’s plan could succeed: that he could intentionally bring it about that he unintentionally beats his recorded time. I think a similar analysis is the right one for the Ann and Bob case. If all goes according to Ann’s plan, then there is some point at which Ann intended to unintentionally offend Bob; in addition, Ann intentionally brought it about that she unintentionally offended Bob; but while she was speaking tersely, she was not intentionally offending Bob; *a fortiori*, she was not trying to offend Bob at that time. It seems entirely plausible that Ann could intentionally bring it about that she unintentionally offends Bob.

To see why Yaffe resists the intuitive plausibility of successful mental-self management-type attempted negligence, we need to understand in more detail the kind of account of intentional action Yaffe is working with. Most accounts of intentional action claim, roughly, that an action is intentional if and only if it figures in the content of an intention, is appropriately caused (initiated and guided) by an intention, and is the result of a predictable causal route.[[10]](#footnote-10) Let us take as a paradigm the account defended by Mele and Moser.[[11]](#footnote-11) For any action A, agent S and time *t*, A is intentional at *t* if and only if:

1. at *t*, S A’s and her A*-*ing is an action;
2. at *t*, Ssuitably follows—hence, is suitably guided by—an intention-embedded plan, P, of hers in A-ing;
3. (a) at the time of S’s actual involvement in A-ing at *t*, the process indicated with significantly preponderant probability by S’s on balance evidence at *t* as being at least partly constitutive of her A-ing at *t* does not diverge significantly from the process that is in fact constitutive of her A-ing at *t*; or (b) S’s A-ing at *t* manifests a suitably reliable skill of S’s in A-ing in the way S A’s at *t*;
4. and the route to A-ing that *S* follows in executing her action plan, *P*, at *t* is, under *S*’s current circumstances, a suitably predictively reliable means of *S*’s A-ing at *t*, and the predictive the route to *A*-ing that *S* follows in executing her action plan, *P*, at *t* is, under *S*’s current circumstances, a suitably predictively reliable means of *S*’s A-ing at *t*, and the predictive reliability of that means depends appropriately on *S*’s having suitably reliable control over whether, given that she acts with A-ing as her goal, she succeeds in A-ing at *t.*

For the remainder of this paper, I will call this account the Standard View (SV). Combined with our reading of mental self-management cases, SV seems to entail that if these cases of attempted negligence issue in the intended actions, these actions will be intentional. To see this, consider the Ann and Bob case. If Ann’s attempt succeeds, then Ann’s offending Bob is an action; when she offends him, she is appropriately guided by her intention-embedded plan; and the route to offending Bob that Ann follows in executing her action plan is suitably reliable by virtue of Ann’s reliable control over whether she can manage her own mental states in the way she plans. Hence, it appears that if Ann’s attempt to unintentionally offend Bob succeeds, she will actually offend Bob intentionally.

Yaffe’s description of the Ann and Bob case suggests that his acceptance of an SV-type account of intentional action is driving his judgment about the possibility of successful mental self-management-type attempted negligence. Yaffe’s explanation for his claim that Ann will offend Bob intentionally if all goes according to plan is that Ann “has the intention to offend Bob throughout” the process and he adds that “she offends him as a result of that intention in precisely the way that she anticipates when she forms the intention.”[[12]](#footnote-12) The difference between this case and standard cases of intentional action, Yaffe argues, is merely that in this case “the act is not intentional in virtue of the mental states that immediately cause and precede it, as most intentional acts are. It is intentional, instead, in virtue of its relation to the prior intention to offend Bob unintentionally.”[[13]](#footnote-13) Moreover, Yaffe argues that in the Ann and Bob case, none of the classic defeaters of intentional action are present: Ann’s intention does not causally operate by a deviant path (although it does operate by an indirect path, as Yaffe notes), and there is no luck or confusion involved. Yaffe agrees, then, that Ann’s action satisfies the SV conditions for intentional action. Her intention to unintentionally offend Bob “appropriately” (i.e. non-deviantly) guides her in acting using a suitably reliable means in a way that involves neither luck nor confusion.[[14]](#footnote-14)

Yaffe is committed to the self-defeat of mental self-management-type attempted negligence in virtue of his commitment to the SV. But we have strong intuitive reason to think that at least some cases of mental self-management-type attempted negligence can be successful—they can result in unintentional or negligent action. It appears, then, that we must *either* modify the SV or reject our intuition about these cases.[[15]](#footnote-15) My argument in the next two sections settles for the first option: I propose a modification to the SV that can vindicate our intuition in the form of an additional necessary condition on intentional action.

***2. Mele’s Response and the Awareness Condition***

In this section, I will defend a necessary condition on intentional action that can explain why, if all goes according to plan, Ann will offend Bob unintentionally. Before I defend this condition, however, I will discuss Al Mele’s recent attempt to vindicate the possibility of successful attempted negligence. I will argue that Mele fails, largely because the putatively necessary condition(s) on intentional action he defends are not necessary at all, and even if these principles have a valid, if limited, application to a certain subset of cases, Mele is unable to explain why mental self-management-type attempted negligence cases count among them.

The generic structure of mental self-management cases seems to be this: at a certain point in time, an agent S forms or acquires an intention to unintentionally A by Q-ing at some point in the future. The “by” here stands for a means-ends relationship of some kind. Whatever Q-ing is, it has the effect of altering S’s overall mental state such that her intention to unintentionally A by Q-ing is no longer operative in some way that requires further explication. In the Ann and Bob case, Q-ing is “working on a paper about intentional action,” an action that has the effect of *engrossing* Ann. When S eventually A’s, her Q-ing will have rendered it unintentional. The issue, then, is what sort of work Q-ing does to an agent’s intention such that *despite* the causal input of this intention and the absence of the usual defeaters of intentional action, the agent’s action comes out unintentional.

In Mele’s response to Yaffe, he claims Ann’s becoming engrossed in her project has two possible effects that negate the intentionality of her action. Accordingly, Mele appeals to two interpretations of the Ann and Bob case to support this claim.[[16]](#footnote-16) On one reading, when Ann speaks tersely to Bob, she does not intend to unintentionally offend him. Rather, the engrossing project she undertakes causes her to lose her intention to unintentionally offend Bob.[[17]](#footnote-17) Despite the fact that Ann intended to offend Bob unintentionally at some point in time and that intention resulted in her offending him in precisely the way that she anticipates when she forms the intention, Ann lacks the intention to offend Bob unintentionally during the stretch of time immediately preceding and during her phone call with Bob. According to Mele, the absence of an intention to offend Bob unintentionally during that time is sufficient to render her action unintentional: “Given the absence of any intention to offend Bob at (or anywhere near) the time of the offense… the claim that, on that occasion, Ann intentionally offended Bob seems implausible.”[[18]](#footnote-18) Mele may be relying on the following claim:

*Intentional Action* 1. Necessarily, if S lacks an intention to [A] (or any intention that includes A-ing) at and immediately preceding *t* and S A’s at *t*, then S unintentionally A’s at *t.*[[19]](#footnote-19)

