

The Significance of Unintentional Omission: Moral Responsibility for the Failure to Act

Jason Benchimol

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Reading Committee:

Angela M. Smith, Chair

Laurence BonJour

Ann Baker

Stephen M. Gardiner

Program Authorized to Offer Degree:
Philosophy

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Abstract

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Jason Benchimol

Chair of the Supervisory Committee:

Associate Professor Angela M. Smith
Department of Philosophy
Washington and Lee University

Many people, if asked, would probably say that we are morally responsible only for actions we voluntarily and intentionally choose to perform. But the phenomenon of unintentional omission poses a special problem for this view about the preconditions of moral responsibility. Imagine a lifeguard who carelessly fell asleep while on duty and, as a result, failed (unintentionally) to assist a struggling swimmer as she should have. It seems that what the lifeguard is morally responsible for in this circumstance is *not* an intentionally chosen action, but an unintentional omission. I argue that unintentional omissions like these can at least sometimes be understood to reflect an agent's judgments about the significance of normative reasons. This is all that is required for an agent to be morally responsible for an unintentional omission. My argument helps to explain why the view that we are morally responsible only for actions we voluntarily and intentionally choose to perform is mistaken.

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Chapter 1: Moral Responsibility for the Failure to Act

Meet Mikael, a middle-aged Swedish man who has loved and lived with his partner Sunna in Stockholm for several years. They traditionally celebrate their anniversary on the seventh of June each year. One year, the seventh of June comes and goes without Mikael even so much as noticing. Sunna can't believe it; convinced that it is a part of some surprise he has planned for her, she refrains from mentioning, much less indicating her awareness of, Mikael's memory lapse until the day is almost over. But as the day draws to a close, she can no longer hold back. All she can bring herself to do is ask him repeatedly how he could have forgotten about their special day. Overwhelmed with remorse and guilt, Mikael does not even attempt to make excuses; he tries to reassure her by explaining that he completely forgot, that he did not mean to ruin their special day. Ultimately, this reassurance only serves to deepen Sunna's emotional wound. She simply cannot understand how all thought of their anniversary could have escaped him.

Mikael's memory lapse, although very significant in the context of his relationship with Sunna, hardly seems significant when compared to the following case. On August 23, 2007, Brenda Nesselroad-Slaby put her two-year-old daughter Cecilia in her SUV before leaving the house to go to her job as assistant principal at Glen Este Middle School in Union Township, Ohio. Her daily morning routine involved only one stop on the way to work, at Cecilia's day care. On the day in question, Ms. Nesselroad-Slaby scheduled an additional stop at a local bakery to pick up some doughnuts for the staff at work. The last time she could recall thinking of Cecilia that day was just prior to changing lanes to go to the bakery. Tragically,

Cecilia remained inside the car all day (the outside temperature that day approached 100 degrees) and died.¹

These cases invite many questions, but there is one question they raise that I find particularly interesting. Are Mikael and Brenda *morally responsible* for the bad things they have done? What exactly have they done? If these agents are morally responsible for anything at all in the relevant circumstances, they are not responsible for *actions*, but for unintentional *failures* to act. This seems to complicate the question of whether they are morally responsible for anything in the relevant circumstances. If, for example, Mikael had intentionally ignored the anniversary date - if he had been aware of it but had simply chosen to disregard it - then, surely, he would be morally responsible for his bad choice. And if Brenda had done the unthinkable - if she had simply decided to leave her daughter in the car all day long, in full recognition of the likelihood that Cecilia would die as a result - then she would probably be as morally responsible (and as blameworthy) as anyone has ever been. But neither agent chose to act badly; they instead *failed* to do what they should have. When people intentionally choose to act badly, they are generally presumed to be morally responsible for those choices. This presumption reflects our broad agreement that intentionally choosing to do something *makes* an agent morally responsible for doing it. But, since neither Mikael nor Brenda intentionally chose to act badly, can they be morally responsible for their *unintentional failures* to do what they should have done?

The topic of this dissertation concerns moral responsibility for unintentional failures to act. It is broadly agreed that people *can* be morally responsible for unintentionally failing to act, but there is no broad agreement as to *why* people can

¹ See <http://www.wlwt.com/r/13960368/detail.html>. Online, last accessed 13 Dec 2011.

be morally responsible for unintentional failures to act. My aim in this dissertation is to provide a compelling philosophical account of the conditions of moral responsibility for unintentional failures to act.

In this short introductory chapter, I have three aims. First, I want to familiarize the reader with the methodological assumptions that will guide the discussion in this dissertation. Then, I want to clarify the particular conception of moral responsibility that will form the basis for this discussion, and to briefly explain why this conception of moral responsibility allows me to sidestep metaphysical debates about the contested relationship between free will and moral responsibility. Finally, I want to briefly sketch the main lines of argument the reader will encounter in the dissertation.

I. Methodological Assumptions and Preliminary Remarks

I assume that theorizing about moral responsibility incorporates two main aims. First, a satisfactory theory of moral responsibility should be able to *explain* the philosophical basis for the judgments of moral responsibility we commonly take to be legitimate. I assume that most people will agree that it is legitimate to judge Mikael to be morally responsible for his unintentional failure to do what he should have.² A satisfactory theory of moral responsibility should be able to explain why this judgment is legitimate. Second, a satisfactory theory of moral responsibility should be able to tell us, in difficult or unclear cases, whether certain judgments of moral responsibility would be legitimate. Most people will not assume that it is legitimate to judge Brenda to be morally responsible for her unintentional failure to do what she

² I do not assume that most people will agree that Mikael is blameworthy for his failure.

should have.³ I take it that hers is a difficult case. A satisfactory theory of moral responsibility should be able to provide guidance regarding difficult cases like these by, minimally, helping us to see what aspects of such cases *make* them unclear, and by helping us to see what would have to be true in order for certain judgments of moral responsibility to be legitimate. A theory of moral responsibility is satisfactory to the extent that it achieves both of these aims. Given the first aim of theorizing about moral responsibility, a satisfactory theory of moral responsibility should not imply that most of the judgments of moral responsibility we commonly take to be legitimate are *illegitimate*. That is, it should not inspire skepticism regarding the judgments of moral responsibility in which we place a high degree of confidence.

Given this methodological assumption about the dual aims of theorizing about moral responsibility, I will approach the topic of this dissertation in the following way. In at least some cases, we think it is legitimate to judge agents to be morally responsible for unintentional failures to act. What unified explanation can be provided as to *why* such judgments are legitimate? This unified explanation should be applicable to the majority of the other judgments of moral responsibility (including judgments of moral responsibility for things that are *not* unintentional omissions) we commonly take to be legitimate. Moreover, in cases where we are unsure whether it would be legitimate to judge an agent morally responsible for an unintentional omission, what would have to be true in order for such a judgment to be legitimate? Ideally, a fully satisfactory theory of moral responsibility would provide the same answer to both questions. That is, a fully satisfactory theory of moral responsibility will specify conditions that explain both what makes certain judgments of moral

³ What I mean is that it is not at all clear that she *could* be blameworthy for her failure. Not only is it unclear *that* she is blameworthy for it; it is equally unclear that she *could* be blameworthy for it.

responsibility legitimate, as well as what would have to be true in an unclear case in order for such judgments to be legitimate. My aim in constructing a philosophically compelling account of the conditions of moral responsibility for unintentional omission is to specify conditions that satisfy these two aims.

Now, I want to take a moment to familiarize the reader with the particular conception of moral responsibility that will form the basis for the discussion in this dissertation. According to this conception of moral responsibility, to say that an agent is morally responsible for something is to say that it renders him eligible for moral assessment. Throughout the dissertation, I will say that, if an agent is morally responsible for something, then it is a *potential* basis for morally assessing him. To say that something is a potential basis for morally assessing an agent is *not*, however, to say that it is an *actual* basis for morally assessing him, i.e., that it makes any particular (positive or negative) moral assessment of him appropriate. Something is an actual basis for positively or negatively morally assessing an agent if and only if it renders him either praiseworthy or blameworthy. If something is a potential basis for morally assessing an agent, then it remains an open question whether he is praiseworthy or blameworthy (or neither) for it. Necessarily, if an agent is praiseworthy or blameworthy for something, then he is also morally responsible for it. But the converse is not true: if an agent is morally responsible for something, then he is not necessarily praiseworthy or blameworthy for it. These remarks should help to clarify some of the logical and conceptual relationships between the concept of *being morally responsible* for something, and *being morally praiseworthy or blameworthy* for it. My aim in this dissertation is to provide an account of the conditions under which unintentional omissions are potential bases for morally

assessing agents, but not to provide an account of the conditions under which unintentional omissions are *actual* bases for morally assessing agents.

As I have said, to say that an agent is morally responsible for something is to say that it is a potential basis for morally assessing him. To assess something morally involves positively or negatively appraising (or evaluating, or judging) it according to distinctly moral standards of assessment.⁴ Many different kinds of things can be morally assessed, including states of affairs, actions, and agents. A particular consequence can be assessed as morally bad; this would amount to negatively morally assessing a state of affairs. To say that an action ought to be done is to positively morally assess it. Particular moral assessments of states of affairs and of actions do not imply particular moral assessments of agents. To say that a consequence of an agent's action is morally bad, or that the action itself is morally wrong, does not automatically imply that he is either praiseworthy or blameworthy for it. Nor does saying either of these things about his action automatically imply that he is morally responsible for it. If he is morally responsible for it, it follows only that he is eligible for moral assessment on its basis. Nothing follows about whether *it* is positively or negatively morally assessable. It is important to keep these conceptual distinctions in mind.

The conception of moral responsibility I adopt in this dissertation should be distinguished from the notion of "holding a person responsible" for something, or for seeing to it that some state of affairs obtains. For example, if I say to my partner "I hold you responsible for the fact that our wedding invitations look cheesy", I am in all likelihood saying that I *blame* him for it. If, on the other hand, I say to my partner "I

⁴ I take "assessing", "appraising", "evaluating", and "judging" to be equivalent. Throughout the dissertation I will exclusively use the terms "assessing" and "assessment".

hold you responsible for picking up our wedding invitations", I am in all likelihood communicating to him my expectation that he pick them up. "Holding a person responsible" for something is thus a relation that holds between at least two agents; it implies that one agent is holding another agent responsible for something. I understand "being morally responsible for something" as a property or attribute of *one* agent; it is a fact about that agent alone, and does not presuppose any other relational facts about him. One of the philosophers whose theory of moral responsibility I will discuss in this dissertation (R. Jay Wallace) takes the conditions of being morally responsible for something to be identical to the conditions of deserving blame for it. On Wallace's view, if an agent is morally responsible for something, then he deserves to be blamed (by others) for it. Wallace thus construes "being morally responsible for something" as a relational fact about an agent. For a variety of reasons that I will not discuss in detail here, I do not adopt Wallace's understanding of what it means to be morally responsible for something. (Simply put, I think most of us would agree that a person can be morally responsible *and* praiseworthy for something, and Wallace's understanding does seem to allow for this possibility.)

The conception of moral responsibility that I have adopted in this dissertation does not have any direct implications for the metaphysical issue of whether free will and causal determinism are compatible. For this reason, I will not address this metaphysical debate at any point in the dissertation. Moreover, I do not assume that free will is a condition of being morally responsible for something. The debate over whether free will is a condition of being morally responsible for something, I think, is best interpreted as a debate over whether free will is required in order for certain

aspects of our common practices of moral judgment to be legitimate. Specifically, I interpret the debate to concern whether our common practices of praising or blaming others (as well as ourselves) could be legitimate if we are completely causally determined to do everything we in fact do throughout our lives. Many find it strange to say that an action can constitute a legitimate basis for blaming an agent if he *had* to do it (in the sense of "he had to do it" that is implied by causal determinism). Perhaps there is a strong argument for the claim that an action cannot constitute a legitimate basis for blaming an agent if he had to do it in the relevant sense. But it wouldn't follow from this argument that an action cannot even represent a *potential* basis for morally assessing an agent if he had to do it in the relevant sense.

I take it that there are certain facts about agents - facts that are consistent with *whatever* causal structure the universe happens to have - that entail that at least some of their actions and omissions are potential bases for morally assessing them. For example, agents act for reasons, even if they are entirely causally determined to have certain reasons for acting and not others. Agents possess complex psychologies that enable them to grasp and apply normative concepts. Agents are involved in interpersonal relationships with each other, and these relationships are partially constituted by certain moral expectations that intuitively render us potentially morally assessable in the event that those expectations are satisfied or violated. These are facts about agents that, I believe, explain why it can make sense to morally assess agents on the basis of some of the things they do even if we all live our lives in a universe where we have to do everything we do (in the sense of "have to do" that is implied by causal determinism). This is what it means to say that at least some agents are morally responsible for at least some things - it *can* make sense to morally assess these agents on the basis of those

things. Now, even if a strong argument could be provided for the claim that an action cannot constitute a legitimate basis for blaming an agent if he had to do it, that argument would not show that an action cannot constitute a *potential* basis for blaming an agent if he had to do it.⁵

It is therefore not clear, to my mind at any rate, why being morally responsible for something requires the truth of any particular thesis about the causal structure of the universe. Consequently, I fail to see why free will should be a condition of moral responsibility. This is not to say that notions of freedom are entirely irrelevant to moral responsibility, only that whatever sort of freedom is presupposed by a legitimate judgment of moral responsibility, agents are at least sometimes free no matter what the causal structure of the universe happens to be.⁶ And if anyone should find this view objectionable - that is, if anyone objects that moral responsibility requires a kind of freedom that presupposes a particular metaphysical thesis about the causal structure of the universe - I can offer the following response. The adequacy of the theory of moral responsibility for unintentional omission I construct should not depend upon whether anyone is ever *in fact* morally responsible for anything (although I do believe that at least some agents are morally responsible for some things). After all, my theory primarily aims to provide a coherent, unified explanation of the philosophical basis for the judgments of moral responsibility we are strongly inclined to regard as legitimate. If a particular thesis about the causal structure of the universe could render all of these

⁵ The same can be said if the causal structure of the universe is imagined, as I think is most reasonable, to be indeterministic rather than deterministic.

