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## Blameworthiness and Ignorance

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BLAMEWORTHINESS AND IGNORANCE

By

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To Winfield and Donna, for your constant love and encouragement

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## ABSTRACT

Sometimes ignorance functions as a legitimate excuse, and sometimes it doesn't. It is widely maintained that an agent is blameworthy for acting (or omitting) from ignorance only if he is blameworthy for the ignorance from which he acts. Call this claim the Blameless Ignorance Principle, or (BI). This principle is at the heart of questions concerning the epistemic condition on blameworthiness; my project explores a number of these with the aim of developing the literature in three areas.

I first explore the epistemic condition on derivative blameworthiness. Theorists are divided over whether this condition requires actual foresight or only reasonable foreseeability. I argue that, precisely because many foreseeability theorists accept (BI), these theorists have reason to reject foreseeability views in favor of an actual foresight view. Consequently, I consider an alternative view that requires actual foresight and is consistent with (BI).

(BI) is also at the center of Gideon Rosen's (2004) skeptical argument that attributions of blameworthiness are never justified. In Chapter 3 I examine whether and to what extent this argument succeeds in establishing skepticism about blameworthiness. After considering critiques and defenses of the argument, I develop a restricted version of the argument which employs an amended version of (BI). The restricted argument itself wields considerable skeptical force that can be avoided only by rejecting (BI). I return to discuss (BI) in Chapter 6, but only after taking a detour into the question of mitigated blameworthiness that informs that discussion.

Awareness comes in degrees. In Chapters 4 and 5 I explore two implications of this fact. The first concerns the relationship between recklessness and negligence. Because an agent may be aware *that* his action exceeds the threshold of permissible risk while culpably ignorant of *how* excessively risky his action is, he may perform the same action both recklessly and negligently. The second implication is that circumstantial ignorance (i.e., ignorance of an action's wrong-making features), even when the ignorance is culpable, can mitigate blameworthiness for morally wrong actions.



In chapter 6 I consider arguments that Gideon Rosen and Neil Levy have marshaled in favor of an unrestricted version of (BI), as well as critiques of these arguments from Randolph Clarke. While Clarke's critiques are, in my opinion, successful, an argument is required to establish the falsity of (BI). Clarke offers such an argument. If Clarke's argument is successful, then all versions of the principle are false. Against Clarke's argument, I defend the view that blameless circumstantial ignorance excuses on the grounds that it precludes the expression or display of certain types of negative quality of will. In the end, I remain agnostic about whether blameless moral ignorance also excuses.

# CHAPTER 1

## INTRODUCTION: BLAMEWORTHINESS, AND IGNORANCE AS AN EXCUSE

My project is to investigate the relationship between blameworthiness and awareness. More specifically, I aim to discuss this relationship with respect to a widely held principle concerning the conditions under which ignorance excuses. Before continuing, I will lay out some presuppositions concerning the nature of blameworthiness and excuses.

### *1.1 Preliminaries and Presuppositions*

Although I am setting aside the debate over what blameworthiness is, I must, when discussing certain conditions on blameworthiness, be clear about what I take these conditions to be conditions on. For the purposes of this project, then, I will presuppose that for an agent *S* to be blameworthy for *A* (where *A* is some action, omission, action-consequence, character trait, or mental state<sup>1</sup>) is for it to be prima facie appropriate for some agent to blame *S* for *A*. We might, following Wallace (1994, pp. 92-109), understand the notion of appropriateness as fairness, and the type of fairness might be best understood as desert or as reasonableness. I'm going to remain non-committal on this issue.

Because my understanding of blameworthiness involves explicit reference to the notion of blame, though, I must say something about what I take blame to be. For the purposes of this project, I will presuppose that when a person *P* blames a person *S* for *A*, *P* has a certain kind of belief-attitude pair:

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<sup>1</sup> I include the possibility of blameworthiness for "mental states" to accommodate the possibility of blameworthiness for non-voluntary things such as attitudes and beliefs. For more on responsibility and blameworthiness for such things, see Smith (2005).

(i) A belief that S acted wrongly (or badly) in A-ing (or in omitting to do something, where A-ing is that omission) or a belief that A is a morally bad character trait (action-consequence, or mental state).<sup>2</sup>

(ii) A negative reactive attitude towards S on the basis of A (e.g., anger, resentment, indignation, guilt, etc.).<sup>3</sup>

It might turn out that blaming involves more in addition to (i) and (ii); here I am assuming that it entails at least (i) and (ii).

## ***1.2 Blameworthiness: Conditions and Excuses***

Traditionally philosophers have held that there are at least two types of conditions on blameworthiness, one that is associated with freedom or control, and the other that is associated with knowledge or awareness.<sup>4</sup> In order to be blameworthy for an action, an agent must have performed it (1) with a certain degree (and kind) of control and (2) with a certain degree (and kind) of belief or awareness about what she is doing.<sup>5</sup> In this section I will limit my discussion to conditions on blameworthiness for actions; later I will discuss how such conditions might apply to blameworthiness for other types of things (e.g., omissions, action-consequences, character traits, mental states).

When an agent performs a morally wrong action we take it that the agent is blameworthy for doing so in the absence of an excuse.<sup>6</sup> Following Gideon Rosen, I will understand an excuse to be a consideration that defeats the standing presumption of

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<sup>2</sup> This belief needn't be occurrent. The wording here is to some extent modeled off of Sher (2005). It should be noted, however, that Sher rejects this account of blame.

<sup>3</sup> The term "reactive attitude" is taken from Strawson (1963).

<sup>4</sup> This tradition dates to Aristotle, who says that actions and feelings "receive praise or blame if they are voluntary, but pardon . . . when they are involuntary." Aristotle continues, "Now it seems that things coming about by force or because of ignorance are involuntary" (Nichomachean Ethics, 1109b30-1110a1). Throughout this passage Aristotle associates being moved by force with lacking control over one's actions.

<sup>5</sup> As Mele (2011) points out, it may be that many epistemic conditions on moral responsibility (or, in this case, blameworthiness) are also conditions on acting freely. It might turn out that there are very few control/freedom-independent epistemic conditions on blameworthiness. As far as I can see, my project does not require that I take up this question.

<sup>6</sup> It may be that agents are sometimes blameworthy for an action without that action's being morally wrong. See Zimmerman (1997b) and Capes (2012). As far as I can tell I will be able to remain non-committal on this issue.

blameworthiness (2004, 298). Corresponding to the two types of conditions on blameworthiness are two types of excuses. Consider first an example of the type of excuse that corresponds to the control condition. Suppose that, as a result of a rage-enhancing drug that was slipped into his drink, Mike acquires an irresistible desire to punch his friend Joe and does so. That Mike (blamelessly) lacked control over his behavior is sufficient to excuse him for his action. Now, consider an example of the type of excuse that corresponds to the awareness condition on blameworthiness. While backing out of his garage, Kit runs over a kitten, unaware that it had been sleeping beneath his rear wheel. If Kit is not blameworthy for his lack of awareness, then it's plausible that he is not blameworthy for running over the kitten. It seems that Kit's ignorance about what he is doing excuses him.<sup>7</sup>

### ***1.3 Ignorance as an Excuse***

Sometimes ignorance functions as an excuse, and sometimes it doesn't. Consider the following pair of cases:<sup>8</sup>

Case 1: Dr. Adams gives Jeremy a certain type of medicine for Jeremy's ailment, unaware that Jeremy is fatally allergic to one of the chemicals in the medicine. Jeremy's allergy is quite rare and everyone, including Jeremy, is unaware of his allergy.

Case 2: Dr. Adams gives Jeremy a certain type of medicine for Jeremy's ailment, unaware that Jeremy is fatally allergic to one of the chemicals in the medicine. Beforehand, however, Adams's nurse asked him if he wanted to look over Jeremy's medical records (which include information about Jeremy's allergy) prior to treating Jeremy's ailment. Adams chose not to look at Jeremy's medical records, aware that medical records often include important information about patients' allergies.

In both cases Dr. Adams' action is morally wrong (a doctor ought not give patients medicine that they are fatally allergic to). In Case 1, however, Dr. Adams is ignorant of Jeremy's allergy, and blamelessly so; he is not even in a position at any point to become

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<sup>7</sup> This example is taken from Fischer and Ravizza (1998).

<sup>8</sup> These cases are modeled after ones discussed in Sverdlik (1993).

aware of this. Given these facts, Dr. Adams' ignorance excuses him for his morally wrong action. In Case 2, though, the situation is different. Although Dr. Adams is ignorant of Jeremy's allergy when he gives him the medicine, he is at fault for being ignorant, and so his ignorance does not excuse him. Dr. Adams is therefore blameworthy for giving Jeremy medicine that he is allergic to. Reflection upon such cases might lead one to accept the following principle:

(BI) An agent is blameworthy for acting or omitting from ignorance only if he is blameworthy for the ignorance from which he acts or omits.

This principle is at the heart of questions concerning the epistemic condition on blameworthiness; my project explores a number of these with the aim of developing the literature in three areas: the epistemic condition on derivative blameworthiness, the question of when (and whether) blameless ignorance excuses, and the relationship between limited awareness and mitigated blameworthiness.

In Chapter 2 I discuss the epistemic condition on derivative blameworthiness. An agent's blameworthiness for something is derivative when it depends upon his blameworthiness for some prior thing that it resulted from. If the doctor is blameworthy for his ignorance, it is in part because it is the result of some prior thing for which he is blameworthy—say, his failure to check the patient's medical chart. However, not just any negative consequence that a blameworthy action or omission results in is something for which the agent is thereby also blameworthy. It is often maintained that, in addition, the consequence must have been foreseeable for the agent. Some theorists, including Gideon Rosen, John Martin Fischer, and Neal Tognazzini maintain that these two conditions are jointly sufficient to satisfy the epistemic condition on derivative blameworthiness. I develop a two-part argument against this view. First, I argue that agents can be blameless for failing to foresee what was reasonably foreseeable for them. Second, I explain that, if this is so and if (BI) is true, then the foreseeability view is false. Consequently, I consider an alternative view that requires actual foresight and is consistent with (BI). This view is not without its costs. Since we foresee significantly less than what is reasonably foreseeable for

us, it implies that agents are blameworthy for consequences less often than we are inclined to believe.

(BI) is also at the center of Gideon Rosen's (2004) argument that attributions of blameworthiness are never justified. In Chapter 3 I examine whether and to what extent this argument succeeds in establishing skepticism about blameworthiness. First, I discuss how one of William FitzPatrick's (2008) criticisms (i.e., that we do, in fact, have good reason to believe in "clear-eyed" akratic actions) casts doubt on one of Rosen's premises and thus restricts the argument from its final conclusion. Second, I defend (BI) against a recent attack by Talbert (2013). Third, I suggest a way in which the restricted version of the argument may be strengthened by adding a stringent epistemic condition on derivative blameworthiness. Fourth, I argue that, while blameless moral and circumstantial ignorance may excuse, normative ignorance more broadly construed does not. I suggest an amendment to (BI) along these lines. Even so, the restricted argument wields considerable skeptical force that can be avoided only by rejecting (BI). I return to discuss (BI) in Chapter 6, but only after taking a detour into the question of mitigated blameworthiness that informs that discussion.

Awareness comes in degrees. In Chapters 4 and 5 I explore two implications of this fact. The first concerns the relationship between recklessness and negligence. Because negligence involves an agent's ignorance with respect to the risk of harm and recklessness involves the agent's awareness of the risk, it would seem that an agent cannot be both reckless and negligent in performing a given action. As I explain, this is false. Because an agent may be aware *that* his action exceeds the threshold of permissible risk while culpably ignorant of *how* excessively risky his action is, he may perform the same action both recklessly and negligently. The second implication is that an agent's degree of awareness of the wrong-making features of an action can make a difference to the degree to which an agent is blameworthy for performing that action. In particular, I explain how an agent's circumstantial ignorance (i.e., ignorance of an action's wrong-making features), even when the ignorance is culpable, can mitigate blameworthiness for morally wrong actions. The explanation relies on two facts: first, the fact that an agent's degree of blameworthiness is sensitive to the quality of will expressed or displayed in his action. Second, circumstantial

ignorance with respect to certain wrong-making features of an action can preclude the expression or display of ill will or lack of due regard with respect to those features.

In chapter 6 I consider arguments that Gideon Rosen and Neil Levy have marshaled in favor of an unrestricted version of (BI), as well as critiques of these arguments from Randolph Clarke. While Clarke's critiques are, in my opinion, successful, an argument is required to establish the falsity of (BI). Clarke offers such an argument. If Clarke's argument is successful, then all versions of the principle are false. Against Clarke's argument, I defend the view that blameless circumstantial ignorance excuses on the grounds that it precludes the expression or display of certain types of negative quality of will. In the end, I remain agnostic about whether blameless moral ignorance also excuses.

#### ***1.4 Blameworthy for What?***

One may wonder, at various points throughout this project, what exactly the agents discussed are blameworthy (or excused) for. Theorists are divided about the issue of act-individuation. Are these agents blameworthy (or excused) for actions, or actions under descriptions? Fine-grained theorists take it there are as many actions as there are distinct act-properties. So, when Don flips the light switch, turns on the light, illuminates the room, and (unknowingly) alerts an outside prowler to his presence, the fine-grained theorist claims that Don performs at least four distinct actions (corresponding to four distinct act-properties).<sup>9</sup> The coarse-grained theorist, in contrast, claims that Don performs only one action that is described in four different ways (the action falls under at least four act-descriptions). I believe that I can proceed with my project without committing myself to a particular view about act-individuation. In order to avoid getting caught up in this issue unnecessarily, then, I will use action variables (e.g., 'A') to stand for either actions or actions under descriptions.<sup>10, 11</sup> When, for example, I say that Dr. Adams is blameworthy for

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<sup>9</sup> Davidson (1980, p. 4).

<sup>10</sup> When the variable is meant to stand for actions (or actions under descriptions) only, I will use 'A.' Elsewhere, however, certain variables (e.g., 'X' and 'Y') may stand for any of the following: actions, actions under descriptions, act-consequences, omissions, beliefs, character traits, and so on.

“giving Jeremy medicine that he is allergic to,” one may read this as an action or as an action under a description.

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<sup>11</sup> This consideration is due to a suggestion given by Al Mele, and I owe this brief summary of the act-individuation issue to Mele (2010).



## CHAPTER 2

### REASONABLE FORESEEABILITY AND BLAMELESS IGNORANCE

#### 2.1. *The Tracing Strategy and a Useful Distinction*

Ignorance is commonly taken to excuse an agent from blameworthiness for morally wrong behavior or bad consequences that result from it. However, there are cases in which an agent lacks awareness with respect to the moral status of an action, omission, or some consequence thereof and is still blameworthy for it.<sup>1</sup> In such cases we may attempt to explain an agent's blameworthiness for this item by tracing it to his blameworthiness for some prior item that it resulted from. The tracing strategy helps explain how an agent can be blameworthy for some item even though he lacks awareness of its moral status.

Consider the following case:

Allergy: Dr. Adams gives Jeremy a certain type of medicine for Jeremy's ailment, unaware that Jeremy is fatally allergic to one of the chemicals in the medicine. Beforehand, however, Adams's nurse asked him if he wanted to look over Jeremy's medical records (which include information about Jeremy's allergy). Adams chose not to look at Jeremy's medical records, aware that medical records often include important information about patients' allergies.

Dr. Adams acts from ignorance in giving Jeremy medicine that he is allergic to. He is blameworthy for this action (and its consequences) despite his ignorance in part because he is blameworthy for something that led to his acting ignorantly, namely, his conscious choice to ignore Jeremy's medical records. However, not just anything that a blameworthy action or omission results in is something for which the agent is thereby also blameworthy. It must also be that, at some time in the past, it was foreseen (or at least foreseeable) that the action or omission would or might result in the subsequent thing. The following case taken from Holly Smith helps illustrate this:

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<sup>1</sup> Ignorance with respect to the moral status of an action or omission comes in different forms. In this chapter I am concerned with what is often called *circumstantial ignorance*: ignorance of the wrong-making features of an action or omission. I discuss this in more detail in section 4.

Blood: The daughter of a business executive has been assigned a science project of investigating the distribution of blood-types within the population. To assist her, the executive asks his secretary to survey the office staff and prepare a report on their blood-types by noon. Instead of carrying out this request, the secretary reads a spy novel. At 11:45 a co-worker suffers massive bleeding as a result of an office accident. Paramedics arrive, and could start a transfusion immediately if the worker's blood-type were known. Unfortunately he is unconscious, cannot provide this information, and so dies before the transfusion can be started. Had the secretary followed her boss's orders, she would have known the worker's blood-type and his life would have been saved (1983, p. 505).

Though the secretary may be blameworthy for failing to follow her boss's orders, it would be unfair to blame her for the death of the worker. After all, how could anyone have foreseen that the secretary's failure to follow her boss's orders would result in the worker's death? Contrast this case with *Allergy*. Because Dr. Adams was aware that medical records often include important information about patients' allergies, and that neglecting to look at medical records can result in unwittingly harming patients, Dr. Adams's blameworthiness for giving Jeremy medicine that he is allergic to is traceable to his blameworthiness for choosing to ignore Jeremy's medical records.

Tracing theorists are divided. While some maintain that the cognitive condition on tracing is best formulated in terms of reasonable foreseeability, others contend that it requires actual foresight.<sup>2</sup> In what follows I will argue that, for a number of theorists, a commitment to the reasonable foreseeability view is in tension with other views that they maintain about the nature of epistemic obligation and the conditions under which ignorance excuses. Before continuing, I will lay out the tracing strategy and its various formulations in more detail.

The tracing strategy helps highlight a useful distinction. An agent's blameworthiness for something is *direct* when he is blameworthy for it in virtue of the control that he exercises and the awareness that he has at the time. In contrast, an agent's blameworthiness for something is *derivative* when he is blameworthy for it at least partly in virtue of his blameworthiness for some prior thing.<sup>3</sup> As I will understand it, the tracing strategy entails the following:

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<sup>2</sup> Rosen (2008), for example, requires reasonable foreseeability, while Zimmerman (1997) requires actual foresight (pp. 420-421).

<sup>3</sup> Zimmerman (1997) and Rosen (2004) give similar accounts of this distinction.

**(TS)** If an agent lacks the control or awareness required to be directly blameworthy for some particular morally wrong or bad item Y, then he is blameworthy for Y if and only if

- (i) Y is (at least partly) the result of some prior thing X for which the agent is blameworthy, and
- (ii) the agent satisfies the relevant foresight condition with respect to Y.

The second clause in (TS) concerns what I will call the “epistemic condition” on derivative blameworthiness. Conceptual space leaves room for at least four general positions concerning this condition:

- (a) The agent must actually foresee at the time of X that it would or might result in Y.
- (b) The agent must actually foresee at the time of X that it would or might result in a certain type of consequence of which Y is a token.
- (c) It must be reasonably foreseeable for the agent at the time of X that it would or might result in Y.
- (d) It must be reasonably foreseeable for the agent at the time of X that it would or might result in a certain type of consequence of which Y is a token.<sup>4</sup>

Corresponding to these four positions on the epistemic condition are four versions of the tracing strategy (TSa, TSb, TSc, and TSd), each differentiated by the particular epistemic condition stated in clause (ii) above.

We can narrow the range of options. In their response to Vargas (2005), Fischer and Tognazzini (2009) convincingly argue that it is an overly demanding epistemic requirement on tracing that particular consequences be reasonably foreseeable for the agent. A good deal of their discussion focuses on Vargas’s *Jeff the Jerk* case, in which a teenage Jeff takes on a process of character development (of becoming a jerk) that results in his behaving in a rude and insensitive manner when he lays off employees some decades later. Vargas explains that, although Jeff is intuitively blameworthy for this later act, it was not reasonably foreseeable for Jeff at the time when he began his character development, and so the tracing strategy (construed so as to require reasonable foreseeability) cannot

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<sup>4</sup> It might need to be added to these foresight conditions that the agent believes that Y (or some type of consequence of which Y is token) is morally bad or wrong.

accommodate Jeff's blameworthiness for the later act. But as Fischer and Tognazzini point out, the fact that a *particular* bad consequence of Jeff's becoming a jerk is not reasonably foreseeable for Jeff at the time does not preclude its being reasonably foreseeable that his becoming a jerk will likely result in his behaving in jerky ways down the road. Put simply, they maintain that it is sufficient for tracing that consequences more broadly construed are reasonably foreseeable for an agent. If the correct version of the tracing strategy is one that requires reasonable foreseeability, it is plausibly TSd. This sort of consideration can also be applied to versions of the tracing strategy that require actual foresight; if the correct version of the tracing strategy is one that requires actual foresight, it is plausibly TSb.<sup>5</sup> I limit the following discussion to these two alternatives, referring to them as foreseeability views and actual foresight views, respectively.

## **2.2. Foreseeability Views**

Gideon Rosen is committed to a foreseeability view. He writes:

[W]e are not culpable in every case for the bad consequences of our culpable wrongdoing. It would be more accurate to say, as the law sometimes does, that we are on the hook for the "foreseeable" bad consequences of the wrong we do (2008, p. 604).<sup>6</sup>

John Martin Fischer and Neal Tognazzini are committed to a foreseeability view concerning the epistemic condition on responsibility for consequences. The version of the tracing strategy that Vargas (2005) attacks, and that Fischer and Tognazzini (2009) defend, is stated by Vargas as follows:

(KC) For an agent to be responsible for some outcome (whether an action or a consequence) the outcome must be reasonably foreseeable for that agent at some suitable prior time (p. 274).

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<sup>5</sup> For simplicity, in what follows I will often omit "a certain type of consequence of which Y is a token" when discussing these two epistemic conditions on derivative blameworthiness.

<sup>6</sup> Rosen is clear that he understands moral culpability as equivalent to blameworthiness (2004, pp. 296-297).

Fischer and Tognazzini accept that, given a broad specification of the outcome, KC correctly states the epistemic condition on responsibility for consequences (pp. 537-538)<sup>7</sup>. I proceed on the assumption that Fischer and Tognazzini maintain that, when conjoined with the fact that an agent has sufficient control (required for blameworthiness) over a prior item that the outcome resulted from, the outcome being reasonably foreseeable is sufficient for both responsibility and blameworthiness for consequences.<sup>8</sup> I take it, then, that they are committed to a foreseeability version of the tracing strategy as understood above.

### 2.2.1. Reasonable Foreseeability

These theorists are committed to reasonable foreseeability as the epistemic condition on derivative blameworthiness. But what does reasonable foreseeability amount to? Some notions of reasonable foreseeability are analyzed in terms of what a certain *sort* of agent (e.g., a reasonable agent) *would* foresee.<sup>9</sup> But whether an agent is responsible or blameworthy for something depends on whether the agent in question has or exercises certain capacities with respect to the item in question (e.g., whether the agent or the mechanism from which he acted was reasons responsive, whether the agent could have

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<sup>7</sup> Although (KC) states a necessary condition and not a sufficient one, Fischer and Tognazzini take it that this is sufficient to satisfy the epistemic condition on responsibility for consequences. This commitment will become clearer in 2.1.

<sup>8</sup> Although Fischer and Tognazzini (2009) commit themselves to an epistemic condition on responsibility for consequences, they do not explicitly commit themselves to a view concerning the epistemic condition on *blameworthiness* for consequences. In a footnote, they say:

[I]t may well be that you are morally responsible for inadvertently offending someone even though you are not blameworthy for doing so. What sort of epistemic requirement is a condition for blameworthiness is an important and interesting question that we do not take up here.

Because of this, one might wonder whether Fischer and Tognazzini are committed to a foreseeability view of the tracing strategy as I state it in section 1 (since it concerns blameworthiness).