However, consider Harman’s famous sniper example.[[20]](#footnote-20) A sniper takes aim at a high-ranking enemy officer knowing that the shot will almost certainly give away his position and alert a nearby enemy patrol. Now, it seems plausible that the sniper does not intend to give away his position at *any* time; *a fortiori,* he does not intend to give away his position when he actually does so. However, it would be odd if the sniper described what he did as *intentionally* shooting the enemy officer but *unintentionally* alerting the nearby patrol. It seems much more plausible for him to say that he intentionally alerted the nearby patrol *in addition* to intentionally shooting the officer. Hence, it would appear that an absence of an intention to give away his position does not entail, in this case, that the sniper gave away his position unintentionally. Some philosophers claim that our intuitions about intentionality in “foreseen side-effect” cases are shaped by our intuitions about moral responsibility, since to claim that an agent did such-and-such unintentionally often entails that the agent is less morally responsible for such-and-such or not responsible at all.[[21]](#footnote-21) This might be true, but in the sniper case, plausibly, moral responsibility is a non-issue: the sniper did not violate any moral obligation in giving away his position, but he may have acted imprudently.[[22]](#footnote-22)

Foreseen side-effect examples are not the only cases where *Intentional Action* 1 seems implausible. Consider a case in which Carl executes a plan for drenching Dora in water by setting up a bucket of water over a certain door. Suppose that Carl forgets about his plan and deed long before Dora opens the door. Surely, in this case Carl intentionally drenched Dora if his plan succeeds. Nevertheless, Carl does not intend to drench Dora at the moment the bucket falls on her or immediately preceding that event. Mele is aware of this kind of case, and his response is that there are two important differences between this kind of case and the Ann and Bob case.[[23]](#footnote-23) First, Ann’s plan is to offend Bob unintentionally, while Carl’s plan is to drench Dora—he doesn’t plan to do anything unintentionally. Second, “what is going on at the time of the offense is exactly the sort of thing that happens when Ann unintentionally offends callers with her terse speech.”[[24]](#footnote-24) However, it’s not clear that, with respect to Mele’s second point, there need be a difference between the Carl and Dora and the Ann and Bob case. Suppose that Carl got the idea for the prank when, working as a window washer, he accidentally left a bucket over a certain door. Carl uses the same bucket and the same door for his prank. Why isn’t what happens when Carl drenches Dora exactly the “sort of thing” that happens when Carl unintentionally drenched someone? As for Mele’s first point, it’s not clear to me why the content of Ann’s plan is relevant in this case. Mele seems to be suggesting that Ann’s intention to unintentionally offend Bob *makes* her action (offending Bob) unintentional. But suppose I falsely believe that I can raise or lower my body temperature at will. Given this belief, I plausibly believe that if I can raise or lower my body temperature at will, then I can raise or lower my body temperature intentionally. I can then *plan* to intentionally raise my body temperature.[[25]](#footnote-25) But because I can’t actually raise or lower my body temperature at will, any actual change in body temperature that results from this plan (say, because *forming* the plan raises my body temperature by a miniscule amount) isn’t intentional. The content of my false beliefs about my ability to perform actions intentionally, even when incorporated into an action-plan, do not simply *make* the causal issue of my plan intentional. Now, suppose Yaffe is right, and Ann’s belief that she can successfully execute a plan to unintentionally offend Bob is false. If she succeeds in offending Bob because of her plan, does her false belief render the action unintentional? I can’t see that it does. The point is that an agent’s false beliefs about intentional action, even when incorporated into the content of a plan, do not in general affect the intentionality of her action.

*Intentional Action* 1 seems implausible as a general principle. And Mele fails to explain why the Ann and Bob case is relevantly different from the counterexamples just discussed. In these examples, there are two features that seem to be crucial to our intuitions about intentionality. First, while the sniper and Carl do not *intend* some of the actions they end up performing, they both have intentions that cause these actions. The sniper intends to shoot the high-ranking officer, which alerts the patrol; Carl intends to bring it about that he drenches Dora, and this intention causes him to set up the bucket above the door. Second, the sniper and Carl can reliably foresee, hence *know*, that the plans they execute will have such-and-such effects. Neither of these facts alone suffices to make their respective actions intentional. But both are clearly relevant to the assessment of whether these actions are intentional and both are present in the Ann and Bob case. Even if Ann’s intention to offend Bob unintentionally does not persist throughout the whole process, it is causally connected to Ann’s eventual action in a way that Ann can reliable foresee. So we have yet to find a feature of the Ann and Bob case that would help support the intuition that Ann can successfully execute her attempt to unintentionally offend Bob.

Mele offers a second reading of the Ann and Bob case focusing on the causal contribution of Ann’s intention. According to this reading, while present during the crucial period, Ann’s intention to unintentionally offend Bob is “unconscious and inert.”[[26]](#footnote-26) Suppose that Ann’s intention to offend Bob unintentionally *persists* throughout the period of her working on the engrossing project, but that the intention could “play no role in shaping behavior”[[27]](#footnote-27) unless it were recalled.[[28]](#footnote-28) As it happens, Ann doesn’t recall her intention until after she speaks tersely to Bob. Mele claims that an unconscious, hence inert intention plausibly does not render Ann’s action intentional, even if present during the time she speaks tersely to Bob.[[29]](#footnote-29) Mele’s discussion of this second reading raises some interesting questions about the causal contribution of intention that I will flesh out in what follows.

Mele seems to suggest that the fact that Ann’s intention, if it persists, is “doing no work at all at the time of the offense”[[30]](#footnote-30) is significant for the question whether her action is intentional. This suggests the following principle:

*Intentional Action* 2. Necessarily, if S has an intention to [A] at *t*, and S’s intention to [A] at *t* is not a proximate or sustaining cause of her A-ing at *t*, then S does not A intentionally at *t*.[[31]](#footnote-31)

But *Intentional Action* 2 would seem to make any “complex action”—by which I mean, roughly, any action that an agent performs *by* performing another action—unintentional. Suppose I pump poison from a well into a house in order to kill the people inside. After about thirty minutes, I have pumped enough poison into the water supply and quietly make my getaway. Within three hours I am lying in bed, dreaming. The people in the house sicken in three and a half hours and die within five. Now, I have very few qualms about claiming that I have intentionally killed the people inside and that killing people inside the house is an action.[[32]](#footnote-32) But it is very doubtful that my intention to kill the people inside by pumping poison from the well is either a *proximate* or a *sustaining* cause of their deaths. Surely, my *intention* does no work at all at the time the people in the house are killed.