⁶ All that matters, in my view, is that it is generally thought that agents' behavior reflects their judgments about reasons, where this needn't imply any particular causal claims at all. An agent's behavior is free insofar as it can be seen as reflecting his judgments about reasons. Coercion, duress, compulsion, severe shock - all of these conditions lead us to see an agent's behavior as unfree in the sense of not expressing his judgments about reasons.

judgments unjustifiable in fact, then this would not show that my theory fails to accomplish its primary aim.

II. General Overview of the Argument

Now, I want to very briefly sketch the general line of argument the reader will encounter in the dissertation. Since topic of this dissertation concerns the conditions of moral responsibility for unintentional omission, it is essential to have a clear understanding of just what is implied when an agent is said to have omitted to do something. My primary aim in the next chapter is to arrive at just such an understanding. To do this, I will examine and refine some fairly recent philosophical analyses of the concept of omission. According to these analyses, if an agent omitted to do something, then not only did he not do it, but it is reasonable to expect him to have done it. There are, however, several ways it can be reasonable to expect an agent to have done something he did not do. Not all of these reasonable expectations of conduct can, as I put it, "generate omissions from nondoings". I argue that there are two main ways an expectation of conduct can be reasonable in an "omission-generating" way. It is reasonable, in an omission-generating way, to expect an agent to have done something he formed an intention to do. It is also reasonable, in an omission-generating way, to expect an agent to have done something he is required or obligated to do. Omissions are nondoings that it is reasonable, in either of these two senses, to expect an agent to have done. The upshot of this view is that omissions are nondoings that constitute either deviations

from "self-imposed" normative standards,⁷ or violations of normative requirements. It follows that omissions are a kind of conduct: because they essentially consist in deviations from, or violations of, normative standards, they can be said to involve *doing*, and are thus things it is correct to cite in a description of an agent's conduct. Deviating from, or violating, normative standards is something that is done, although in the case of omissions, these deviations and violations occur by way of inaction rather than action. Because omissions are a kind of conduct, they represent potential bases for morally assessing agents. The main conclusion of the next chapter is that agents are generally morally responsible for intentional and unintentional omissions. This conclusion raises the question that guides the discussion in the remainder of the dissertation: *what makes* agents generally morally responsible for omissions? What is the nature of the "responsibility-grounding relationship" between an agent and his omission that makes it a potential basis for morally assessing him?

In chapter 3, I review the kinds of response that defenders of volitionalist theories of moral responsibility have provided to this question. According to volitionalist theories of moral responsibility, something (e.g., an action, an omission, or an attitude) is a potential basis for morally assessing an agent if and only if it reflects at least one of her intentional choices. Volitionalism straightforwardly implies that agents are generally morally responsible for *intentional* omissions; these omissions *directly reflect* (in the sense that they are partially constituted by) intentional choices not to do whatever it is that can reasonably be expected. Unintentional omissions, however, are not partially constituted by such choices, and

⁷ By forming an intention to do something, one implicitly recognizes normative reasons to do it. If I form an intention to clean my apartment, then I impose a normative standard upon myself in virtue of having recognized normative reasons to clean my apartment.

so do not *directly reflect* intentional choices. This raises a question for volitionalists: what grounds moral responsibility for unintentional omissions? Volitionalists have commonly replied that, roughly speaking, agents are morally responsible for only those unintentional omissions that *indirectly reflect* (i.e., that are causally and epistemically related to) intentional choices.

My aim in this third chapter is to argue that the volitionalist account of moral responsibility is provisionally worthy of rejection. I say "provisionally" because the account should be rejected only if some other account of moral responsibility for unintentional omission can be shown to be superior. My argument for provisionally rejecting the volitionalist account proceeds in two main steps. First, I expose and criticize some of the main rationales that prominent defenders of volitionalist theories of moral responsibility offer for the claim that the only potential bases for morally assessing agents are things that directly or indirectly reflect intentional choices. Then, I argue against the volitionalist account of moral responsibility for unintentional omission. The upshot of these arguments is that we should investigate whether there is any nonvolitionalist theory of moral responsibility that can succeed where volitionalism has failed.

In Chapter 4, I investigate whether George Sher's recently developed nonvolitionalist theory of moral responsibility has the resources to construct an account of moral responsibility for unintentional omission that represents a superior alternative to the volitionalist account. According to Sher's theory, agents are morally responsible for all and only those things that are caused by their characters. His view implies that agents are generally morally responsible for unintentional omissions because they are caused by their characters. This of course raises the question of what it means for an unintentional omission to be caused by an agent's

character, and a related question about what constitutes an agent's character. Sher identifies an agent's character with the set of physical and mental states that consistently causally contribute to her characteristic "mental life". Because these states need not themselves be intentional choices, Sher's account of character implies that agents can be morally responsible for things that neither directly nor indirectly reflect intentional choices. But how exactly can an agent's character cause an unintentional omission?

Sher explains that an agent's character may sometimes cause her *not* to act as she should, or *not* to notice something that she ought to have noticed. His idea is important: he attempts to cash out the "responsibility-grounding relationship" for unintentional omission in terms of a causal relationship between it and some of an agent's nonvolitional mental states. Although this represents a step in the right direction, I argue that Sher's theory specifies an unconvincing account of the *kinds* of nonvolitional mental states to which an unintentional omission must be related in order for it to represent a potential basis for morally assessing an agent. The main problem with his theory is that it calls into question certain judgments of moral responsibility that we are very strongly inclined to regard as legitimate. I also argue that his theory cannot specify a convincing account of the conditions of moral blameworthiness for unintentional omission. Because a satisfactory nonvolitionalist theory of moral responsibility must provide a convincing specification of the "responsibility-grounding relationship", and because Sher's theory does not satisfy this requirement, I take this as a reason to continue searching for a fully defensible nonvolitionalist alternative to the volitionalist account of moral responsibility for unintentional omission.

In the final chapter, I examine two very closely related nonvolitionalist theories of moral responsibility that are defended by T. M. Scanlon and Angela M. Smith. Roughly speaking, these theories hold that an agent is morally responsible for something if and only if it reflects her rational judgment. Scanlon leaves it unclear whether, and if so how, an unintentional omission can reflect an agent's rational judgment. Smith's development and extension of Scanlon's theory helps to resolve this unclarity. She suggests that, in some cases, what agents do and do not notice can reflect their rational judgments. I explain that unintentional omissions characteristically involve failures of awareness. For example, on the seventh of June, Mikael failed to notice that it was the date of his and Sunna's anniversary. Ms. Nesselroad-Slaby failed to notice that she left her daughter Cecilia in the car. Since unintentional omissions characteristically involve failures of awareness, and since, in at least some cases, failures of awareness can reflect rational judgments, it seems natural to propose that agents are morally responsible for unintentional omissions that involve failures of awareness that reflect their rational judgments. To show that my proposal represents a superior alternative to both the volitionalist's and Sher's accounts of moral responsibility for unintentional omission, I explain how it can escape all of the objections I raised against those accounts. Finally, I defend my proposal against six objections that are likely to be raised. I conclude that the most philosophically compelling account of moral responsibility for unintentional omission takes the "responsibility-grounding relationship" to hold between an unintentional omission and an agent's rational judgments.

If Mikael is morally responsible for forgetting his and Sunna's anniversary, then this is because it reflects his rational judgment. Similarly, if Ms. Nesselroad-Slaby is morally responsible for tragically forgetting her daughter in the car, then her

forgetting reflects her rational judgment. As the reader will see, the account of moral responsibility for unintentional omission I defend has the resources to provide a unified philosophical explanation of the judgments of moral responsibility for unintentional omission we are inclined to regard as legitimate, and to explain, in unclear cases like Ms. Nesselroad-Slaby's, what would have to be true in order for her to be morally responsible for unintentionally omitting to act as she should have.

Chapter 2: The Concept of Omission

I. What is Omission?

What is omission? That is, when it is said that an agent omitted to do something, what exactly is implied? Since the topic of this dissertation concerns the conditions of moral responsibility for unintentional omission, it is essential to have a clear understanding of just what is implied when an agent is said to have omitted to do something. My primary aim in this chapter is to arrive at just such an understanding. To do this, I will examine and refine some fairly recent philosophical analyses of the general concept of omission and the related concept of unintentional omission. The philosophers who have offered these analyses agree that these concepts have normative underpinnings. But, as we'll see, they have not yet said enough to make the normative nature of these underpinnings fully clear. By the end of this chapter, I hope to have resolved any lingering unclarity, and thereby to have provided a clear and compelling answer to the question of what omission is.

But first, some brief introductory remarks will help to clarify what omission is *not*. It might be thought that, when we say that someone omitted to do something, we imply merely that the agent didn't do that thing.⁸ On this view, omission is just "nondoing", i.e., not performing some action or other. But, surely, this view cannot be correct. Suppose that Esmerelda, a single mother who is struggling to hold down a full-time job, didn't feed her baby as she had planned. Of course, neither did

⁸ This is suggested in J. Fischer and M. Ravizza, *Responsibility and Control: A Theory of Moral Responsibility*, (New York, Cambridge University Press: 1998) pp. 125-126. They adopt what they call a "wide" concept of omission according to which anytime an agent does not do x, she fails to do x, and omits to do x.

anyone else: not her brother Juan-Carlos, nor Mr. Uribe, who lives two blocks away and has never heard of Esmerelda or her baby, nor Billy Bob, who runs a successful Chinese restaurant in another state, and so on. If omission were just nondoing, then we would have to say that not only Esmerelda, but everyone else in the world omitted to feed the baby as well. But if anyone omitted to feed the baby, surely it was Esmeralda and no one else. Therefore, the view that omission is just nondoing cannot be correct. Only certain nondoings are omissions, and in the imagined circumstance, only Esmeralda's nondoing can be an omission. I take it, then, that when we say that someone omitted to do something, we do not imply merely that the agent didn't do that thing. My aim in this chapter is to explain what else is implied when we say this.

Another line of thought might go as follows: an omission is nothing but the nonoccurrence, or absence, of a particular event. Since no event consisting in Esmeralda feeding her baby occurred, Esmeralda omitted to feed the baby. But this line of thought cannot be correct, either. Its principal defect, however, is not its inability to explain why no one else besides Esmeralda omitted to feed her baby (after all, an event consisting in Juan-Carlos not feeding her baby didn't occur either), but rather its representation of the idea of omission *as nothing at all*; as a mere absence. Absences, I take it, aren't anything at all. Although we may say that there is an absence of things in the refrigerator, what we mean is that there is *nothing* in the refrigerator. Absences aren't things at all. Omissions, on the other hand, are surely *something*. Omissions can be described in many different ways (e.g., he *refrained* from taking a second cup of coffee, she *forgot* to unplug the iron), and, suggesting a commonality with actions, they involve a sort of doing or agency (e.g., *ignoring* the sycophantic student was what she *did* to try to get him to shut up).

A mere absence of an event, however, can never by itself be described in different ways, nor does it involve any sort of doing or agency. This reveals a related defect in the proposed line of thought, namely, its representation of the idea of omission as something that can be entirely detached from human agency. By the end of this chapter, we will understand just what omission *is* (it is not *nothing*), as well as what are some of the different ways omission occurs, in what sense omission involves a sort of doing, and why it cannot be detached from human agency.

My purpose in offering these remarks is to set out on the right foot by clarifying what omission is *not*. Omission is neither *mere* nondoing nor a *mere* nonoccurrence of a particular event. Now, let me turn to the task of explaining what omission *is*.

II. The Linguistic Topography of Omission

It is uncontroversially true that omission fundamentally involves nondoing: necessarily, if Esmerelda omitted to feed her baby, she did not feed her baby. But it is also uncontroversially true that only certain nondoings are omissions. To get some initial guidance as to which nondoings are omissions, it will be helpful to consider some examples involving nondoing. Our intuitions should be guided by asking whether certain “omissive terms” can be used to describe the nondoing in the relevant example. As John Kleinig has noted, we speakers of English have “a rich and extensive vocabulary of omission, a restricted but complex cluster of concepts”

that can help us determine whether, in any given case, a nondoing is an omission.⁹ His list of omissive terms includes ‘neglecting’, ‘refraining’, ‘forbearing’, ‘abstaining’, ‘ignoring’, ‘allowing’, ‘withholding’, ‘declining’, ‘refusing’ and ‘letting happen’, to which I would add ‘forgetting’, ‘overlooking’, and ‘failing to...’. I do not hope to draw any strong conclusions about the concept of omission by considering these particular examples. My aim in this section is simply to show how these omissive terms can help us distinguish, in an intuitive manner, nondoings that are omissions from nondoings that are not. Once we have done this, we can ask whether there are any notable commonalities among those nondoings that have been marked out as candidates for omissions.

“Tax Trick”: Jean-Claude is having trouble making his monthly mortgage payments and realizes he can get a larger refund if he fudges some information on his income taxes. He decides not to report the \$10,500 he withdrew from his IRA account the prior year as income.

“Bus Blunder”: Igor rides the bus to and from work every day. He lives in a city whose inhabitants are uncommonly polite. Unlike many other urban areas, bus riders in this city regularly thank the bus driver when they exit the bus. One morning while riding the bus to work, Igor is captivated by a fascinating NPR podcast he is listening to on his iPod, and he exits the bus without thanking the driver.