It might be argued, as Fritz (2014) does, that the position that an agent may be responsible for wrongdoing without being blameworthy for it is unmotivated. If Fritz is correct, then Fischer and Tognazzini cannot plausibly maintain that there are distinct epistemic conditions on responsibility for consequences and blameworthiness for consequences. In any case, given their silence on this issue, the argument I present in this chapter may be taken either as a critique of their position (on the assumption that they do in fact hold that these conditions are sufficient for *blameworthiness* for consequences) or else as a reason for them to take a stand against foreseeability versions of the tracing strategy (on the assumption that they are merely agnostic about the issue).

<sup>9</sup> Husak, for example, maintains that an agent *should* be aware of some risk “if a reasonable person in his situation *would* have been aware of the risk” (2011, p. 207, my emphasis).

done otherwise, etc.).<sup>10</sup> Because of this, the reasonable foreseeability requirement in foreseeability versions of the tracing strategy should be understood as relative to the agent in question. We should ask, not whether something is reasonably foreseeable *simpliciter*, but rather whether something is reasonably foreseeable *for a given agent*.<sup>11</sup>

Some event Y is a reasonably foreseeable result of some event X for an agent S only if S has the ability to foresee that Y will or might result from X.<sup>12</sup> As Fischer and Tognazzini say of one of Vargas' cases, "tracing can apply simply because it is reasonable to think that the agent *can foresee* outcomes that are broadly specified" (p. 552, my emphasis). Of course, an agent's ability to foresee something often depends upon his ability to *do* certain things the performance of which makes foresight likely for him. For example, Dr. Adams' ability to foresee that the medicine he prescribes to Jeremy might harm him depends upon his ability to check Jeremy's medical history chart for allergies.

It is worthwhile to note that Y's being reasonably foreseeable for S does not entail that it is reasonable to *expect* S to foresee Y, since, depending on S's circumstances, there may not be any reason for S to foresee that Y will or might result from X. For example, although it would be reasonably foreseeable for some other doctor that prescribing a certain medication may result in harm to Jeremy, it would not be reasonable to expect this other doctor to foresee this if he has no reason to prescribe the medicine to Jeremy and isn't intending or considering whether to do so, since in that case he will have no reason to do things to make this foresight likely (e.g., ask Jeremy about known allergies). Since Y's being reasonably foreseeable for S often depends upon S's ability to do certain things the performance of which makes foreseeing Y more likely for S, it would be reasonable to expect S to foresee Y only if S had sufficient reason to do such things, and usually this is the case when S is considering whether to or intending to X or if S has reason to X.<sup>13</sup> It is reasonable to expect S to foresee Y, then, if and only if it is Y is reasonably foreseeable for S

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<sup>10</sup> See, for example, Fischer and Ravizza (1998), according to which an agent's being morally responsible for an action requires that the mechanism from which the agent acted be moderately reasons responsive.

<sup>11</sup> Sher (2009, pp. 100ff) maintains that the standards concerning what a given agent should be aware of are sensitive to facts about that agent's cognitive capacities.

<sup>12</sup> For simplicity, I will often use "Y is reasonably foreseeable for S" as shorthand for "it is reasonably foreseeable for S that Y (or some type of consequence of which Y is a token) will or might result from X."

<sup>13</sup> S will also have reason to do such things if S is somehow involved in or obligated to help with another agent's deliberation concerning X.

and if S has sufficient reason to consider whether Y might result from some action or event X.

Often the notions of Y being reasonably foreseeable for an agent and of it being reasonable to expect an agent to foresee Y are used interchangeably. For example, of *Jeff the Jerk*, Fischer and Tognazzini write, “there must be a prior time at which Jeff’s firing his employees is *reasonably foreseeable*” (p. 536, my emphasis). And, of the same case, they write, “We hold him responsible partly because he freely decided to become a jerk at some point in the past, and it is *reasonable to expect* Jeff’s younger self to have known that becoming a jerk would in all probability lead him to perform jerky actions” (p. 538, my emphasis). Using these two notions interchangeably makes sense when speaking of an agent who Xs, since, if Y is foreseeable for that agent, then he will often also have had sufficient reason to consider the possible consequences of X-ing prior to doing so. In section 2.3.1 I discuss sufficient reasons agents may have to do such things in terms of moral obligations to improve their epistemic position with respect to the consequences of their actions.

### **2.3. The Argument**

In this and the following sections I reveal a tension between foreseeability versions of the tracing strategy and other views that certain theorists committed to this strategy hold. By offering an argument for the conclusion that foreseeability views are false, I will make perspicuous this tension. The argument has three premises. The difficulty for these proponents of TSd (Rosen and Fischer and Tognazzini) is that they accept two of these and have no principled reason to deny the third. Since the argument is valid, these theorists must either give up their version of the tracing strategy or else give up one of the earlier premises that they are committed to.

Before continuing to discuss it in detail, I will briefly summarize the argument. The argument begins from the premise that it is possible for an agent to be blameless for failing to foresee what was foreseeable for him. The second premise is the principle that an agent is blameworthy for acting from ignorance only if he is blameworthy for that ignorance. If blameless ignorance excuses agents for actions, though, then it also excuses agents for

action consequences (the third premise). But, given the first premise, foreseeability versions of the tracing strategy contradict this: they imply that an agent can be blameworthy for some consequence even if he was blamelessly ignorant of it. So, foreseeability versions of the tracing strategy are false.

### 2.3.1 Introducing the First Premise

The first premise of the argument concerns the nature of epistemic obligation and the possibility of blameless ignorance. It will be helpful to discuss these issues with reference to a case:

Chocolate: Jon tosses his younger brother's chocolate bar into the next-door neighbor's backyard, where a very mean pit-bull guard dog lives. The pit-bull eats the chocolate bar and dies as a result (the pit-bull is very sensitive to chocolate). Jon does this freely, knowing that it's wrong to throw his little brother's chocolate bar somewhere that he cannot retrieve it.

Jon is blameworthy for tossing his brother's chocolate bar over the fence. Is Jon also blameworthy for the pit-bull's death? It depends upon further details of the case. Jon is aware that the pit-bull lives in the neighbor's backyard. Jon also knows (though we may suppose that he isn't attending to this at the time) that dogs are, in general, sensitive to chocolate. By considering these facts, Jon could have made the relevant inference that throwing the chocolate bar next door would or might result in harm to the pit-bull; that this consequence would or might result from his action was reasonably foreseeable for Jon at the time of his action. Suppose, though, that Jon failed to foresee this. Does this excuse Jon for the pit-bull's death? Certainly not, if Jon's failure of foresight is something for which he is blameworthy. But what if Jon is *blameless* for this failure?

On foreseeability views, whether an agent's lack of foresight is blameless is irrelevant to whether the agent is blameworthy for the consequence. If such blameless ignorance is possible, then this is problematic for foreseeability theorists who maintain that blameless ignorance excuses (I discuss this in section 4). We can begin the argument, then, with this premise:



(1) *Possibly, an agent is blameless for failing to foresee what was reasonably foreseeable for him.*

Because agents have obligations to foresee certain reasonably foreseeable results of their own actions, an assessment of premise (1) requires clarification of the claim that an agent ought to foresee something.

It is commonly held that moral obligations apply directly only to those things that are under our direct voluntary control.<sup>14</sup> We normally think of obligations as applying to actions or omissions; they concern those actions that we ought or ought not to perform. It's difficult, then, to make sense of what an *epistemic* obligation amounts to without further qualifying it. Beliefs generally do not fall under the category of things that are under our direct voluntary control. So, how are we to make sense of obligations to believe, to know, or to be aware of certain things?

On Gideon Rosen's view, epistemic obligations amount to duties to *do* certain things that will or might result in an improved epistemic position with respect to one thing or another. Rosen calls these "procedural epistemic obligations." According to Rosen, such an obligation "is not itself an obligation to know or believe this or that. It is an obligation to take steps to ensure that when the time comes to act, one will know what one ought to know" (2004, p. 301).<sup>15</sup> Procedural epistemic obligations may include deliberating about alternative courses of action before performing morally significant actions, seeking advice in cases of difficult choices, paying attention to pertinent features of your situation, reflecting on the permissibility of an action, and so on. As Rosen emphasizes, these obligations are impossible to codify; exactly what epistemic obligations one has in a given situation will depend upon the details of that situation.

In defending the tracing strategy against a concern raised by Angela Smith's case of forgetting a close friend's birthday, Fischer and Tognazzini seem to operate with this view of epistemic obligation:

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<sup>14</sup> There are some who disagree with this, such as Robert Adams (1985) and Angela Smith (2005). However, because this chapter is concerned with theorists that do not dispute this claim, I will not attempt defend it here.

<sup>15</sup> See also Rosen (2003, pp. 63-64).

To see why we think some sort of tracing must be going on in the birthday case, consider the fact that Smith failed to choose to do various things which were such that, had she so chosen, she would have had a better chance of remembering her friend's birthday.... Part of what it is to be a good friend is to take these steps to minimize the likelihood that you will forget your friends' birthdays. If you don't take these steps, and then forget, you are legitimately morally assessable for your forgetting precisely because you failed to do something to make your forgetting much less likely (and you were in control of this failure) (2009, p. 550).

In addition to the implicit agreement with Rosen's view of epistemic obligation, the above passage also seems to imply that an agent who did *not* fail to fulfill any procedural epistemic obligations relevant to his foreseeing Y would be excused for failing to foresee Y. After all, if an obligation to foresee Y is just an obligation to do certain things to help ensure an improved epistemic position with respect to Y, it seems possible for an agent to fulfill whatever procedural epistemic obligations he has with respect to Y without subsequently coming to foresee Y. If this were so, the agent would be blameless for failing to see what was reasonably foreseeable for him and premise (1) would be true. In the following subsection I illustrate this possibility.

### *2.3.2 The Case for Possible Blameless Ignorance*

Recall Dr. Adams. In a variation of the case, he checks Jeremy's chart, which says that Jeremy is allergic to chemical A. Dr. Adams prescribes B to Jeremy, aware that B is composed of chemicals  $\alpha$ ,  $\beta$ , and  $\gamma$ . As it turns out, ' $\gamma$ ' is another name for chemical A. Dr. Adams knows this, but his knowledge of this is not occurrent at the time.

It was reasonably foreseeable for Dr. Adams at the time that prescribing B would result in harm to Jeremy. Dr. Adams had the knowledge and capacity required to make the inference that, since Jeremy is allergic to chemical A, B is partly composed of chemical  $\gamma$ , and  $\gamma$  is identical to A, prescribing B will result in harm to Jeremy. We may further assume that Dr. Adams should have foreseen that prescribing B would result in harm to Jeremy, and this epistemic obligation is a matter of his having had certain procedural epistemic

obligations. For example, Dr. Adams had a procedural epistemic obligation to check patients' medical history charts before prescribing them medicine, a duty that he fulfilled on this occasion. And yet, Dr. Adams failed to foresee that prescribing B would result in harm to Jeremy.

Dr. Adams may have come to realize this if he had first checked with another doctor in his office to make sure that B wouldn't harm Jeremy. But if he did have a procedural duty to do this, then it would presumably be an instance of a more general procedural duty to double-check with another doctor any time (or at least most times) before he prescribes medicine. But it's implausible that he has a general procedural epistemic duty of this kind. So, it's implausible that he had this duty with respect to prescribing B to Jeremy. It's more plausible that Dr. Adams had a procedural epistemic duty to double-check with *himself* by asking himself whether B might be harmful to Jeremy. We can suppose that he did, but simply failed to recall that one of B's components is identical to chemical A (but sometimes goes by a different name).<sup>16</sup>

This case helps illustrate the claim that it is possible that an agent fulfills whatever procedural epistemic duties he has to with respect to foreseeing Y without subsequently coming to foresee Y. If an obligation to foresee Y is just an obligation to do certain things to help ensure an improved epistemic position with respect to Y, an agent that fulfills these procedural obligations without subsequently coming to foresee Y is excused (and therefore blameless) for failing to foresee what was reasonably foreseeable for him.

Let's return to *Chocolate*. What epistemic duties might Jon have had in his situation? Since it's plausible that we have a general obligation to check around before throwing something even slightly heavy to make sure that it won't hit someone, Jon plausibly had this procedural epistemic duty with respect to throwing the chocolate bar. Suppose that he

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<sup>16</sup> One might point out that Dr. Adams does not merely have procedural epistemic obligations to check Jeremy's medical history chart, to ask himself whether B might be harmful to Jeremy, and so on; he has obligations to do these things *carefully*, and he may have failed to fulfill these more specific procedural epistemic obligations. But the supposition that Dr. Adams can, for example, ask himself whether B might be harmful to Jeremy and yet still fail to realize that it will be harmful to him does not require the assumption that Adams did not take a reasonable amount of time asking himself this question or that he did not ask himself carefully. He may have done so and nevertheless failed to recall what he knew. Although it may be *unlikely* that Dr. Adams fulfill each of these procedural epistemic duties without coming to foresee that prescribing B would result in harm to Jeremy, there is no reason to suppose it impossible. Since (1) concerns possibility and not likelihood, the possibility of such a scenario is sufficient for its truth.

did fulfill this obligation, but that the fulfillment of this obligation didn't lead to foreseeing that harm might come to the dog. Of course, this isn't surprising; Jon's throwing the chocolate bar doesn't pose any serious danger to the dog for the reason that it might hit the dog, but rather because the dog might eat it. This thought might lead one to think that Jon didn't merely have an obligation to check to see whether he might hit anyone. He has a broader procedural epistemic duty; he has a duty to think about whether, by throwing the chocolate bar, he might *harm* someone. Suppose he does think about this, but all that comes to mind when he asks himself whether he might *harm* someone is whether he might *hit* someone. That is, he fails to realize at the time that there are more ways to harm someone by throwing the chocolate bar than by hitting someone. We can suppose he would have realized this had he asked himself the same question while throwing a more conspicuously dangerous item, such as a firecracker. In this alternative case, though, Jon may well have additional procedural epistemic duties that he did not have in the actual case.

Some may take it that Dr. Adams or Jon plausibly had further procedural epistemic duties than the ones I have discussed, and this might be right. But this wouldn't alter the general point that I have been attempting to illustrate: the fulfillment of one's procedural epistemic duties in order to avoid some future ignorance does not *guarantee* that one will avoid that ignorance. The considerations raised in this section suggest that it is at least possible (even if it is *unlikely*) that an agent fulfill whatever procedural epistemic duties he has, and yet for some reason or another his fulfillment of these duties didn't lead (as we might hope it would) to foresight. If this is so, then the agent is blameless for his failure to foresee what was reasonably foreseeable for him, and so premise (1) is true.

### 2.3.3 *Objections to the First Premise*

A possible objection arises here. It might be claimed that, if an agent fulfills all of his procedural epistemic obligations and yet fails to foresee some consequence of his action, then the consequence is not reasonably foreseeable for the agent. The reasoning is as follows. On one possible construal of reasonable foreseeability, that Y is reasonably foreseeable for S entails that S *ought* to foresee Y. This, in turn, is just a matter of S's having certain procedural epistemic obligations the fulfillment of which makes foreseeing Y more

likely for S. If an agent has met all of these, it might be explained, then there is no further obligation to fulfill. Given that there is no further obligation that the agent has not met, then if the agent fails to foresee Y, there just is no sense in which he ought to have foreseen Y. In sum, if “Y is reasonably foreseeable for S” entails that “S ought to foresee Y,” then Y is not reasonably foreseeable for the agents I discuss above, and so the cases I discuss fail to establish premise (1).

In response to this objection, we should first consider the claim that must be true in order to refute the argument I offer for (1): if S has no unfulfilled procedural epistemic obligations relevant to Y and S fails to foresee Y, then Y is not reasonably foreseeable for S. This claim is counterintuitive. If I am correct, then it is possible for Dr. Adams and Jon to fulfill all the relevant procedural epistemic obligations and yet fail to foresee. But how would this make it so that these consequences are not reasonably foreseeable for these agents? By stipulation, these agents have the cognitive capacities to foresee what they failed to, and there are procedures (that they are able to carry out) the performance of which makes foresight likely for them. These two facts seem sufficient for reasonable foreseeability.

Furthermore, human cognition is fallible. Rosen himself emphasizes that sometimes we simply fail to notice a relevant fact or fail to foresee something, *not* because we lack the capacity to do so, but simply because our cognitive faculties are not infallible; sometimes our failure to realize some feature of our behavior or to foresee some consequence of our action is simply, as Rosen puts it, “cognitive bad luck” (2008, p. 606-607).

Finally, we can revisit some of the considerations raised in section 2.2. It’s implausible that “Y is reasonably foreseeable for S” entails “S *ought* to foresee Y,” since agents who have the ability to foresee Y may nevertheless lack sufficient reason to foresee Y. And if they have no reason to foresee, then they are not obligated to.

The above objection depends upon the claim that the epistemic condition on tracing requires that S *ought* to foresee Y. Let us, for the time being, suppose that this is the proposed epistemic condition. Consider an alteration to the first premise that corresponds to this:

*(1') Possibly, an agent is blameless for failing to foresee what it he ought to have foreseen.*

On the view held by Rosen and Fischer and Tognazzini, epistemic obligations are just procedural epistemic obligations; that is, they are just obligations to perform (or to refrain from performing) certain actions. If this is right, then agent might be excused for failing to foresee Y if the agent failed to fulfill some procedural epistemic obligation relevant to Y and the agent has an excuse for that omission. Because a procedural epistemic obligation relevant to Y is an obligation to do something that will or might result in an improved epistemic position with respect to Y, a failure to fulfill such an obligation may be excused in the same way that other failures to fulfill obligations to perform certain actions are excused; i.e., it may be excused due to either lack of control or lack of awareness.<sup>17</sup> If this is so, then an agent may be excused for failing to foresee what he ought to have foreseen, and so (1') is true.

The objector might point out that, since the agent's ability to foresee Y depends upon his ability to do things that make foresight more likely, a lack of control or awareness with respect to one of these things would make it so that he doesn't have the ability to do these things, and so does not have the ability to foresee Y. If this is so, and if 'ought' implies 'can', then it is false that the agent ought to foresee Y in such a case, and so the case fails to establish (1').

This response from the objector succeeds only if it is impossible for an agent to have an excuse for what he ought to have foreseen. If this is true, then the alteration of the epistemic condition on tracing entails that, if an agent fails to foresee what he ought to have foreseen, then his failure to foresee this is blameworthy. I will argue in section 2.6 that, given certain plausible assumptions, this epistemic condition collapses into an actual foresight version of the epistemic condition on tracing, and so is unhelpful to the foreseeability theorist.

### *2.3.4 Commitment to the First Premise*

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<sup>17</sup> Although I have not here raised the question of what epistemic conditions there are on direct blameworthiness, a blameless failure to satisfy them would constitute an excuse.

The foregoing considerations lend plausibility to (1): it is possible for an agent to be blameless for failing to foresee what was reasonably foreseeable for him. As we have seen, this point may be disputed. However, it has not been my intention to establish (1) beyond any doubt, but rather to argue for its truth on the view that epistemic obligations amount to procedural epistemic obligations. In addition to this, there is evidence that the foreseeability theorists discussed here accept it.

Rosen is committed to (1). Indeed, it is closely related to a premise in one of his own arguments:

The skeptical argument assumes as a premise that *whenever you are culpable for failing to know some pertinent truth, this is because you are culpable for failing to comply with one of these procedural epistemic obligations...* Take any case of action done from ignorance and let it be stipulated that the agent has been utterly scrupulous in policing his own opinion: he has been as careful and as inquisitive and as reflective as a person in his circumstances should be, and yet he has failed to grasp some crucial fact. I claim that if you bear this stipulation clearly in mind, you will be persuaded in every case that the agent's ignorance is not his fault" (2004, p. 302).<sup>18</sup>

It follows from Rosen's premise that if one is not culpable for failing to comply with one's procedural epistemic obligations with respect to awareness of some consequence Y, then one is not culpable for failing to foresee Y. The conjunction of this claim with the claim that it is possible for an agent to fulfill all of his procedural epistemic obligations without foreseeing what was reasonably foreseeable for him (as I have argued above) entails that (1) is true.

Fischer and Tognazzini also seem to accept (1). When discussing Smith's birthday-forgetting case, they write:

Surely if it's true that Smith did everything she could do to make forgetting her friend's birthday less likely, then she isn't responsible if she accidentally forgets anyway. If Smith were to explain to her friend how much care she put into trying to remember the birthday, and that despite her

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<sup>18</sup> Elsewhere Rosen writes, "We also have a plausible sufficient condition for excusable ignorance, according to which ignorance is excusable when it is nonnegligent— that is, when it persists despite the fact that the agent has taken every required precaution against such ignorance" (2008, p. 604).

best efforts, she simply forgot, we maintain that her friend would no longer be justified in holding her responsible for forgetting... here we assume that the example can be filled in so that it is clear that all reasonable efforts were made by Smith to ensure that her memory would be triggered... (2009, p. 550).<sup>19</sup>

Here Fischer and Tognazzini seem to accept that Smith would be blameless for failing to foresee some consequence were she to fulfill all of the relevant procedural epistemic obligations, and offer no reasons to think that the consequence is not reasonably foreseeable for Smith. There is good reason, then, to think that they are committed to (1).

#### ***2.4. Drawing out the Tension: Blameless Ignorance as an Excuse***

The second premise in the argument is a widely held principle about the conditions under which ignorance excuses:

*(2) An agent is blameworthy for X-ing from ignorance only if he is blameworthy for the ignorance from which he Xs.*

Call this the Blameless Ignorance Principle, or (BI). This principle is maintained by the theorists that I have been discussing (Rosen 2004, p. 300; 2003, p. 64, Fischer and Tognazzini 2011, p. 390), as well as a number of other theorists, including Michael Zimmerman (1997, p. 411), William FitzPatrick (2008, pp. 601-602), Neil Levy (2009, p. 741), and Holly Smith (2011, p. 118).

(BI) can be understood in at least two different ways, corresponding to two different kinds of ignorance that can figure into an agent's performance of a morally wrong action. First, an agent may be ignorant of the wrongness of his action because he is unaware of the features of his action that make it wrong. Second, an agent may be aware of the features of the action that make it wrong but unaware that they are wrong-making. The first type is

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<sup>19</sup> Although Fischer and Tognazzini (2011) speak in terms of moral responsibility here, elsewhere they maintain that moral responsibility is required for blameworthiness, so they are implicitly committed to my claim.



commonly called *circumstantial* ignorance and the second kind *moral* ignorance.<sup>20</sup> While the claim that blameless moral ignorance excuses is somewhat controversial, acceptance of the claim that blameless circumstantial ignorance excuses is widespread.<sup>21</sup> Here I restrict the second premise to the claim that blameless circumstantial ignorance excuses.

One compelling reason that (BI), when restricted to circumstantial ignorance, has gleaned considerable support is that ignorance of wrong-making features of an action or omission commonly (if not always) precludes the expression of a negative quality of will, which is commonly thought to be necessary for blameworthiness.<sup>22</sup> An agent's blameless ignorance that his action will or might have harmful consequences, for example, commonly precludes the expression of a morally objectionable judgment or attitude with respect to that consequence, since the harm was unintended and unknown.<sup>23</sup> Consider, now, a closely related principle:

(BIC): A person S is blameworthy for something Y that is a consequence of S's X-ing out of ignorance (with respect to whether Y would or might result from X) only if S is blameworthy for the ignorance from which he X-ed.

Do we have good reason to accept (BIC)? It might be supported by appealing to (BI), such that if (BI) is true then so is (BIC). There are a number of reasons for accepting this conditional. First, the reason offered above in favor of (BI) lends support to (BIC), as well. As I mention above, blameless ignorance of the consequences of one's action or omission commonly (if not always) precludes the expression of negative quality of will with respect to that consequence, and this fact supports (BI) and (BIC) alike.

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<sup>20</sup> Rosen (2003) also makes this distinction, calling the first type factual (or non-moral) ignorance, and the second moral ignorance. FitzPatrick (2008) and Talbert (2013) both use the term "circumstantial ignorance."