Suppose we restrict *Intentional Action* 2 to “basic actions,” actions that are implied by basic actions (e.g., saying hello by waving one’s hand), or actions that are direct consequences of basic actions (e.g., turning on the light by flicking the switch).[[33]](#footnote-33) That would at least cover the Ann and Bob case, since speaking tersely might plausibly be construed as basic, and offending Bob is a direct or unmediated consequence of speaking tersely. Even here, however, the principle seems implausible. Suppose an experienced tennis player intends to make an effective backhand slice to impress onlookers. Making a backhand slice is, plausibly, a basic action for this player. Suppose she knows that if she stands at a certain spot on the court after her opponent makes a shot, she has a 95% chance of backhanding, and when she backhands, she almost always slices. At the crucial (and very intense) moment, the player runs to the spot and backhands; as it turns out, the backhand is devastatingly effective. Now, plausibly, the player’s backhand was intentional *yet* non-proximately causally linked to her intention to backhand. It was intentional because it was suitably causally related to the player’s intentional (and intended) “triggering” of a reliable skill at backhanding. It was *non-proximately* causally related to her intention to backhand because the player did not have to intend to backhand once she found herself in that certain spot on the court at that moment; at that point, the player’s reliable skill was in control. It was her habit of backhanding, not her intention to backhand, that initiated and sustained her backhanding.

As it happens, the Ann and Bob case seems entirely analogous to the tennis case. Ann reliably speaks tersely when occupied by a task. Like the tennis player’s habit of making backhands when in a certain position, Ann’s tendency to speak tersely is a habit that she knows about. At an early point in the story, she intends to unintentionally speak tersely to Bob bythrowing herself into an engrossing project. Once she becomes engrossed, her habit takes over such that she does not have to form an intention to speak tersely to Bob when her phone rings. If she successfully offends Bob, her speaking tersely unintentionally will be causally but non-proximally linked to her intention to unintentionally offend Bob. Again, *Intentional Action* 2 seems implausible as a general principle, and we have yet to discover a relevant feature of the Ann and Bob case that distinguishes it from the counterexamples.

Mele’s emphasis on Ann’s intention being “unconscious” hints at a different approach. For Mele, it seems, the fact that Ann’s intention may be unconscious is not a defeater of intentionality *per se*; rather, it is a psychological condition for the causal inertness of the intention. But it’s possible that a lack of awareness can itself defeat the intentionality of an action. G.E.M. Anscombe famously wrote that the response, “I was not aware that I was A-ing” (where “A-ing” is an action under some description) to the special “Why?” question that is given application in cases of intentional action, often signals (absent conceptual confusion or lying) that the agent did not A for a reason—i.e., that she did A, but not for a reason; hence, the agent did not A intentionally.[[34]](#footnote-34)

This claim seems to be borne out in many cases in which we intuitively deny that an agent acts intentionally, *even if* what she does, under some description, is exactly what she intends under that description. Oedipus sets out on the road to Thebes intending to go to Thebes and kill his father. Upon entering the city, he encounters an old man who blocks his way. Intent on carrying out his mission, he kills the man. As it happens, the man is his father. Does he intentionally kill his father? Plausibly, no. Oedipus goes to Thebes and kills his father and manages to do so, thus satisfying the content of his intention. Moreover, he kills his father *because* of his intention to kill his father. But because Oedipus is not aware that he is discharging his intention to kill his father by killing the old man, he does not kill his father intentionally.

In Mele’s case, if Ann succeeds in offending Bob, she will do so “without realizing it.”[[35]](#footnote-35) I interpret this to mean that she will not realize at the time she speaks tersely both that she is speaking tersely and that she is offending Bob. If someone were to later ask her why she had spoken tersely (or offended Bob), she could truthfully and without confusion reply that she wasn’t aware that she was offending him. Of course, this does not mitigate her responsibility for the act, since she *did* intentionally bring about that she unintentionally offended him. The point, however, is that her lack of awareness seems sufficient to render her action unintentional according to Anscombe’s awareness test. A necessary psychological condition for her not realizing that she is speaking tersely to Bob is that her intention to do so is at least unconscious, so Mele is right that if her intention is unconscious then this at least *allows* for the possibility of unintentional action. But Mele did not, I think, put his finger on the relevant intentionality-defeating feature of the Ann and Bob case. He thought the feature was the absence of a proximal or sustaining causal contribution by Ann’s intention; I claim that the relevant feature is Ann’s lack of awareness of what she is doing.

It might be objected that unlike the cases we have discussed previously, in the Oedipus case the satisfaction of Oedipus’s intention to kill his father, while causally linked to this intention, is not brought about by a reliable, hence predictable, chain of events or actions that Oedipus foresees in advance and incorporates into his plan. Return to the Carl and Dora case. Carl is not aware that he is drenching Dora with water when the bucket falls on her (recall that he has forgotten about his prank). Nevertheless, at least all things equal, he intentionally drenches her. The difference between the two cases is that, while both Carl and Oedipus are unaware of what they are doing, Carl drenches Dora in precisely the way he planned and *because* of his plan (more precisely, because of his intention-embedded plan). Oedipus kills his father accidentally. Apparently awareness, or lack thereof, is not really what is doing the work in explaining why Oedipus does not act intentionally. Rather, as Anscombe seems to suggest, lack of awareness may signal a deeper lack of control.

However, there is a relevant difference between the Ann and Bob case and the Carl case. In the Ann and Bob case, the target action—speaking tersely—involves bodily movement. Carl’s drenching Dora, by contrast, involves no bodily movement on Carl’s part beyond the setting up of the bucket above the door—an action that Carl performs while he is still consciously guided by his prank plan. It seems, intuitively, that with respect to a bodily movement, even if an agent can reliably predict one of her movements beforehand and cause that movement by executing some plan to bring it about without her awareness, this is not sufficient for the movement to count as intentional. Suppose that Carl, without realizing it, tends to speak so rapidly before an audience that it is difficult to understand him. His colleagues have told him that he does this, and he knows each time he speaks in public that he’s likely to speak too quickly. Suppose that he is planning to deliver two back-to-back public talks in one day and he’s allowed to budget his own time. Moreover, he doesn’t really care about his first lecture, but cares a lot about his second. Knowing his propensity to speak quickly, he estimates that it will only take him twenty minutes to deliver his first lecture starting at 2 p.m. So he schedules his next lecture for 2:30 p.m. He plans to consciously rein in his talking speed for the second lecture, but not the first. He will simply approach the first lecture as he always does, focusing on presenting the material at hand without a thought to his speaking speed. As it turns out, he speaks quickly enough to get through his first lecture in twenty minutes, although he doesn’t realize he’s speaking that quickly until he glances at the clock and sees that he has completed his talk in twenty minutes. Here, I think, it’s plausible to claim that Carl both knows about and plans to “use” his unconscious habit of speaking quickly, but that when he is actually speaking, he is not intentionally speaking quickly. This suggests the following principle:

*Intentional Action* 3:Necessarily, if an agent S intentionally A’s at *t*, where A-ing is an action involving bodily movement, then S is aware that she is A-ing at *t.*

If I am right about *Intentional Action* 3, then Ann’s offending Bob will be unintentional. Furthermore, we must add to the SV the stipulation that, with respect to actions involving bodily movements, agents must be aware that they are performing those actions if they are to count as intentional. An interesting question that I cannot pursue here is whether *Intentional Action* 3 is in fact implied by one or more of the SV conditions, properly understood. For example, in the Oedipus case at least, his lack of awareness seems to defeat the intentionality of his action because it shows that the connection between his plan and the actual outcome was not predictable. But not all cases where lack of awareness seem to be important to our judgments about intentionality seem to involve a lack of predictability—indeed, the Ann and Bob example is one such case. I conclude, rather provisionally, that *Intentional Action* 3 adds another necessary condition on intentional action not explicitly covered by the SV.