“Mental Madness”: Jim is a graduate student in philosophy, and he wonders whether it is possible to will oneself to deliberate about whether to do something, or whether deliberation is caused only by an authentic recognition of some practical question, a kind of recognition that cannot be brought about at will. He tries to will himself to deliberate about whether to pick up his wallet, which is sitting on the coffee table. But all he can do is think about picking up the wallet. The attempt at voluntary deliberation having proven unsuccessful, he does not pick up his wallet.

“Forgotten Friend”: Gwendolyn and Harriet have been friends for 15 years. Harriet always treats Gwendolyn to dinner and a movie on her

⁹ John Kleinig, “Criminal Liability for Failures to Act,” *Law and Contemporary Problems* 49 (1986), p. 162.

birthday. This year, Gwendolyn's birthday comes and goes and she never hears from Harriet. A week after the birthday has passed, Harriet calls and apologizes profusely for forgetting. Gwendolyn brushes the incident off and forgives her long-time friend; Harriet is relieved.

"Wary Witness": Roberto, an undocumented immigrant who has been living and working in the U.S. for seven years, sees a man get stabbed in a knife fight while on his way home from work one night. The assailant fled the scene, but Roberto followed him and managed to glimpse some important details about the getaway vehicle. Against his conscience and principally out of a fear of deportation, he does not contact the police to file a report.

"Runaway Rover": Yolanda is in the middle of a heated telephone call while driving through a residential neighborhood on her way to the office. She's so mentally engrossed in the conversation that she practically flies through a series of visually unobstructed stop signs that she does not notice. A concerned resident notes the license plate of her Range Rover and reports the incident to the police.

"Miffed Mayor": Sheila is the mayor of a small community in North Dakota who is universally liked for her affable public persona. One of the reasons people like Sheila so much is that, whenever she speaks in public, she almost always takes time to engage in a brief "meet and greet" with some of the attending constituents prior to taking the stage. Recently, a scandal involving an allegation of misappropriated public funds has captured everyone's attention. Sheila is scheduled to speak to the community at a press conference today. Upon her arrival at the venue, she is swarmed by reporters who ask questions that are obviously designed to sensationalize and inspire gossip. She hurries past her constituents to the podium and, exuding frustration and impatience, addresses the crowd.

"Lethargic Lifeguard": Abby stayed up all night drinking at a going-away party for one of her high school friends. Now she is on duty at her lifeguard job. The beach is calm and it is a warm breezy day. Abby is exhausted and doesn't realize that she is drifting off to sleep. While she dozes, a strong undertow pulls a swimmer away from the shore, and because she has fallen asleep on the job, Abby doesn't assist him.

All of these cases involve nondosings on behalf of the relevant agents. Which of the nondosings seem to be omissions? Some of the cases are, I think, intuitively

quite clear. Everyone should agree that Jean-Claude omitted to report his IRA distribution as income. A variety of omissive terms can be used to describe his nondoing: he *withheld* the information, he *left it out*, *excluded* it, *declined* to mention it, *knowingly failed* to report it, and so on. Harriet, Yolanda, and Abby all seem to have omitted to do something: Harriet *forgot* to take Gwendolyn out for a birthday celebration; she *failed* to recall Gwendolyn's special day. Yolanda *failed* to stop at the stop signs; she *overlooked* them, and *neglected* to stop at them. Abby *failed* to assist the swimmer. Roberto's nondoing is probably also an omission: he *withheld* reporting what he saw, he *abstained* and *refrained* from calling the police. Finally, Sheila's nondoing is an omission: she *refrained* from doing the meet and greet.

It is not clear whether the relevant nondos in the other two cases are omissions. Igor didn't thank the bus driver, but we cannot (without adducing further assumptions) comfortably say that he *forgot* or *overlooked* or *failed* to thank the bus driver. What about Jim? Did he omit to pick up his wallet? He thought about picking up his wallet, and could have done it, but then ultimately didn't. If an agent thinks about doing something but then doesn't do it, has he omitted to do that thing? I won't try to answer this question here. I simply want to note the intuitive unclarity in these two cases. As we'll see, one of the virtues of the analysis of omission I will ultimately defend is its capacity to explain the source of this unclarity.

Can any preliminary inferences about the concept of omission be drawn from considering these cases? There does seem to be a common element running through all the intuitively clear cases of omission. In each, we can appropriately say that the relevant agent *failed* to do something. Roberto failed to file a police report, Abby failed to assist the swimmer, Yolanda failed to stop at the stop signs, Harriet

failed to recall Gwendolyn's birthday, Jean-Claude failed to report his IRA income, and Sheila failed to perform the meet and greet. But it is not clear that Igor failed to thank the bus driver, or that Jim failed to pick up his wallet.

This suggests that omissions are nondoings that can be described as failures to act. The suggestion is intriguing because, according to one very influential recent analysis of the concept of omission, omissions are nondoings that imply that contextual standards of reasonable expectations have been unsatisfied. And to say that someone failed to do something typically implies that he in some way did not satisfy a normative standard.

III. Feinberg's Normative Analysis of Omission

In *Harm to Others*, Joel Feinberg presents an analysis of the concept of omission whose central feature is a contextual standard of reasonable expectation. Feinberg recognizes that the term "omission" does not apply to "all [nondoings], but only [a] relatively narrow class".¹⁰ For Feinberg, if A omitted to do S then,

- (1) A did not in fact do S,
- (2) A had reasonable opportunity to do S,
- (3) A had the ability to do S,
- (4) A knew he had reasonable opportunity and the ability to do S, and
- (5) it was reasonable to expect A to do S in the circumstances.¹¹

Condition (1) captures the element of nondoing that is essential to omission, and that distinguishes it from full-fledged doing or action. Conditions (2), (3), and (4) can

¹⁰ Joel Feinberg, *Harm to Others*, (Oxford, Oxford University Press: 1984), p. 159.

¹¹ *Ibid*, pp. 159-161.

be called “conditions of possible action”.¹² They help to explain why it would be bizarre to say that anyone ever omits to stop the rotation of the earth, or to lift a boulder that is too heavy for him to lift. Although conditions (1)-(4) cannot fully distinguish omission from nondoing, condition (5) identifies the contextual standard of reasonable expectation that can. Moreover, this normative standard helps to explain why omission fundamentally seems to involve a *failure* to act: the contextual standard of reasonable expectation makes it appropriate to describe the agent's nondoing as a *failure*. Even if an agent's nondoing satisfies conditions (1)-(4), it doesn't follow that he failed to do anything. Consider Beauregard, who thinks about whether to take a crumpet with his afternoon tea, but then does not do so. There are crumpets in the cupboard that he can easily reach and he knows they are there, so his nondoing in this circumstance satisfies conditions (1)-(4). But is it reasonable to expect him to have taken a crumpet? No. So, it doesn't follow that Beauregard failed to do anything, because it is not reasonable to expect him to have taken a crumpet with his tea.¹³

Feinberg's analysis of omission thus has considerable initial appeal. Its normative element, i.e., condition (5), plausibly explains why my intuitively clearer cases of omission hang together as a class. Jean-Claude's not reporting his IRA distribution as income intuitively counts as an omission, and it is obviously

¹² It is important to note that these conditions, taken together, incorporate both the element of “control” and of “knowledge” that we commonly think are necessary for responsible agency. Conditions (2) and (3) can be seen as expressing both internal and external control, but do not necessarily imply that the agent has genuine metaphysical alternative possibilities open to her, or some other kind of libertarian or contra-causal freedom of the will. Condition (4) can be seen as expressing the idea that there must be some kind of mental connection between the agent and an item of conduct in order for the agent to be responsible for that conduct. I merely wish to point out here that these conditions satisfy (albeit only formally) the necessary conditions of morally responsible agency.

¹³ Some might be tempted to say that Beauregard refrained from taking a crumpet. Coupled with the thought that all refrainings are omissions, it might be objected that Beauregard omitted to take a crumpet. Shortly, it will be clear why this temptation should be resisted.

reasonable to expect him to have reported it. It also seems reasonable to expect Yolanda to have stopped at the stop signs. Although we can understand why Roberto does not file the police report, it nevertheless seems reasonable to expect him to have done so, and this supports the judgment that his nondoing is an omission. The same can be said of Abby, Harriet, and Sheila. Feinberg's analysis also permits an initial judgment that Jim's nondoing is not an omission, since it is not reasonable to expect him to have picked up the wallet. But Igor's case remains unclear. This is because the details of the case do not permit any clear inferences about whether it is reasonable to expect him to have thanked the bus driver. Feinberg's analysis thus has substantial initial appeal because its condition (5) explains what holds the intuitively clear examples of omission together as a class.

Condition (5) of Feinberg's analysis states: it was reasonable to expect A to do S in the circumstances. But, surely, this requires some unpacking. When is it reasonable, in a given context, to expect a person to have done something he did not do? Feinberg identifies three bases for the kind of reasonable expectations that turn nondoing into omission. First, it is reasonable to expect an agent to do something that either she, or people in her position, *ordinarily* do. This basis for a reasonable expectation of conduct explains why Sheila's nondoing is an omission: like many elected officials, she ordinarily performs a "meet and greet" with her constituents before publicly speaking. Second, it is reasonable to expect people to do things that they have a *specific duty* or *obligation* to do. Such specific duties and obligations may have diverse origins: there are professional duties that stem from one's occupation or job (e.g., Abby's duty to assist swimmers who need help), duties that flow from a particular social role one holds (Jean-Claude has a duty, as a

citizen, to pay his taxes), and duties that stem from one's position in a special relationship.¹⁴ Last, it is reasonable to expect people to do things that they are *morally, legally, or contractually obligated* to do. Yolanda is legally obligated to stop at stop signs: it is thus reasonable to expect her to have done so. It's useful to note that more than one of these bases for reasonable expectations of conduct can apply to a single case (e.g., Jean-Claude has a "role" obligation as well as a legal obligation to pay his taxes, and may even have a moral obligation to do so).

Feinberg restricts his account of "omission-generating" reasonable expectations, and for a good reason. (I'll use the locution "omission-generating reasonable expectation" to refer to reasonable expectations that turn nondoinings into omissions.) There are other arguably reasonable expectations of conduct that are not omission-generating. Suppose that before Smythe goes on vacation, Worthington tells him that Chauncey will water his beloved begonias while he is away. Smythe doesn't know that Worthington is lying, and takes him to be a generally trustworthy bloke. Consequently, Smythe expects (reasonably, let us assume) that Chauncey will water his begonias.¹⁵ Of course, Chauncey never waters Smythe's begonias, and they die. Intuitively, Chauncey did not omit to water the begonias, despite the fact that it is arguably reasonable (for Smythe, at least) to expect him to have done so. Feinberg's restricted account of omission-generating

¹⁴ I don't think any of my example cases exemplifies such a duty, but perhaps - albeit very doubtfully - Harriet has a *duty* to take Gwendolyn out on her birthday.

¹⁵ I borrow this kind of example from Sarah McGrath in her paper, "Causation by Omission: A Dilemma," *Philosophical Studies* 123 (2005), pp. 125-148. There is, of course, much room for debate whether Smythe's expectation of Chauncey really is in fact reasonable, and this debate turns on the kind of justification that testimony can provide (if any). I do not wish to take a stand on this issue here. If one thinks that Smythe's expectation is *not* reasonable in virtue of Worthington's shoddy testimony, then this does not pose a problem for my account. But for those who think that shoddy testimony can still make an expectation based on that testimony reasonable, it is important to see that Feinberg does not admit this kind of reasonable expectation as one that is relevant to omission.

reasonable expectations explains this intuition: assuming that Smythe's expectation that Chauncey have watered the begonias is in fact reasonable, it is not made reasonable by any of the considerations Feinberg names in his restricted account. Watering Smythe's begonias is not the sort of thing that Chauncey ordinarily does, or that people in his position (people who have been unwittingly implicated in a ruse) ordinarily do. Nor does Chauncey have a special moral, legal, or contractual obligation to water Smythe's begonias. So, although it is arguably reasonable (for Smythe, at least) to expect Chauncey to have watered the begonias, the reasonable expectation is not omission-generating. It thus appears that Feinberg's analysis has the resources to "sort cases" correctly.

But the analysis nevertheless raises several important questions. One question concerns whether conditions (2), (3), and (4) - the conditions of possible action - are themselves presupposed in condition (5). Could it be reasonable to expect an agent who did not do something to have done that thing if she was either incapable of doing it or didn't know that she was capable of doing it?¹⁶ This question raises a host of thorny issues concerning both what kind of ability (the agent's ability at the time of nondoing, or the agent's ability in general?), and what kind of knowledge (if any) an omission-generating reasonable expectation of conduct presupposes. To illustrate, consider a variant on Abby's case: suppose she failed to assist the swimmer not because she fell asleep on the job, but instead because, as she was climbing down from her lookout, she accidentally tripped and suffered a terribly painful ankle sprain that rendered her physically unable to run down to the water. Is it reasonable to expect her to have assisted the swimmer despite the fact

¹⁶ I will use "incapable" to imply a lack of ability, or reasonable opportunity, or both. I will use "capable" to imply having both ability and reasonable opportunity.

that she was unable to do so at the time of nondoing? Suppose we say "no", because she is unable to assist the swimmer at that time. Then what about the fact that she is technically unable to assist the swimmer while she is sleeping? In neither case is she able to assist the swimmer, but in the original version of the case it nevertheless seems reasonable to expect her to have done so. I'll suggest a solution to this apparent puzzle in a moment. Other cases can be adduced that test intuitions regarding just what kind of knowledge, if any, is presupposed in condition (5) of Feinberg's analysis.¹⁷ But I suspect that all the problem cases can be resolved by incorporating Feinberg's conditions of possible action, in slightly modified form, as subconditions of his condition (5). Let me explain why I think this.