<sup>21</sup> Rosen (2003) defends the claim that blameless ignorance of any kind excuses. Talbert (2013) accepts that blameless circumstantial ignorance often excuses but argues that moral ignorance often does not. Clarke (2014) argues that (BI) (understood either in terms of circumstantial or moral ignorance) is lacking in support.

<sup>22</sup> Talbert, for example, seems to have something much like this in mind in maintaining that non-culpable *circumstantial* ignorance may excuse an agent from wrongdoing but that non-culpable *moral* ignorance usually does not (2013, p. 226).

<sup>23</sup> Levy (2009) offers a distinct reason in favor of (BI), namely that it is unfair to blame someone for doing something if he blamelessly lacked the belief that he has good or compelling reason to omit from doing it (likewise, it is unfair to blame someone for failing to do something if he blamelessly lacked the belief that he has good or compelling reason *to* do it). Blameless ignorance of the wrong-making features of an action (i.e., blameless circumstantial ignorance) may make it so that the agent blamelessly lacks such a belief.

A second reason to accept the conditional claim can be seen by considering how one might object to these principles. For example, one may reject (BIC) by maintaining that, if it is reasonable to expect an agent to know or to be aware of some likely bad consequence of some (free) action of his and yet he fails to be aware of it, then he is blameworthy for that consequence, blameless ignorance notwithstanding. The purpose of stating this objection is not to defend against it but rather to point out that the same sort of objection works equally well against (BI): if it is reasonable to expect an agent to know or to be aware of some wrong-making feature of some (free) action of his and yet he fails to be aware of it, then he is blameworthy for performing that action, blameless ignorance notwithstanding. Indeed, it may be that any objection to (BIC) can be made to work equally well against (BI). This would support the claim that, if (BIC) is false then so is (BI), which is logically equivalent to the claim we are seeking support for.

Perhaps the simplest and strongest support for the conditional claim (and also a straightforward explanation for the two reasons just offered) is that (BIC) seems just to *be* a particularized version of the blameless ignorance principle applied to consequences: circumstantial ignorance with respect to X-ing can include ignorance with respect to the consequences of X-ing. Because of the forgoing considerations, the following premise is quite plausible:

*(3) If (BI) then (BIC)*

The next step of the argument follows from the second and third premises:

*(4) (BIC)*

The reader may begin to see how the argument proceeds from here. Given our first premise (that possibly, an agent is blameless for failing to foresee what was reasonably foreseeable for him), foreseeability views have the implication that an agent can be blameworthy for some consequence even if he was blamelessly ignorant of it. Although this claim does not directly contradict the Blameless Ignorance Principle, it does contradict its corollary, (BIC). We can now state the fifth step of the argument:

*(5) If reasonable foreseeability is sufficient to fulfill the foresight condition on derivative blameworthiness, then (BIC) is false.<sup>24</sup>*

Finally, it follows from (4) and (5) that

*(C) It is not the case that reasonable foreseeability is sufficient to fulfill the foresight condition on derivative blameworthiness.*

It follows from (1) - (5), then, that foreseeability versions of the tracing strategy are false. We can condense the argument as follows: If (BIC) is true and if it is possible for an agent to be blameless for failing to foresee what was reasonably foreseeable for him, then foreseeability views are false. The problem is that the foreseeability theorists discussed in this chapter accept two of the three assumptions of the argument (1 and 2), and seem to have no principled reason to reject (BIC). Something has to give.

The first option for such theorists is to reject the claim that it is possible for an agent to be blameless for failing to foresee what was reasonably foreseeable for him (premise 1). But the authors discussed here have strong reasons not to reject (1). It seems that (1) is entailed by the view that we can be directly responsible or blameworthy only for those things that are under our direct voluntary control. On this view we can be directly responsible or blameworthy only for actions or omissions. This “control-based” view is a foundational view that these theorists are committed to about the nature of responsibility and blameworthiness.<sup>25</sup> Since epistemic states (ignorance, in particular) are not under our direct voluntary control, we can only be derivatively blameworthy for ignorance by being blameworthy for something that resulted in it. That is to say, it cannot be that an agent is not blameworthy for any action or omission and yet is nevertheless blameworthy for being ignorant. We can continue this line of reasoning by briefly rehashing some of the motivation offered in 2.3.2 for premise (1). Agents have procedural epistemic obligations to do or to refrain from doing certain things such that fulfilling these obligations makes it

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<sup>24</sup> Notice that both (1) and (5) can be altered to correspond to the amendments to the epistemic condition considered in section 3.2, so that modified versions of this argument will fare just as well against views that adopt those epistemic conditions.

<sup>25</sup> Rosen (2004, p.302), Fischer and Tognazzini (2009, pp. 549-550).

likely that the agent will become aware of some morally relevant fact (e.g., that a certain action is wrong, or that it will have bad consequences). But the fulfillment of these procedural epistemic obligations does not guarantee that the agent will avoid the ignorance that the procedural epistemic obligations are aimed at avoiding. This means that an agent may fulfill all of his epistemic obligations without avoiding that ignorance. But then it is possible for an agent to be ignorant and yet blameless with respect to his procedural epistemic obligations. If this is so, and if blameworthiness for ignorance is always derivative (something that seems to be entailed by the control-based view of responsibility stated above), then (1) is true. In 2.3.3 I point out that these theorists may attempt to resist this line of argument but that doing so requires an alteration to their view of the epistemic condition that fares no better with respect to avoiding corresponding versions of the first premise.

There are two remaining options for these theorists. They can either reject (BI), or they can adopt a version of the tracing strategy that is not vulnerable to the sort of argument I have offered against foreseeability views.<sup>26</sup> It is clear how rejecting (BI) allows these theorists to avoid the argument presented above, since (BI) is its second premise. It may not be as clear, however, how a different version of the tracing strategy helps avoid the same sort of argument. In the next section I will explain how a similar argument cannot be used to show that actual foresight views are false.

## ***2.5 A Way Out: What TSb Implies***

Here I will illustrate how an actual foresight view deals with blameless ignorance (and thus avoids the sort of argument presented above) by showing how it does so with respect to Jon in *Chocolate*. Recall the epistemic condition that TSb places on derivative blameworthiness:

- (b) The agent must actually foresee at the time of X that it would or might result in a certain type of consequence of which Y is a token.

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<sup>26</sup> Zimmerman, for example, maintains (BI) and an actual foresight view much like TSb (1997, pp. 420-421).

According to TSb, Jon is blameworthy for the pit-bull's death only if it is the foreseen result of something for which he is blameworthy. If he fails to foresee that tossing the chocolate bar into the pit-bull's yard will or might result in harm to the pit-bull, then TSb implies that Jon is blameless for the pit-bull's death. Notice, though, that the fact that Jon failed to foresee *at the time of his action* that it would or might result in harm to the dog is not, on its own, sufficient for TSb to imply that Jon is blameless for the dog's death. This is because Jon's harming someone as a result of ignorance might be a foreseen result of some *earlier* item for which Jon is blameworthy. If it were, then Jon would be blameworthy for his subsequent ignorance (with respect to tossing the chocolate bar) and for the death of the pit-bull. According to TSb, then, Jon is blameworthy for the death of the pit-bull only if he is blameworthy for his ignorance that his action (i.e., tossing the bar) might have that result. In this way, TSb avoids the implication that foreseeability views have, i.e., that agents can be blameworthy for foreseeable consequences, blameless ignorance notwithstanding.

Some may object that if TSb were true then agents would have an easy way to avoid blameworthiness. Since (b) requires that an agent have actually foreseen the consequences of his actions in order to be blameworthy for those consequences, TSb implies that an agent could simply fail to consider the foreseeable consequences of his blameworthy actions and in doing so avoid blameworthiness for those consequences. Or at least that is the worry.

This objection rests on an oversimplification of TSb. As I pointed out earlier in this section, the fact that an agent fails to foresee *at the time of his action* that it would or might result in certain bad consequences is not, on its own, sufficient for TSb to imply that the agent is blameless for those consequences. That the agent would or might bring about bad consequences as a result of ignorance might be a foreseen upshot of some other thing for which the agent is blameworthy.

The intuitive pull of the objection rests on a misleading picture: If TSb were true, and an agent knew this, he could seemingly avoid blameworthiness simply by choosing not to consider the foreseeable bad consequences of his blameworthy actions. It's not difficult to see why this is false. The agent in question intentionally omits to consider possible negative consequences for the purpose of avoiding blameworthiness. But, he can have this motivation only if he is aware that his ignorance might result in negative consequences of

some type, i.e., those very consequences with respect to which he wants to avoid blameworthiness. Since when he chooses not to consider the possible negative consequences he does so with an awareness that doing so may result in his bringing about negative consequences via ignorance, TSb implies that such an agent *would* be blameworthy for those consequences.<sup>27</sup>

TSb implies that an agent is blameless for unforeseen negative consequences of his blameworthy actions if and only if his failure of foresight is blameless. The upshot in this section is that the argument offered in this chapter against foreseeability views cannot be rephrased to work against actual foresight views like TSb. The argument I have offered against foreseeability views rests upon the following implication: when conjoined with premise (1) (i.e., possibly, an agent is blameless for failing to foresee what was reasonably foreseeable for him) foreseeability views imply that an agent can be blameworthy for some consequence even if he was blamelessly ignorant of it, and so (BIC) is false. This implication does not hold for actual foresight views.

## **2.6. An Attempt to Revise the Foreseeability View**

Some have argued that a commitment to the tracing strategy requires admitting that many agents that we would normally take to be blameworthy are in fact not.<sup>28</sup> The reason cited to support this claim concerns the epistemic condition that the tracing strategy places on derivative blameworthiness. The alleged problem is that it is rare that outcomes are foreseen (or even reasonably foreseeable) at the time of a prior act or omission for which the agent is blameworthy. But, since actual foresight is a more stringent requirement than reasonable foreseeability, the set of cases in which agents satisfy the foresight condition on derivative blameworthiness given TSb is smaller than the set of cases in which agents satisfy the foreseeability requirement given TSd. The result, then, is that if a foreseeability view such as TSd has the result that agents are blameworthy significantly less often than

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<sup>27</sup> Referencing Aquinas's *Summa Theologiae*, I-II, Q 6, art. 8., FitzPatrick (2008) calls this kind of ignorance (where one intentionally remains ignorant in order to have an excuse) "affected ignorance."

<sup>28</sup> Zimmerman (1997), Rosen (2004), Vargas (2005), McKenna (2008), Sher (2009).

we are inclined to think, an actual foresight view like TSb implies that there are even fewer cases in which agents are blameworthy.

Given the argument I have presented, it might be suggested that the foreseeability theorist can revise the foresight condition without needing to adopt something as strong as the actual foresight requirement set out by (b). With this in mind, consider the following revision of (d):

(d') It must be foreseeable by the agent at the time of X that it would or might result in a certain type of consequence of which Y is an instance, *and if the agent fails to foresee this then his failure must be blameworthy.*

The problem with (d) is that, given premise (1), it implies that agents who blamelessly fail to foresee negative consequences that are foreseeable for them are blameworthy for those consequences, and so TSd implies that (BIC) is false. (d') avoids this problem, so that agents who fail to foresee negative consequences that are foreseeable for them are blameworthy for those consequences only if their failure to foresee (i.e., their ignorance) is itself blameworthy.<sup>29</sup> This does not imply, though, that the foreseeability theorist can avoid an actual foresight view with this revision. Indeed, I will argue here that, given certain plausible assumptions, (d') collapses into (b).

The first assumption is that blameworthiness for ignorance is always derivative (an assumption that the targets of my arguments seem to share).<sup>30</sup> If this assumption is true, then if an agent is blameworthy for ignorance it is in virtue of being blameworthy for some prior item that resulted in it. Suppose, then, that blameworthiness for ignorance is always derivative and that some agent S is blameworthy for his ignorance. Call this ignorance i1. According to (d') S is blameworthy for i1 only if it is the foreseeable result of some prior item X for which S is blameworthy. Suppose that, at the time of X, S failed to foresee that i1

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<sup>29</sup> The argument in this section works just as well if we add that S *ought* to foresee a certain type of consequence of which Y is an instance" to (d'). The result would be the revision to the epistemic condition that I consider in section 2.3.3.

<sup>30</sup> This chapter is primarily focused on accounts (like Rosen's and Fischer and Tognazzini's) that hold that one is directly blameworthy for something only if it is under one's direct voluntary control. Since ignorance is not under an agent's direct voluntary control, these accounts imply that one cannot be directly blameworthy for ignorance. Rosen explicitly uses this first assumption as a premise in his argument for skepticism about moral responsibility (2004, pp. 301-303).

would or might result from X. (d') entails that S is blameworthy for *that* ignorance, i2. But, if blameworthiness for ignorance is always derivative, we must again trace S's blameworthiness for i2 to some prior act or omission. As long as any prior act or omission we trace blameworthiness for some ignorance (in this case, the lack of foresight, i2) to is itself accompanied by a lack of foresight (i3) that ignorance would or might result from it, (d') entails that S is blameworthy for that lack of foresight (i2), but only derivatively so.

The second assumption is that if S is derivatively blameworthy for some instance of ignorance, then S is blameworthy for it in virtue of being *directly* blameworthy for some earlier item.<sup>31</sup> But, given the conclusion of the preceding paragraph, *mere* foreseeability (without foresight) only yields derivative blameworthiness. The only way that S can be blameworthy for any instance of ignorance on (d'), then, is in virtue of being directly blameworthy for some earlier act or omission at the time of which S *actually foresaw* that his action or omission would or might result in the ignorance that it results in. But, if this is so, then (d') collapses into (b).

## **2.7. Conclusion**

There seem to be only two viable options for the theorists discussed in this chapter: they must either give up (BI) or else adopt an actual foresight version of the tracing strategy. I have not attempted to adjudicate between these two options. Rather, I leave these authors with a dilemma. Although it is open to them to reject (BI), tracing theorists who are committed to the view that blameless ignorance excuses have reason to reject foreseeability views in favor of an actual foresight view of the tracing strategy.

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<sup>31</sup> Rosen also uses this second assumption as a premise in his argument (2004, p. 299).



## CHAPTER 3

### A SKEPTICAL ARGUMENT

#### *3.1. Rosen's Skeptical Argument*

Gideon Rosen 2004 has offered an argument for the conclusion that we are never justified in making confident positive judgments of blameworthiness. This argument operates under the assumption that awareness is a condition on direct blameworthiness (premise (2)), and that blameless ignorance excuses (premise (4)). In this chapter I will examine Rosen's argument as well as various replies to it with the goal of determining whether and to what extent Rosen's argument succeeds in establishing skepticism about blameworthiness. After considering various responses to the argument, I will suggest a restriction of the argument and an amendment of two of its premises.

Consider the following reconstruction of Rosen's argument:<sup>1, 2</sup>

- (1) If a person X is blameworthy for A then either X is directly blameworthy for A or else X is derivatively blameworthy for A in virtue of being directly blameworthy for something that resulted in A (299).
- (2) X is directly blameworthy for A-ing only if X was aware (at the time of his A-ing) that the balance of reasons weighs against his A-ing (i.e., only if X's A-ing is a genuine case of akratic action<sup>3</sup>).<sup>4</sup>

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<sup>1</sup> For another reconstruction of Rosen's argument, see FitzPatrick (2008). In some places, I borrow FitzPatrick's wording. However, I lay out Rosen's argument somewhat differently than FitzPatrick (the wording, order, and numbers of some of the premises are different). My doing so is a matter of preference; I believe that FitzPatrick offers an accurate representation of Rosen's argument.

<sup>2</sup> I use "blameworthy" instead of "culpable" in this reconstruction, though Rosen's understanding of culpability and blameworthiness make it clear that the two terms may be used interchangeably.

<sup>3</sup> Rosen characterizes akratic action as action contrary to one's reflective judgment about what one has most reason to do (306). Some philosophers would add to this that akratic action is *free* and *intentional*, such as Mele (2012).

<sup>4</sup> There are two ways that ignorance can figure in an agent performing a morally wrong action. First, an agent might fail to recognize the wrongness of her action because of ignorance of some wrong-making feature of the action. Second, an agent might be aware of a wrong-making feature of her action, but fail to recognize the wrongness of her action because she is ignorant that the wrong-making feature is wrong-making. Rosen (2003) calls the first type cases of factual (or non-moral) ignorance, and the second type cases of moral ignorance. Rosen (2003) argues that ignorance of either type excuses, and Rosen (2004) maintains this view.

It follows from (1) and (2) that

(3) If X is blameworthy for A-ing from ignorance, then X's blameworthiness for A is derivative (300).<sup>5</sup>

(4) X is blameworthy for A-ing from ignorance only if X is blameworthy for the ignorance from which he A-ed.<sup>6</sup>

(5) X is blameworthy for some instance of ignorance (e.g., his failing to know that P) only if his ignorance is the result of some prior blameworthy act or omission.

In particular,

(5.1) X is blameworthy for failing to know that P only if he is blameworthy for failing (at some earlier time) to comply with some procedural epistemic obligation.

It follows from (2) that

(6) X is directly blameworthy for failing to comply with some procedural epistemic obligation only if X was aware that the balance of reasons weighs against his failing to comply with that procedural epistemic obligation; that is, X's failure to comply with the epistemic obligation was itself akratic.

It follows from (1)-(6) that

(7) If X is blameworthy for A then either X's A-ing was akratic or else X A-ed from ignorance, in which case the ignorance from which X A-ed was a result of some earlier akratic action or omission (in particular, an akratic failure to comply with certain procedural epistemic obligations).<sup>7</sup>

But,

(8) It is not possible for us to know in any particular case whether akrasia is really involved in the etiology of an action.<sup>8</sup>

It follows from (7) and (8) that

(9) It is not possible for us to know in any particular case whether X is blameworthy for A.

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<sup>5</sup> The ignorance here is ignorance of the fact that the balance of reasons weighs against X's A-ing.

<sup>6</sup> This premise should be familiar at this point; it is (BI).

<sup>7</sup> Here I allow for the possibility of akratic *omissions*, which can be understood as failures on the part of the agent to do what he believes he has most reason to do.

<sup>8</sup> I borrow this wording from FitzPatrick.

Steps (3), (6), (7), and (9) of the argument follow from earlier premises. The premises of the argument, then, are (1), (2), (4), (5), and (8). In what follows I will consider two responses to Rosen’s argument from FitzPatrick 2008 and Talbert 2013. FitzPatrick first argues against premise (8) and then against step (6) (via rejecting premise (2)).<sup>9</sup> Talbert instead rejects premise (4). Along the way, I will also consider how Neil Levy 2009 responds to FitzPatrick’s argument against (6).

One further remark is worthwhile before proceeding. Although the main purpose of this chapter is to deal with the skepticism purportedly established by Rosen’s argument, it will also be of interest whether the skeptical conclusion of this argument is more strongly reinforced if we assume that a version of the tracing strategy is true (recall from the previous chapter that maintaining (BI) gives us reason to adopt an actual foresight version of the tracing strategy over a foreseeability version of the strategy). I will explore this further in section 3.6.

### ***3.2. FitzPatrick’s Reply***

FitzPatrick’s reply to Rosen comes in two parts. First, FitzPatrick points out that Rosen’s defense of premise (8) is weak; we do, in fact, have good reason to believe in “clear-eyed” akratic actions (p. 593 ff.). Second, FitzPatrick rejects step (6). In contrast to what Rosen maintains, FitzPatrick argues that we can be blameworthy for ignorance without having to trace that blameworthiness to earlier akratic actions (that meet the foreseeability condition). Instead, FitzPatrick explains, blameworthiness for ignorance can be grounded in reasonable expectation for the agent to take steps to eliminate it (where the agent had ability and opportunity to do so) (p. 602 ff.). I will discuss each part of FitzPatrick’s reply in turn.

#### *3.2.1 Clear-Eyed Akrasia*

Recall step (8) of Rosen’s skeptical argument:

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<sup>9</sup> FitzPatrick seems to agree with (4) (pp. 601-602).

(8) It is not possible for us to know in any particular case whether akrasia is really involved in the etiology of an action.

In Rosen's argument, this premise serves as an important connection between the claim that blameworthiness (either direct or indirect) requires akrasia (i.e., step (7) of the argument) and the conclusion that we cannot in any particular case know that an agent is blameworthy for something. If this connection is severed then the force of the argument will have been significantly diminished. In his first attack on Rosen's argument, FitzPatrick aims to cast doubt on (8), believing it to be the weakest point of the argument. Before looking at FitzPatrick's case against (8), I will first review what Rosen says in defense of the premise.

Rosen's defense of (8) depends upon the claim that, in practice, cases of genuine akrasia are difficult to distinguish from what he calls "ordinary weakness of will." Rosen explains the difference:

The akratic agent judges that A is the thing to do, and then does something else, retaining his original judgment undiminished. The ordinary moral weakling, by contrast, may initially judge that A is the thing to do, but when the time comes to act, loses confidence in this judgment and ultimately persuades himself (or finds himself persuaded) that the preferred alternative is at least as reasonable (p. 309).

Rosen continues to explain that the set of actions that merely seem to be akratic (but in fact are not) is not limited to the straightforward kind of ordinary weakness of will described above. This set also includes instances in which an agent suspends his judgment that he ought to A while he does something else instead. Furthermore, as Rosen points out, agents rarely have explicit judgments to the effect that they ought to A during the time that they do otherwise. This means that, if an agent does have a belief one way or the other concerning whether he ought to A during the time that he does otherwise, that belief is

implicit.<sup>10</sup> But, Rosen claims, whether an agent has a particular implicit judgment to the effect that he should A while he performs some other action instead is difficult to determine. Rosen says that this is so even from the first-person perspective, whether one tries to determine this of oneself after the time of one's action or during it. The mind is (even from the first-person perspective) opaque; because of this, we never have sufficient reason to be confident in forming positive judgments of akrasia.

FitzPatrick argues that Rosen's skeptical claims concerning akrasia are exaggerated. We have plenty of good first-hand evidence that we sometimes act akratically. For example, guilt or shame accompanying my performance of an action (not just afterwards, when my beliefs about the moral status of the action may have changed) is good evidence that *at the time of the action* I judge that I ought not be doing what I am doing, and this is so even if it is true that I am sometimes mistaken about what my judgments really are. In a similar way, we have good evidence that others sometimes act akratically when they openly acknowledge having known better at the time and having felt guilty or shameful during the act. FitzPatrick points out that, in some cases, people admit that they acted wrongly in the belief that they ought to have done otherwise because any attempt to offer an excuse of normative ignorance wouldn't be at all plausible.<sup>11</sup> FitzPatrick maintains that we also often have good reason to believe that an action was akratic when the agent (either another person or oneself) attempts to conceal his or her behavior. When one "cuts corners" at work and tries to hide it, for example, one's attempt to hide it at the time is evidence that one believed at the time that one ought not to do that.

If FitzPatrick is correct that we often are justified in believing that an action was performed akratically, then we can reject step (8) of Rosen's skeptical argument. In so doing, we can avoid the skeptical conclusion that it is not possible for us to know in any particular case whether an agent is blameworthy for a given action. As FitzPatrick explains, though, his rejection of (8) still leaves the argument intact up until (7), which is itself still a powerful conclusion:

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<sup>10</sup> I take it that by calling a judgment "explicit," Rosen means that the judgment is *occurrent*, i.e., the agent is attending to it at the time. By "implicit" judgment, then, we may understand him as referring to a judgment that the agent holds but is not attending to at the time.

<sup>11</sup> An agent suffers from normative ignorance when the agent is unaware that certain features of an action make it so that the agent ought not perform that action. FitzPatrick offers the example of someone getting caught cheating on his spouse, where a plea of normative ignorance wouldn't be taken seriously (p. 596).

(7) If X is blameworthy for A then either X's A-ing was akratic or else X A-ed from ignorance, in which case the ignorance from which X A-ed was a result of some earlier akratic action.

FitzPatrick claims that the conditions on blameworthiness in (7) may be difficult to satisfy; it may be that many cases in which one acts from ignorance the ignorance is not the result of any earlier akratic action. If this is so and if (7) is true then we are led to the result that many of our judgments about blameworthiness are mistaken (p. 599).