It might be objected that *Intentional Action* 3 gets us the wrong result in the following case.[[36]](#footnote-36) Suppose Bruce Banner needs to smash his way out of a jail cell. He cannot do it in his normal state, but could easily do the job if he turns into the Hulk. Banner knows that when he turns into the Hulk, he is unaware of what he is doing. But Banner also knows that in 98% of cases, Banner-as-Hulk smashes all the walls in whatever room he happens to find himself in when he transforms. Under these circumstances, it seems intuitive that if Banner hits his thumb with a hammer so as to turn himself into the Hulk and Banner-as-Hulk smashes the walls of his jail cell, Banner would count as smashing the walls *intentionally.* This result seems to hold even though Banner-as-Hulk is unaware that he is smashing walls.

However, if we distinguish between two claims about Banner, we can see that this case need not be a counterexample to *Intentional Action* 3. It does, indeed, seem plausible that Banner intentionally brought about that Banner-as-Hulk smashed the walls. But from the fact that Banner intentionally brought about that Banner-as-Hulk smashed the walls it does not necessarily follow that *Banner-as-Hulk* intentionally smashed the walls. It is *this* claim that must be established for this case to constitute a counterexample to *Intentional Action* 3. And it’s not at all clear to me that Banner-as-Hulk *does* intentionally smash the walls given our stipulation that Banner-as-Hulk is completely unaware of what he is doing.

A careful look at the Ann and Bob case yields a similar conclusion. Suppose Ann at time t1 embarks on her engrossing project guided by her intention to bring about that she unintentionally offends Bob. At t2 Ann, preoccupied with her work, speaks tersely over the phone without realizing what she is doing, offending Bob. Now, from the fact that Ann at t1 intentionally brought about that she offended Bob at t2 it does not follow that Ann at t2 intentionally offended Bob. *Contra* Yaffe, the truth in the claim that Ann intentionally offends Bob if all goes according to plan is that Ann intentionally *brought about* that she offended Bob (unintentionally). At the moment she offends him by speaking tersely, she is not aware she is doing so. Since speaking tersely involves bodily movement, this renders the action unintentional.

My argument so far might raise the following objection. It might seem intuitive that if an attempt to A succeeds, then one will have done A intentionally. For example, one might think that if you attempt to kill someone and succeed, then you have intentionally killed the person. It follows from this principle that if Ann succeeds in her attempt to offend Bob unintentionally, then she will have intentionally offended Bob unintentionally. But, as I explained above (note 15), this result is either absurd or it requires two different senses of intentionality. In either case, my account of the Ann and Bob case would be untenable, since I propose that we can analyze the case using only the account of intentional action provided by the SV plus an additional necessary condition on intentional action.[[37]](#footnote-37)

I have already suggested an answer to this objection. According to my reading of the Ann and Bob example, Ann attempts to bring about that she unintentionally offends Bob, and if her attempt is successful, she will intentionally bring about that she unintentionally offends Bob. I have claimed, further, that from the fact that Ann intentionally brings about that she offends Bob, it does not follow that Ann intentionally offends Bob. If this is right, then Ann’s attempt to bring about that she unintentionally offends Bob, if successful, does not entail that Ann intentionally offends Bob unintentionally.[[38]](#footnote-38) But we might wonder why this is the case. Why doesn’t an intentional *bringing about* that one A’s entail an intentional A-ing? Providing an answer to this question will require an account of intentions to bring about that one A’s. This is the burden of the next section of the paper.

***3. Intending to Bring about that S A’s versus Intending to A***

In the last section, I argued that successful mental self-management-type attempted negligence can be explained with minimal revision to the SV. This can be accomplished by adding the condition of *Intentional Action* 3, which is at least consistent with the SV conditions if not implied by them. However, my account also commits me to the claim that although Ann attempts to bring about that she unintentionally offends Bob, it does not follow from this, if Ann’s attempt is successful, that she intentionally offends Bob unintentionally. My defense of this claim hinges on the idea that what Ann intends in her attempt is not to unintentionally offend Bob, but to bring about that she unintentionally offends Bob. In this section, I argue that an intention to bring about that one A’sdoes not, if it is satisfied, entail that one intentionally A’s. Therefore, an attempt to bring about that one A’s informed by an intention to bring about that one A’s does not, if successful, entail that one intentionally A’s.[[39]](#footnote-39) I offer an account of intentions to bring about that one A’s that explains why this is so, apply my analysis to the Ann and Bob case, and defend the analysis against some objections.

Since my analysis of the intentions to bring about that one A’s is couched in terms of intentions to A, I offer the following sketch ofthe latter’s content- and causal role-based conditions of success or satisfaction. An agent’s intention to A at *t* succeeds when she A’s at *t* guided by her intention-embedded plan for A-ing at *t*, where such guidance follows a predictable path and excludes causal deviance, luck, and confusion. The conditions for success of intentions *to* Aare just the SV conditions for intentional action briefly stated; this should not be surprising, given the close conceptual link between intention and intentional action.[[40]](#footnote-40)

The essential difference between intentions to bring about that one A’s and intentions to A lies in the intending agent’s conception of her power to determine events. In the case of intentions to bring about that one A’s, agents are intending types of actions that they see themselves as unable to do or realize *at will*; when agents intend to A, A-ing belongs to an action-type that they *can* realize at will.I can shoot a basketball, run through the library, or quit my PhD program at will; I cannot cry, sweat, have a phobic reaction, or fire my gun motivated by irresistible anger at will. And, correspondingly, I can intend to do the first three things, but I can only intend to bring about the last four things. Moreover, it seems that what is at issue is not things that an agent cannot do at will in some absolute sense (at any time and at any place), but things that an agent *could* not do or bring about at will *here and now*. Finally, what an agent *could* not do or bring about at will here and now is going to be *relative* both to the agent’s set of skills, powers, abilities, and motivations, and to the conditions under which the agent acts or would act that bear on the reliable success of that agent’s actions and on the agent’s estimations of success.