Patricia G. Smith has written extensively on Feinberg's analysis of omission, and argues, successfully I think, that a slightly modified account of Feinberg's conditions of possible action should be incorporated as subconditions of his condition (5). Her modification produces the following restatement of condition (5), which I'll call "(S5)":

(S5): It is reasonable to expect A to have done S because:

- (a) A could have, in ordinary circumstances, or should have been able to do S and knew or should have known it; and
- (b) S is probable behavior for A or those in A's position (i.e., A or those in A's position usually do S); or

¹⁷ These questions are pursued at some length in Patricia G. Smith's paper, "Feinberg on the Failure to Act," *Legal Theory* 11 (2005), pp. 237-250.

(c) S is prescribed for A (i.e., A has a specific duty, a general moral obligation, or responsibility to do S, or S is generally required of people in a position like A's).¹⁸

Smith formulates line (a) to provide a fuller understanding of both the kind of capacity (i.e., both ability and reasonable opportunity) to act and the knowledge that is presupposed in an omission-generating reasonable expectation of conduct. Her (S5) is constructed to provide solutions to puzzling cases like the variant on Abby's case. In the original case, Abby has presumably fallen asleep due to carelessness or negligence. Reasonable people can disagree about whether Abby was, in fact, incapable of *assisting this swimmer* because she was asleep at the time, and thus whether it is reasonable to expect her to have done so. But (S5) obviates any need to settle this dispute. Even if it is technically true that Abby was incapable of assisting this swimmer, it is still reasonable to expect her to have assisted him because Abby *should have* been able to do so. Smith explains that when the agent's own deficient (usually careless) behavior lies at the root of her incapacity, then this will not render unreasonable an otherwise reasonable expectation of conduct.¹⁹ Now consider the variant of Abby's case, in which she does not assist the swimmer due to a totally unforeseeable and entirely accidental ankle injury. Here, Abby neither could have assisted the swimmer, nor should she intuitively have been able to do so. The general idea behind Smith's proposal is that, when the basis for a reasonable expectation of conduct is prescriptive - i.e., a special, moral, legal, or contractual obligation - the prescription does not apply in circumstances where the

¹⁸ Ibid, p. 240.

¹⁹ Ibid, p. 245.

agent is nonculpably incapacitated from doing whatever is prescribed. But in cases where the agent's incapacity is culpable, the prescriptive basis for the reasonable expectation still applies. Smith's (S5) thus explains the intuition that, even though Abby is technically unable to assist the swimmer in both cases, it is reasonable to expect her to have done so only in the original version of her case.

Smith's (S5) also helps explain what kind of knowledge is presupposed in a reasonable expectation of conduct. It hardly seems reasonable to expect someone to have done something he neither knew, nor should have known, he could do. But knowledge of capacity to do what is reasonably expected does not seem sufficient for a reasonable expectation of conduct. The agent must also know *that the conduct itself* is reasonably expected of him. Consider a world traveler who is as versed as he can be in the specifics of tipping practices from country to country, but who happens to be in a remote area whose tipping practices he has not yet had reasonable opportunity to learn about (perhaps the behaviors mandated by the practice are intentionally kept secret from foreign travelers). In fact, he can perform the relevant behaviors. Now, even if somehow he came to know that he can perform the relevant behaviors (say, because the locals have told him that he can do so), since he doesn't know which behaviors can reasonably be expected of him, it is intuitively unreasonable to expect him to have tipped appropriately should he not do so. Although an agent's knowledge of his capacity to do what is reasonably expected is necessary for a reasonable expectation, the agent must also know *that the conduct in question* is reasonably expected of him. It is, in other words, not reasonable to expect a person to perform an action that he can perform, and knows he can perform, but has no way of knowing he can reasonably be expected to

perform. (For now, I will leave Smith's (S5) unchanged, but I will modify it later.) This is why I think Smith's (S5), suitably modified, satisfactorily resolves one of the questions Feinberg's account leaves open, namely, whether conditions (2), (3), and (4) - the conditions of possible action - are themselves presupposed in his condition (5).

I will from this point forward focus primarily on two other questions Feinberg's analysis of omission leaves open. One of these questions concerns the normative bases of the kind of reasonable expectations that turn nondoing into omission, i.e., the normative bases for omission-generating reasonable expectations. As we'll see, there are reasonable expectations of conduct that are not normative, and that are thus not omission-generating. Recall Feinberg's claim that, if an action is the sort of thing an agent ordinarily does, then it is reasonable, in an omission-generating sense, to expect her to do it. Sheila ordinarily performs the "meet and greet"; people in Igor's position (bus riders in his city of residence) ordinarily thank the bus driver when they step off. We can say that these behaviors are statistically ordinary or frequent for the relevant agents. But to say that the agents frequently behave in these ways is simply to describe the world; such a description does not appear to involve any kind of normativity. So, did either Sheila or Igor fail, in a normative sense, to do anything? In other words, are all omissions *normative* failures to act?

The other important question left open by Feinberg's analysis of omission concerns how omission-generating reasonable expectations can turn mere nondoing (which is *nothing*) into omission (which is *something*). As I have already mentioned, we commonly speak of omissions as *things*. Indeed, omissions are

usually held to be legitimate bases for making moral assessments of agents. Now, I assume we cannot morally assess an agent on the basis of nothing, so if omissions are legitimate bases for making moral assessments of agents, then they must be *something* rather than *nothing*. A related way to express this point is to say that omissions (unlike mere nondoings) are things that can correctly be included in a description of an agent's conduct.²⁰ To describe an agent's conduct is to describe what he does. In some sense, then, it is reasonable (albeit linguistically curious) to say that an agent who omits to do something has nevertheless done *something*. What exactly does an agent do when he omits to do something? These questions have an obvious significance for the topic of moral responsibility for unintentional omission because if an agent is morally responsible for something, that thing must represent a basis for moral assessment of him. If agents are morally responsible for omissions, then, omissions had better turn out to be something rather than nothing. It is important to understand just what it is that an omission-generating reasonable expectation generates from a given nondoing. The two questions that will guide the inquiry in the remainder of this chapter are thus:

- (1) What are the normative bases for omission-generating reasonable expectations?
- (2) How exactly does a reasonable expectation of this sort turn nondoing (which is nothing) into omission (which is something)?

I cannot appeal to Feinberg's own thinking to answer these questions because he never explicitly addresses them. Instead, I will turn to Patricia G. Smith's development of Feinberg's thought for guidance.

²⁰ Feinberg, *Harm to Others*, p. 161.

IV. Probability and Reasonable Expectation

In this section, my aim is to clarify the normative basis for an expectation of conduct that is made reasonable by the fact that the conduct in question is *ordinary* (i.e., frequent) for an agent. The normative basis of a reasonable expectation that is based in *duty* or *obligation* is, I assume, quite straightforward; the duty specifies normative reasons for the agent to do whatever he is obligated to do, and it is thus normatively reasonable to expect him to do it. But it is not at all clear just what is *normative* about a reasonable expectation that is based in *ordinariness* or *frequency* of conduct. The mere fact that Sheila frequently performs the meet and greet does not necessarily imply that there are any normative reasons for her to do it. Similarly, the mere fact that bus riders in Igor's city frequently thank their bus drivers when they step off does not entail that it is normatively reasonable to expect Igor to have done so. We therefore need a clearer understanding of the normative basis of expectations of conduct that are made reasonable by the fact that the conduct in question is *ordinary* for an agent. As I mentioned, Feinberg does not explain his idea that, because an action is the sort of thing an agent ordinarily (i.e., frequently) does, it can be *normatively* reasonable, in a determinate context, to expect him to do it.

Patricia G. Smith suggests that we should understand Feinberg's idea to mean that the action is something the agent, or people in the agent's position, probably will do.²¹ Intuitively, it does seem reasonable to expect an agent to do something if he will probably do it, and this "probability-based" expectation seems reasonable in virtue of the fact that it is something the agent frequently does. But, as I will explain, the fact that an agent probably will do something does not necessarily

²¹ Patricia G. Smith, "Feinberg and the Failure to Act," p. 240.

imply that, if the agent does not do it, he has omitted or failed to do it. It thus seems that not every probability-based reasonable expectation can be an omission-generating reasonable expectation.

To see why, consider Ollie, an absent-minded professor who very often unthinkingly fiddles with his necktie before he begins to lecture. Assume that Ollie has no idea that he frequently does this and, if he were asked, would be unable to explain why he frequently does it. It is a mere nervous twitch, not unlike the way a person might fidget in his seat while watching a movie. The frequency of Ollie's behavior justifies the claim that he probably will fiddle with his necktie just prior to his next lecture. But it would, I think, be very strange to say that, if he does not do it prior to his next lecture, he has omitted to do it. No omissive terms could be used to describe his nondoing in further detail: he has not obviously refrained, abstained, withheld, deliberately neglected, or even forgotten to fiddle with his necktie. Although it is reasonable to expect Ollie to have fiddled with his necktie because he probably will do it just prior to his next lecture, this probability-based reasonable expectation does not seem to be an omission-generating reasonable expectation. So not all probability-based reasonable expectations are omission-generating. But, as Sheila's case demonstrates, at least some probability-based reasonable expectations are omission-generating. It is reasonable to expect Sheila to do the "meet and greet", not because she is obligated to do it, because she frequently does it. So we need a principled way to distinguish probability-based reasonable expectations that are omission-generating from those that are not.

To begin to think about how to draw this distinction, it will be useful to consider some cases that will help illustrate the different ways a probability-based expectation can be made reasonable. First, there are cases involving patterns of

activity that justify probability-based reasonable expectations, but where the pattern of activity either consists purely in autonomic activity or occurs while an agent is unconscious. These patterns of activity involve bodily phenomena that cannot plausibly be regarded as instances of *behavior*. Consider Hampus, who snores almost every night. He probably will snore tomorrow night, so it is reasonable to expect him to do so. But if his wife Ulla is so lucky as to enjoy a peaceful night, Hampus surely has not omitted to snore. This is because the probability-based reasonable expectation does not concern anything that can plausibly be regarded as genuine behavior. Since, by snoring while asleep, Hampus doesn't *do* anything, he really cannot be said to *fail to do anything* should he not snore. As patterns of activity that either occur while an agent is unconscious or consist in purely autonomic activity are not patterns of *behavior*, they cannot ground omission-generating probability-based reasonable expectations.

Then, there are cases where a genuine behavioral pattern justifies a probability-based reasonable expectation, but where the language of omission seems awkward to say the least. Many of us quite unreflectively, and for no apparent reason, dry off in a specific, patterned manner after bathing (e.g., first the hair, then the arms, then the chest, followed by the back, and then lower extremities). Although the pattern can plausibly be regarded as involving genuine behavior, I think it would be strange to say that anyone ever omits to "towel off" according to the pattern he unreflectively happens to exhibit. So, the mere presence of a genuine pattern of conscious behavior is insufficient to ground an omission-generating reasonable expectation. It would seem strange to say, in a toweling off case, that the agent would have *failed* to conform his behavior to the pattern if he did not do so. While it may be reasonable to expect an agent to towel off in conformity

with his unique pattern in the future because he probably will do it, this sort of probability-based reasonable expectation does not seem to implicate any *normative* considerations that could justify a claim of failure.

Finally, some cases of behavioral patterns ground probability-based reasonable expectations that appear to implicate genuinely normative considerations, and that are intuitively omission-generating. Sheila intuitively omitted to perform the meet and greet, and this suggests that her case involves a behavioral regularity of the sort that can ground omission-generating reasonable expectations. The task, then, is to say what the relevant normative considerations are in cases like hers. Although it is (we may assume) just as "probability-based" reasonable to expect Ollie to unthinkingly fiddle with his necktie before he begins to lecture as it is that Sheila will perform her meet and greet on the day in question, it is not equally clear that both will have omitted or failed to do anything on occasions when these behavioral regularities do not obtain. There is presumably some normative "angle" of Sheila's case that is not present in Ollie's case.

One very significant difference between these two cases consists in the fact that Sheila's pattern of behavior appears to be guided by *practical norms* that specify normative reasons for performing the meet and greet. If Ollie does not fiddle with his necktie before beginning to lecture, his nondoing cannot easily be described as a failure to act according to practical norms that he takes to specify normative reasons for action. If Sheila does not perform the meet and greet, however, her nondoing can be described as a failure to act in accordance with practical norms that she takes to specify normative reasons for action. Sheila's pattern of behavior obtains in virtue of her recognition of these reasons; Ollie's pattern of behavior does not seem to stem from any similar recognition. Sheila's pattern of behavior is

therefore guided by practical norms. To further clarify just which patterns of behavior are guided by practical norms, consider H. L. A. Hart's account of practical norm guidance. Hart cites three conditions that are necessary for a given pattern of behavior to be guided by practical norms:

1. practical norm guidance implies the possibility of criticism for deviation, and this possibility in turn implies pressure for conformity in the presence of threatened deviance;
2. practical norm guidance implies that deviation is *good reason* for actually criticizing the flouting of the norm; and
3. practical norm guidance implies that agent(s) governed by that norm have at least some reflective critical attitudes toward the behavior that the norm specifies.²²

I've suggested that Ollie's pattern of unreflectively fiddling with his necktie likely cannot (without adducing further assumptions) be regarded as guided by practical norms, and Hart's account corroborates this suggestion.²³ The possibility of either self-criticism or criticism from others for not adjusting his necktie is, we must imagine, exceedingly remote, and only in some bizarre universe could we imagine Ollie feeling any pressure to adjust his necktie if, for some strange reason, he considered not doing so. Hart's account also corroborates my suggestion that

²² H. L. A. Hart: *The Concept of Law* (Oxford, Clarendon Press: 1961), pp. 55-57. Hart does not elaborate extensively on how he understands this critical reflective attitude, but it is safe to say that it implies normative judgments about the behavior in ways that, as he puts it, all "find their characteristic expression in the normative terminology of 'ought', 'must', and 'should', 'right' and 'wrong'." I think it is enough to say that a critical reflective attitude toward some behavior implies evaluative judgment of some sort or other of that behavior.