### 3.2.2 Blameworthiness for Ignorance and Reasonable Expectation

At this point FitzPatrick turns his attention to an earlier step in Rosen's argument, step (6):

(6) X is directly blameworthy for failing to comply with some procedural epistemic obligation only if X was aware that the balance of reasons weighs against his failing to comply that procedural epistemic obligation; that is, X's failure to comply with the epistemic obligation was itself akratic.

FitzPatrick agrees with premise (4) of Rosen's argument; that is, an agent is blameworthy for acting from ignorance only if the agent is blameworthy for that ignorance (pp. 601-602). But he rejects Rosen's view that an agent can be blameworthy for ignorance only if he is blameworthy for some earlier akratic failure to fulfill some procedural epistemic obligation. Instead, FitzPatrick believes that one can be directly blameworthy for failures to fulfill procedural epistemic obligations without those failures being akratic.

FitzPatrick uses the case of the ruthless businessman, Mr. Potter (from the well-known film *It's a Wonderful Life*), to argue for different conditions on blameworthy (culpable) ignorance. Many of Potter's business practices are quite clearly morally wrong. While Potter is aware of the morally relevant features of his actions (e.g., that they will result in harm to certain people), he fails to recognize that these features make his actions morally wrong. Potter's ignorance is what some writers have referred to as *moral* or *normative ignorance*, as opposed to *circumstantial* or *non-moral ignorance* (where this latter kind is ignorance of certain morally relevant features of an action, e.g., its

consequences).<sup>12</sup> We can suppose, FitzPatrick writes, that Potter was raised poorly and in such a way that his capacity for moral reasoning and reflection is “stunted.” Because of this, although he may occasionally reflect upon the morality of his practices, this reflection does not yield the moral awareness that we might hope it would. Plausibly, FitzPatrick claims, “we may be able to trace his current normative ignorance back indefinitely without finding anything that counts as a genuine akratic episode of failing to fulfill epistemic obligations” (p. 601). If this is so, then (7) implies that Mr. Potter is not blameworthy for his ruthless business practices.

FitzPatrick thinks we have reason to reject (6); if he is right then we can avoid (7), and thus avoid the conclusion that agents like Potter are blameless for their actions done in moral ignorance. In order to do this, FitzPatrick offers an alternative account of the conditions under which ignorance is culpable, or blameworthy. He begins by asking the following question:

R: What, if anything, could the agent reasonably (and hence fairly) have been expected to have done in the past to avoid or to remedy that ignorance (p. 603)?

FitzPatrick claims that “[i]t is by getting clear about this [question] that we discover what it is reasonable, and hence fair, to blame the agent for now, which is what culpability is about.”<sup>13</sup> FitzPatrick takes Rosen’s premise (6) as offering an answer to R:

Rosen’s view, then, if it is to have any real pull, must be understood as addressing and answering R. His answer amounts to saying that the claim that Potter could reasonably have been expected to have avoided or remedied his ignorance depends for its truth on there having been earlier points where Potter acted badly in the management of his opinion despite “full knowledge of every pertinent fact or norm” about appropriate forms of reflection and deliberation (p. 603).

FitzPatrick, of course, would not deny that Rosen’s conditions are sufficient to make it true that an agent could reasonably have been expected to act differently. What FitzPatrick

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<sup>12</sup> FitzPatrick (2008), Rosen (2003, p. 64), Talbert (2013, p. 225).

<sup>13</sup> Rosen (2003, p. 74 ff.) seems to agree with FitzPatrick on this point.

denies is that Rosen's conditions are necessary for it being reasonable to have expected an agent to act differently. FitzPatrick thinks that the requirements are less demanding than Rosen claims they are. He begins by trying to show "that we can defend relevant claims of reasonable expectation without appealing to such strong attributions of akrasia" (603). FitzPatrick emphasizes that whether it is reasonable to expect an agent to have corrected his ignorance depends upon whether the agent had the opportunity to do so. Return to Mr. Potter. We can suppose that Potter did have such opportunities. Growing up and living in a town with honest and charitable businessmen like the Baileys means that Potter had access to those with morally admirable views. His interactions with people who plead with him to see his practices in a clearer moral light provided him with the opportunity to improve upon his moral ignorance. But Potter did not avail himself of these opportunities. Why not? It could be that Potter intentionally remained in his moral ignorance (say, in order to avoid the weight of moral obligations or guilt). If this were so, then Potter's remaining in moral ignorance would be due to akratic failures to fulfill procedural epistemic duties. But, we may suppose that this isn't the case. Instead, FitzPatrick asks us to suppose that

Potter's complacency, self-indulgence, and arrogance have led him to dismiss competing views and arguments as naive and foolish, without adequate critical reflection on his own views, and he remains quite confident that he is in the right, just retaining and compounding his moral ignorance as time goes by (p. 605).

In this case, FitzPatrick thinks that it is highly intuitive that Potter is blameworthy for his moral ignorance. He supports this claim with three considerations that are supposed to help explain why Potter is blameworthy for his moral ignorance. First, given Potter's social context and his own capacities, it would not have been difficult for him to avail himself of the resources (e.g., information gathering and moral reflection) needed to remedy his moral ignorance. Second, his failure to avail himself of these resources is due to his own voluntary exercises of vice (e.g., arrogance, overconfidence, etc.). Third, FitzPatrick claims that "He could thus reasonably have been expected to take steps that would have eliminated that ignorance, by refraining from exercising those vices and instead taking advantage of the epistemically relevant opportunities available to him" (p. 605).



FitzPatrick is quick to address a possible objection from Rosen: Potter's blameworthiness for his moral ignorance cannot be explained by his exercise of moral vices unless those exercises are also blameworthy. If Potter's exercises of those vices were themselves done in moral ignorance, Rosen would maintain that we must trace his blameworthiness for these exercises of vice (and the moral ignorance in which they were performed) back to some earlier akratic action. While FitzPatrick agrees with Rosen that his appeal to the voluntary exercise of vices must itself be blameworthy if it is to do the explanatory work he wants it to do, he resists this move. Indeed, this objection would rest upon premise (6), which is the very premise that FitzPatrick rejects by offering alternative conditions on blameworthy ignorance. According to FitzPatrick, an agent may be blameworthy for his failures to fulfill procedural epistemic obligations without these failures being akratic, as long as the three considerations listed above hold for these failures.<sup>14</sup> As a result of the foregoing considerations, FitzPatrick offers alternative conditions on blameworthy (culpable) ignorance:

CI: Ignorance, whether circumstantial or normative, is culpable if the agent could reasonably have been expected to take measures that would have corrected or avoided it, given his or her capabilities and the opportunities provided by the social context, but failed to do so either due to akrasia or due to the culpable, nonakratic exercise of such vices as overconfidence, arrogance, dismissiveness, laziness, dogmatism, incuriosity, self-indulgence, contempt, and so on.

By offering an alternative account of the conditions under which ignorance is blameworthy or culpable, FitzPatrick is able to reject premise (6) of Rosen's skeptical argument and thereby avoid (7), which seems to have the implication that many of our judgments about blameworthiness are mistaken.

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<sup>14</sup> FitzPatrick's claim here implies a rejection of premise (2).

### **3.3. Levy's Response to FitzPatrick on Reasonable Expectation**

Neil Levy 2009 agrees with FitzPatrick that the fairness of blaming an agent for his normative ignorance depends upon whether the agent could reasonably have been expected to eliminate (or to have avoided) his normative ignorance (recall FitzPatrick's R). However, Levy holds that FitzPatrick is mistaken in how to go about answering this question. FitzPatrick argues that agents like Potter could reasonably have been expected to remedy their moral ignorance when they have both opportunities to remedy their moral ignorance and the capacity required to avail themselves of these opportunities. Against FitzPatrick, Levy defends Rosen's view that it is reasonable to have expected an agent to eliminate or avoid his ignorance only if there was some earlier time at which the agent acted akratically in the management of his opinion by knowingly shirking some procedural epistemic obligation.

Levy defends Rosen's view about the conditions on reasonable expectation by arguing that it is reasonable to expect an agent to have complied with some norm only if the agent had the capacity to do so. And, he continues, an agent's possession of this capacity requires that the agent can comply with the norm *rationally*. Here Levy draws an important distinction between what an agent *has most reason* to do and what it would be *rational* for the agent to do. He writes:

What I have most reason to do is—plausibly—settled by facts external to me, regardless of whether I am aware of these facts. But what it is rational for me to do—that is, what I can decide to do as the result of engaging in reasoning—is settled by my actual mental state (p. 735).

Levy maintains, then, that what it is rational for an agent to do is a function of the agent's internal reasons, where an agent's internal reasons are determined by the agent's own pro-attitudes. According to Levy, an agent has an internal reason to perform some action if she believes that doing so will or might further the satisfaction of her goals (p. 735).<sup>15</sup>

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<sup>15</sup> This is stated as a sufficient condition but not as a necessary one. However, Levy's defense against FitzPatrick succeeds only if this is a necessary condition as well; otherwise, an agent may have an internal reason to perform some action even if she does not have the belief that doing so "will or might further the

With this understanding of rational action in hand, Levy argues that agents like Potter could not reasonably have been expected to avoid or repair their moral ignorance, and so they are not blameworthy for their ignorance. In order for it to be reasonable to have expected an agent to comply with certain procedural epistemic duties the agent must have been able to rationally comply with these duties. And this will be so only if the agent had internal reasons for doing so. But agents like Potter simply don't have any internal reasons for complying with such procedural epistemic obligations. As Levy puts it, "if Potter does not see that he is managing his moral views badly, he has no (internal) reason to manage them any differently" (p. 737).

Since Potter had no internal reasons to take advantage of the opportunities for moral improvement, he lacked the ability to rationally comply with the epistemic norm that requires that he do so. And since he lacked this ability, it is unreasonable to have expected him to do so. While Levy agrees with FitzPatrick that an agent is blameworthy for his moral ignorance only if it would be reasonable to have expected him to have avoided or remedied this ignorance, agents like Potter fail to meet this condition and are therefore blameless for their ignorance.

Levy has defended the claim that an agent is blameworthy for his ignorance only if he could have rationally complied with the relevant procedural epistemic obligations. Levy maintains that this requires that the agent have had internal reasons to do so, and he can have these reasons only if he was aware that he ought to comply with the relevant procedural epistemic duties. So, Levy concludes that Rosen was correct about (6): an agent is blameworthy for his ignorance only if at some earlier time he akratically failed to comply with one some procedural epistemic obligation (p. 741).

### ***3.4. Talbert's Reply***

A recap would be helpful at this point. FitzPatrick succeeds in casting doubt upon premise (8) of Rosen's argument. As he admits, though, the truth of (7) may still leave us

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satisfaction of her goals." Levy's argument does seem to maintain that this is also a necessary condition (e.g., see the quote in the following paragraph).

with a good deal of skepticism about blameworthiness, since it requires that an agent is blameworthy for acting from ignorance only if that ignorance is the upshot of some earlier akratic action, and it may be that tracing fails in many such cases. Although FitzPatrick attempts to avoid (7) by attacking premise (6), Levy argues that FitzPatrick's case against (6) fails. On the assumption that Levy's argument against FitzPatrick succeeds, we find ourselves stuck with (7), as it were.<sup>16</sup>

Matthew Talbert 2013 agrees with Levy that FitzPatrick's argument against (6) is unsuccessful: agents who are morally ignorant often cannot be reasonably expected to comply with procedural epistemic obligations since they have no internal reason for doing so (p. 232). Talbert proposes that, in order to successfully avoid (7), we reject an earlier premise in the argument that has so far been agreed upon by Rosen, FitzPatrick, and Levy, namely (4):

(4) X is blameworthy for A-ing from ignorance only if X is blameworthy for the ignorance from which he A-ed (2013, p. 232).

More precisely, Talbert argues that while non-culpable circumstantial or non-moral ignorance may excuse, non-culpable moral ignorance rarely does.

Let's reconsider the case of Mr. Potter. On Talbert's view, the fact (supposing that it is a fact) that agents like Mr. Potter aren't culpable for their moral ignorance does not prevent them from being blameworthy for the actions that their ignorance results in. When Potter finds and keeps money that belongs to the Baileys, Potter believes (non-culpably, we may suppose) that what he is doing is morally permissible. And yet, Talbert points out, it *would* seem appropriate for George Bailey to resent Potter for his action. After all, Potter does not suffer from circumstantial ignorance; he is aware that his action will result in harm to the Baileys, and does not judge that this is a reason to refrain from it. As Talbert puts it, the action "expresses the implicit judgment that George's welfare is unimportant in

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<sup>16</sup> Whether Levy's argument against FitzPatrick *does* succeed is a matter of controversy, and I will not take a stand on it here. Robichaud (2014) points out that Levy's defense against FitzPatrick succeeds only on a restrictive view of rationality according to which an agent can rationally A only if he believes he has reason to A (in contrast with the *weaker* view that an agent can rationally A only if there is a route, as it were, from his actual beliefs and desires to his believing that he has reason to A).

comparison with whether Potter achieves his aims” (233). Not only does Potter fail to judge the resulting harm to George and his family as a reason not keep the money, Potter takes this as a reason *to* do it; he intentionally keeps the money *in order* to bring about their financial ruin. Potter doesn’t believe that his action is morally wrong, but as this case quite clearly illustrates, his moral ignorance doesn’t preclude ill will or contempt.

For Talbert, an agent is blameworthy for acting wrongly when his action expresses a morally objectionable evaluative judgment or attitude (p. 233).<sup>17</sup> If this is true, then since Mr. Potter’s action expresses not merely a lack of due regard for the Bailey family but also a malicious attitude toward them, he is blameworthy for his action.

### ***3.5. Responding to Talbert***

If Talbert is correct then Rosen’s argument fails to establish skepticism about blameworthiness; it is halted at step (4). In this section I address Talbert’s approach to the question of blameworthiness for unwitting wrongdoing and argue that this approach is insufficiently motivated.

As we have seen, Rosen, FitzPatrick, and Levy agree that whether an agent is blameworthy for acting from moral ignorance depends upon whether the agent could reasonably have been expected to eliminate or to have avoided his moral ignorance. This claim is tied to a second claim that each of these theorists also seem to agree on, namely, that an agent is blameworthy for an action if and only if it would be *fair* to blame the agent for that action.<sup>18</sup> The combination of these two claims is that it is fair to blame an agent for performing some action from moral ignorance only if the agent could reasonably have been expected to eliminate or to have avoided his moral ignorance.

Talbert seems to agree with the second claim that blameworthiness is a matter of fairness. But he rejects the first claim, believing instead that an agent may be blameworthy for acting from moral ignorance even if it would be *unreasonable* to have expected the

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<sup>17</sup> As Talbert points out, this approach to blameworthiness is similar to that of T. M. Scanlon (1998) and Angela Smith (2005). The view that blame is primarily a reaction to the quality of will expressed in an action can be traced back to Peter Strawson’s seminal paper, “Freedom and Resentment” (1962).

<sup>18</sup> Rosen says that blameworthiness is best conceived in terms of fairness (2003, p. 74). FitzPatrick (2008, p. 603) phrases questions of blameworthiness in terms of fairness (which is supposed to follow from reasonableness), and Levy concurs with this (p. 732).

agent to eliminate or to avoid his moral ignorance. For example, while Levy argues that an agent's blameworthiness for acting from moral ignorance depends upon whether the agent had an internal reason to avoid so acting, Talbert takes a different approach:

In my view, approaches like Levy's focus too much on the perspective of the blamed agent, on what can count as a reason for him, and what can be expected of him. In fact, I think that our judgments about blameworthiness are often formed—and rightly so—on the basis of the normative considerations that we recognize, and not on whether those we blame could have assigned the same normative weight to these considerations that we do (p. 239).

Here I will examine the reasoning that Talbert offers to accept certain judgments of blameworthiness and argue that it is unconvincing. As I have noted above, Talbert holds that an agent is blameworthy for an action when the action expresses a morally objectionable judgment. This explains why Talbert believes that non-culpable *circumstantial* ignorance may excuse an agent from wrongdoing but that non-culpable *moral* ignorance usually does not (2013, p. 226). Wrongdoing from non-culpable circumstantial ignorance often does not express morally objectionable attitudes or judgments. An agent may, for example, be non-culpably ignorant that his action will have harmful consequences. In such a case, one's action needn't express any morally objectionable judgment or attitude, since the harm was unintended and unknown. Wrongdoing from non-culpable moral ignorance, in contrast, often expresses a morally objectionable judgment or attitude. As Talbert explains,

The reason we should expect the actions of morally ignorant wrongdoers like Mr. Potter to express objectionable judgments is that their moral ignorance is—unlike a lot of circumstantial ignorance—often a manifestation of a normative disagreement the agent has with those who object to his behavior. More specifically, the moral ignorance of such an agent is often tied up with a perspective that regards as unobjectionable the very thing that his victims take to make his behavior objectionable. (p. 236).

The central reason that Talbert offers in support of his approach is that wrongdoing from moral ignorance does not preclude ill will or lack of due regard for the welfare of others.

The morally ignorant wrongdoer's action may still express the implicit judgment that the interests of others do not matter (or at least a rejection of the judgment that they *do* matter). As Talbert sees it, those who are treated in this way reasonably find this behavior and the judgment that it expresses morally objectionable, and so it is reasonable for them to respond with blaming attitudes such as resentment and indignation.<sup>19</sup> For example, when arguing that Mr. Potter is blameworthy for wronging George Bailey, Talbert writes:

[E]ven if George agrees that Potter had no (internal) reason to refrain from his action, it is inappropriate to demand that George regard Potter's action as unobjectionable because this asks George to concede that his welfare is not normatively significant (p. 239).

Talbert is mistaken on this point. Someone who defends the view that Potter is not blameworthy for his treatment of George on the grounds that Potter is non-culpably ignorant of the wrongness of his actions need not "demand that George regard Potter's action as unobjectionable," nor is one who takes this position asking George "to concede that his welfare is not normatively significant." What is at stake here is not whether Potter's action is morally objectionable; it's quite clear that his behavior is morally wrong. Neither is it a matter of whether Potter's actions towards George reveal morally objectionable attitudes or judgments; they certainly do. *We do* see George's welfare as normatively significant; this is why the judgments expressed in Potter's actions are so objectionable to us. Instead, the issue here is whether Potter's non-culpable ignorance *excuses* him for these things.

Talbert continues:

If we agree with George that his welfare is valuable, and that a person of good will would see his welfare as a source of reasons, we should conclude that Potter's judgment about the significance of George's welfare reasonably elicits blaming responses on George's part (p. 240).

When Talbert writes that "Potter's judgment about the significance of George's welfare *reasonably elicits* blaming responses on George's part," it's tempting to agree. Indeed, when

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<sup>19</sup> See also Talbert (2012).

we understand “reasonable” in a certain way, it seems that denying that blaming responses would be reasonable for George would amount to denying that they would *make sense*. No doubt it is understandable, or to be expected (in an epistemic sense) that George would be angry with Potter for dismissing his welfare as significant. But if blameworthiness is a matter of fairness, then whether this is so is not relevant. In order for Talbert’s statement to support the claim that Potter is blameworthy for his action, “reasonably elicits” must be understood, not merely in an epistemic sense, but in a moral sense, implying fairness.<sup>20</sup> When understood in this way, Talbert’s statement does not have the same intuitive force. And it is not clear how the statement is supposed to support the claim that Potter is blameworthy. How does the fact that a person of good will would be responsive to George’s welfare make it true that it would be fair to blame *Potter* (who non-culpably fails to recognize that George’s welfare is normatively significant) for his action or the judgment that it expresses? Since George, unlike Potter, *does* see his own welfare as a source or normative reasons, it is reasonable for George to reject Potter’s implicit judgment that George’s welfare is normatively insignificant. But this isn’t a point of controversy; I take it that Rosen and Levy would agree. The disagreement between these theorists is about whether performing an action that expresses a morally objectionable judgment is sufficient for being blameworthy for so acting.

Talbert defends his attributions of blameworthiness and his approach in general by appealing to the fact that the actions of morally ignorant agents may express morally objectionable attitudes and judgments despite (and even *because* of) their moral ignorance. But although he spends a good deal of effort explaining this point, his opponents wouldn’t disagree. Rosen 2003 addresses this very point. When discussing quality of will accounts, he writes

When an agent acts from blameless factual ignorance, the natural inference from harm done to an objectionable quality of will is often blocked. When the agent acts from blameless moral ignorance, the corresponding inference will be much stronger. After all, an objectionable

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<sup>20</sup> To be fair, in a separate paper Talbert makes a distinction between blame’s being understandable and its being reasonable (2012, p. 97). Here, though, I believe that drawing attention to the distinction between “reasonable” understood as “understandable” and “reasonable” understood as “fair” shows that some of the force of Talbert’s claim in the quoted passage derives some of its intuitive force from an ambiguity.



attitude towards others is often *constituted* by a form of moral ignorance: ignorance about the consideration due to others (p. 72).

Rosen readily grants the point that Talbert insists upon: agents who act from moral ignorance can do so in a way that expresses an objectionable quality of will. And he admits that focusing on this fact does incline us to blame. Nonetheless, Rosen maintains, when we draw our attention to the fact that these agents are not culpable (and therefore, on Rosen's view, not blameworthy) for their ignorance, our initial inclination to blame disappears (p. 73).

For the sake of clarity and insight, it is crucial to point out the underlying disagreement between Talbert, on the one side, and Rosen and Levy, on the other. It is a central feature of both Rosen's view and Levy's view that an agent may be morally *bad* without being *blameworthy* (Levy 2005). More specifically, they hold that an agent may perform a morally wrong action that expresses a morally objectionable attitude or judgment without being blameworthy for performing that action. As these theorists see it, whether an agent is blameworthy isn't settled merely by whether there is something morally objectionable about his behavior or character. What Talbert says in the above passages seems to assume that denying that an agent who acts from moral ignorance is blameworthy for an action entails a denial that the action is morally wrong or objectionable. Of course, this entailment claim is true if Talbert is correct that an agent is blameworthy for an action if it expresses a morally objectionable judgment or attitude. But to assume this would be to beg the question.<sup>21</sup>

As I have pointed out, Talbert's opponents can accept that actions from moral ignorance can express morally objectionable judgments. They deny, though, Talbert's claim that this entails that the agent who performs them is blameworthy. It would seem that we are at an impasse. However, Talbert has a further consideration to offer in favor of his view. In order to appreciate this consideration it is helpful to review Talbert's treatment of a view about the function of blame. Talbert (2012) considers the view that blame is functional; it aims to morally address the wrongdoer in the hopes that the wrongdoer will

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<sup>21</sup> This point is dealt with in more detail in Miller (2014, pp. 480-483).

see the error of his ways, feel remorse for his actions, and morally reform himself.<sup>22</sup> But, Talbert asks, what does this imply about agents for whom such moral address will not achieve these goals?<sup>23</sup> Does this mean that blame has no purpose in such cases? Talbert answers 'no'. Even if blame will have no effect on the wrongdoer, blame may still have a purpose because of the value it has for the would-be blamer:

I suggest that it is reasonable to blame morally impaired agents because their actions can express offensive judgments that we are interested in rejecting and standing up against. In particular, we may wish to reject the impaired wrongdoer's judgment that our needs and interests do not count as reasons for refraining from certain actions. Even when it is impossible to inspire consideration of our moral standing in others, insisting on this standing can still serve to affirm for ourselves certain moral facts, and this can be something of significant value (2012, p. 106).