The second feature of intentions to bring about that one A’s is implicit in the very locution. Intentions to bring about that one A*’*s are intentions *to*, where the “direct object” is *bringing about* rather than A-ing. As I understand it, an intention to bring about that one A’s partly involves a plain intention to Q, where Q-ing is conceived by the agent as a means to, or a partial cause of, her A-ing, and A-ing is not something the agent can do at will. As with all intentions *to*, the intention to Q succeeds if and only if S Q’s at the appropriate time and S Q’s at that time *because of* her intention to Q in a suitably reliable way. In other words, *the intention to Q that is “embedded” in the intention to bring about that one A’s commits the agent to Q-ing intentionally.* Most important, in many cases of an intention to bring about that one A’s, the normal success conditions for intentions to A *only apply* to intentions to Q, where Q-ing is part of the overall intention to bring it about that A*.* That is, all intentions to bring about that one A’s, if they are successful, entailthat one Q’s intentionally. In addition, all such intentions, if successful, entail that one A’s, but they do not entail that one A’s intentionally.[[41]](#footnote-41)

The discussion so far suggests the following necessary conditions for an agent Sintending to bring about that S A’s at *t*, where A is some action.[[42]](#footnote-42) S intends to [bring about that S A’s] [[43]](#footnote-43) at *t* only if:

1. A-ingfigures in S’s intention-embedded plan of action P either as a constituent of the plan or as its goal;
2. A-ingis such that either (a) Scouldnot at time *t*, under any circumstances (including the present ones) in which she retained only her existing set of abilities, skills, powers, and motivations,Aif, and because, she intended to [A]at *t* or (b) S treats A-ing *as if* (a) were the case at *t*;
3. A-ing is not, in the context of action, implied in any action Rthat S can perform at *t* if and because she intended to Rat *t*;
4. There is some action Qsuch that (a) Qfigures in S’s intention-embedded plan of action P as a means of A-ing; and (b) Scan intend to [Q]at *t* now andQat *t* because of her intention.

Condition (2) is the heart of the account as it captures the sense in which agents conceive of actions they intend to bring about as things they could not do at will. The basic idea of condition (2) is that at a given moment in all possible worlds in which an agent retains her existing abilities, skills, powers, and set of motivations, she could not make A happen just by acquiring anintention to A at that moment. Consider crying, for example. For some agents, this is something they *can* do at will, and so something they can intend *to* do.[[44]](#footnote-44) For others, this is not so. The latter may intend to bring about that they cry by, for example, cutting an onion. What *distinguishes* those who cannot cry at will from those who can is that those who are unable to cry at will can’t, *given* their sets of abilities, skills, powers, and motivations, intend to cry at *t* and cry at *t* solely on account of that intention. Of course, some agents (experienced actors, perhaps) can bothbring about that they cry and cry at will. When such an agent intends to bring about that she cries, she is treating crying *as if* it were something she is unable to do at will.[[45]](#footnote-45)

Condition (3) is important because it provides an additional condition on actions performed at will. Consider the following case. S intends to wave his hand back and forth in order to signal to others that he is leaving a party. This is certainly an odd intention—most people might just intend to say goodbye—but it is conceivable. Now, waving his hand back and forth is something that S can do at will in the sense of (2). Waving goodbye is not *caused by* S’s waving his hand back and forth; rather, it is *implied in* that action in the context. To wave my hand back and forth in the context *just is,* in part, to wave goodbye. Clearly, the sorts of actions that are the objects of intentions to bring about are not those *implied* in an action that an agent can perform at will. I need not conceive of my waving as something I can only bring about, rather than intend to do. Therefore, actions that I intend to bring about are those that are *not,* in the context, implied in some action that I can perform at will.

Condition (4) captures the second important feature of intentions to bring about. I have claimed that intentions to bring about that S A’s include within them plain intentions *to* “bring about,” where to *bring about* is some action Q causally linked to A-ing. Because Q figures in S’s plan of action P, and because Q-ing is something S can do at will, S intends to Q*.* As I pointed out, an intention to bring about that S A’s commits an agent only to Q-ing intentionally, but it carries no such commitments with respect to A-ing.

Notice that my account does not rule out agents intending *to* perform actions that require many intervening steps. I intend to fly to Tokyo and know that this goal is effectively facilitated by going online, buying the tickets, driving to the airport, going through security, etc. It may be that, at the time I form or acquire the intention to fly to Tokyo, I cannot just hop on an airplane and fly to Tokyo. Many distinct actions intervene between the acquisition of this intention and the execution of its goal. Yet there are nearby possible worlds in which I *can* fly to Tokyo at will, given my existing abilities, skills, powers, and set of motivations, since in those worlds I may differ with respect to the proximity between me and the ultimate goal of my intention, flying to Tokyo. I may, for example, be standing in the boarding gate, and by simply walking into the plane and sitting down—both actions I can perform at will—I fly to Tokyo.

The best way of understanding cases of mental self-management like the Ann and Bob case, I propose, is to understand Ann as intending and attempting to bring about that she unintentionally offends Bob, rather than intending and attempting *to* unintentionally offend Bob.[[46]](#footnote-46) We can now see why this distinction is significant. Recall the objection that motivated the distinction between intentions to bring about that one A’s and intentions to A. According to that objection, Ann’s attempt to unintentionally offend Bob entails, if her attempt is successful, that Ann will intentionally offend Bob unintentionally. But we can see now why this is not the case. On my reading, Ann attempts and intends to bring about that she unintentionally offends Bob by throwing herself into an engrossing project. That means, if my analysis is correct, that if Ann’s attempt is successful she will *intentionally* throw herself into the engrossing project since *that* action substitutes, in this instance, for Q—the action that is related as a means to A-ing in my generic account of intentions to bring about that one A’s. However, her intention does not commit her to intentionally *offending Bob* as it would if she intended *to* offend Bob unintentionally. So if all goes according to plan, Ann will intentionallybring about that she unintentionally offends Bob because she will intentionally throw herself into the engrossing project that is related to unintentionally offending Bob as a means to that end. But since her intention to bring about that she unintentionally offends Bob does not commit her to intentionally *offending Bob*, it does not follow from the fact she will intentionally bring about that she offends Bob unintentionally that she will intentionally offend Bob unintentionally.

Combining the account developed in this section with that of section 2, we get the following story about the Ann and Bob case. Ann attempts and intends to bring about that she unintentionally offends Bob. If all goes according to plan, she will intentionally throw herself into an engrossing project as a means to this end. At the moment that she offends Bob, she will be unaware that she has an intention to offend him, that she is speaking tersely, and that she is offending him. Therefore, by *Intentional Action* 3, she will unintentionally offend Bob. Moreover, her attempt to bring about that she unintentionally offends Bob does not entail that she intentionally offends Bob unintentionally because of the nature of intentions to bring about that one A’s. These intentions, if successful, entail merely that one intentionally Q’s—but not that one intentionally A’s.