²³ Perhaps Ollie's nervous unreflective habit is indicative of his belief that he should look presentable when he lectures. If so, then his habit can be taken to be governed by practical-norms. I am thankful to Angela Smith for suggesting this possibility. I have thus far been understanding, and will continue to understand, Ollie's habit as not being reflective of any such belief.

Sheila's pattern of doing the meet and greet is guided by practical norms. It is clear that the possibility of criticism for not performing the meet and greet is not at all remote in Sheila's case should it be known that she would not, on some future occasion, do so.

Another very significant difference between Sheila's and Ollie's cases consists in the fact that, unlike Sheila, Ollie has absolutely no reflective critical attitudes toward the particular pattern of behavior he exhibits. I take it that Hart understood the notion of a "reflective critical attitude" as a kind of evaluative stance that an agent takes towards a given pattern of behavior or practice. Such a stance likely encompasses a range of beliefs about the relative worth or importance of the relevant behavior or practice, as well as some fairly specific judgments about the kinds of circumstance in which the behaviors involved in the practice are "called for".²⁴ It is fair to say that an agent's reflective critical attitude towards a practice or behavior is constituted by the agent's recognition of standards that specify normative reasons to perform the behavior itself. Now, this appeal to recognition of normative reasons plausibly explains why there seem to be genuinely normative considerations guiding Sheila's pattern of behavior, as well as why the pattern is capable of grounding a genuine omission-generating probability-based reasonable expectation. Since Sheila's pattern of behavior obtains in virtue of her critical reflective attitudes towards it, and is thus guided by her own recognition of normative reasons to perform the meet and greet, we can say that it is reasonable *in a normative sense* to expect her perform the meet and greet in certain circumstances. The same cannot be said of Ollie's unreflective "tie adjusting" behavior: I have

²⁴ To say that an agent has no beliefs about the worth of importance of the behavior in question is just to say that he has no reflective critical attitudes concerning that behavior.

essentially stipulated that Ollie doesn't even know he exhibits the pattern of behavior, so it cannot be said that his pattern of behavior obtains in virtue of any recognition on his behalf of normative reasons to fiddle with his necktie. Thus, his pattern of behavior is not guided by any practical norms, and we therefore cannot say that it is reasonable *in a normative sense* to expect him to fiddle with his necktie prior to lecture. This provides *prima facie* reason to conclude that, regarding the question of which behavioral patterns are probable in a way that can ground omission-generating reasonable expectations, only those behavioral patterns that are explainable in virtue of the agent's having at least some critical reflective attitudes towards - i.e., recognition of normative reasons to perform - the behaviors manifested in the pattern can ground omission-generating probability-based reasonable expectations. These expectations are normative because they are made reasonable by the agent's own recognition of the relevant normative reasons. They are thus reasonable in a manner that permits a judgment that deviations from the pattern of behavior involve genuinely normative *failures* to act as can reasonably be expected.

My suggestion, then, is that only those patterns of behavior that are probable for an agent because they are guided by the agent's own critical reflective attitudes toward the behavioral patterns themselves can ground omission-generating probability-based reasonable expectations. There is plenty of textual support for my suggestion. Andrew Altman reminds us that "the guiding idea of Smith's analysis [of omission] is that the norms that turn nonaction into omission are standards that give agents reasons for action."²⁵ While Sheila recognizes normative reasons to perform

²⁵ Andrew Altman, "Concepts of Omission," *Legal Theory*, 11 (2005), p. 254.

the meet and greet, it cannot comfortably be said that Ollie recognizes any reasons to fiddle with his necktie prior to lecturing, or that we recognize any reasons to towel off in certain ways rather than others after bathing. If there are such normative standards at work in Sheila's case, then they make a probability-based expectation of her conduct reasonable in a genuinely normative way, i.e., in a way that goes above and beyond the mere descriptive claim that her future behavior is likely to (i.e., probably will) resemble her past behavior. The presence of normative standards, coupled with her recognition of the reasons for action those standards generate, show her behavioral pattern to be guided by practical norms. Sheila's nondoing, then, can be regarded as a normative failure to act, while Ollie's nondoing cannot, despite the fact that probability-based expectations are reasonable in both cases. My suggestion thus provides a principled way of distinguishing omission-generating probability-based reasonable expectations from other probability-based reasonable expectations.

If we turn to Patricia Smith's earlier work on omission, we find additional textual evidence for my suggestion. She names "four classes of cases which, by and large, are grounds for assessments of probability".²⁶ The first class, which Smith calls "custom", involves sets of "interpersonal standards which grow and develop over time... [and] which essentially constitute the forms of life within which human interaction takes place."²⁷ Behaviors of this sort might include holding doors open for others, saying "thank you" when a service is rendered, leaving a gratuity after paying the check, etc. These are not mere idiosyncratic patterns of behavior that occur

²⁶ Patricia Smith, "Contemplating Failure," *Philosophical Studies* 59 (1990), p.167. It is important to note that a given norm may overlap across several of these classes.

²⁷ *Ibid.*

wholly independently from common recognition of practical reasons; the existence of the relevant behavioral patterns depends upon a whole host of shared reflective critical attitudes towards them. The second class is called “routine or habit”, and concerns individual behaviors that typically imply the presence of a guiding norm and corresponding reflective critical attitudes towards those behaviors.²⁸ Consider people who are habitually punctual. Their patterns of punctuality can reasonably be thought to depend crucially upon judgments about the relative importance of being on time and the kinds of circumstance in which punctuality is called for.²⁹ Sheila’s habit of performing the meet and greet probably belongs in this category.

The third class is what Smith calls “universal”. This class incorporates “assessments or assumptions about human characteristics or human nature.”³⁰ We can use Smith’s own example to distinguish this class from the first two. It is likely that anyone (regardless of cultural custom or personal routine/habit) who can do so will wear some item of warm clothing in below-freezing temperatures, since humans generally recognize reasons to protect themselves from harm when doing so is easy. And this behavioral pattern surely reflects practical norm guidance; it is grounded in myriad reflective critical attitudes that all (or very nearly all) humans, as a class, share. Smith calls the final class “individual”. She says, “Clearly, an

²⁸ Smith includes under the rubric of “routine or habit” a case not entirely unlike that of Ollie. See p. 168 of “Contemplating Failure”. I think this is a mistake, given her claim that the kind of reasonable expectations that are relevant to omission imply that others are entitled to expect that behavior conforms to the established pattern. She understands this to mean something above and beyond the descriptive claim that it is likely that behavior will conform to the established pattern. I think it is clear that, in Ollie’s case, the only sense in which it is reasonable to expect him to nervously adjust his necktie is that it is likely, descriptively speaking, that he will do so.

²⁹ If someone showed up on time for work every day without having any evaluative beliefs about the importance of doing so, we would have to say that the behavioral regularity is a freak coincidence, and not a genuine habit.

³⁰ Ibid. She notes that it may not be possible to fully distinguish between behaviors that belong to this class rather than the class of “custom”. This is not a significant concern as long as the behavior in question reflects practical norm-governance.

individual can omit something no one, other than he, has any reason to expect him to do. Obvious examples are forgetting or overlooking something which the person himself would have included if he had remembered or noticed.”³¹ “Overlooking” and “forgetting” typically imply failures to meet some normative standard. I can only be said to have forgotten to bring a lunch with me to work if I (implicitly or explicitly) judge that I had reason to do so. In this sort of case, in order for my nondoing (not bringing the lunch) to count as an instance of “forgetting” or “overlooking”, it must be imagined that I have at least some reflective critical attitudes towards (i.e., that I recognize normative reasons to perform) the action I did not perform.

Smith’s four classes of behavioral regularities that can constitute grounds for assessments of probability explain why only normative probability-based reasonable expectations are omission-generating, and why non-normative probability-based reasonable expectations (e.g., those that pertain to Ollie's necktie-fiddling behavior) are not. These other expectations amount to mere descriptive claims that an agent’s future behavior will conform to the behavioral pattern he has exhibited in the past. Omission-generating probability-based reasonable expectations, however, implicate further normative considerations, and thus depend for their reasonableness upon an agent's recognition of normative reasons for action. Smith reinforces the normative nature of these expectations in the following short passage:

When it is said that it is (or was) reasonable to expect such and such conduct in some circumstance, it is not generally meant (merely) that it is likely to be an accurate prediction. It generally means that the person who holds those (reasonable) expectations is *entitled* to expect that behavior will conform to the usual pattern. Thus, patterns of regular behavior become *standards* of behavior... [and] this regularity of conduct structures society,

³¹ Ibid, p. 170.

human interaction, and basic social attitudes, and it operates (and must operate) at a largely unconscious level.³²

This passage, while helpful for explaining the normativity inherent in omission-generating probability-based reasonable expectations, contains a slightly troubling ambiguity. What does it mean to say that someone is *entitled* to expect that behavior will conform to the usual pattern? Since Smith does not want to understand omission-generating probability-based reasonable expectations non-normatively, the sense of “entitled” at work here should go beyond “in possession of adequate theoretical justification”. We can easily speak of being entitled to expect that Ollie will fiddle with his necktie before his next lecture, but this kind of “entitlement” is not grounded in any normative considerations. So this is presumably not the sense of “entitled” that Smith has in mind.

I suggest that the sense of “entitled” at work in Smith’s analysis be understood to mean that it would in principle be intelligible - that is, it would make sense - for a person who holds a probability-based omission-generating reasonable expectation of conduct to request normative justification in case the expectation goes unmet. In other words, requests for normative justification in response to a deviation from a reasonable expectation must make sense in order for that expectation to be a probability-based omission-generating one. Although we are entitled to expect Ollie to fiddle with his necktie prior to his next lecture, if he does not do so, a request for normative justification obviously would not make sense. Given that Ollie's behavioral pattern is not guided by his recognition of any practical reasons, a request for justification for not fiddling with his necktie would make about

³² Ibid, p. 172.

as much sense as a request for normative justification for not snoring. On the other hand, we are entitled to expect Sheila to perform the meet and greet because, if she does not do so, a request for normative justification would make sense. Since her pattern of behavior is guided by her recognition of practical reasons, a request for normative justification in this case would be in principle appropriate. So, although it is probability-based reasonable to expect Ollie to fiddle with his necktie, the only sense in which we are *entitled* to expect his behavior to conform to the pattern he exhibits is *theoretical*. We are, on the other hand, *normatively entitled* to expect Sheila to perform the meet and greet; our entitlement in this case is not merely a matter of possessing adequate theoretical justification for thinking that her future behavior will conform to the relevant pattern.

Let me sum up the discussion of this section thus far. I began with the question of how we should understand Feinberg's idea that the fact that an action is the sort of thing an agent ordinarily (i.e., frequently) does makes it reasonable, in an omission-generating sense, to expect him to do it. Smith suggests that we understand Feinberg's idea to mean that the behavior in question is probable for the agent. Then, I asked how the fact that an agent's behavior is *probable* for her (or for those in her position) can ground omission-generating reasonable expectations. I distinguished between patterns of behavior that are not indicative of practical norm-governance, and patterns of behavior that are. I suggested that omission-generating probability-based reasonable expectations are grounded in behavioral patterns that obtain in virtue of an agent's recognition of normative reasons for action. The presence of an agent's reflective critical attitude regarding the pattern of behavior itself is what guarantees the agent's recognition of normative reasons for acting

according to the relevant pattern. I then offered textual support for my suggestion. Finally, I explained the sense in which probability-based omission-generating reasonable expectations of conduct *entitle* their holders to expect that behavior will conform to the usual pattern. Only when an agent's nondoing represents a deviation from a probability-based omission-generating reasonable expectation can anyone be normatively entitled, in principle, to request normative justification of the agent.

But there remains a worry concerning Igor's case. Feinberg and Smith agree that it is reasonable to expect an agent to do something that either he frequently does, or those in his position frequently do. The description of Igor's case includes no information about whether thanking bus drivers is something he frequently does, and thus provides no reason to suppose that, on the given occasion, he probably will do it. But Feinberg and Smith seem to allow that, since others in his position (i.e., other bus passengers) frequently thank bus drivers, it is reasonable to expect Igor to do it as well. Whether this claim is plausible is hard to determine, since its plausibility seems to hinge crucially on whether the other bus passengers are indeed "in Igor's position", and neither Feinberg nor Smith say anything about what "or those in his position" means. It is therefore unclear how it can be reasonable to expect Igor to thank his bus driver, and consequently whether Igor's nondoing is an omission. The source of this unclarity is, I think, further unclarity about whether the frequency of others' conduct can make it reasonable to expect Igor to behave as they do.

I do not know whether Igor's nondoing is an omission, but let's assume that it is and then imagine what would have to be true on the Feinberg-Smith approach. First, I will stipulate that Igor has no established pattern of thanking the bus driver. If

Igor's nondoing is an omission, then it is reasonable to expect Igor to have thanked the bus driver either (1) because it is the sort of thing others in his position frequently do, or (2) because Igor has a duty or obligation to do it. Now, I do not see how the mere fact that people in Igor's position (i.e., other bus passengers) have a habit of thanking the bus driver could make it reasonable to expect Igor, who has no such habit, to have thanked the bus driver on the day in question. This would, I think, be a fairly contentious way to try to explain why Igor's nondoing is an omission. Imagine a local politician who has no habit of "meeting and greeting" his constituents before he speaks publicly. It hardly seems reasonable to expect him to do this just because others in his position (i.e., other politicians) ordinarily do so. This means that, if Igor's nondoing is an omission, it is because he has a duty or obligation to thank the bus driver. But how can this be? To explain, I will appeal to another example.