In the cases that Talbert is concerned with, the wrongdoer has treated the victim as though his interests do not matter, and this judgment is one that the victim has reason to reject. In blaming the wrongdoer for the objectionable judgment about his own welfare, the victim rejects this judgment and thereby affirms his own moral standing, i.e., his right to be treated as a source of action-guiding reasons. In this way, Talbert understands blame as a form of moral protest that has value for the blamer. Talbert seems to offer this insight about moral protest as support for his claim that agents are blameworthy for actions that express morally objectionable judgments, regardless of whether those agents are capable of appreciating and responding to moral criticism. But Talbert's point about moral protest cannot support his proposed sufficiency claim on blameworthiness in the way that he needs it to, and there are two reasons for thinking this.

The first reason concerns how closely moral protest is related to negative reactive attitudes. This point is important, since on Rosen's view it is negative reactive attitudes such as anger and resentment that are unfair, unfitting, or inappropriate when an agent is blameless (Rosen 2003, p. 74; 2004, p. 297), and Talbert (2013) makes it clear that his

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<sup>22</sup> Talbert attributes this sort of view to Wallace (1996).

<sup>23</sup> In some cases this will be so because the agents blamed lack moral competence. In other cases this will be so because the agents are no longer alive, or are unreachable by blame (e.g., because of spatial distance).

discussion of blameworthiness is concerned with these reactive attitudes.<sup>24</sup> It may be that when we protest a morally objectionable judgment, our doing so involves anger or resentment. However, if it is possible to protest an objectionable judgment without having a negative reactive attitude toward the wrongdoer whose action expresses it, then the fact that it would be reasonable, as Talbert puts it (I leave “reasonable” unanalyzed here), to protest a judgment does not entail that it would be reasonable to have a negative reactive attitude toward the wrongdoer whose action expresses it. Is it true, then, that it’s possible to protest a morally objectionable judgment without having an accompanying negative reactive attitude? Consider what is involved in moral protest as Talbert describes it. At the least, protesting a morally objectionable judgment entails disbelieving that the judgment is true. But Talbert makes it clear that moral protest involves more than this. In morally protesting an objectionable judgment that, for example, my welfare is not a source of action-guiding reasons, I not only reject the judgment; I reaffirm—if not for anyone else then at least for myself—that my welfare *is* in fact a source of reasons. This is what is valuable for the victim in moral protest. But it is possible (even if it is uncommon) for me to do these things without becoming angry or resentful at the wrongdoer. I might (if I share Rosen and Levy’s view) see the agent whose action expresses this judgment as blameless due to non-culpable ignorance, and withhold negative reactive attitudes on that ground. But this need not prevent me from affirming for myself and for others that I deserve to be treated with consideration and respect. Because this is so, the fact that it would be reasonable to protest a morally objectionable judgment does not entail that it would be reasonable to be angry or resentful toward the wrongdoer whose action expresses it. For this reason, Talbert cannot use his insight about the value of moral protest to support the claim that an agent is blameworthy for an action if it expresses a morally objectionable judgment.

The second reason for this is that Talbert’s insight about moral protest is focused on the value that blame may have for the blamer. To put this point quite briefly, considerations of the value of blame may count in favor of blaming, but they don’t have to

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<sup>24</sup> Talbert says “I will understand moral responsibility in just the way Rosen suggests: the primary question will be about whether judgments of blameworthiness, and responses like resentment, are apt” (2013, p. 227).

do with the agent's *blameworthiness*. Talbert uses different terms when describing blame (and in particular, the negative reactive attitudes) in different passages. In some places he says that it is not *unfair* to blame morally ignorant wrongdoers (2013, pp. 237 ff.), at others he says that it would, in certain cases, be *reasonable* to blame them (2012, p. 106; 2013, p. 240), and at others he talks of it being *appropriate* to blame such agents (2013, p. 232). Talbert does not say much to distinguish these qualifiers, which is an indication that he does not have distinct concepts in mind when using them. However, there is an important distinction to be made between the type of appropriateness that is associated with fairness or reasonableness and a second type of appropriateness. In making this distinction, we may be able to capture what seems convincing about Talbert's claims and yet why Rosen and Levy disagree with the conditions he places (and those he rejects) on blameworthiness.

Blameworthiness might be analyzed in terms of a kind of appropriateness, and this may in turn be analyzed in terms of fairness, reasonableness, fittingness, or desert.<sup>25</sup> We needn't take a stand on which of these terms best captures the appropriateness involved in blameworthiness. What matters here is that the kind of appropriateness involved in blameworthiness has to do with facts about the agent: his actions, attitudes, and judgments as well as his various capacities. When we ask whether an agent is blameworthy, we are asking a question that depends upon these facts about that agent. We can distinguish the kind of appropriateness involved in blameworthiness from a second kind of appropriateness we might call *all-things-considered* appropriateness.<sup>26</sup> This second kind of appropriateness, when applied to blame, is a matter of the balance of reasons that weigh for or against blaming in a particular case.<sup>27</sup> Whether blame is all-things-considered appropriate depends, not only on facts about whether the agent is blameworthy, but also on any fact that counts as a moral reason for or against blaming the agent, including the consequences for the agent blamed (e.g., deterrence effects, moral improvement), the

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<sup>25</sup> Wallace analyzes an agent's being responsible for A in terms of its being appropriate to hold the agent responsible for A (1994, pp. 91ff). He then discusses how the appropriateness involved can be understood in terms of fairness, and that fairness might be analyzed in terms of desert or reasonableness.

<sup>26</sup> Rosen makes a similar distinction (2004, p. 297).

<sup>27</sup> This sort of appropriateness is moral in nature, and so the balance at issue is determined by the *moral* reasons that count in favor of or against blaming on a given occasion.

moral standing of the blamer, the value that the blame has for the blamer, and so on.<sup>28</sup> Here is the crux: that blaming may have value for the *blamer* counts in favor of the second kind of appropriateness (all-things-considered appropriateness), but it is irrelevant to whether or not the *agent* is blameworthy. For this reason, that blame may have value for the blamer cannot be used to support Talbert's claim that performing an action that expresses a morally objectionable judgment is sufficient for being blameworthy for so acting.

Talbert rejects premise (4) of Rosen's argument on the grounds that an agent can be blameworthy for an action (non-culpable moral ignorance notwithstanding) if his action expresses a morally objectionable judgment. He defends this claim with the observation that morally ignorant wrongdoers can express morally objectionable judgments along with the insight that blame as moral protest can be valuable for the blamer. I have argued that these reasons fail to support his sufficiency claim. If this is so, then Talbert's rejection of (4) is unwarranted.

### ***3.6. Taking the Hit and Softening the Blow***

Let's take stock. FitzPatrick offers a convincing case that we often are justified in believing that certain actions are performed akratically. If he is correct about this, then we can reject step (8) of Rosen's skeptical argument and avoid the skeptical conclusion that it is not possible for us to know in any particular case whether an agent is blameworthy for a given action. As FitzPatrick explains, though, his rejection of (8) still leaves the argument intact up until (7). Since (7) requires that an agent is blameworthy for acting from ignorance only if that ignorance is the upshot of some earlier akratic action (or omission), and it may be that tracing fails in many such cases, (7) may still have the implication that a good deal of our positive judgments of blameworthiness are false. In order to reject (7), FitzPatrick attacks (6), arguing that agents who act from moral ignorance may still be reasonably expected to have avoided their ignorance (by complying with the relevant

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<sup>28</sup> Smith (2007) draws attention to a number of considerations that bear on the question of whether we should blame that are distinct from the question of whether an agent is blameworthy. Wallace (2010) focuses specifically on the question of how hypocrisy relates to a would-be blamer's moral standing to blame another.

procedural epistemic duties), and therefore are blameworthy for their ignorance and the actions that result from it. Against FitzPatrick, Levy argues that it is unreasonable to expect an agent to do something that would be irrational for them, given their own internal reasons. On Levy's view, agents who are ignorant of their procedural epistemic obligations will have no internal reason to comply with them. If this is so then they cannot reasonably have been expected to avoid or eliminate their moral ignorance, and are thus blameless for it and the actions that result from it. If Levy's defense of (6) is successful, then we are still left with (7)—that is, unless we can find some earlier premise to reject. Talbert opts for this strategy, aiming to take down the argument earlier, at premise (4). As I have argued in the preceding section, though, Talbert's rejection of (4) is insufficiently motivated. On the assumption that Levy's defense of (6) succeeds, it seems that we are left at (7).<sup>29</sup>

(7) is taken to yield skepticism about blameworthiness because it may have the implication that cases of derivative blameworthiness are less common than we are inclined to think: it may not be very often that our ignorance is the result of an earlier akratic failure. But the skepticism generated by (7) is even more powerful if it is conjoined with the tracing strategy. Recall that the tracing strategy places two conditions on derivative blameworthiness. The first condition states that an agent is derivatively blameworthy for some item only if it is the result of some prior item for which the agent is blameworthy. This condition follows from the requirement that (7) places on derivative blameworthiness.<sup>30</sup> The second condition is the foresight condition, and different versions of the tracing strategy are differentiated by which version of the foresight condition they maintain. As I have argued in Chapter 2, an actual foresight version of the tracing strategy (TSb, in particular) is, for some theorists, preferable to foreseeability versions. Since actual foresight is a more stringent requirement than mere foreseeability, the set of cases in which agents satisfy the foresight requirement on derivative blameworthiness in TSb is likely to be smaller than the set of cases in which agents satisfy the foreseeability requirement in TSd. The result, then, is that if a foreseeability view such as TSd has the

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<sup>29</sup> As I indicate above in footnote 14, I do not take a stance here on whether Levy's defense of (6) succeeds. I will return to discuss Levy's view (as well as a critique of it) in Chapter 6.

<sup>30</sup> (7) requires that derivative blameworthiness be rooted an earlier akratic action or omission. On the assumption that akratic actions are free actions, (7) requires that derivative blameworthiness be rooted in some prior item for which the agent is blameworthy.

result that agents are blameworthy significantly less often than we are inclined to think, an actual foresight view like TSb implies that even fewer agents are blameworthy. If we suppose that this version of the tracing strategy is correct, then Rosen's skeptical argument can be amended by strengthening (7) (amendment in italics):

(7') If X is blameworthy for A then either X's A-ing was akratic or else X A-ed from ignorance, in which case the ignorance from which X A-ed was a result of some earlier akratic action or omission (in particular, an akratic failure to comply with certain procedural epistemic obligations) *at the time of which X foresaw that A would or might result.*<sup>31,32</sup>

There are two general reasons why Rosen's argument, amended by (7'), establishes skepticism about blameworthiness. The first reason is because, as Rosen contends, we can never be sure in any particular case about whether an action is performed akratically, and because we are directly blameworthy for acting only if we act akratically, we can never be sure in any particular case about whether an agent is directly blameworthy for an action. Second, even if we may have good reason to believe that we act (or omit) akratically and can be directly blameworthy for some things, the two conditions on derivative blameworthiness (i.e., the tracing conditions) may often not be met. In what follows I review some considerations that help soften the blow of the amended version of Rosen's skeptical argument.

FitzPatrick convincingly argues that the first reason for skepticism in Rosen's argument is not as strong as Rosen makes it out to be. We often have good evidence of akrasia, and so we often have good evidence that we are directly blameworthy for morally wrong actions. Thus, the amended argument may be restricted to (7').

What about the second reason for skepticism, the claim that the conditions on tracing are rarely met? If we have good reason to think that akrasia is fairly common, then

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<sup>31</sup> (7') is ambiguous about what exactly the agent needs to foresee. It might be required that the agent must foresee that A would occur, or that the ignorance would result, or that the A-ing would be done in ignorance. I am not sure how exactly to parse this out. I am inclined to think that, if (BI) is true (at least with respect to circumstantial ignorance) then the agent must foresee that A-ing would be done in ignorance. This way, the agent is blameworthy for that ignorance, and so the ignorance would not excuse the agent for A-ing. I am grateful to Randolph Clarke for pointing out this ambiguity.

<sup>32</sup> Although I think it worthwhile to see how the argument may be amended on the assumption that TSb is correct, I remain non-committal on whether it is.

many unwitting actions will be the result of earlier akratic failures, and so the first condition on tracing may be satisfied fairly often. The second condition on tracing is more problematic: how often are these actions actually foreseen at the time of the earlier akratic failures? Here we can return to Fischer and Tognazzini's consideration about the tracing strategy discussed in Chapter 2. One reason why it may be thought that the tracing strategy places conditions on derivative blameworthiness that are rarely satisfied is that it is supposed that the foresight condition on the tracing strategy is more stringent than it is. It may be supposed that, in order to be derivatively blameworthy for the result of some blameworthy action on the tracing strategy, the agent needs to foresee that particular result. However, we can, as Fischer and Tognazzini suggest, specify the result more broadly. Instead of requiring that an agent foresee a particular result, the agent may satisfy the foresight condition by foreseeing that a result of some type would or might occur.<sup>33</sup> Although this consideration softens the skeptical blow dealt by (7') to some extent, it must be admitted that there may be many cases in which we are inclined to make positive judgments of blameworthiness in which the agent is not directly blameworthy and in which tracing fails due to either or both of the conditions on tracing not being met.

### ***3.7 Normative vs. Moral Ignorance***

In this final section I suggest one further way in which the skeptical conclusion of the argument (when amended by and restricted to (7')) may be softened. Thus far I have been treating normative and moral ignorance interchangeably, and many authors seem to do so.<sup>34</sup> But, as Rosen points out, they may come apart. An agent may be ignorant about the balance of reasons—that is, about what he ought to do, all things considered—without being ignorant of the moral status of his actions. Rosen offers an example to illustrate this point:

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<sup>33</sup> The amended part of (7') should be changed accordingly: "... at the time of which X foresaw that the action would or might result in *a type of consequence of which A is an instance*" (italics added to reflect this change).

<sup>34</sup> FitzPatrick (2008) doesn't seem to distinguish moral ignorance from normative ignorance more broadly construed. At one place he writes of an agent that "her concealing behavior is good evidence that she knew what she was doing was wrong, and so she was acting akratically" (p. 598). Robichaud implies that an action done in the (true) belief that it was morally wrong suffices for its being akratic (2014, p. 137).



Suppose that Bill has gotten himself into trouble and that he is considering a self-serving lie... Bill knows that the act he is considering would be wrong: he knows that it's just plain wrong to lie to your wife about where you've been. The trouble is that he also knows that if he tells the truth, he will suffer. Let's stipulate that as a matter of fact, the case against the lie is the stronger case, and hence that all things considered Bill should tell the truth and face the music (305).

As Rosen uses the term, an agent performs an action *A* akratically only if he believes that the balance of reasons weighs against his *A*-ing. Bill mistakenly judges that, even though it would be wrong, all things considered he should lie. In this case Bill does not act akratically even though he believes his action is morally wrong.<sup>35</sup> Rosen maintains that, on the assumption that Bill is blameless for his normative ignorance, Bill is excused for his action. When expressing how it would be appropriate for his wife to react, Rosen offers what we can call the "Poor Bill..." excuse:

"Poor Bill. Through no fault of his own he found himself believing that all things considered, he should lie. Given that he found himself in that state, I can hardly fault him for lying. Holding the judgment fixed, the lie itself was a perfect manifestation of practical rationality. I can fault him for the lie only if I can fault him for believing that in the circumstances, his selfish interests were more important than my moral interests. Since by hypothesis, it is not his fault that he held this view, I have no option but to conclude that he is not properly culpable for his bad action" (p. 306).

Some may find this to be an unsatisfying excuse. Bill is ignorant of the fact that he ought not lie to his wife, all things considered. But he is aware that in doing so he is violating a moral norm, and an awareness of the moral norm as such comes with the awareness that its violation is, even if not rationally criticizable, morally condemnable. Insofar as blame is a

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<sup>35</sup> Rosen seems to maintain that Bill is ignorant of the fact that moral reasons are *overriding*; that is to say, if the balance of *moral* reasons weighs against some action *A*, then all things considered one ought not to *A*:

[W]e can also imagine...that he has been badly taught. Perhaps he has been led to believe, through no fault of his own, that while moral considerations have some weight, they are not in general decisive: that moral costs may legitimately be outweighed by non-moral benefits in sound rational deliberation about what to do (pp. 305-306).

sanction on moral violations, it does not seem that Bill's having practical or self-interested reasons for lying is relevant to whether or not moral sanctions would be fair, fitting, or deserved. However, though these brief considerations may incline one to reject Rosen's view on this matter, they are not decisive.<sup>36</sup> Here I am more concerned with reserving conceptual space for those who agree with Rosen's view that blameless moral ignorance excuses but disagree with him that all blameless normative ignorance excuses. It may be necessary for direct blameworthiness that an agent be aware at the time of action that it is wrong. But one can maintain this without maintaining that blameworthiness requires that the agent be aware that, all things considered, he ought not to perform the action in question.<sup>37</sup> One may hold that someone isn't excused from blameworthiness if he believed that his action was wrong but judged (because of self-interested reasons, for example) that he ought to perform the action despite this fact. So, one may agree with much of the reasoning of Rosen's argument (in either its original form or with the amendments I suggest) without accepting that blameless normative ignorance in all its forms excuses. The relevant premise in the argument, (2), can be phrased in terms of moral ignorance in particular instead of in terms of the broader notion of normative ignorance:

(2') X is directly blameworthy for A-ing only if X was aware (at the time of his A-ing) that the balance of *moral* reasons weighs against his A-ing.<sup>38</sup>

I have suggested a version of Rosen's skeptical argument that is amended by (2') and (7') and is restricted at (7'). This version of the argument is weaker in its skeptical upshot than Rosen's original conclusion that we are virtually never justified in believing that an agent is blameworthy. When amended and restricted in the ways that I have suggested, the argument yields a more balanced, yet admittedly revisionary, conclusion. The skepticism about blameworthiness generated by this version of the argument is largely

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<sup>36</sup> Rosen considers a similar sort of case against his view. Rosen maintains that blameless normative ignorance (even when an agent is not morally ignorant) excuses while admitting that the reasons for his belief are inconclusive (2003, pp. 76-82).

<sup>37</sup> It is open to those who hold that moral reasons are overriding to say that the agent needn't be aware of an additional truth: *if one's A-ing would be morally wrong then one ought not to A.*

<sup>38</sup> If (2) is revised in this way, then statements involving the requirement of akrasia in other premises of the argument (e.g., (6) and (7')) should be revised to require an awareness of moral wrongness instead of akrasia.

restricted to skepticism about derivative blameworthiness. Since the conditions on derivative blameworthiness (i.e., the tracing conditions) set out by (7') are fairly stringent, they may often not be met.

## CHAPTER 4

### ARE RECKLESSNESS AND NEGLIGENCE MUTUALLY EXCLUSIVE?

#### 4.1 Introduction

Jerome Hall writes the following about recklessness and negligence:

Since recklessness connotes awareness while negligence excludes awareness, it follows that, like life and death, where the one is, the other is not. No matter how difficult it may be in particular cases to determine whether the defendant was reckless or negligent, there is a hard impenetrable wall that separates them (1947, p. 116, cited by Husak 2011, p. 211).

Call the view that Hall expresses concerning recklessness and negligence the *Simple View*. This view is a conjunction of two claims: (i) recklessness and negligence are mutually exclusive and (ii) there is a sharp distinction between recklessness and negligence.

Douglas Husak (2011) argues, contra Hall, that there are cases of impermissibly risky action that do not fall clearly under the categories of recklessness or that of negligence. This is not, according to Husak, simply a matter of our having underdetermined evidence concerning whether an agent was reckless or negligent in performing an action. That there are such cases is consistent with Hall's position. Rather, Husak seems to maintain that our concept of *belief* and the conditions for the correct application of that term are themselves unclear. As Husak puts it, "Neither ordinary language nor philosophical analysis yields an unequivocal answer to the question whether S tacitly believes p (e.g., my baby is unattended in the tub) at the moment S has temporarily forgotten p" (p. 211). Because of this, there are cases in which it is conceptually underdetermined whether an agent was reckless or negligent in performing some impermissibly risky action.

If Husak is correct then the Simple View is false because there is not a sharp distinction between recklessness and negligence: there are cases that do not fall neatly into

*either* category. Whether Husak is correct is not something that I will pursue here. Rather, I want to focus on a different way in which the Simple View may be mistaken: there may be some cases that fall clearly into *both* categories. By illustrating how this can be so, I show that the first conjunct of the Simple View—that that recklessness and negligence mutually are exclusive—is mistaken. Recklessness and negligence, though commonly characterized such that they seem mutually exclusive, are in fact compatible. In the end, I will briefly point to an interesting implication of this fact that concerns the degree to which reckless agents are blameworthy.

#### ***4.2. Recklessness and Negligence***

Recklessness and negligence are commonly characterized such that they appear to be mutually exclusive; that is, it seems that an agent cannot perform the same action both recklessly *and* negligently. In what follows I illustrate how this is false. First, though, I attempt to highlight the tension between recklessness and negligence by getting clear about what I mean by each.

We begin with the mundane observation that we often blame agents who harm others as a result of carelessness or recklessness. However, Sverdlik (1993) points out that we also often blame agents for actions that pose a risk of harm to others even when they do not result in harm to others. Sverdlik takes this as evidence that, in addition to having an obligation not to harm others, we also believe that we have an obligation not to pose excessive risk of harm to others. When, in performing an action, an agent impermissibly poses an excessive risk of harm to others, he violates what Sverdlik calls the “risk norm.” (p. 138). As I use the term, an agent performs an action *recklessly* only if, in performing it, he violates the risk norm. But there is a further component of reckless action that is crucial in distinguishing it from other impermissibly risky actions, since an agent may perform a risky action while unaware that in performing it he is violating the risk norm. What sets

reckless action apart from other kinds of risky action is *awareness*; an agent performs an action recklessly if and only if, in performing it, he wittingly violates the risk norm.<sup>1,2</sup>

In contrast with reckless action, an agent performs an action *negligently* only if it is impermissibly risky and the agent is ignorant with respect to its wrongness or wrong-making features. In the following section I focus on cases of negligence where the agent is ignorant with respect to a certain type of wrong-making feature of his action, namely the risk of harm that it poses to others. This type of negligent agent, then, violates the risk norm, but is ignorant with respect to the risk of harm posed to others by his action. This characterization of negligence closely follows King (2009), who writes

To do x negligently is to do x as a result of not consciously entertaining the risk of x posed by one's directly intended conduct and refraining from (or adequately modifying) that conduct. Thus, we should consider negligence as characterized by the failure to consider the risk. The hallmark of negligence is the lack of a conscious element (p. 578).<sup>3</sup>

An agent may act negligently either because he fails to consider whether there are risks of harm posed to others by his action, as King points out, or, I would add, because he does consider this but in doing so fails to become aware of some risk.

Above I cite two necessary conditions on negligence, i.e., violation of the risk norm and ignorance with respect to the risk of harm it poses. To these we can add a third condition that is widely agreed upon: the negligent agent *should* have been aware of the risk of harm his action posed.<sup>4</sup> Some place a fourth condition on an agent's performing an

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<sup>1</sup> As Sverdlik points out, not all risky behavior is reckless behavior: "one can act in such a way that one's behavior poses a risk of harm without one's choosing to take this risk" (p. 138). It is also worthwhile to note that an agent may act recklessly without having the concept of the "risk norm" as such; he may simply be aware that he is impermissibly risking harm to others.

<sup>2</sup> Some think that the term *recklessness* should include cases in which an agent is aware that he is taking a risk but is unaware that he is doing so impermissibly (Simons 2009, p. 290). Husak suggests that recklessness needn't involve an agent's awareness that he is taking a risk impermissibly, so long as the agent is aware of the features that make his risk-taking impermissible (2011, p. 208).

<sup>3</sup> Clarke 2014 characterizes negligence similarly, saying that "a failure to advert to the risk of harm is common to cases of negligence; indeed, it is often said to be the defining feature of negligent action" (p. 163).