It might be objected that my analysis of the case proves too much. If Ann only intends and tries (or attempts) to bring about that she unintentionally offends Bob, then she only tries to *bring about* that she performs an unintentional action—she does not try to commit one. But this would mean that the Ann and Bob case is not really an example of attempted negligence (i.e., an attempt to commit a negligent crime). Rather, this case is an example of an attempt to bring about that one commits a negligent crime. In addition, if Ann is only trying to bring it about that she unintentionally offends Bob, then the Ann and Bob case does not constitute a counterexample to Yaffe’s claim that attempts *to commit* negligent crimes are self-defeating.[[47]](#footnote-47) The objection, then, is that if we read the Ann and Bob case in my way, the case is not an example of attempted negligence (I agree with Yaffe that it is) *and* it is not a counterexample to Yaffe’s self-defeating claim. The assumption underlying the objection, I take it, is that it is not the case that if S tries to bring about that S A’s, then S tries to A. To be sure, I am committed to the claim that it is not the case that if S *intends* to bring about that S A’s, then S intends to A. But I don’t see why tries or attempts need to follow intentions here. After all, although intentions and attempts are closely linked, they are quite distinct phenomena. When an agent attempts to bring about that she acts in some way, I see no difficulty in adding that she attempts to act in that way, albeit by a peculiar route. The peculiarity of that route opens up the possibility that her action, though planned, will be unintentional. But that doesn’t make her action any less *planned* or any less *attempted.* I affirm the principle that if S tries or attempts to bring about that S A’s, then S tries or attempts to A.

I *do* deny, however, that Ann is *either* trying to bring about that she unintentionally offends Bob *or* trying to unintentionally offend Bob *throughout the process of executing her plan,* as Yaffe claims.[[48]](#footnote-48)Rather, she is attempting to do these things when she embarks on her engrossing project; however, by the time the phone rings (or thereabouts), she is no longer attempting or trying to bring about that she offends Bob. The reason is that if I am right that Ann unintentionally offends Bob, then she is not attempting (at that moment) to bring it about that she unintentionally offends Bob. Plausibly, if S attempts to [A] at *t* and her attempt is successful at *t*, then she intentionally A’s at *t*.[[49]](#footnote-49) Of course, this does not entail that at the time the phone rings, Ann does not *intend* to bring about that she unintentionally offends Bob. I leave that possibility open. Even though Ann may *have* the intention, that is not sufficient to characterize what she is doing at that moment as an attempt *if* her intention is unconscious.

My account rests on two basic claims. First, in the Ann and Bob case, Ann’s offending Bob does not meet all of the requirements for intentional action. Second, because Ann intends to bring about that she unintentionally offends Bob, her intention (and the attempt it guides) may *succeed* despite failing to issue in intentional action. My interpretation of the Ann and Bob case requires only minimal modification of the SV, does not commit us to the existence of intentional unintentional actions, and leaves open the possibility that attempted negligence may succeed in cases like Ann’s.[[50]](#footnote-50)

***4. Conclusion***

Yaffe’s arguments for the possibility of negligent attempts commit him to an interpretation of cases of mental self-management-type attempted negligence that is problematic from the standpoint of action theory. I have offered a reinterpretation of these cases that is both independently plausible and avoids the problems raised by Yaffe’s account. First, I have argued that in such cases, agents fail to act intentionally because they render themselves, through their acts of self-management, unaware that they are successfully executing their intentions. Second, I have argued that because agents merely intend to bring about these actions in these cases, their attempts do not commit them to performing these actions intentionally. I have offered an analysis of intentions to bring about that one A’s and defended it against objections.

A further question is whether anything of legal significance turns on the possibility of successful attempted negligence. I hasten to add that in considering this question here, my points will be necessarily preliminary. Insofar as we are concerned with the legal theory of attempts, it might appear that the answer is no: the important question for the theory of attempts is whether attempted negligence is *possible*, not whether it can be successful. I am in agreement with Yaffe and Mele that attempted negligence is possible and that mental self-management cases demonstrate this possibility. However, from the standpoint of criminal law there may be an important worry about drawing the distinction between attempts and intentions to bring about some result and attempts and intentions to perform some act. We do not, I think, want lawbreakers to game the system by intentionallybringing about that they negligently or recklessly commit unlawful acts and receiving lighter penalties than they would if they intentionally committed the acts.

A parallel issue arises in the legal doctrine of *actio libera in causa*, which concerns the responsibility of agents for actions unfree in themselves, but free in their causes. In its original formulation, the doctrine applied just to actions that were involuntary when performed, though the actor purposefully caused his subsequent involuntariness for the purpose of later committing the crime when in an involuntary state.[[51]](#footnote-51) The doctrine says that the involuntary action can be imputed to the agent despite the fact that he acted involuntarily at the time so long as the action was caused by voluntary actions performed at an earlier time with the intention of committing the crime. The classic example of *actio libera* is an extremely intoxicated offender who voluntarily becomes intoxicated but who is not acting voluntarily at the time of his crime. Other examples include intentionally induced insane automatism, hypnosis, and sleepwalking. Extreme intoxication can, in many jurisdictions, negate the *actus reus* requirement of a criminal offense, since it is generally understood that even if criminal liability does not require an “act,” strictly speaking—agents can be criminally liable for omissions, statuses, and states of affairs—offenses must be committed or brought about voluntarily. The *actio libera* doctrineseems to be in tension with the voluntariness requirement, since it allows that some agents may be legally responsible for actions that are not, at the time they are performed, under their voluntary control. The doctrine also apparently conflicts with the concurrency requirement, which necessitates the temporal concurrence of the *mens rea* and *actus reus* elements of the criminal offense. In *actio libera* cases, the *mens rea* occurs at a previous time, when the agent voluntarily performs acts she knows will bring about her involuntary commission of a criminal offense.

The question of liability for acts of successful attempted negligence does not require a defense of the *actio libera* doctrine, so long as the unintentional acts self-managing agents perform are not involuntary. The question raised by *actio libera* is whether involuntary acts are imputable to agents in the sense required for criminal liability; however, the unintentional acts performed in cases of successful attempted negligence clearly qualify as voluntary if any negligent acts do. For example, while Ann may offend Bob unintentionally, her act is plausibly considered voluntary in the sense required for responsibility since it is intentional under some description (e.g., “talking on the phone”). That said, there may be cases of successful attempted negligence where the agent deliberately brings it about that she performs some act *involuntarily*, and not just unintentionally—for example, a case in which an agent intentionally brings it about that she performs a criminal act while extremely intoxicated. In these sorts of cases, the agents’ actions may not be intentional under any description.[[52]](#footnote-52) So the question of liability for successful attempted negligence bifurcates into at least two categories: that in which the acts performed are unintentional, but not involuntary, and that in which the acts performed are involuntary and *a fortiori* unintentional.

For the former, the important question is whether the agent is liable for a negligent or purposeful crime, given that at least at some earlier time the agent plausibly had the *mens rea* for a purposeful crime—Ann not only knows that she will offend Bob at time she sets into motion her plan to offend Bob, but intends to do so. It seems intuitively plausible that, for the purposes of liability, we should consider the crime purposeful. If that’s so, then the agent who successfully attempts to commit a crime unintentionally is subject to a certain kind of self-defeat after all: while he successfully commits an unintentional act, the act will not be considered negligent for the purposes of criminal sanctioning. Interestingly, as with the *actio libera* doctrine, treating cases of successful attempted negligence in this way would require violating the concurrency requirement, since the *mens rea* and *actus reus* would not temporally co-occur.