James had a very bad moral education, and as a result is now extraordinarily insensitive to norms of etiquette. He never says "thank you" when others render services for him, he never holds doors open for people who walk behind him, he never says "excuse me" when he accidentally bumps into people in public, he never asks polite questions to inspire conversation when he meets someone new, and so on. Although saying "thank you" when someone renders a service for one is probable behavior for others in James's community - behavior that clearly reflects practical norm-governance - it is not in any sense probable for James. Yet it seems quite clear that, when he (intentionally or unintentionally) does not say thank you after the barista hands him his change and cup of coffee and says, "Have a good day!", he has omitted to thank the barista. It is, in other words, reasonable to expect

him to have done so quite apart from whether he has ever done so or has any intention of doing so. I think what explains the reasonableness of this expectation is the existence of a social rule that applies to *everyone* in James's community that generates reasons to say "thank you" when others render services for one. This social rule generates requirements that apply to James quite apart from what he has ever done or intended to do. Although saying "thank you" in such circumstances is not probable behavior for James, he is required to do so, and for this reason it is reasonable to expect James to say "thank you" when others render services for him such that, if he does not do so, he has omitted to do so.

Let me say a bit more about social rules (including rules of etiquette), which I understand to have the character of genuine prescriptive requirements. When it is said that one ought to thank someone who has done something nice for one, this does not mean merely that it is *recommended* that one do so.³³ In the course of a child's moral education, we do not teach the child that politely expressing gratitude is merely supererogatory; we teach the child that he has to do it. And the same goes for many other social rules, including rules that require an expression of polite apology when one accidentally bumps into another, rules that require holding doors open for people walking behind one, and so on. It thus makes sense to interpret a social rule as issuing reasons of a prescriptive nature, reasons that entitle others to demand that behavior will conform to the rule. James omits to say "thank you" to the barista because it is reasonable to expect him to do so, but the basis for this reasonable expectation is *prescriptivity* and not *probability*. Interestingly, what

³³ See Philippa Foot, "Morality as a System of Hypothetical Imperatives," reprinted in Steven M. Cahn and Peter Markie eds., *Ethics: History, Theory, and Contemporary Issues* (4th edition), pp. 558-559 (Oxford, Oxford University Press: 2009).

explains the fact that people in James's position probably will say "thank you" in circumstances like his is that there is a social requirement to do so.³⁴ Therefore, in cases where an expectation that an agent will do something is made reasonable by a social rule, we do not need to settle the question of whether it is the fact that other people in the agent's position ordinarily do that thing (even if the agent himself never does it) that makes the expectation reasonable. And if I am correct that social rules issue reasons of a prescriptive nature, then Igor's not thanking the bus driver counts as an omission if it makes sense to say *either* that there is a social rule that gives him reasons to do so, *or* that he has an established habit of doing so that reflects practical norm-governance.³⁵ Igor's nondoining is an omission only if we can read Igor's case as one in which either he has an established habit of thanking the bus driver that reflects practical norm-governance, or there is a social rule that requires him to do so. Since it is unclear in Igor's case whether he has such an established habit or whether there is such a social rule, we now have an explanation of what makes his case unclear.

In fact, there is a slight problem with what I have just claimed. It's false that Igor omitted to thank the bus driver only if he either has an established habit of doing so or there is a social rule requiring him to do so. Let's also modify Igor's case

³⁴ To elaborate: we might think that whenever it is true that *s* is probable behavior for *A* because people in *A*'s position ordinarily do *s*, this is because there is a social rule that explains why people in *A*'s position ordinarily do *s*. But this is not always correct. Most politicians perform "meet and greets" with their constituents prior to public speaking events, but this doesn't mean that there is any social rule that explains this behavioral pattern. It would be a mistake to think that, because most elected officials perform such "meet and greets", the President of the United States (who does not display any such established pattern of behavior) *omits* to perform "meet and greets" virtually every time he speaks publicly. We can distinguish cases of patterns of behavior among a given population that reflect social rules, and cases of patterns of behavior that exist among a given population that do not reflect social rules. In the latter kinds of case, it will be another question which agents do and do not count as members of that population. In the former case, it is not necessary to answer this question since a social rule applies generally.

³⁵ Or, failing either of these alternatives, that Igor has a one-time intention to do so. I will explain more about this momentarily.

by transporting him to another city, where there is no social rule that requires passengers to thank the bus drivers as they step off. Additionally, let us suppose that Igor decides that he will, for the first time as far as he can recall, thank the bus driver when he steps off later today. At the moment Igor steps off the bus, however, his attention is fully devoted to the podcast, and he forgets to do so. Now, it surely seems correct to say that Igor forgot to thank the bus driver. It thus seems correct to say that he omitted to do it; it is "probability-based" reasonable to expect him to have done so. The omission is thus generated from a probability-based reasonable expectation that is not grounded in a pattern of behavior. Thanking the bus driver is not probable behavior for Igor because he frequently does it. The probability-based reasonable expectation in Igor's case is thus distinguishable from the kind of probability-based reasonable expectations at issue in the preceding discussion. What, then, is the normative basis for the kind of probability-based reasonable expectation that turns Igor's nondoing into an omission?

V. The Significance of Intention for Probability-Based Reasonable Expectations

In the last section, I defended the claim that omission-generating probability-based reasonable expectations are grounded in patterns of behavior that depend upon an agent's recognition of normative reasons for action. This raises a question: must an omission-generating probability-based reasonable expectation be grounded in a behavioral pattern or regularity? So far, I have focused on omission-generating probability-based reasonable expectations that are grounded in behavioral regularities: the basis for thinking that some behavior is probable for an agent is that

it is frequent. But, as the variant on Igor's case shows, not all omission-generating probability-based reasonable expectations are grounded in behavioral regularities.

What stands out about Igor's variant case is that thanking the bus driver was something he intended to do, and an intention to do something presumably implicates reflective critical attitudes about the relevant behavior. It makes no sense to say that Igor intends to thank the bus driver but recognizes no normative reasons to do so. It therefore seems clear that an intention to do something implies that an agent's recognition of normative reasons. Although there may be no established pattern of doing that thing, when we say that the agent probably will do it, we are saying that the agent intends to do it for a normative reason. The normativity of this omission-generating probability-based reasonable expectation consists in the agent's recognition of normative reasons. Igor intended to thank the bus driver necessarily for some normative reason; intentions are guided by practical norms. Moreover, the same is true of Sheila. In her case, the behavioral pattern of performing the meet and greet is guided by her standing intention to do it, and this intention implicates Sheila's critical reflective attitude toward the behavioral pattern itself. Intention thus has a special significance for omission-generating probability-based reasonable expectations.

Igor's case shows that there are two kinds of omission-generating probability-based reasonable expectations: those that are grounded in the claim that an action is probable for the agent because it is the sort of thing he frequently (intentionally) does, and those that are grounded in the claim that an action is probable for the agent because he intends (once) to do it. This shows that Smith's reading of Feinberg's locution "S is ordinary behavior for A" as "S is probable

behavior for A" represents an improvement over Feinberg's original analysis of omission. Smith's reading provides a more accurate account of which nondoings are omissions. On Smith's reading, it is "probability-based" reasonable to expect an agent to do something if he probably will do it, where this entails that he either (1) has a one-time intention to do it, and where it is not something he frequently does, or (2) has a standing intention to do it reflected in a pattern of behavior.

This helps to fully distinguish omission-generating probability-based reasonable expectations from (also omission-generating) prescriptivity-based reasonable expectations. Omission-generating probability-based reasonable expectations are grounded in an agent's intentions. Prescriptivity-based reasonable expectations are grounded in considerations wholly distinct from an agent's intentional mental states. Intention fully distinguishes the normative standards implicit in omission-generated probability-based reasonable expectations from the normative standards implicit in prescriptivity-based reasonable expectations. Although both kinds of standard are normative in nature, they are not normative in the same way. Still, both are capable of justify the claim that an agent (normatively) failed to do what can reasonably be expected. This account of the normative foundations of prescriptivity-based reasonable expectations and omission-generating probability-based reasonable expectations provides compelling explanations of the various normative considerations at issue in each of the example cases of omission I introduced earlier.

In Tax Trick, it is irrelevant whether Jacob ever intended to report his IRA distribution as income in order for it to be reasonable to expect him to do so. He has an obligation to do so, and the reasonable expectation that he have done so is

prescriptivity-based. In *Bus Blunder*, if Igor has never thanked his bus driver nor ever intended to do so, then there must be some social rule that expresses a requirement that he do so in order for his nondoing to count as an omission. Otherwise, his nondoing could not be an omission. In *Forgotten Friend*, the habitual pattern of behavior Harriet exhibits - one that clearly reflects her standing intention to acknowledge Gwendolyn's birthday - explains why her nondoing is an omission. In *Wary Witness*, it seems reasonable to think that Roberto is morally obligated to report what he saw to the police. His nondoing is an omission. In *Runaway Rover*, Yolanda is legally obligated to stop at the stop signs. In *Miffed Mayor*, Sheila's own standing intention to perform the "meet and greet", which is reflected in her habitually doing so, explains why she omitted to do so on the occasion in question. And finally, in *Lethargic Lifeguard*, Abby is "role obligated" to assist struggling swimmers. This explains why her nondoing counts as an omission. The cases where expectations are made reasonable by normative considerations of prescriptivity are clearly distinguishable from the cases where expectations are made reasonable by normative considerations of probability. We are almost ready for an answer to the question of what omission is.

VI. Unintentional Omission

According to Patricia G. Smith, all that is necessary and sufficient for A to omit to do S is that (1) A did not do S, and (2) it is reasonable to expect A to have done S.³⁶ This analysis is neutral as regards the distinction between intentional and

³⁶ Smith, "Feinberg and the Failure to Act," p. 238.

unintentional omission. Let me provide a fuller analysis that incorporates the clarifications and refinements that I have defended in this chapter.

For intentional omission:

A intentionally omits to do S if and only if:

1. A did not do S;
2. A thought, at the time, of doing S; and
3. It is reasonable to expect A to have done S.

For unintentional omission:

A unintentionally omits to do S if and only if:

1. A did not do S; and
2. A did not think, at the time, of doing S; and
3. It is reasonable to expect A to have done S.³⁷

Condition (3) should be unpacked as follows:

It is reasonable to expect A to have done S because:

- (a) A could have, in ordinary circumstances, done S, or should have been able to do S;
- (b) A knew that he could have done S or should have known it;
- (c) S is either probable behavior for A or prescribed (required) behavior for A:
 - (c.1) If S is probable behavior for A, then this is because either
 - (i) A's pattern of frequently doing S reflects his standing intention to do S; or

³⁷ As I mentioned earlier, it is reasonable to include Feinberg's "possibility conditions" as part of condition (3).

(ii) A has a "one-time" intention to do S;

(c.2) If S is prescribed behavior for A, then A knew or should have known that S is reasonably expected of him.

Any nondoing that satisfies these conditions is an omission.

VII. The Omissions-As-Conduct Thesis

At the end of the third section of this chapter, I presented the two questions that would guide the remaining inquiry. The first question was

(1) What are the normative bases for omission-generating reasonable expectations?

This question has now been answered. I now turn my attention to answering the second question:

(2) How exactly does a reasonable expectation of this sort turn nondoing (which is nothing) into omission (which is something)?

To answer this question, I will once again consult Patricia Smith's work. She states that "an omission, like an act, is something done. Omission is essentially an element or a type of conduct."³⁸ But since, if an agent omits to do something, he did not do that thing, what exactly did he do? How can a nondoing that is an omission become conduct? Smith's answer is that "omission is... a deviation from a pattern of activity that violates what a reasonable person would expect to be done, paradigmatically because it leaves out an element of conduct necessary to meet a standard of normal behavior within some context or community of value construed in terms of probability

³⁸ Ibid, p. 247.

and/or prescription.”³⁹ Before I explain how this passage can help answer the question of what an agent does when he omits, I want to offer some clarificatory remarks.

Smith suggests that omission is a “deviation from a pattern of activity” that violates a reasonable expectation. First, is omission always a deviation from a pattern of activity? The answer to this question must be “no”, since Igor’s variant case is an omission that involves no deviation from a pattern of activity. Igor did, however, have a “plan of action”, and his forgetting represents a deviation from this plan, so his omission is still a deviation from something. But there are also omissions that cannot be described as deviations at all, namely, those generated by prescriptivity-based reasonable expectations. Both Jean-Claude and Yolanda violated a legal obligation, Abby violated a role-obligation, and Roberto seems to have violated a moral obligation. Only in Yolanda’s case is there an explicit requirement and an established pattern of activity, but her failure to stop at the stop signs is intuitively not merely a deviation from her own pattern of prior behavior, but a violation of a requirement. Where no such requirement exists, it is strange to say that an omission represents any sort of violation. Neither Sheila’s nor Harriet’s case seems suited to the language of violation. But, it is in these cases that it seems correct to speak of a deviation from a pattern of activity. Therefore, to resolve the difficulty in Smith’s text, I suggest we change it to read: an omission represents *either* a violation of a requirement *or* a deviation from a pattern of activity or a plan of action to which it is reasonable to expect an agent’s behavior to conform. Hence, omissions are *either* (1) violations of requirements, or (2) deviations from patterns or

³⁹ Ibid.

plans of activity that implicate an agent's recognition of normative reasons. Omissions are failures to satisfy either largely externally-imposed standards (and, thus, violations of those standards) or largely self-imposed standards (and, thus, deviations from those standards).