<sup>4</sup> That the negligent agent fails to meet some epistemic obligation is nearly unanimous (Sverdlik 1993, p. 137; Fitzpatrick 2008, p. 598; Fischer and Tognazzini 2009, pp. 543-544; Clark 2014 p. 163). But we might wonder what it is for an agent to have an obligation to believe, be aware of, or know something. Some, such as Husak, understand this in terms of what a reasonable person in the agent's situation *would* have been aware of (2011, p. 200). Rosen takes the view that epistemic obligations amount to duties to *do* certain things that will

action negligently: that the agent is *blameworthy* for it.<sup>5</sup> I am non-committal on whether this fourth condition is correct; accordingly, my claims concerning recklessness and negligence in the following section do not hinge upon whether negligent agents are blameworthy for their ignorance or for acting from it.<sup>6,7</sup>

### 4.3. *The Compatibility of Recklessness and Negligence*

King emphasizes the distinction between recklessness and negligence: “Unlike harms that agents bring about on purpose, or knowingly, or even recklessly, negligently produced harms are brought about because of an absence of care” (p. 578).<sup>8</sup> Similarly, Husak remarks, “On any account, if a defendant is aware of the risk, he is reckless. If he is not aware, he is negligent as long as he should have been aware, that is, as long as a reasonable person in his situation would have been aware of the risk he disregards” (2011, p. 200). Because negligence, as I am using the term, involves an agent’s ignorance with respect to the risk of harm and recklessness involves the agent’s awareness of the risk, it would seem that an agent cannot be both reckless and negligent in A-ing. But there is an interesting sense in which this is false. I will examine two ways in which an agent can be

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or might result in an improved epistemic position with respect to his action or its consequences (2004, p. 301). Smith seems to maintain view about the nature of epistemic obligation similar to that of Rosen (1983, p. 552).

<sup>5</sup> Sverdlik (1993, p. 138) and Clarke (2014, p. 160) use “negligence” so that it entails blameworthiness. As Clarke acknowledges in a footnote, though, not all authors use the term this way, choosing rather to distinguish between agents who are *culpable* or *blameworthy* for being negligent or acting negligently and those who are not (p. 160). As an example of one who draws this distinction, Clarke cites Rosen (2004, p. 605).

<sup>6</sup> I remain non-committal on whether negligence entails blameworthiness (either for one’s ignorance or for acting from that ignorance) because it seems that one might be blameless for failing to be aware of some fact even if one ought to have been aware of it; i.e., there may be excuses for failures to fulfill epistemic obligations. If this is so, then *culpable* ignorance is not a condition on negligence. Furthermore, if blameless ignorance excuses and if an agent can be blamelessly ignorant of what he ought to have been aware of, then it is possible for an agent to be blameless for acting negligently.

<sup>7</sup> Simons distinguishes between three conceptions of negligence in morality and law (1999, p. 55). The first conception involves the creation of an unjustifiable or unreasonable risk. The second involves either a belief that a reasonable person would not have or an act that a reasonable person would not perform. The third involves inadvertence to a risk, where the agent is unaware of the risk but should be. The conception of negligence I am working with here includes both the first and third of these and is consistent with the second.

<sup>8</sup> Negligence and recklessness might be distinguished more clearly by stating that *both* involve a lack of care, but that they differ with respect to what the lack of care is for. In the case of negligence, the agent displays a lack of care for his epistemic position, while in cases of recklessness the agent displays a lack of care for the risk that he is creating. I am grateful to Matthew Talbert for pressing me to clarify this distinction.

both reckless and negligent in performing a given action. These two ways correspond to two factors that are relevant to whether an action violates the risk norm.<sup>9</sup>

The first factor is the likelihood that the harm risked will occur. Many actions that pose a *risk of serious harm* to others are permissible. For example, when a mother drives her children to the park on the weekend she risks their being injured in an accident along the way. When turning on a gas stove in the house to cook dinner for his family, a man risks causing an explosion due to the possibility of an unknown gas leak that would kill or seriously injure his family. Although the harm that is risked by the performance of these actions is serious, the likelihood of their occurrence is low, and this is one reason why performing them is generally permissible. In contrast, turning on a gas stove that is prone to leakage may be impermissible because of the likelihood that it will result in an explosion.

The second factor is the seriousness of the harm that is risked. Many actions that pose a *high risk of harm* to others are permissible. In taking a newly trained Labrador puppy for a walk, one might pose a risk that the puppy excitedly jumps up on some passersby, scratching their legs or hands. But, though the likelihood of this harm may be fairly high, the seriousness of the harm is low, and this is one reason why performing an action that poses this risk of harm is permissible. Matters would be different, for example, if one were walking a large dog that is disposed to biting passersby, since the seriousness of the harm risked is greater.

Corresponding to these two factors are two ways in which an agent can be both reckless and negligent in performing a given action. First, an agent may wittingly violate the risk norm while ignorant of how high the likelihood of the occurrence of harm is. In such a case the agent is aware that the risk of harm posed by his action is high enough to make it impermissible for him to perform it. When he acts, then, he wittingly violates the risk norm. But he may do this while also being negligent. In order to see this more clearly, consider an example. Ted has recently received his driver's license. During his drivers education class his teacher had often emphasized the dangers of texting while driving,

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<sup>9</sup> In addition to the two that I discuss, whether an action is impermissibly risky may also depend on whether the value of the benefits of the action outweigh the disvalue of the chances of the harm, whether the action is one that the agent has some moral reason to perform, whether the person (or people) to whom the risk of harm is posed voluntarily enter into the situation aware of the risk, and so on. Although whether an action is impermissibly risky depends on a number of factors, here I focus on what I take to be two of the simplest ones.



citing studies that purport to show that texting while driving greatly increases the risk of getting into an accident.<sup>10</sup> However, Ted is overconfident about his own ability to multitask. He believes that, while texting while driving would significantly increase his risk of getting into an accident, it would not increase the risk as much the studies suggest. Ted believes, however, that any activity that significantly raises the likelihood of harming others while driving is impermissibly risky. For this reason, Ted believes that it would be wrong for him to text while driving his friend home from work. While doing so, Ted receives a text message from a girl he has a crush on. Although he knows it is impermissibly risky to do so, Ted is anxious to read and respond to the message. He reads the message and responds to it while driving; luckily, he does not get into an accident while doing so.

This case illustrates how it may be that an agent is both reckless and negligent in performing an action. Ted is reckless in his texting while driving. He knows that his doing so is impermissibly risky, and he does so anyway. But despite his recklessness, Ted is also negligent in texting while driving. He doesn't realize that his confidence in his own ability to multitask is misplaced: the risk of his getting into an accident while texting is greater than he believes it is, and so he is ignorant with respect to the risk posed by his action. Further, given his education, he should know better, and we may suppose that he is blameworthy for disbelieving what he has been given good reason to believe.<sup>11</sup>

The second way that an agent can be both reckless and negligent in performing a given action corresponds to the second factor discussed above. An agent may wittingly violate the risk norm while ignorant of how serious the harm risked is. In such a case the agent is aware that the harm posed by his action is serious enough to make it impermissible for him to perform it. Because of this, he performs the action while aware that in doing so he is violating the risk norm. But this is consistent with his also being negligent in performing the action. To illustrate this, consider the following case. Cody is an older "brother" in a popular fraternity who has the job of initiating new pledges into the

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<sup>10</sup> See, for example, Klauer et. al. (2014).

<sup>11</sup> It may be that Ted's failure to adequately estimate the likelihood that the harm risked would occur is due to earlier witting failures on his part to reevaluate his general tendency towards overconfidence (we may suppose that he has been exhorted by his parents and peers to do so), and so is blameworthy for his ignorance. If this is so, then his blameworthiness for his ignorance here is due to earlier recklessness on his part. This is consistent with Gideon Rosen (2004), who maintains that all blameworthiness for ignorance is due to prior witting failures to fulfill one's epistemic obligations.

fraternity through a series of hazing rites. One of these rites involves coercing pledges to compete with each other to see who can consume the most alcohol before passing out, the expected result being that the pledges will wake up to a terrible hangover the next morning. Cody knows that this risk makes his action impermissibly risky, but egged on by his fellow brothers he commences the hazing (with some pangs of guilt, we may suppose). Most of the pledges end up passing out and the older brothers leave them to sleep on the floor at the fraternity house. Fortunately, each of the pledges survives the hazing with nothing more than a searing headache the next day. But, as a number of past cases have shown, matters could have been much worse; the drinking rite could have resulted in hospitalization or even death.<sup>12</sup>

Cody's coercing the pledges to drink large amounts of alcohol is reckless, since he knows that his doing so is impermissibly risky. But Cody's action is also negligent. He doesn't consider that there are much more serious risks posed to the pledges by his action, risks that he should have considered.<sup>13</sup>

Although at first glance it seems that an agent cannot perform a given action both recklessly and negligently, I have shown how this is false. Whether an action is excessively risky (and therefore violates the risk norm) depends upon a number of factors, and at least some of these factors may vary in degree. I have focused on two such factors, the likelihood that the harm risked will occur and the seriousness of the harm that is risked. Because an agent may be aware *that* his action exceeds the threshold of permissible risk while culpably ignorant of *how* excessively risky his action is, he may perform the same action both recklessly and negligently.<sup>14</sup>

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<sup>12</sup> See, for example, Winerip (2012).

<sup>13</sup> In order for an agent to act negligently, he must be ignorant with respect to the risks posed by his action. However, this does not require that he be *completely* ignorant with respect to these risks. He may, for example, act with some awareness of the risks but also fail to realize something about those risks that he ought to have realized. Such an agent can meet all four of the conditions on negligence mentioned in section 1.

<sup>14</sup> The focus of this discussion is importantly different from both Ferzan (2001) and Simons (2009). Ferzan's concept of "opaque recklessness" applies to cases where an agent "is conscious of the fact that she is dismissing a dangerous risk; she just has not stopped to think about why it is dangerous" (p. 630). Simons's discussion centers around agents who are aware that they are taking risks but fail to realize that the risk is great enough to make their actions impermissibly risky. Simons's position appears to be that recklessness requires the awareness that one is taking some risk, but needn't involve the awareness that one's risk-taking is unjustifiable. In contrast, the agents in the cases I discuss are aware that they are, by taking certain risks, doing so impermissibly (i.e., violating the risk norm) *and* are aware of some fact that is sufficient for their

#### **4.4. Degrees of Blameworthiness**

Until now I have discussed cases in which certain harms risked by the agent do not obtain. Supposing that they do obtain helps highlight an interesting result of the compatibility of recklessness and negligence. In particular, this result concerns degrees of blameworthiness, since agents who bring about harms recklessly are blameworthy to a greater degree than agents who bring about harms merely negligently. However, because an agent can perform the same impermissibly risky action both recklessly *and* negligently, we cannot evaluate an agent's degree of blameworthiness for bringing about some harm simply by knowing whether he was reckless or whether he was negligent in acting.

As I explain above, there are at least two ways in which an agent can perform an action both recklessly and negligently. Corresponding to these two ways are two ways in which an agent's blameworthiness for recklessly bringing about some harmful consequence may be mitigated. First, an agent may recklessly bring about some harm while unaware of how likely the occurrence of the harm was. Recall Ted. Suppose that Ted's texting while driving results in the injury of another driver. Since Ted's texting while driving was reckless (i.e., he knew that by doing so he was impermissibly risking harm to others), he is blameworthy for the harm to the other driver. However, it's plausible that he is not as blameworthy as he would have been had he been aware of how high the likelihood of risk was. In fact, Ted believed that his texting while driving made the chances of an accident significantly more likely. If, however, Ted had been aware that doing so made the chances of an accident much more likely than he thought it did, then he would have been even more reckless in taking that risk, and therefore more blameworthy than he actually is.

Second, an agent may recklessly bring about a harm while unaware of how serious the harm risked is. Recall Cody. Although Cody was aware when conducting the hazing rite that he was performing an impermissibly risky action, he failed to consider that the pledges might die as a result. Suppose, in a variation of the case, that they do die. Because he was aware that his action might result in harm to the pledges, Cody is blameworthy for their

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doing so. The former distinguishes these cases from the one Simons discusses, while the latter distinguishes them from the sort of case that Ferzan discusses.

deaths. But he is not *as* blameworthy as he would be if he were not at all negligent with respect to this more serious risk.

The upshot is that the fact that an agent recklessly performs an impermissibly risky action does not settle the matter about how blameworthy the agent is for resulting harm. The degree to which an agent is blameworthy for the consequences of a reckless action is also dependent upon whether the agent is ignorant with respect to the likelihood or seriousness of the harm risked. Although ignorance does not excuse such agents (given that they are aware that their actions are impermissibly risky), it plausibly mitigates the degree to which they are blameworthy for the consequences of their reckless actions. In the following chapter I suggest a consideration that supports this claim and helps explain why it is true.

## CHAPTER 5

# CIRCUMSTANTIAL IGNORANCE AND MITIGATED BLAMEWORTHINESS

### *5.1. Circumstantial Ignorance and Mitigated Blameworthiness*

Although an agent may be blameworthy for wrongdoing done from ignorance, it is intuitive that witting wrongdoers are often more blameworthy than they would have been had they been ignorant of the wrongness of their actions.<sup>1</sup> When discussing the question of when ignorance excuses, Gideon Rosen offers the following case: “Suppose that there is arsenic in the sugar bowl. You ask for sugar. I put a spoonful of arsenic in your tea, and you drink” (2004, p. 299). Rosen maintains that if he puts the spoonful of arsenic in my tea unaware that it is arsenic (instead of sugar) then whether he is blameworthy for poisoning me depends upon whether his ignorance is culpable. On Rosen’s view, an agent is blameworthy for acting from ignorance only if he is culpable for the ignorance from which he acts (300).<sup>2</sup> Suppose, then, that he is culpable for his ignorance. Rosen continues: “In that case I am plausibly culpable for the poisoning—*though I am obviously less culpable than I would have been if I had done it deliberately*” (300, emphasis mine). Rosen’s claim here implies that ignorance, *even if culpable*, can mitigate blameworthiness. But Rosen doesn’t seek to explain *why* this is so.

In this chapter I suggest a consideration that supports this claim and helps explain why it is true. Before proceeding, though, I must qualify the claim. Recall from previous chapters that there are at least two ways in which an agent may perform a morally wrong action while ignorant of its wrongness. First, an agent may be ignorant of the wrongness of his action because he is unaware of the feature(s) of his action that make it wrong. Second, an agent may be aware of the features of the action that make it wrong but unaware that

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<sup>1</sup> Smith discusses this (1983, pp. 557-558), and Smith (2011, p. 119n12) briefly mentions this issue.

<sup>2</sup> I intend “blameworthy” and “culpable” to be used interchangeably. Rosen’s understanding of culpability and blameworthiness make it clear that he also uses these two terms interchangeably.

they are wrong-making. Call the first type of ignorance circumstantial ignorance and the second kind moral ignorance.<sup>3</sup> In what follows I restrict my discussion to circumstantial ignorance. I seek to support and explain the claim that *circumstantial ignorance*, even when culpable, can mitigate blameworthiness.<sup>4</sup>

To help illustrate why circumstantial ignorance can mitigate blameworthiness, recall the following case from Chapter 4:

Hazing: Cody is an older “brother” in a popular fraternity who has the job of initiating new pledges into the fraternity through a series of hazing rites. One of these rites involves coercing pledges to compete with each other to see who can consume the most alcohol before passing out, the expected result being that the pledges will wake up to a terrible hangover the next morning. Cody knows that this risk makes his action impermissibly risky, but egged on by his fellow brothers, he commences the hazing. Fortunately, each of the pledges survives the hazing with nothing more than a searing headache the next day. But matters could have been much worse; the drinking rite could have resulted in the need for hospitalization or even death.

Cody is blameworthy for coercing the pledges to drink large amounts of alcohol, and part of the reason for this is that he is aware that doing so may have some harmful consequences (e.g., a hangover). But Cody’s action is also characterized by a degree of ignorance: he does not consider or realize that there are much more serious risks posed to the pledges by his action (e.g., hospitalization, death).<sup>5</sup>

If in acting Cody had been aware of these more serious risks, he would have been more blameworthy for his action than he actually is. But why? The most obvious answer is the degree to which an agent is blameworthy for performing an action is sensitive to his degree of awareness with respect to the wrong-making features of his action. Though I believe that this answer is correct, it is not very satisfying. We want a deeper explanation, I

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<sup>3</sup> Rosen (2003) also makes this distinction, calling the first type factual (or non-moral) ignorance, and the second moral ignorance. Fitzpatrick (2008) and Talbert (2013) both use the term “circumstantial ignorance.”

<sup>4</sup> I do not take a stand here on whether culpable *moral* ignorance also can mitigate blameworthiness.

<sup>5</sup> Cody may have non-occurrent beliefs that, taken together, entail that by acting he is taking a more serious risk (e.g., that drinking large amounts of alcohol can result in death and that the pledges are drinking large amounts of alcohol), and nevertheless fail to make the relevant inference.

suspect—one that explains why an agent’s degree of blameworthiness is sensitive to his degree of awareness. What is it about ignorance that can mitigate blameworthiness?

The more satisfying explanation that we are looking for, I believe, is this: an agent’s degree of blameworthiness for some action (or omission) depends at least in part upon the quality of will expressed in that action, and an agent’s level of awareness when performing a morally wrong action can make a difference to the quality of will that is expressed in it. The more that an agent is aware of the wrong-making features of his action, the more disregard or ill will for others he displays in acting despite that awareness. In fact, Cody failed to consider that his actions posed risks to the fraternity pledges more serious than a headache. His conducting the hazing rite involved willingness on his part to bring about some temporary pain and discomfort to the pledges, and his willingness to do so is morally objectionable. But suppose instead that Cody had been aware, when conducting the hazing rite, that one or more of the pledges might end up hospitalized or dead as a result, and proceeded anyway. His commencement of the rite in spite of this awareness would have reflected a seriously objectionable apathy or indifference to the well-being of the young men pledging his fraternity. Cody’s quality of will toward the young men expressed in his action is significantly worse in the counterfactual case than it is in the actual case. It is his increased awareness of the risk that allows for his action to express a greater disregard for the people at risk.

So far I have been speaking of negative quality of will either as a matter of ill will or lack of due regard. For reasons that will soon become clear it is helpful to distinguish the two. When in performing some morally wrong action an agent expresses ill will towards another person, he either desires or intends that his action harms (or results in harm to) that person; he sees the fact that his action may result in harm to the person as a reason to perform it, and is motivated (at least in part) by the awareness that it may.<sup>6</sup> In contrast, when in performing some morally wrong action, an agent exhibits a lack of due regard for

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<sup>6</sup> I leave it open here that an agent may desire that his action result in harm to another person without intending that it do so because of a failure to meet certain epistemic constraints on intention. It may be that, in order to intend that one’s action result in harm *H*, an agent must at the very least lack the belief that the action will not or probably will not result in *H*. Mele discusses this epistemic constraint on intention (1992, p. 176).

another person, he fails to see the fact that his action may harm (or result in harm to) the person as a reason not to do it.<sup>7,8</sup>

With these notions in hand we can explain more perspicuously how circumstantial ignorance can make a difference to the quality of will expressed by an agent in an action. If an agent is unaware of some wrong-making feature, *H*, of his action, then the action cannot express a certain kind of negative quality of will with respect to *H*. Cody's ignorance of the risk that the hazing ritual might result in the death of one or more of the pledges (substitute this risk for *H*), for example, precludes him being motivated by the awareness of that risk. Because of this, it prevents Cody from expressing *ill will* in his action toward the pledges with respect to *H*.

I claim that circumstantial ignorance prevents the expression of a certain kind of negative quality of will with respect to some wrong-making feature of an action. While ignorance prevents the expression of ill will, it is not as clear that it also prevents lack of due regard from being exhibited. In fact, because seeing something as a reason not to perform an action requires an awareness of that thing, Cody's ignorance of *H* entails that he fails to see *H* as a reason not to perform the action.

There is, however, an ambiguity lurking here, for there are different ways in which Cody may fail to see *H* as a reason not to perform the action in question and thus exhibit a lack of due regard toward the persons who may be harmed by it. First, Cody may fail to see *H* as a reason not to perform the action simply because he is unaware of *H* and does not care enough to consider whether his action may pose more serious risks than he is aware of at the time.<sup>9</sup> Second, Cody may fail, *while aware of H*, to see *H* as a reason not to perform

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<sup>7</sup> We may suppose that these actions are morally wrong *because* of the risk of harm that they pose to others.

<sup>8</sup> I say that ill will may be *expressed* in an action or omission because the agent's awareness of the risk of harm in these cases plays a motivational role in the agent's performance of the action. Because this is not so for lack of due regard, I will speak of lack of due regard being *exhibited* or *displayed* in an action or omission.

<sup>9</sup> This leaves it open whether it is the case that, *if* Cody were to become aware of the more serious risk, *H*, then he would see it as a reason not to perform the action. Of course, it may also be the case that, if he were to become aware of *H*, then he would not see it as a reason not to perform the action.

One might think that what counterfactual is true makes a difference to the agent's degree of blameworthiness for the action in the actual case. It might be thought that, if it's true that, had Cody been aware of *H* then he still would have performed the action, then his blameworthiness for the action in the actual case is not mitigated by his circumstantial ignorance. Although there is something to this, I believe that this claim conflates the distinction (explained in the following paragraph) between an agent's *bearing* a negative quality of will toward another person and the agent's *expressing* or *exhibiting* that quality of will in action. What the



the action (and this may be so even if he does not see *H* as a reason *to* perform the action).<sup>10</sup> The difference between these two possibilities is important: there is a kind of callousness and disregard for others that is exhibited in action with the second kind of failure that isn't with the first. It is the second possibility that an agent's ignorance of *H* precludes. An agent's ignorance of some wrong-making feature, *H*, of his action, then, precludes both the expression of ill will and the exhibition of the more callous type of disregard with respect to *H*.

Given these considerations, it is clear that there is a difference between an agent's *bearing* ill will or lack of due regard toward another person and an agent's *expressing* or *exhibiting* one of those in an action. Recall Rosen's arsenic case. Rosen may desire that things go poorly for me or be completely indifferent about whether they do. But, if he is blamelessly ignorant that what he is putting in my tea is arsenic and not sugar then his doing so does not *express* or *exhibit* a negative quality of will toward me. His condemnable attitudes toward me would not be reflected in that action.<sup>11</sup>

## **5.2. Culpable Ignorance and Mitigated Blameworthiness**

It is commonly accepted that when an agent's circumstantial ignorance in performing a morally wrong action is *blameless* it mitigates (or at least can mitigate) his blameworthiness for performing the action.<sup>12</sup> But, if an agent is *culpable* for his ignorance,

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truth of this counterfactual *would* indicate, I think, is that there may be something about Cody's *character* for which he is blameworthy; I do not think that the truth of this counterfactual would bear on the degree to which Cody is blameworthy for the *action* in question. I am grateful to Sam Sims for suggesting this line of thought.

<sup>10</sup> In the counterfactual imagined here Cody suffers from *moral* ignorance. It is a separate question whether his moral ignorance in this supposed *counterfactual* would mitigate his blameworthiness in that counterfactual; here I am only concerned with whether his circumstantial ignorance in the actual case can mitigate his blameworthiness there. Interestingly, Cody's circumstantial ignorance in the actual case precludes moral ignorance, as I have defined it.

<sup>11</sup> This distinction is important for understanding certain views about the conditions on blameworthiness. For example, it seems that it is the expression or display of negative quality of will in action (and not merely the bearing of a negative quality of will) that McKenna requires for blameworthiness for morally wrong actions (2012, pp. 57-64).