In cases where successful attempts to commit unintentional acts issue in acts that are not merely unintentional but involuntary in the sense relevant to our descriptions of automatism, hypnosis or extreme intoxication, the issues for criminal liability are the same as those that arise with the *actio libera* doctrine. Clearly, much hinges on the nature of the voluntariness requirement. Why should we think there is a voluntariness condition for *actus reus* requiring that the agent be able to control, at the time she commits the act, whether or not it (under any description) occurs? Only a requirement this stringent would generate a conflict between the voluntariness requirement for *actus reus* and the doctrine of *actio libera.* As Susan Dinnock points out, that robust requirement would be descriptively inconsistent with many legal rules that impute actions to agents for the purposes of criminal liability even though these agents did not perform them; examples include various complicity doctrines where offenders may be held liable for results brought about by the actions of their co-conspirators.[[53]](#footnote-53) Such a stringent requirement would also be normatively inconsistent with the widely accepted principle of responsibility known as the “tracing” principle. According to this principle, one can be held responsible for acts performed involuntarily if the performance of such acts can be robustly traced to some previous exercise of agency, provided that one knew or reasonably could have known that such an exercise would lead to the involuntary act. The principle could be used to ground an argument for criminal liability in successful attempts to commit unintentional acts that issue in involuntary conduct as for *actio libera* cases more generally.

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1. See J.C. Smith, “Two Problems in Criminal Attempts”, *Harvard Law Review* 70 (1957): pp. 422-448; R.A. Duff, *Criminal Attempts* (Oxford: Oxford University Press, 1996). [↑](#footnote-ref-1)
2. Yaffe, Gideon. *Attempts: In the Philosophy of Action and the Criminal Law* (New York: Oxford University Press, 2011). [↑](#footnote-ref-2)
3. Yaffe 2011, 182. [↑](#footnote-ref-3)
4. Mele, Alfred R. “Crimes of Negligence: Attempting and Succeeding”, *Criminal Law and Philosophy* 6 (2012): 387-398. [↑](#footnote-ref-4)
5. Alfred R. Mele, “Is There a Place for Intention in an Analysis of Intentional Action?” *Philosophia* 27(3-4) (1999): pp. 419-432. [↑](#footnote-ref-5)
6. Yaffe treats “negligent” as equivalent to “unintentional,” and I follow him for the purposes of this paper. [↑](#footnote-ref-6)
7. For more discussion on the settling role of intentions, see J. David Velleman, *Practical Reflection* (Stanford: CSLI Publications, 2007); Alfred R. Mele, *Springs of Action: Understanding Intentional Behavior* (New York: Oxford University Press, 1992); Michael Bratman, *Intentions, Plans, and Practical Reason* (Stanford: CSLI Publications, 1987). [↑](#footnote-ref-7)
8. Yaffe 2011, 185, emphasis in the original. [↑](#footnote-ref-8)
9. I assume that if an agent S unintentionally A’s at *t*, then she isn’t trying to A at *t.* Hence, with Mele, I disagree with

   Yaffe’s claim that Ann is trying to unintentionally offend Bob “throughout the process” of executing her