This distinction between deviating from a normative standard, and violating a normative standard, tracks the two different bases for reasonable expectations that turn nondoing into omission, and simultaneously tells us what omissions *are*. Plainly, omissions are nondoings that constitute either deviations from, or violations of, normative standards. Deviating from, or violating, a normative standard involves doing something; it is therefore conduct. As regards omission, the deviation or violation is “doing by way of inaction” rather than “doing by way of action”. This supports Smith’s claim that “omission is a negative element of conduct that is necessarily attributable to a particular agent because of the agent’s participation in the practice that specifies normal conduct in those circumstances. It is not necessarily action, but it is necessarily conduct: it is a particular kind of deviant behavior.”⁴⁰ Therefore, the element of omission that makes it conduct (and therefore *something*) is the deviation or violation of a normative standard the omission represents. We now have our answer to the question of how a contextual standard of reasonable expectation turns nondoing (which is nothing) into omission (which is something, namely, a kind of conduct). If an agent does not do something it is not reasonable to expect him to have done, then the agent neither deviated from nor violated any normative standard of conduct. The agent literally did nothing. But if an agent does not do something it is reasonable to expect him to have done, then the

⁴⁰ Ibid, p. 250.

agent either deviated from or violated a normative standard of conduct. The agent did something, by way of not doing something else. And to describe what an agent does is to describe his conduct. Omission is therefore conduct. I'll call this the "omissions-as-conduct" thesis. We now have our answer to the question of what omission is: it is a kind of negative conduct that represents a deviation from, or a violation of, a normative standard of conduct. When we say that an agent omitted to do something, we imply that he failed to satisfy (i.e., either that he deviated from, or violated) a normative standard of conduct.

VIII. Omission and Moral Responsibility

The "omissions-as-conduct" thesis entails, as Smith puts it, that omissions are "necessarily attributable to a particular agent" by virtue of their being either deviations from, or violations of, a normative standard. Since omissions are deviations from, or violations of, normative standards, it stands to reason that they represent potential bases for morally assessing agents. In other words, agents are generally morally responsible for omissions. Moving forward, my focus in this dissertation will be exclusively devoted to the question of what *makes* agents morally responsible for omissions. What is the nature of the relationship - the "responsibility-grounding" relationship - between an agent and his omission that makes it a potential basis for moral assessment of him? In the subsequent chapters of this dissertation, I will review different possible responses that can be provided to this question, and I will argue that one of these responses is the most compelling.

Let me conclude by reviewing what has been done in this chapter. Consideration of the cases at the start of the chapter suggested that omissions are *failures* to act. Feinberg's normative analysis of omission supports this suggestion. Omissions are nondoings that represent departures from contextual standards of reasonable expectation. It was noted that there are two main considerations that make such expectations reasonable: prescriptivity and probability. Then, I explained that not all considerations of probability are capable of grounding omission-generating reasonable expectations. The considerations of probability that can ground such expectations stem from an agent's intention to do whatever it is supposed he probably will do. Finally, I explained how the two main considerations that ground omission-generating reasonable expectations turn nondoing (which is nothing) into omission (which is something). Omissions are either deviations from what an agent otherwise intended to do, or violations of prescriptive standards. Although nondoing is a central component of omission, omission is not *mere* nondoing because omission involves a deviation from, or a violation of, a normative standard. Omission is thus a kind of conduct. Since omission is a kind of conduct, it follows that agents are generally morally responsible for omissions.

Chapter 3: The Volitionalist Account of Moral Responsibility for Unintentional Omission

I. Introduction

One of the main conclusions of the previous chapter is that agents are generally morally responsible for omissions because they constitute either deviations from, or violations of, normative standards of conduct. These deviations and violations represent potential bases for morally assessing agents. But *what makes* agents generally morally responsible for omissions? What is the nature of the "responsibility-grounding relationship" between an agent and his omission that makes it a potential basis for morally assessing him? According to a prominent theory of moral responsibility called "volitionalism", something (e.g., an action, an omission, or an attitude) is a potential basis for morally assessing an agent if and only if it reflects at least one of her intentional choices. Volitionalism straightforwardly implies that agents are generally morally responsible for *intentional* omissions; these omissions *directly reflect* (in the sense that they are partially constituted by) intentional choices not to do whatever it is that can reasonably be expected. Unintentional omissions, however, are not partially constituted by such choices, and so do not *directly reflect* intentional choices. This raises a question for volitionalists: what grounds moral responsibility for unintentional omissions? Volitionalists have commonly replied that, roughly speaking, agents are morally responsible for only those unintentional omissions that *indirectly reflect* (in the sense that they are causally and epistemically related to) intentional choices. Although I will

wait until later in this chapter to fully clarify the nature of this causal and epistemic relationship, it offers a rudimentary idea of the volitionalist account of the "responsibility-grounding relationship" in cases of unintentional omission.

In this chapter, my main aim is to argue that the volitionalist account of moral responsibility for unintentional omission is provisionally worthy of rejection. I say "provisionally" because the account should be rejected only if it can be shown that some other account of moral responsibility for unintentional omission is superior. My argument for provisionally rejecting the volitionalist account will proceed in two main steps. First, I will expose and criticize some of the main rationales that prominent defenders of volitionalist theories of moral responsibility offer for the claim that the only potential bases for morally assessing agents are things that directly or indirectly reflect intentional choices. My objective in this first stage of the argument is to cast doubt on the plausibility of the volitionalist claim that moral responsibility requires intentional choice. Then, I will argue against the volitionalist account of moral responsibility for unintentional omission. If my arguments are successful, then they will provide adequate justification for concluding that the volitionalist account of moral responsibility for unintentional omission is provisionally worthy of rejection.

II. Volitionalism

A volitionalist theory of moral responsibility reserves a special role for the notion of a "volition" as the fundamental basis for all legitimate moral assessments of agents. Michael J. Zimmerman, a prominent defender of volitionalism, characterizes the notion of a volition as "a *decision or choice*... that some event

occur, a decision which is *accompanied by an intention* that it (the decision) be causally efficacious with respect to the event in question."⁴¹ Neil Levy, another well-known defender of volitionalism, provides a wonderfully concise articulation of the volitionalist's basic theoretical commitment when he says that "an agent is [morally] responsible for something (an act, omission, attitude, and so on) just in case that agent has - directly or indirectly - *chosen* that thing."⁴² In the course of explicating his volitionalist theory of moral responsibility, R. Jay Wallace emphasizes the fundamental role intentional choice plays in grounding legitimate moral assessments of agents. He says, "the primary target of moral assessment... is the quality of choice expressed in what we do... Indeed, the degree of our moral fault [or credit] is determined essentially by the quality of the choices on which we act, regardless of whether we succeed in achieving the ends fixed by these volitional states."⁴³

Volitionalist theories of moral responsibility can thus be seen as incorporating two conditions on morally assessing agents. First, if something is a potential basis for morally assessing an agent, then that thing directly or indirectly reflects at least one of his intentional choices.⁴⁴ Second, an agent's morally praiseworthiness or blameworthiness for something depends upon whether it directly or indirectly reflects certain morally significant features of agents that are indicated by their intentional choices, i.e., whether those choices indicate morally

⁴¹ Michael J. Zimmerman, *An Essay on Moral Responsibility*, (Totowa, NJ: Rowman & Littlefield, 1988), p. 19.

⁴² Neil Levy, "The Good, the Bad and the Blameworthy," *Journal of Ethics & Social Philosophy* 1 (2005), p. 2 (emphasis in original).

⁴³ R. Jay Wallace, *Responsibility and the Moral Sentiments* (Cambridge, MA: Harvard University Press, 1994), p. 128.

⁴⁴ What about the consequences of these choices? Aren't agents also potentially morally assessable on the basis of things that are not intentional choices but that are suitably related to these? As we'll see, the volitionalist is committed to the view that legitimate moral assessments of agents concern only the intentional choices they make. Things that are not intentional choices, but that are suitably related to them, are not, in themselves, potential bases for moral assessments of agents. To claim otherwise would be to abandon volitionalism altogether.

significant aspects of the agent that are open to positive or negative moral judgment.⁴⁵ In the next three sections of this chapter, I want to question whether there is good reason to accept the first condition of the volitionalist theory, namely, the condition on *moral responsibility*. After undertaking a careful review of the reasons volitionalists commonly offer in defense of this condition on moral responsibility, I hope to have shown that none of these reasons provides decisive justification for accepting the claim that moral responsibility requires intentional choice.

III. R. Jay Wallace's Volitionalist Theory

In his book *Responsibility and the Moral Sentiments*, R. Jay Wallace defends a broadly Strawsonian, volitionalist theory of moral responsibility. P. F. Strawson is commonly interpreted as having held that the conditions of moral responsibility are the conditions under which we hold others morally responsible.⁴⁶ In this context, the phrase "holding another person morally responsible" can mean one of two things. First, the phrase can carry the sense of "regarding a person *as a morally responsible agent*". To hold someone morally responsible in this sense is to believe

⁴⁵ Volitionalists do not always agree regarding *how* intentional choices indicate these aspects of agents. As we'll see, Wallace holds that the content of an intentional choice - what is actually chosen - determines an agent's praiseworthiness or blameworthiness. Zimmerman, on the other hand, holds that an agent's praiseworthiness or blameworthiness does not depend crucially on what is actually chosen, but instead upon certain background beliefs in light of which the choice was made.

⁴⁶ See, for example, Gary Watson, "Responsibility and the Limits of Evil: Variations on a Strawsonian Theme," in *Perspectives on Moral Responsibility*, J. M. Fischer and Mark Ravizza eds. (Ithaca, NY: Cornell University Press, 1988), p. 120. "All traditional theories of moral responsibility acknowledge connections between [reactive attitudes] and holding one another responsible. What is original to Strawson is the way in which they are linked. Whereas traditional views have taken these attitudes to be secondary to seeing others as responsible, to be practical corollaries or emotional side effects of some independently comprehensible belief in responsibility, Strawson's radical claim is that these 'reactive attitudes' (as he calls them) are *constitutive* of moral responsibility; to regard oneself or another as responsible just is the proneness to react to them in these kinds of ways under certain conditions."

that he is capable of understanding and complying with genuine moral expectations; it is to count him as a member of the community of beings that are at least sometimes appropriate targets of moral praise (when our moral expectations are either satisfied or exceeded) and blame (when our moral expectations are violated). Second, and more importantly for present purposes, the phrase can carry the sense of "holding another person morally responsible *for something*" which Wallace interprets to mean "blaming that person for that thing".⁴⁷ To hold someone morally responsible in this sense is, minimally, to experience certain negative "reactive" attitudes and emotions - e.g., resentment, indignation, anger, etc. - towards him on the basis of whatever one holds him responsible for.⁴⁸ Wallace's theory can thus be regarded as broadly Strawsonian because he holds that the conditions of *being morally responsible* for something are the conditions under which that thing makes it morally fair blame him.⁴⁹ To be morally responsible for something, on Wallace's view, is to deserve moral blame for it.

Wallace contends that an agent is morally responsible for something (i.e., deserves moral blame for that thing) when and only when it represents a violation of a moral obligation. He states, "it is a condition of moral blameworthiness for a given action... that the action violates some moral obligation that we accept" and that "those who have not in fact done anything wrong [i.e., violated a moral obligation]

⁴⁷ See Wallace, *Responsibility and the Moral Sentiments*, p. 118. The locution "I hold A responsible for having done S" seems strongly connected with blaming responses like resentment, indignation or guilt. This is why Wallace interprets "holding another person morally responsible for something" to mean "blaming that person for that thing". See also Angela M. Smith, "On Being and Holding Responsible," *The Journal of Ethics* 11 (2007), pp. 465-484. Smith supports the idea that "holding another person morally responsible for something" usually means "blaming that person for that thing": "[We do not] normally talk of 'holding' people responsible for morally praiseworthy actions, such as acts of heroism. It would be very odd to say, after the fact, that we hold the fireman responsible for courageously risking his life to save the baby in the burning house."

⁴⁸ Minimally, these "reactive" emotions and attitudes are commonly understood to include anger, resentment, and indignation.

⁴⁹ Wallace, *Responsibility and the Moral Sentiments*, p. 5.

clearly do not *deserve* to be subjected to the reactive emotions and the forms of sanctioning treatment that express them."⁵⁰ Wallace explains that an agent has violated a moral obligation when and only when he has *intentionally chosen* to act in a manner that is prohibited by a moral obligation. For example, the moral obligation of nonmaleficence does not prohibit all things that involve causing harm to others (e.g., striking a person while in the throes of an epileptic seizure), but only *intentional choices* to harm others. This, Wallace explains, is why "we [do not violate] the duty of nonmaleficence except when what we do results from a choice to harm someone".⁵¹ It follows, from these elements of Wallace's view, that moral responsibility requires intentional choice. Wallace's reasons to this volitionalist conclusion from three premises: first, an agent is morally responsible for something if and only if she deserves to be morally blamed for that thing. Second, an agent deserves to be morally blamed for something when and only when that thing represents a violation of a moral obligation. Third, something represents a violation of a moral obligation if and only if it involves an intentional choice to act in a manner that is prohibited by that moral obligation. Therefore, intentional choice is necessary for moral responsibility.⁵²

⁵⁰ Ibid, pp. 134-135 (emphasis in original).

⁵¹ Ibid, p. 128.