<sup>12</sup> I leave it open whether such an agent is blameworthy *at all* for a morally wrong action performed from ignorance (where that ignorance is blameless). Rosen (2004) maintains that blameless circumstantial ignorance excuses, and Talbert claims that it often does (2013, p. 226). Whether the agent is blameworthy *at all* for performing the action may depend upon whether the agent is aware that the action is wrong and merely (blamelessly) ignorant with respect to *some* wrong-making feature of the action (but is still aware that

then that ignorance is a result of some prior behavior that expressed ill will or (what is more likely when it comes to failing to meet epistemic obligations) displayed a lack of due regard. Holly Smith states that all cases of culpable ignorance involve the following: “an initial act, in which the agent fails to improve (or positively impairs) his cognitive position, and a subsequent act in which he does wrong because of his resulting ignorance” (1983, p. 547). Call the former *benighting* actions (or omissions), and the latter kind *benighted* actions (or omissions).<sup>13</sup>

If an agent’s culpable ignorance at the time of the benighted action is itself due to an earlier benighting action that expressed or displayed a negative quality of will, then it may be difficult to see how that ignorance can mitigate blameworthiness for the benighted action. Because of this, it might be thought that blameworthiness for benighted actions cannot be mitigated by considerations concerning the agent’s quality of will.

This, however, is mistaken. If the quality of will expressed in an action can make a difference to the agent’s degree of blameworthiness for performing that action, then an agent’s ignorance can mitigate blameworthiness even when culpable. This is because even culpable ignorance can preclude the expression or display of a negative quality of will with respect to certain wrong-making features of a benighted action. In order to explain why this is so, we must recognize that culpable ignorance does not always mitigate blameworthiness. Central to whether (and to what extent) it does is the notion I call *capture*.

An agent’s quality of will at the time of a benighting action captures some wrong making feature, *H*, of the benighted action if and only if *H* is foreseen by the agent at the time of the benighting action. Given that foresight of some feature can be accompanied by different subjective probabilities and degrees of clarity, capture may come in degrees that correspond to these.<sup>14, 15</sup>

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the action is wrong for other reasons), or whether the agent is (blamelessly) ignorant that the action is wrong.

<sup>13</sup> Smith calls the former kind “benighting acts,” and the latter kind “unwitting wrongful acts,” although I will (following Ginet 2000) call them “benighted” acts or actions. As I note parenthetically here, there can be benighting and benighted *omissions* as well as actions. For simplicity I often use the terms “benighting action” and “benighted action” to refer to both.

<sup>14</sup> In cases of lack of due regard, at least, it seems that the agent’s quality of will at the time of the benighting action captures a wrong-making feature, *H*, to a greater degree if he accurately estimates the probability that *H* would obtain than if he underestimates this probability. The higher the agent’s subjective probability that *H*

We must also be careful, in individuating wrong-making features of an action. For example, the wrong-making feature *killing* is not identical to the wrong-making feature *harming*, since an action can possess the latter feature without possessing the former. Because of this, an agent may be aware of at least one wrong-making feature of the benighted action (*harming*) while being ignorant of another wrong-making feature of the benighted action (*killing*).<sup>16</sup>

We can now define capture of the wrong-making features of an action taken together, noting that *capture* is a term of degree. The degree to which an agent's quality of will at the time of a benighting action captures the wrong-making features of the benighted action is a function of how many of those features are foreseen by the agent at the time of the benighting action and the degree to which each of these features are captured by the agent's quality of will at that time.<sup>17</sup>

When an agent performs a morally wrong action while aware of its wrong-making features his action expresses a negative quality of will, and does so *directly*; it is the awareness that he has *at the time of the action* that allows his negative quality of will to be expressed or exhibited in it. In cases of ignorance, of course, things are different; the agent's ignorance with respect to wrong-making features of the action precludes a direct expression or display of negative quality of will in it. If the agent is ignorant that his action may result in serious harm to another person, for example, the agent cannot be motivated

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will obtain, the more that the agent's indifference with respect to *H* is displayed. However, there is reason to think that this is not so in cases of ill will, since, regardless of what the agent's subjective probability of *H*'s obtaining is, in such cases the agent intends or desires that *H will* obtain (and not merely that it *might*). I offer an example of this below.

<sup>15</sup> Not all foresight is occurrent to the same degree. For example, while no one doubts that an experienced baseball player with two strikes is aware that he is at risk of striking out, it may be better for him not to focus too much on this fact (Husak 2011, p. 209). It would seem that an agent's quality of will at the time of the benighting action captures a wrong-making feature to a greater degree the higher his level of attention to that feature is.

<sup>16</sup> Although I opt to use the term "feature," these can be understood as wrong-making *properties* of an action.

<sup>17</sup> It should be noted that, given a more fine-grained individuation of the wrong-making features of an action, foreknowledge of some wrong-making features will not increase the degree of capture in a morally significant way. For example, an agent's foreseeing that the benighted action might *seriously* harm someone would increase the degree of capture in a morally significant way beyond the foresight that the benighted action might harm someone. In contrast, foresight that the benighted action might injure someone's *right* leg would not (normally) increase the degree of capture in a morally significant way beyond the foresight that the benighted action might injure someone's leg. The reason here is that in the first case there is a morally significant difference between the two wrong-making features and in the second case there is not a morally significant difference.

by the fact that it may, nor can his action be performed with the sort of callous disregard for that wrong-making feature that requires awareness of it. The notion of capture, however, explains how an action performed from circumstantial ignorance can still express a negative quality of will. When an agent's quality of will at the time of some action or omission captures the wrong-making features of some subsequent morally wrong action, the quality of will is expressed or exhibited (albeit *indirectly*) in the subsequent action with respect to the features of the subsequent action that are captured.

We can imagine, first, an agent who at some earlier time intentionally acted to bring it about that, when the time came to act, he would be ignorant of precisely what he becomes ignorant of. One of the most striking examples of this is portrayed in the film *Memento*. In it, Leonard is bent on finding and killing the man who murdered his wife. Due to a head injury inflicted by the culprit at the time of the attack, Leonard cannot form new memories. In order to find the murderer, then, Leonard writes notes to himself on scraps of paper and tattoos his body with clues to the identity of his wife's murderer. At one point, the man assisting him on his pursuit of vengeance, Teddy, reveals to Leonard that they had already found his wife's murderer and that Lenny had killed him. Due to his condition, of course, Leonard had forgotten. Teddy explains to Leonard that he has continued helping Leonard track down other suspects in order to give purpose to Leonard's life. Realizing in that moment how Teddy has been manipulating him, Leonard resolves to make Teddy his next kill. He writes notes to himself implicating Teddy, aware that this will lead him to kill Teddy out of ignorance.

Leonard's ignorance is culpable, and this is at least in part due to the fact that the benighting act (i.e., his implicating Teddy) that led to his ignorance expressed ill will. Leonard's ignorance at the time of the benighted action (i.e., his killing Teddy) does not mitigate his blameworthiness for the benighted action, and the explanation for this is straightforward: the quality of will expressed in making himself believe incorrectly that Teddy is his wife's murderer *completely captures* the wrongness of his killing Teddy out of ignorance, and so is expressed (indirectly) in it. Put more perspicuously, there are no

wrong-making features of the benighted action that Leonard was unaware of at the time of the benighting action.<sup>18, 19</sup>

More often than not, of course, an agent's quality of will at the time of a benighting action does not completely capture the wrong-making features of the benighted action. When a doctor fails to look at his patient's medical chart before prescribing medication to the patient, he may be aware that his failure to do so might result in his being ignorant of special conditions the patient might have and in turn prescribing medicine that will (due to some such condition) harm the patient. But the doctor may know that he is risking harm to the patient without being aware of *how* serious the harm might be (due to his ignorance of the patient's particular medical conditions). Suppose that the patient dies as a result of the prescription. The doctor's earlier failure to check the patient's medical chart displayed a lack of due regard for the patient's health. However, if the death of the patient did not fall within the scope of foreseen outcomes, then the doctor's lack of due regard for the patient at the time of his benighting omission only partially captured the wrongness of his prescribing the medication: there are wrong-making features of the benighted action (his prescription of the medicine) that he was unaware of at the time of his earlier benighting failure to check the patient's medical records. In particular, his lack of due regard captured the risk of harm to the patient but not the risk of death. The lack of due regard exhibited in the doctor's benighting omission (i.e., his failure to check the medical records) does not

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<sup>18</sup> This is not to say that, at the time of his benighting act, Leonard foresaw what the benighted act would be "in all its florid particularity," (to borrow a phrase from Fischer and Tognazzini 2009, p. 538). He would not have known, for example, exactly where he would kill Teddy, what each of them would be wearing, what particular weapon he would use to do it, and so on. My claim here is that Leonard was aware, at the time that he set himself up to kill Teddy, of all of the features of that action that would make it *morally wrong*.

<sup>19</sup> McKenna (2009) has a very nice discussion of the various philosophical difficulties that arise with respect to the character of Leonard in *Memento*. On the question of moral responsibility in particular, McKenna suggests that, since Leonard cannot remember his past actions, it does not make sense to blame him for them. As he puts it, "an agent who simply could not remember his acts could not see the blame or the punishment as responding to the character traits in him as they were revealed in his actions" (p. 39). Even so, McKenna explains, this does not preclude Leonard from being *blameworthy* (i.e., worthy of blame) for his actions. In the end, however, McKenna admits that, if Leonard is responsible and blameworthy for his actions, "his moral responsibility is so vanishingly minimal that it seems not to amount to much" (p. 41). Part of the reason for this judgment, I take it, is that Leonard's agential capacities are so severely impaired by his continual memory loss. In order to avoid this broader concern about Leonard's agency and responsibility for the case I discuss here, we can imagine a similar case in which an otherwise normally functioning agent intentionally induces the sort of memory loss and ignorance that comes naturally to Leonard with the aim of killing someone out of ignorance.

include a conscious lack of care concerning whether the patient would die as a result of a harmful prescription.

Let's return once more to Rosen's arsenic case. If his circumstantial ignorance is non-culpable, Rosen maintains, then he is blameless for ignorantly putting arsenic in my tea. Rosen's judgment that non-culpable circumstantial ignorance *excuses* can be explained by my claims concerning the expression or display of negative quality of will in actions and omissions. As I explain above, if Rosen is blamelessly ignorant that what he is putting in the tea is arsenic and not sugar then his doing so does not express or display any negative quality of will; his ignorance precludes these (and this is so even if he happens to *bear* a negative quality of will toward me). But what if Rosen's ignorance was culpable? Recall what he says: "In that case I am plausibly culpable for the poisoning—*though I am obviously less culpable than I would have been if I had done it deliberately*" (300). What I have said in this section helps explain why this is so. Rosen's ignorance with respect to the wrong-making features of his action precludes a direct expression of negative quality of will in it. If his ignorance is culpable, however, then it is still likely that his action expresses or exhibits a negative quality of will *indirectly*. If Rosen's culpable ignorance is the result of an earlier benighting action, then the quality of will expressed in the benighting action may (to one degree or another) capture the wrongness of his putting arsenic in the tea, and thereby be expressed or exhibited indirectly in the benighted action. But if there are wrong-making features of Rosen's unwitting wrong (benighted) action that were not foreseen at the time of the earlier benighting action, then the quality of will expressed or exhibited indirectly in the benighted action is not as bad as it would have been were it either performed with full awareness of its wrong-making features or if the quality of will expressed or exhibited in the benighting action fully captured the wrong-making features of the benighted action.

### **5.3. Conclusion**

An agent's ignorance, even when culpable, can mitigate his blameworthiness for acting from ignorance. Whether and to what extent an agent's ignorance mitigates his blameworthiness for morally wrong actions or omissions, I have suggested, depends upon the extent to which the agent's negative quality of will is expressed or exhibited in the

action or omission. In the case of non-culpable ignorance with respect to all of the wrong-making features of the action, the expression or display of a negative quality of will is precluded entirely. In the case of culpable ignorance, the degree to which the ignorance mitigates blameworthiness depends upon the degree to which the agent's quality of will at the time of the benighting action captured the wrongness of the subsequent (benighted) action performed from ignorance.

## CHAPTER 6

### WHEN DOES BLAMELESS IGNORANCE EXCUSE?

#### 6.1. Introduction

Recall the following principle:

(BI) An agent is blameworthy for acting or omitting from ignorance only if he is blameworthy for the ignorance from which he acts or omits.

This principle has been maintained, in one form or another, by what seems to be the majority of theorists working on the epistemic condition on blameworthiness. There is disagreement, however, on which version of the principle is correct. While some accept the principle when restricted to certain types of ignorance, others accept an unrestricted version of the principle. In this chapter I will review some attempts to defend versions of this principle, as well as critiques of these defenses by Randolph Clarke (2014, forthcoming). Toward the end I will consider an argument offered by Clarke, which, if sound, would imply that all versions of (BI) are false. I then offer a response to Clarke in favor of a restricted version of the principle.

#### 6.1.1 Factual Ignorance and Moral Ignorance

Recall that there are at least two ways that ignorance can figure in an agent performing a morally wrong action.<sup>1</sup> First, an agent might fail to recognize the wrongness of her action because of ignorance of some wrong-making feature of the action. Second, an agent might be aware of a wrong-making feature of her action, but fail to recognize the wrongness of her action because she is ignorant that the wrong-making feature is wrong-

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<sup>1</sup> In Chapter 3 I discuss a third type of ignorance: non-moral normative ignorance. I will return to discuss this at the end of this chapter.



making. I call the first type circumstantial (or non-moral) ignorance, and the second type moral ignorance.<sup>2</sup> Rosen has argued that a good case can be made for the following thesis:

The Parity Thesis: (BI) holds in full generality; that is, it holds for cases of circumstantial ignorance as well as moral ignorance (2003, p. 64).

The primary aim of this chapter is to examine what reasons there are to accept the Parity Thesis; accordingly, in this chapter I will use “(BI)” to refer to the principle that blameless ignorance (circumstantial or moral) excuses. In particular, I will focus here on the question of whether blameless moral ignorance excuses.

## **6.2. Zimmerman on (BI)**

Zimmerman phrases (BI) in terms of culpability:

One is culpable for behaving ignorantly only if one is culpable for being ignorant (1997, pp. 414, 423).

Zimmerman uses (BI) as a premise in an argument for the conclusion that an agent is directly blameworthy for his morally wrong behavior only if he is aware that his behavior is morally wrong. But, given that (BI) plays a central role in that argument, he inquires into how one might go about defending (BI). Zimmerman briefly considers but rejects the view that it can be defended on the basis of a more general principle of which (BI) is an instance:

One is culpable for behaving X-ishly only if one is culpable for being X-ish (p. 423).

As Zimmerman points out, there are clear counterexamples to this general principle. For example, one needn't be culpable for being angry in order to be culpable for acting angrily. Of course, the fact that the more general principle is false doesn't imply that every instance

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<sup>2</sup> Both types of cases, of course, involve ignorance of a moral fact: ignorance that the action performed is morally wrong.

of the principle is also false. But, if (BI) cannot be defended on the basis of the more general principle, how might it be defended? One way we might try to do this is to see what relevant differences there are between acting angrily, for example, and acting ignorantly. How could it be that blameless ignorance always excuses one from acting ignorantly but that blameless anger doesn't always excuse one from acting angrily? One explanation is that ignorance precludes the freedom to avoid acting ignorantly. More precisely, it might be said that, if one's ignorance is unavoidable, then it is also unavoidable that if, one acts, one acts ignorantly. However, the unavoidability of one's being angry is consistent with one's having the freedom to avoid acting angrily.

Zimmerman rejects this line of thought. If one's ignorance is unavoidable, then surely it is unavoidable that, if one acts, one acts *while* ignorant. However, this is consistent with one having the freedom to avoid acting *from* ignorance, since acting *from* ignorance involves more than merely acting *while* ignorant. As Zimmerman puts it, when an agent acts from ignorance, the ignorance serves as an explanation of why the agent acted as he did. It may be true of such an agent that, had she not been ignorant (i.e., if he had been aware that what he was doing was morally wrong), he would not have acted in a morally wrong way.

According to Zimmerman, the relevant difference between acting angrily and acting ignorantly is that one can act angrily with an awareness that one is acting wrongly, but one cannot act ignorant of the fact that one's action is wrong while also being aware that the action is wrong. While this is true, it does not provide a defense of the claim that blameless ignorance excuses. In the end, Zimmerman accepts (BI) because he maintains that "lack of ignorance is a root requirement for responsibility." In other words, Zimmerman accepts (BI) because he believes that direct responsibility or blameworthiness requires awareness. Zimmerman admits that, while this claim helps explain why (BI) is true, it cannot be used to defend (BI) without begging the question, since (BI) is itself a premise in his argument for the claim that direct blameworthiness requires awareness. Zimmerman does not attempt to defend (BI) any further.

### **6.3. Rosen's Defense of (BI)**

Gideon Rosen presents the following case in support of (BI):

Ancient Slavery: In the ancient Near East in the Biblical period the legitimacy of chattel slavery was simply taken for granted. The evidence suggests that until late in antiquity it never occurred to anyone to object to slavery on moral grounds. So consider an ordinary Hittite lord. He buys and sells human beings, forces labor without compensation, and separates families to suit his purposes. Needless to say, what he does is wrong. The landlord is not entitled to do these things. But of course he thinks he is. Moreover, we may stipulate that if he had thought otherwise, he would have acted differently (2003, pp. 64-5).

We can stipulate that the lord has fulfilled all of his procedural epistemic duties: he has carefully considered the various features of his situation and reflected upon whether or not what he does is morally permissible. However, he might (due at least in part to how deeply ingrained the moral paradigms of his time are) nevertheless come to the conclusion that what is doing is in fact morally permissible. Rosen argues that, given these facts, it's plausible that the Hittite lord is blameless for his moral ignorance. And, if this is so, Rosen argues, then he is not blameworthy for his actions. "[I]n my view," Rosen says, "it makes no sense to hold this injustice against the perpetrator when it would have taken a miracle of moral vision for him to have seen the case for acting differently" (p. 66).

Rosen considers another account, the Quality of Will Account, which yields a different judgment about the Hittite lord. On this account, what is required for an agent's being blameworthy for a morally wrong action or omission is that the agent displayed a negative quality of will towards another person in her action or omission. If this is correct, then non-moral ignorance may excuse an agent from blameworthiness by precluding an expression or display of a negative quality of will in the agent's action or omission. Because, as explained in Chapter 3, moral ignorance does not preclude expressions of a negative quality of will, the Quality of Will Account does not imply that blameless moral ignorance excuses. The lord's treating slaves in the way that he does displays a negative quality of

will, his moral ignorance notwithstanding; his actions display a lack of due regard for others, and may also express ill will toward others.

If the Quality of Will Account is correct, then (BI) is false. Recognizing this, Rosen offers both a response to the Quality of Will Account and positive support for (BI). First, Rosen claims that someone can't be blameworthy for not showing due regard for another person when that person is blamelessly ignorant of what regard is due that person. When we reflect on this fact, he claims, our tendency to blame the person disappears. Rosen also offers the following principle that is intended to support (BI):

(SBI) It is unfair to blame someone for doing something if he blamelessly believed that there is no compelling moral reason not to do it.

Rosen takes it that (SBI) is supported by two other principles:

(i) It is unreasonable to expect people not to do what they blamelessly believe they are entitled to do.

(ii) It is unreasonable to subject people to sanctions when it would be unreasonable to expect them to have acted differently (pp. 74-75).

Because I am concerned with the conditions on blameworthiness, in what follows I will discuss (ii) as a claim about it being unreasonable to *blame* someone when it would be unreasonable to expect them to have acted differently.<sup>3</sup>

#### **6.4. Clarke's Critique of Rosen**

Clarke (2014) argues that Rosen's (i) and (ii) fail to support (SBI). Both (i) and (ii) are phrased in terms of reasonable expectation. As Clarke points out, though, the question of whether an expectation is reasonable can be interpreted either in an epistemic sense

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<sup>3</sup> Rosen understands blame as a type of sanction (2003, p. 73 and 2004, pp. 296, 306).

(that is, as a question about whether we have good reason to believe something) or in a normative sense (that is, as a question about whether it is fair to hold someone to a norm requiring him to do something). (i) is uncontroversial when we interpret it as an epistemic claim: we do not have good reason to believe that someone won't do what he believes he is entitled to do. However, Clarke reasons that Rosen does not intend "unreasonable to expect" in (i) to be interpreted in an epistemic sense. Clarke's reasoning is as follows: In order for (i) and (ii) to *jointly* support (SBI), they must both have the same sense of "reasonable expectation." And, it is fairly clear that (ii) is to be interpreted as making a normative claim. This is so because (ii) is implausible when it is interpreted as making an epistemic claim (as Clarke puts it, it's false that it is unfair to hold someone blameworthy for doing something that your evidence shows it is highly likely that she will do). Clarke infers, then, that Rosen must intend both (i) and (ii) to have normative readings of reasonable expectation. The question, then, is whether there are normative interpretations of (i) and (ii) on which they are plausible and jointly support (SBI).

(ii), read as the claim that it is unfair to blame others when it would be unfair to expect them to have acted differently, seems to be uncontroversial. But what about (i)? Clarke first considers interpreting (i) so that it states that it is unfair to hold someone to a norm when the person blamelessly but falsely believes that what he is doing is permissible. Read this way, though, (i) is doubtful. Clarke explains, "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" (p. 181). Clarke then considers the possibility that holding someone to a norm might be taken to involve regarding the person as blameworthy if he violates the norm. If (i) is understood in this way, however, then (i) is just a restatement of (SBI), the principle that it is supposed to support.

The problem, then, is that the only plausible normative interpretation of (i) is that on which it is simply a restatement of (SBI). Clarke concludes that "[t]here is, then, no understanding of the two claims on which, together, they support the thesis in question" (p. 181).

While I believe that Clarke's critique of Rosen's argument for (SBI) is successful, there is a further problem for Rosen's attempt to defend (BI) by way of (SBI): (SBI) doesn't entail (BI). (SBI) concerns an agent's *having false* beliefs about the moral status of his action, while (BI) concerns an agent's *lacking true* ones. (SBI) implies that those who blamelessly *believe* that there is no compelling moral reason not to A are excused; it does not imply, as (BI) does, that those who blamelessly *lack* the belief that there is a compelling moral reason not to A are excused. To put it more simply, (BI) is a stronger claim than (SBI). Since there are agents that are excused on (BI) that are not excused on (SBI) alone, (SBI) does not entail (BI).

### **6.5. Levy's Argument and Clarke's Critique**

In his response to Fitzpatrick (2008), Levy (2009) maintains that whether an agent is culpable for his ignorance depends upon whether he could have reasonably been expected to avoid or eliminate that ignorance. Levy argues that it is reasonable to expect an agent to have complied with some norm only if the agent had the capacity to do so *rationally*. Levy takes it that the relevant sense of rationality here is an internalist one, according to which an agent has reason to perform some action only if he believes that it will or might lead to the satisfaction of one of his goals (p. 735).<sup>4</sup> This is relevant to our purposes here because Levy maintains that the same principle underlies the claim that agents are not culpable for acting from non-culpable ignorance—that is, (BI) (p. 741).<sup>5</sup>

Clarke (forthcoming) states Levy's principle as follows: *An agent isn't blameworthy for not doing something that isn't rational in the internalist sense.*<sup>6</sup> For Levy, an agent acts rationally only if he does what he believes he has best reason to do. To see more clearly

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<sup>4</sup> Levy initially phrases this in terms of a sufficient condition, but (as I point out in a footnote in Chapter 3) what he says later in the paper makes it clear that he maintains this also as a necessary condition.

<sup>5</sup> Levy, Rosen, and Clarke use "culpable" interchangeably with "blameworthy," so there is no alteration in meaning if we phrase (BI) in terms of blameworthiness and blameless ignorance (instead of culpability and non-culpable ignorance).