   plan (Yaffe 2011, 186). See section 3 and note 49 for a full discussion of this point. [↑](#footnote-ref-9)
10. Cf. Ginet, Carl, *On Action* (Cambridge: Cambridge University Press, 1990); Mele, Alfred R., and Paul K. Moser. “Intentional Action”, in Alfred R. Mele (ed.), *The Philosophy of Action*, (New York: Oxford University Press, 2003), pp. 223-256; Gilbert Harman, “Practical Reasoning”, *The Review of Metaphysics* 29(3) (1976): pp. 431-463. [↑](#footnote-ref-10)
11. Alfred R. Mele and Paul K. Moser, “Intentional Action”, in Alfred R. Mele (ed.), *The Philosophy of Action* (New York: Oxford University Press, 2003), pp. 223-256. [↑](#footnote-ref-11)
12. Yaffe 2011, 186. [↑](#footnote-ref-12)
13. Yaffe 2011, 185. [↑](#footnote-ref-13)
14. In his response to Mele, Yaffe is explicit about this commitment: “[T]he action that takes place according to plan will necessarily not be unplanned and so will not be of the sort aimed at in the attempt. You can try to commit a negligent homicide, but if all goes according to plan it will be an intentional homicide that you commit and not a negligent one.” See Gideon Yaffe, “More Attempts: A Reply to Duff, Husak, Mele, and Walen”, *Criminal Law and Philosophy* 6 (2012): pp. 429-444. [↑](#footnote-ref-14)
15. There is a third possibility: Perhaps Ann’s action will be both intentional *and* unintentional. Yaffe argues against this possibility, saying that it amounts to the claim that the event [Ann’s offending Bob] possesses incompatible properties (Yaffe 2011, 184). Of course, we might avoid this sort of objection by claiming that Ann’s action will be intentional in one sense and unintentional in another. We might say, for example, that Ann’s action of offending Bob is intentional in the sense that it is one of her goals, something she at least dispositionally desires at the time of acting. But it is unintentional in the sense that she is unaware, as she does it, *that* she is doing it. However, as with the “intentional” reading, the “unintentional and intentional” reading would make Ann’s intention self-defeating, if what Ann intends is to unintentionally—and *not in any sense intentionally*—offend Bob. [↑](#footnote-ref-15)
16. Mele 2012, 392-395. [↑](#footnote-ref-16)
17. Mele bolsters this argument by presenting a modified version of the Ann and Bob case where Ann has a friend selectively erase her memory of the $10,000 offer and any intention she might have to offend Bob at the appropriate time (2012, 393). [↑](#footnote-ref-17)
18. Mele 2012, 392. [↑](#footnote-ref-18)
19. In fact, Mele explicitly rejects this claim in his note 7 (see below). I introduce it merely as a jumping off point for discussion. [↑](#footnote-ref-19)
20. Harman 1976, 434. My presentation of the example adds some details, but the point is the same. [↑](#footnote-ref-20)
21. See, for example, Joshua Knobe, “The Concept of Intentional Action: A Case Study in Moral Psychology”, *Philosophical Studies* 130 (2006): pp. 203-231. [↑](#footnote-ref-21)
22. Foreseen side-effect examples also present a challenge to the SV since according to the SV an action must figure in the content of an intention-embedded plan in order to count as intentional. I prefer to think of the SV as laying out sufficient conditions for intentional action, rather than necessary and sufficient ones. Even this weaker reading would fail to accommodate the possibility of successful attempted negligence. [↑](#footnote-ref-22)
23. Mele 2012, note 7. [↑](#footnote-ref-23)
24. Ibid. [↑](#footnote-ref-24)
25. I do not mean to suggest here that necessarily, the content of any intention to A includes that the agent A’s intentionally or by way of that very intention. However, I have not seen an argument for the claim that necessarily, intentions *cannot be* self-referential. For discussion, see Velleman 2007, Mele 1992, Harman 1976. [↑](#footnote-ref-25)
26. Mele 2012, 394. [↑](#footnote-ref-26)
27. Ibid. [↑](#footnote-ref-27)
28. Again, Mele makes this claim more plausible by presenting a modified version of the case in which Ann undergoes a procedure that renders her intention unconscious such that it could only be recalled under extreme hypnosis (Ibid). [↑](#footnote-ref-28)
29. Ibid. [↑](#footnote-ref-29)
30. Ibid. [↑](#footnote-ref-30)
31. Notice that S’s intention need only be *a* proximate or sustaining cause: the principle rightly does not rule out as unintentional causally over-determined actions or actions that require multiple causal contributions. [↑](#footnote-ref-31)
32. Note that both “coarse-grained” and “fine-grained” theorists could agree that killing the people inside is an action. There are well-known puzzles about what we should say about *when* I performed this action that I will ignore here. [↑](#footnote-ref-32)
33. The distinction between basic and non-basic actions is, of course, disputed. For a classic skeptical discussion, see Annette Baier, “The Search for Basic Actions”, *American Philosophical Quarterly* 8 (1971): pp. 161-170. [↑](#footnote-ref-33)
34. G.E.M. Anscombe, *Intention* (Cambridge, Massachusetts: Harvard University Press, 2000): 11. [↑](#footnote-ref-34)
35. Mele 1999, 421. [↑](#footnote-ref-35)
36. Thanks to an anonymous reviewer at *Law and Philosophy* for this excellent example. [↑](#footnote-ref-36)
37. Thanks to an anonymous reviewer at *Law and Philosophy* for help formulating this objection clearly. [↑](#footnote-ref-37)
38. As I note below, I believe it’s plausible that an attempt to bring about that one A’s entails an attempt to A, at least typically. So I am committed to *denying* the principle underlying the objection—namely, that successful attempts to A entail intentional A-ings. On my view, Ann attempts to unintentionally offend Bob, but that does not entail that if she is successful, she will intentionally offend Bob unintentionally. [↑](#footnote-ref-38)
39. The principle of intentions “informing” attempts here is the same as the one used in section 1: When an intention appropriately motivates an attempted action, that intention informs the proper characterization of the agent’s attempt. [↑](#footnote-ref-39)
40. Cf. Bratman, 1987, 50. Notice that I am not claiming that merely *having* an intention to [A] at *t* is *either* necessary or sufficient for intentionally A-ing at *t*. Rather, the intention must fulfill the complex causal and epistemic conditions of guidance articulated by the SV. [↑](#footnote-ref-40)
41. Although the intention to bring about that one A’s does not commit one to intentionally A-ing, and its success therefore does not entail that one A’s intentionally, neither does it preclude intentionally A-ing. For example, Carl plausibly intends to bring about that he drenches Dora with the bucket of water, but his drenching is intentional. Whether or not an intentional bringing about that one A’s results in an intentional A-ing will depend upon whether, in A-ing, one satisfies the SV conditions plus my additional condition. [↑](#footnote-ref-41)
42. This is not intended as an account of the locution, Sbrings about that A, since *this* locution allows that Ais not an action that Sperforms, and indeed that it is not an action at all. [↑](#footnote-ref-42)
43. Where this is a *de se* attitude. [↑](#footnote-ref-43)
44. I assume here that what these agents can do at will is cry, and not, e.g., induce tears in some way that doesn’t amount to crying. In other words, I assume that the relation between what these agents can do and what normal agents do is not the same as the relation between winking and blinking. [↑](#footnote-ref-44)
45. Thanks to an anonymous reviewer at *Law and Philosophy* for this point. [↑](#footnote-ref-45)
46. What if someone were to offer a version of the Ann and Bob case in which Ann, equipped with the conceptual distinctions outlined in this section, intends and attempts *to* unintentionally offend Bob? I would be tempted to see this case as falling under the *proximal attempts* principle (see note 49). If Ann conceives of unintentionally offending Bob as something she can simply intend and attempt *to* do, then her attempt may very well turn out to be self-defeating. The reason is that Ann’s intending and attempting *to* unintentionally offend Bob in this case implies that she conceives of unintentionally offending Bob as something she can do at will and not just indirectly. But according to the proximal attempts principle, if S attempts to A at *t* and A’s at *t*, then she intentionally A’s at *t.* If Ann conceives of unintentionally offending Bob as something she can do at will, then her attempt, if successful, will issue in action at the same time or nearly the same time as she makes her attempt. Hence, her attempt, if successful, will issue in intentional action. [↑](#footnote-ref-46)
47. Yaffe raises this point in his response to Mele (2012, 441). [↑](#footnote-ref-47)
48. Yaffe 2011, 186. [↑](#footnote-ref-48)
49. We might call this the principle of *proximal* attempts, attempts that if successful issue in action at the same time or nearly the same time as the attempt. I think a plausible argument can be offered to the effect that with respect to *proximal* attempts, attempted negligence is not possible. Note that this principle is not equivalent to the principle that motivated the objection at the bottom of section 2. That principle claimed that if one attempts to A then, if the attempt is successful, one will A intentionally. The Ann and Bob case is a counterexample to this principle, provided that attempts to bring about that one A’s entail attempts to A. But the *proximal* attempt principle is sensitive to temporality: it claims that if one attempts to [A] *at t* then, if the attempt is successful at *t*, one intentionally A’s at *t.*  [↑](#footnote-ref-49)
50. Indeed, we can apply a similar analysis to the Carl-the-sprinter case from section 1 and the Bruce Banner case from section 2. In both cases, it is plausible that the agents lack the awareness of what they are doing that is required for intentional action. [↑](#footnote-ref-50)
51. This narrow understanding has largely given way to a more expansive one that applies to a range of cases in which agents create the conditions for an exculpatory affirmative defense and commits a crime at a time when those conditions obtain. For discussion see Susan Dinnock, “Actio Libera in Causa”, *Criminal Law and Philosophy* 7 (2013): pp. 549-569; Larry Alexander, “Causing the Conditions of One’s Own Defense: A Theoretical Non-problem”, *Criminal Law and Philosophy* 7 (2013): pp. 623-628. [↑](#footnote-ref-51)
52. Of course, this raises the question whether the agents’ actions qualify as “actions” at all. On Donald Davidson’s view, an action just is something an agent does that is intentional under some description (Donald Davidson, *Essays on Actions and Events* (Oxford: Oxford University Press, 1980)). Finkelstein argues along similar lines that, since there can be no “involuntary actions,” imposing criminal liability for involuntary “acts” would violate any plausible definition of *actus reus*. If there is no *actus reus*, then there is no criminal offense (Claire Finkelstein, “Involuntary Crimes, Voluntarily Committed”, in Stephen Shute & A.P. Simester (eds.), *Criminal Law Theory: Doctrines of the General Part* (Oxford: Oxford University Press, 2002)). [↑](#footnote-ref-52)
53. See Dinnock 2013, 566-67. [↑](#footnote-ref-53)