<sup>6</sup> Levy (2009) allows that an agent might be *indirectly* blameworthy for failing to do something that isn't rational in the internalist sense if the agent acts from culpable ignorance. I take this into account in my restatement of his principle below.

how Levy's principle might be related to other principles discussed here, it may be helpful to phrase it differently:

(RB) It is unfair to blame someone for doing something if he blamelessly lacked the belief that he has best reason to do it.<sup>7</sup>

This principle does add something to the support of (BI) that Rosen's (SBI) lacks, namely that it would be unfair to blame someone doing something if they only could have done it *irrationally*.<sup>8,9</sup> Let's see how (RB) fares. Levy thinks that whether A-ing is rational (in the internalist sense) is just a matter of whether one believes that one has best reason to do A. Levy's thought is that, if one doesn't take oneself to have best reason to A, then one can't A rationally. Clarke (forthcoming) responds that this is false: even if one does not *now* believe that one has best reason to A, one might be able to come to believe that one has best reason to A. Clarke presents the following case to illustrate this point:

Ann is driving to a friend's house when she collides in an intersection with another car, killing one of its passengers. Ann has run a stop sign. She didn't see it. She wasn't intoxicated and she wasn't speeding. But she hadn't driven this route before. And although she was watching the road, she was also thinking about her work; indeed, she had just realized how to solve a problem that had been bothering her for days. Her attention to her driving had dropped below where it ought to have been (pp.9-10)

We can apply Levy's thinking to this case: since Ann did not take herself to have best reason to stop before the intersection, she could have only stopped irrationally. If this is so,

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<sup>7</sup> Although I phrase this principle in terms of actions, I take it that (RB), as well as other principles discussed here, applies also to omissions.

<sup>8</sup> Rosen and Levy agree that whether an agent is blameworthy for something is a matter of whether it would be fair to blame them for that thing.

<sup>9</sup> As I point out above, (SBI) is about an agent's having a belief that there is no compelling moral reason to do something. (RB), in contrast, is about only *lacking* the belief that one has a reason to do something and not about *having* the belief that something is not a compelling reason to do it. Consider, then, the following revision of (SBI):

(SBI') It is unfair to blame someone for doing something if he blamelessly lacked the belief that there is compelling moral reason not to do it.

then according to (RB), it would be unfair to blame her for failing to stop. But, Clarke explains that Levy's principle cannot be invoked to excuse Ann here:

Ann doesn't take herself to have best reason to stop at the intersection. She doesn't notice the stop sign. But (up to a certain point in time) she can maintain or return her attention to her driving and notice the sign. And she can thus come to take herself to have best reason to stop and can rationally (in the internalist sense) stop before entering the intersection. To demand that she stop, then, isn't to demand that she do something that she can only do irrationally.

Levy's justification for (RB) is that, if one lacks the belief that it would be best to A, then one can't A rationally. And if one can't A rationally, then it's unfair to blame one for failing to A. Clarke succeeds in showing that the following claim is false: if one doesn't take oneself to have best reason to A, then one can't A rationally. Ann *can* rationally stop even though she doesn't take herself to have best reason to do so, since she can come to take herself to have best reason to stop. By showing that the above claim is false, Clarke undermines Levy's support for (RB).

### **6.6. Clarke's Argument Against (BI)**

We have so far considered two arguments for (BI) and critiques of those arguments. So far, each of the arguments for (BI) have been found wanting. We have not, however, seen any argument *against* (BI). Here we will consider such an argument offered by Clarke (forthcoming). Though Clarke does not explicitly endorse the conclusion (he remains agnostic about premise (6) of the argument below), the argument is nevertheless worth examining. Consider the following reconstruction of Clarke's argument:

(1) If it is reasonable to expect an agent to realize that his behavior is morally wrong, then he is blameworthy for his behavior.<sup>10</sup> (premise)

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<sup>10</sup> For the sake of this argument, it is assumed that the relevant agents satisfy the non-epistemic requirements on blameworthiness.



(2) Some unwitting wrongdoers could have and should have realized that their behavior was morally wrong. (premise)

(3) If an agent can and should realize that his behavior is morally wrong then it is reasonable to expect him to realize that it is morally wrong. (premise)

(4) Some unwitting wrongdoers could have reasonably been expected to realize that their behavior is morally wrong. (2 & 3)

(5) Some unwitting wrongdoers are blameworthy for their morally wrong behavior. (1 & 4)

(6) Some of these unwitting wrongdoers are not blameworthy for failing to realize that their behavior was wrong. (premise)

(7) Some unwitting wrongdoers are blameworthy for their morally wrong behavior and not blameworthy for the ignorance from which they acted (or omitted). (5 & 6)

(8) If (BI) is true, then no unwitting wrongdoers are blameworthy for their morally wrong behavior and not blameworthy for the ignorance from which they acted (or omitted).

(C) (BI) is false. (7 & 8)

(4), (5), (7), and (C) follow from earlier steps, and (8) follows straightforwardly from (BI). (1), (2), (3), and (6) are premises. (1) is perhaps the most controversial premise; I leave it to the side for now.

Clarke's defense of premise (2) is fairly uncontroversial. We have the capacity to realize certain facts (e.g., the wrongness of an action) even when that capacity isn't manifested. Clarke focuses primarily on cases of circumstantial ignorance. In some cases, I fail to realize the wrongness of an action (or omission) of mine because I fail to realize some relevant feature of my situation; I may forget that I made a certain promise, for example, or fail to make a relevant inference. In such cases, if I were aware of these

features, I would realize the wrongness of my action. And, since I often have the capacity to realize these features, I often have the capacity to realize the wrongness of my actions, even when I don't manifest this capacity. Further, Clarke explains, given my obligation to perform (or not to perform) the action in question, I should realize this fact (forthcoming, p. 16).

(3) seems to state a position about reasonable expectation very similar to one that I discuss in Chapter 2. There I maintain that it is reasonable to expect an agent to foresee some consequence if and only if that consequence is reasonably foreseeable for the agent and if the agent has procedural epistemic obligations with respect to that consequence. Here, though, Clarke uses "should," to include not only procedural epistemic obligations, but also some norm or standard, where an agent's failure to meet this standard is morally faulty in some way. Clarke explains,

Generally, one shouldn't hate one's enemies or envy one's rivals, and sometimes one should care more than one does for a certain thing. Although 'shouldn't' and 'should' in these cases don't express obligations to act or omit to act, the shortcomings may be moral faults (p. 20).

Clarke then says that the failure of certain agents (e.g., Ann) to realize that their conduct was wrong may be morally faulty in this kind of way. Although (2) is interestingly different from the position that I maintain in Chapter 2, I will not dispute it here. Instead, I want to return to premise (1).

Recall Anne, who violates at least two obligations. The most obvious violation is her failure to stop at the intersection. But she also violates a procedural epistemic obligation: she fails to keep her attention on her driving. Each of these failures to fulfill obligations is due to lack of awareness of a morally relevant feature of her situation: the stop sign and the low level of attention on her driving, respectively. But Anne had the capacity to become aware of each of these features, and should have. By (2) and (3), then, Anne could have reasonably been expected to become aware of each of these features. Clarke's view, then, implies that (assuming she acts freely) Anne is blameworthy for each of these unwitting

omissions, ignorance notwithstanding.<sup>11</sup> He offers a challenge to those who would disagree:

If it was reasonable to expect these agents to be aware that their conduct was wrong, and if they were free to do otherwise, what is their excuse? My suggestion is that they have none. They satisfy conditions that suffice for direct blameworthiness for their conduct (p. 19).

Clarke acknowledges that some will respond to his challenge that it is the agent's (blameless) ignorance that excuses him. But, Clarke states, we need an argument for the claim that awareness is required for direct blameworthiness. And, as we have seen, Clarke's critiques of extant arguments for (BI) casts doubt upon them. In the following section I offer what I take to be a more satisfying response to Clarke's challenge: what excuses such agents is that they fail to express a negative quality of will in their behavior.<sup>12</sup>

If Clarke is correct about (1), (2), and (3), then awareness (either of the wrongness of an action or of the wrong-making features of the action) is not required for direct blameworthiness. This is not, however, sufficient for the falsity of (BI). (BI) is false only if it is possible that some agent is blameworthy for morally wrong behavior performed from ignorance and yet not blameworthy for his ignorance. Premise (6) is meant to fill the gap:

(6) Some of these unwitting wrongdoers are not blameworthy for failing to realize that their behavior was wrong.

If (5) is true, then some unwitting wrongdoers are blameworthy for their morally wrong behavior. And, if it is true, as (6) states, that some of these agents are not blameworthy for their ignorance, then every version of (BI) is false.

There is something puzzling here. On Clarke's view, these agents' blameworthiness for their behavior is grounded, in part, in the fact that it was reasonable to expect them to realize that their behavior is wrong. But how can it be that (assuming the freedom or

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<sup>11</sup> It is assumed that Anne is morally competent, such that, if she were aware of the wrong-making features of her behavior, then she would be aware of its wrongness.

<sup>12</sup> Recall from Chapter 3 that Talbert takes the position that blameless circumstantial ignorance excuses for this reason.

control condition is met) this reasonable expectation is sufficient for blameworthiness for an agent's *behavior* performed from ignorance, but not sufficient for blameworthiness for the agent's *ignorance* itself (especially considering the fact that this ignorance is, on Clarke's view, morally faulty)? Clarke's answer, it seems, is found in the following principle:

(DB) We can be directly blameworthy only for actions or omissions to act (p. 5).

Recall Anne's failure to fulfill a procedural epistemic obligation to keep her attention on her driving. If she could reasonably have been expected to realize that she ought to do this, then (assuming she had the ability to do this) she is blameworthy for failing to fulfill this epistemic obligation. Her failure to fulfill this obligation, though, is due to another failure: her failure to realize the need to keep her attention on her driving. But, as Clarke points out, *this* failure is not a failure to fulfill an obligation (since realizing is not itself an action), nor need it be traceable to such a violation: Anne needn't have had an obligation to make sure that she would realize the need to keep her attention on her driving (p. 20). If this is so, Anne is not indirectly blameworthy for her ignorance. And, if (DB) is true, then Anne isn't directly blameworthy for her ignorance, either. But then (6) is true, and (BI) is false. (DB), while widely held, is not without its detractors.<sup>13</sup> And, while Clarke says that he finds (DB) "rather plausible" (p. 8), he does not offer a defense of (DB). Without a defense of this principle, though, the argument against (BI) is lacking.

### **6.7. Wrestling with Implications: Quality of Will**

The support for premise (6) is lacking. This may be why Clarke is noncommittal about whether it is true. I do not consider myself to have successfully defeated any of the premises in Clarke's argument. Sometimes we reject an argument initially, not because we are sure about the falsity of a particular premise, but because we find the implications of the argument to be unacceptable. To this end I will explore some of the implications of Clarke's argument. Along the way I will expand upon my response to Clarke's challenge

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<sup>13</sup> Adams (1985); Scanlon (1998); Smith (2005).

about excusing conditions. Reflection upon the implications of Clarke's argument will lead me to dispute (1).

Clarke's argument implies that an agent can be blameworthy for an unwitting action or omission that

(i) because of the agent's circumstantial ignorance, did not express a negative quality of will,

(ii) was performed (or omitted) *because* the agent was ignorant (and not merely *while* the agent was ignorant), and

(iii) even though the agent was entirely blameless for this ignorance.

We might argue that (ii) and (iii) are sufficient for an excuse. If the agent performed the action because the agent was ignorant, and if the agent is blameless for this ignorance, then what exactly grounds the agent's blameworthiness? For Clarke, it's something about the ignorance—namely, that the agent could reasonably have been expected to lack it. And, given the capacities of the agent, the failure to be aware was morally faulty. But, unless this failure was itself blameworthy, I cannot see how these facts, even in conjunction, suffice for blameworthiness for an action performed from ignorance. Because it isn't immediately clear how to resolve the difference in intuitions here, I look elsewhere for clarity.

There is a more straightforward shortcoming in Clarke's account, expressed above in (i). The agents in question suffer from circumstantial ignorance. We may, with Clarke, suppose that their ignorance need not have resulted from an earlier witting failure to fulfill some procedural epistemic obligation, or even from what FitzPatrick calls the voluntary exercise of vices (e.g, overconfidence, arrogance, etc.) in failing to fulfill some procedural epistemic obligation. Because of this, these agents do not either directly *or* indirectly express ill will or display (what I have called in Chapter 5 the more callous kind of) lack of due regard in their actions or omissions.

Clarke challenges us to offer an excuse for the sorts of agents we have been considering. My response is that the truth of (i) is sufficient for an excuse. Indeed, if a

negative quality of will is nowhere to be found in the etiology of the behavior in question, to what could blame be an appropriate response?

Clarke could, of course, refuse to engage in this debate on Strawsonian terms, rejecting the view that considerations about quality of will are central to the conditions on blameworthiness. But he doesn't. Instead, he points out that there *is* a failure with respect to quality of will in these cases: a failure to *express good will*. Concerning the sorts of agents we have been discussing, he writes:

Although Ann, Bob, and Carol might have some shortcomings, as I've portrayed them there's no reason to think that their wills are especially bad. Still, in an important respect, all three agents fail to meet the Strawsonian demand. Though their cares, concerns, and values might be good enough, they fail to express goodwill on the occasions in question in doing things that they ought to do... Even if they have proper regard for others, they don't perform these required actions that would express it. (pp. 21-22).

Clarke's response that his account does include a quality of will condition is unsatisfying. A failure to fulfill a moral obligation to other people always involves a failure to express good will or due regard for those people, and the reason why is straightforward: the expression of good will that is lacking just *is* the fulfillment of the obligation in question.<sup>14</sup> So, Clarke offers no *additional* consideration over and above those included in his proposed conditions on direct blameworthiness.

Clarke is certainly right that there is a moral demand that we express good will for others in our behavior. But a failure to meet our obligations towards others, while sufficient for a failure meet this demand, is insufficient for blameworthiness. Clarke's position is that the additional factor required is a matter of reasonable expectation. But again, if an agent is blameless for failing to be aware of what it is reasonable to expect her to be aware of, then it's hard to see how the reasonable expectation can be cited among the reasons to think that the agent is blameworthy.<sup>15</sup> Furthermore, Clarke's position is consistent with an agent's failing to meet some obligation (and thereby fail to express good

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<sup>14</sup> Perhaps this manifestation of good will also requires the right kind of motivation.

<sup>15</sup> This is one reason to reject premise (1).

will) merely by an unfortunate accident or a slip of the mind for which the agent is entirely blameless.

Suppose, for example, that Clarke's wife asks him to pick up milk on his way home from work, but that he forgets to do so.<sup>16</sup> We can suppose, Clarke points out, that his forgetting isn't due to any earlier failure to fulfill a procedural epistemic obligations, but simply due to a momentary lapse of attention. His level of regard for his wife is not morally objectionable. It may be that, as he puts it, his awareness or level of attention fell below a cognitive standard that applied to him in that situation: he could have, and (in a sense) should have remembered to pick up the milk. But he didn't; it simply slipped his mind. And he is entirely blameless for this mental slip. Of course, given his obligation to pick up the milk, Clarke fails to express good will toward his wife on that occasion. Clarke takes it that he is plausibly blameworthy for failing to pick up the milk, and so sees this case as evidence for his own view. But, given that Clarke's failure is simply due to an unfortunate mental slip for which he is entirely blameless, I find this case to be a paradigmatic example of what is problematic about his view.

There is a more satisfying supplement than Clarke's. When an agent fails to express good will in their behavior, the agent is blameworthy for the failure to express good will only if that failure expresses (directly or indirectly) either ill will or (the callous type of) lack of due regard. This supplement captures the concern that blameworthiness not be subject to merely unfortunate and blameless epistemic failures.

Our practice, I think, confirms this alternative to Clarke's position. Recall that Rosen claims that, when we discover that the agent is blameless for the ignorance she acts from, and focus on that fact, our inclination to blame disappears. Because Rosen intends this claim to apply to cases of moral ignorance as well as circumstantial ignorance, some will balk at this. We might find that Mr. Potter is blameless for his moral ignorance, for example, and nevertheless feel resentment towards him because of the arrogance and ill will he expresses towards others in his behavior. But there is a weaker claim that is significantly less controversial than Rosen's: when we discover that an agent's behavior does not

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<sup>16</sup> This case is taken from Clarke (2014).

(directly or indirectly) express a negative quality of will, and focus on this fact, our inclination to blame disappears.

I have argued that Clarke's account is unsatisfying because it implies that agents can be blameworthy regardless of whether their behavior expresses a negative quality of will. Interestingly, Clarke has more to say. After making his case that the expression of negative quality of will isn't required for blameworthiness, Clarke attempts to point out that, even if these agents' circumstantial ignorance does arise from a negative quality of will, the agents may still end up being blameless for their circumstantial ignorance. If this is so, Clarke claims, then (6) turns out to be true, anyway:

Still, we might reimagine the cases such that there *is* some poor quality of will that gives rise to the failures to notice, think of, or remember. If DB is correct, then the agents aren't directly blameworthy for their vices or objectionable non-voluntary attitudes. And now, if these states don't arise from prior blameworthy conduct which the agents could reasonably have been expected to see risked giving rise to these subsequent faults, then the agents won't be blameworthy for these states.

Clarke continues:

But it isn't generally the case that blameworthiness for conduct arising from ill will or indifference requires blameworthiness for that quality of will. I see no reason to think, then, that it must do so in the case of unwitting wrongful conduct (p. 22).

Here, again, Clarke wants to show that an agent might be blameworthy for his unwitting behavior but not blameworthy for the ignorance that he acts (or omits) from, and thereby establish that (BI) is false. First, we should note that there is an important difference between an indirect *expression* of negative quality of will in an agent's unwitting behavior and unwitting behavior that merely *arises* from a negative quality of will. With respect to the former, there is an epistemic connection between the agent's benighting and the benighted conduct: the agent foresaw at the time of the benighting conduct that he might, as a result, unwittingly perform a morally wrong action (or omission) at some later



point.<sup>17</sup> With respect to the latter, however, there is no way for the unwitting behavior to express a negative quality of will. It may be helpful to reproduce a relevant passage from Chapter 5 here:

When an agent performs a morally wrong action while aware of its wrong-making features his action expresses a negative quality of will, and does so *directly*; it is the awareness that he has *at the time of the action* that allows his negative quality of will to be expressed or exhibited in it. In cases of ignorance, of course, things are different; the agent's ignorance with respect to wrong-making features of the action precludes a direct expression or display of negative quality of will in it. If the agent is ignorant that his action may result in serious harm to another person, for example, the agent cannot be motivated by the fact that it may, nor can his action be performed with the sort of callous disregard for that wrong-making feature that requires awareness of it. The notion of capture, however, explains how an action performed from circumstantial ignorance can still express a negative quality of will. When an agent's quality of will at the time of some action or omission captures the wrong-making features of some subsequent morally wrong action, the quality of will is expressed or exhibited (albeit *indirectly*) in that action with respect to the features of the action that are captured. (p. 71)

Because these agents are circumstantially ignorant, their behavior does not express a negative quality of will directly. This leaves it open, of course, whether their actions express a negative quality of will indirectly. With these points in mind, we can present a response to Clarke by way of a dilemma.

The first horn: Suppose that the negative quality of will merely *gives rise* to the circumstantial ignorance, and isn't expressed (indirectly) in the unwitting behavior. If this is so, then the view I articulated above (that the expression of negative quality of will in behavior is required for blameworthiness for that behavior) implies that the agent isn't blameworthy for the unwitting behavior. But then Clarke cannot use such a case to establish (BI) without begging the question against that view.

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<sup>17</sup> The notion of capture developed in in Chapter 5 helps make sense of this indirect expression of negative quality of will in an agent's behavior.

The second horn: Suppose that the negative quality of will *is* expressed, albeit indirectly, in the unwitting behavior. We can grant here Clarke's judgment that the agent may be blameworthy for the behavior. If this is so, then on the view that I have articulated, it is (at least in part) because the unwitting behavior is an upshot of some earlier behavior at the time of which the agent foresaw that his behavior might result in subsequent unwitting morally wrong behavior. But, if this is so, then the agent would be blameworthy for the ignorance from which he behaves. Either way, (BI) isn't established.

### **6.8. *Where Are We, Now?***

There are three types of ignorance that can figure into an agent's failure to realize that he ought to perform (or ought to refrain from performing) some action. First, an agent may suffer from circumstantial ignorance, and fail to realize that he ought to perform (or refrain from performing) an action because he fails to be aware of some wrong-making feature of the behavior. Dr. Adams suffers from circumstantial ignorance when he gives medication to Jeremy; he is unaware of the fact that, due to an allergy, it will result in harm to Jeremy. Second, agents that suffer from moral ignorance are aware of the wrong-making features of their behavior but fail to realize that they are wrong-making. Mr. Potter realizes that keeping the money that belongs to the Baileys will result in harm to them, but fails to realize that this makes his doing so morally wrong. Lastly, an agent that suffers from non-moral normative ignorance may be aware that his behavior is wrong but fail to realize that, all things considered, he ought to (or ought not to) perform the action. Rosen's "Poor Bill" realizes that lying to his wife is morally wrong, but fails to realize that, all things considered, he ought not lie to her.

One of the guiding questions of this project is "When does ignorance excuse?" A common answer to this question, as we have seen, is that ignorance excuses when it is blameless. And, although most theorists agree that agents can be blameless for the above types of ignorance, they are divided on what types of blameless ignorance excuses. We have examined a number of positions on this issue:

(A) All types of blameless ignorance excuse.

(B) Blameless moral and circumstantial ignorance excuse, but blameless non-moral normative ignorance does not.

(C) Ignorance excuses if and only if it is blameless circumstantial ignorance.

(D) There is no type of blameless ignorance that always excuses.

Rosen (2003) and Levy (2009) maintain (A).<sup>18</sup> Zimmerman (1997) maintains (B).<sup>19</sup> Talbert (2013) holds (C). Clarke offers an argument for (D). We've seen reasons to doubt each of the extremes, so an account that is sensitive to these reasons will fall somewhere in the middle.

Clarke has (successfully, in my view) critiqued the arguments offered in favor of (A). And, in Chapter 3, I offer considerations for the claim that (A) involves a dubious kind of excuse. Because blame is a response to *moral* violations, and an agent that suffers only from non-moral normative ignorance is still aware that his actions are morally condemnable, a belief that one has overriding *non-moral* reasons for one's morally wrong behavior doesn't seem to bear at all on the fairness of *moral* sanctions, such as blame. So, not only do we have no successful argument for (A); we also have a positive reason to doubt it.

I have argued that a satisfying account of the conditions on blameworthiness for behavior plausibly includes the expression of a negative quality of will. If this is correct, then (D) is mistaken. (B) and (C) remain.

Maintaining (B) would leave us in a difficult position. We can defend the claim that blameless circumstantial ignorance excuses on the grounds that it precludes the expression of negative quality of will. But this strategy will not work for the view that moral ignorance also excuses, since moral ignorance does not preclude the expression of negative quality of will. We could choose (with more or less justification) to reject or ignore Clarke's critiques

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<sup>18</sup> FitzPatrick is inclined to agree with (A), as well (2008, p. 601-602).

<sup>19</sup> Throughout his paper, Zimmerman emphasizes that the type of ignorance he is concerned with is ignorance that an action is morally wrong. Ignorance of this fact can be due to either circumstantial or moral ignorance. Although Zimmerman *may* maintain (A), he does not address the issue of non-moral normative ignorance.

of the arguments that Levy and Rosen offer for (BI). But it's difficult to see how this would help establish (B), since we cannot consistently maintain that Levy and Rosen's arguments are sound but reject their broader implications (namely, that blameless non-moral normative ignorance also excuses).

This does not mean that (B) is not a tenable position. What it might mean, though, is that the view that both blameless circumstantial and moral ignorance excuse cannot plausibly be defended with a single argument. Though we have seen reasons to believe that blameless circumstantial ignorance excuses, we have yet to see an argument for the claim that blameless moral ignorance excuses that does not also imply that blameless non-moral normative ignorance also excuses.

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## **BIOGRAPHICAL SKETCH**

Daniel Miller grew up in Pequannock, New Jersey. He received his M.A. and Ph.D. in philosophy from Florida State University, and a B.A. in philosophy from William Paterson University. His primary research areas are located at the intersection of ethics and the philosophy of action. In particular, he specializes on the epistemic and control conditions on blameworthiness and the norms governing our blaming practices. During his time at Florida State University he published articles on these issues in *Philosophia* and *Pacific Philosophical Quarterly*.