⁵² This line of reasoning is an interpretation of Wallace, one that I offer because Wallace does not provide an explicit account of the conditions an agent must satisfy in order to be morally responsible for some thing. On p. 52 of *Responsibility and the Moral Sentiments*, Wallace claims that a *morally responsible agent* is someone whose actions open him up to a kind of deep moral appraisal that "does more than record a causal connection between [him] and the consequences of [his] actions." He goes on to equate being a morally responsible agent with being an autonomous agent who is "reflective about [his life], who [has] a set of values or commitments sufficiently structured to constitute what we might call a 'conception of the good', and who [aims] to advance that conception in [his actions]." Finally, he says that being a morally responsible agent should not be "confused with moral responsibility", but then proceeds to talk exclusively about what is involved in being morally blameworthy for some thing. So, it isn't clear just which conditions an agent must satisfy to be morally responsible, but not morally blameworthy, for some thing. Given Wallace's rejection of the idea that there is anything more to being morally responsible for something than being *held morally responsible for that thing*, and given his explicit alignment with the view that appropriately being held morally responsible for some thing entails that that thing is either an intentional choice or suitably related to an

To support this volitionalist conclusion, Wallace appeals to a variety of examples wherein an agent neither intentionally chooses to act in a manner that is prohibited by a moral obligation nor intuitively deserves to be blamed on its basis.⁵³ For instance, in many cases we think agents do not deserve to be blamed for actions that involve inadvertence, mistake, or accident. These circumstantial considerations frequently show that no intentional choice was made to act in a manner that is prohibited by a moral obligation. Wallace explains, "To do something of a certain kind intentionally, one must know that one is doing something of that kind. More precisely, to do something of kind *s*, as the result of the choice to do something of kind *s*, one must believe that what one is undertaking to do is of kind *s*, at the time that one makes the choice to do it."⁵⁴ Actions involving mistake, inadvertence, or accident, commonly involve failures to believe that what one is actually doing is of a certain kind. Actions that involve such failures of belief may not represent violations of moral obligations.⁵⁵ For example,

if A makes a movement that harms someone (treading on another's hand, say) but it turns out that A [did not know he would, in making that movement, tread on another's hand], then what A did will not constitute a case of harming someone as the result of a choice to bring about such harm. Hence A will not have breached the obligation of nonmaleficence, and it would be

intentional choice, I am led to suppose that Wallace would claim that in order for an agent to be judged morally responsible for some thing, it must be possible for her to be judged morally praiseworthy or blameworthy for that thing. And since intentional choices (or things that are suitably connected to these) are the only things for which it is possible for an agent to be judged morally praiseworthy or blameworthy, I interpret Wallace to hold the view that in order for an agent to be judged morally responsible for some thing, that thing must be an intentional choice (or suitably connected to an intentional choice). There may be a bit of support for my interpretation in a footnote on p. 129, where Wallace claims that "every intentional action open to moral assessment involves a moment of choice". I am grateful to Angela M. Smith for helpful comments on this issue.

⁵³ These circumstances are described as involving only apparent violations of moral obligations because no intentional choice to act in a manner that was contrary to what the obligation requires was made.

⁵⁴ *Ibid.*, p. 136.

⁵⁵ I say "may not" to cover cases involving blameworthy or "at fault" accident, mistake, and inadvertence. I take it that, in these cases, the mere failure of belief will not unequivocally show that no moral obligation has been violated.

inappropriate to hold A responsible [in the sense of blaming A] for a violation of that duty.⁵⁶

Wallace uses an array of examples like these to support his claim that intentional choice is a precondition of deserving blame, and thus of moral responsibility as well. I hope the foregoing discussion has made it amply clear that Wallace's theory of moral responsibility is thoroughly volitionalist.

The rationale underlying Wallace's volitionalist theory consists principally in his claim that an agent does not deserve to be blamed unless he has intentionally chosen to do something that represents a violation of a moral obligation. In what follows, I will argue that there are reasons to reject this claim. Specifically, I will argue that agents can be blameworthy for things that do not represent violations of moral obligations. If my argument is successful, then we will have justification for concluding that Wallace has failed to provide a compelling rationale for volitionalism.

Before presenting my argument, I want to point out that one virtue of Wallace's view is the psychological connection he draws between blaming others and particular *expectations* to which we hold them. Strawson emphasized this psychological connection in his observations that, first, we standardly expect "some degree of goodwill or regard on the part of those who stand in [interpersonal] relationships to us" and, second, the manner in which "the range and intensity of our *reactive* attitudes" depends crucially upon whether this standing expectation of goodwill or regard is satisfied.⁵⁷ Here, Strawson highlights a basic psychological fact about our practices of moral judgment: we are generally inclined to blame or praise others to the extent that they violate or satisfy a *standing* expectation that they display towards us attitudes of goodwill or regard. Wallace expresses his alignment

⁵⁶ Ibid, p. 133.

⁵⁷ P. F. Strawson, "Freedom and Resentment," pp. 49-50 (emphasis in original).

with Strawson's idea when he claims that, "[r]esentment, indignation, and guilt [i.e., blaming responses] are essentially tied to *expectations* that we hold ourselves and others to; susceptibility to these [responses] is what constitutes holding someone to an *expectation*."⁵⁸ But, Wallace notes, there are different kinds of expectations to which we hold others, some of which he thinks are more intuitively deserving of the qualification "moral" and, in virtue of their being *moral expectations*, make blame morally appropriate in case they should be violated. He equates the notion of moral expectation with that of a moral obligation.⁵⁹ This is why Wallace thinks that blame is morally appropriate only when an agent has violated a moral obligation.

As I've already pointed out, on Wallace's view, moral obligations can, in the first instance, only regulate (i.e., prescribe or prohibit) intentional choices.⁶⁰ This is because moral obligations can regulate only those things that can be brought about "[as a result of] one's grasp of the reasons expressed in moral principles."⁶¹ Wallace explains why only intentional choices satisfy this constraint by contrasting them with "particular states of emotion or feeling" which, he claims, "are not the sorts of states that can be directly controlled by the reasons expressed in moral principles... [they] are generally not states that could be produced simply by the belief that there are moral considerations that make them obligatory."⁶² This reveals Wallace's

⁵⁸ Wallace, p. 21 (my emphasis).

⁵⁹ Ibid, p. 36. "Moral expectations can then be defined as expectations that are justifiable in terms of distinctively moral reasons. I will refer to expectations that admit of this kind of moral justification as *obligations*."

⁶⁰ I say "in the first instance" because moral obligations do regulate conduct, but only conduct that involves intentional choices. For example, the moral obligation to donate to charity regulates certain actions, but it is an essential element of these actions that they involve intentional choices. The satisfaction or violation of this obligation depends crucially upon whether certain intentional choices are made.

⁶¹ Ibid, p. 131.

⁶² Ibid, pp. 131-132. He adds, in a footnote, that moral obligations can regulate these states *indirectly*, insofar as there are steps one might take (i.e., intentional choices one might make) to cultivate certain emotions or to get rid of certain states of feeling.

assumption that moral obligations can only regulate those things that could be produced simply by the belief that there are moral considerations that make them obligatory. This is why moral obligations can only regulate intentional choices and, coupled with his claim that blame is morally appropriate only when an agent has violated a moral obligation, constitutes his rationale for accepting volitionalism. It is worth noting that Wallace's view represents a significant departure from Strawson's. Strawson ties the legitimacy of blaming others to the violation of our standing expectation that regulate certain attitudes, namely, attitudes of goodwill or regard. These attitudes probably cannot be produced simply by the belief that there are moral considerations that make them obligatory, yet Strawson counts them as the kind of things that can be regulated by legitimate expectations to which we hold others. Wallace, on the other hand, ties blameworthiness to the violation of only *certain* moral expectations (i.e., moral obligations) to which we hold others, expectations that can only regulate intentional choices.⁶³

In what follows, I will try to show that Wallace's argument for the claim that blameworthiness presupposes the violation of a moral obligation fails. I will provide reason to think that Wallace has made two mistakes in his argument. The first mistake consists in equating the notion of a moral expectation with that of a moral obligation. Although Wallace may be correct that moral obligations can only regulate intentional choices, legitimate moral expectations can regulate things that are not intentional choices. The second mistake consists in tying blameworthiness to the violation of only moral obligations. Agents who violate moral expectations that do not

⁶³ The reason for this departure is that Wallace is, unlike Strawson, attempting to provide a theory of moral responsibility that explains when blaming responses are *morally justifiable*. Strawson maintained that these responses are not the sort of thing that are open to independent *philosophical* (specifically, *metaphysical*) justification, but did suggest that their justification must be internal to our practices of moral judgment.

regulate intentional choices are in at least some circumstances worthy of blame for such violations. If my argument is defensible, then it shows that Wallace has not provided a strong enough reason to think that blame can be appropriate only when an agent has intentionally chosen to do something that constitutes a violation of a moral obligation.

Recall that Wallace defines moral expectations as "expectations that are justifiable in terms of distinctively moral reasons", and then goes on to equate the notion of a moral expectation with that of a moral obligation. But, as Gregory Mellema points out, not everything that satisfies Wallace's definition of a moral expectation is a moral obligation.⁶⁴ Mellema cites several examples of expectations that are justifiable in terms of moral reasons, but that do not have the character of a strict requirement or obligation. An example of a non-obligating moral expectation is bringing a present to a birthday celebration for a close friend. It is reasonable to think that bringing the present is something you have moral reason to do, but far from obvious that you *must* do it. Another example of a moral expectation is expressing gratitude toward someone who has done you a favor. You ought (morally speaking) to thank your benefactor although it hardly appears to be something you are morally obligated to do. Even if she does not have standing to literally demand your gratitude, she surely has standing to expect it, and her expectation appears to be justifiable in terms of distinctively moral reasons. This distinction between a moral expectation and a moral obligation is significant because Wallace claims that moral expectations are moral obligations in virtue of their being "expectations that are justifiable in terms of distinctively moral reasons". But there do seem to be moral reasons that justify expectations that are not obligations. This distinction between a

⁶⁴ Gregory Mellema, "Moral Expectation," *The Journal of Value Inquiry*, 32 (1998), pp. 479-488.

moral expectation and a moral obligation raises a question for Wallace: could blame be appropriate when moral expectations that are not moral obligations are violated?

I'll answer this question momentarily. For now, I want to say a bit more about the distinction between a moral expectation and a moral obligation. Specifically, I want to draw attention to the kinds of things that moral expectations can regulate. Imagine a woman whose male boss always fantasizes about being naked in the shower with her while she is presenting reports at meetings. Imagine that, somehow, she has learned that he routinely does this (perhaps *via* another employee to whom the boss confessed). Surely, she has standing to expect that her boss not fantasize about being naked with her in the shower while she is presenting a report. This expectation deserves to be called "moral" insofar as it is grounded in moral reasons, reasons that flow from her inherent worth as a being who is generally owed a certain degree of consideration and respect. But notice that what this moral expectation regulates is not an intentional choice. It regulates an *attitude*: it entitles the female employee to expect that her boss not regard her in particular way, namely, as an object of his lurid fantasies.⁶⁵ He cannot violate (or satisfy) this expectation by making (or refraining from making) any particular intentional choices. Indeed, it is just this sort of expectation that Strawson in all likelihood had in mind when he claimed that we standardly expect "some degree of goodwill or regard" from others, since "goodwill" and "regard" are attitudes, not intentional choices. Even if Wallace is correct to claim that moral obligations can regulate only

⁶⁵ It does not seem reasonable to object that moral expectations cannot regulate attitudes because attitudes are not the sort of thing that can be brought about simply by a belief that they are expected. This would imply that the legitimacy of the woman's expectation depends upon whether her boss can satisfy it without much psychological difficulty. Intuitively, the legitimacy of her expectation depends upon her worth as a person who deserves his respect.

intentional choices, the same need not be true regarding the kinds of things moral expectations can regulate.

Now, to return to the question of whether blame could be appropriate when moral expectations that are not moral obligations are violated. The boss violates the woman's legitimate moral expectation that he not fantasize about her in the relevant manner. It is reasonable to think that his failure at least raises a question about whether he is blameworthy on its basis.⁶⁶ It would be odd to say that the employee has no grounds for resentment or anger simply because what offends her in this circumstance is a failure of respect rather than a failure to make some particular choice. If this is right, then it appears that blame can be appropriate when moral expectations that are not moral obligations are violated. This undermines confidence in Wallace's claim that blameworthiness depends uniquely upon whether a moral obligation has been violated. And since moral expectations can regulate things that are not intentional choices, the view that moral responsibility requires intentional choice is not immune from criticism. Wallace's rationale for volitionalism is thus questionable.

Let me sum up this assessment of Wallace's defense of volitionalism. For Wallace, an agent is morally responsible for something if and only if he deserves to be blamed for it.⁶⁷ He deserves to be blamed for it if and only if it represents a

⁶⁶ Indeed, this example helps to expose a further flaw in Wallace's view. Whether the boss *deserves* blame is not solely a matter of whether he fails to satisfy the relevant moral expectation. It is also, at least in part, a matter of how he responds to this failure. If he recognizes the objectionable nature of his attitude towards the female employee and is trying his hardest to come to regard her with more respect, then he arguably would not deserve to be blamed, at least not to the extent that he would deserve to be blamed if he understands that she would find his attitude objectionable but simply doesn't care. The boss's blameworthiness thus depends, at least in part, upon his response to the objectionable attitude itself. Cf. Angela M. Smith, "On Being and Holding Responsible," for arguments supporting this point.

⁶⁷ The argument I have presented against Wallace's rationale for volitionalism has granted that the conditions of being morally responsible for something are the conditions of deserving moral blame for that thing. This aspect of Wallace's view is not immune from criticism either. Even if my argument against Wallace's rationale fails, Wallace has shown only that it is a condition of blameworthiness for

violation of a moral obligation. It represents a violation of a moral obligation only if it involves an intentional choice that is prohibited by the obligation in question. Wallace concludes that moral responsibility requires intentional choice. I have argued that agents can deserve blame for things that do not represent violations of moral obligations. They can deserve blame for violating moral expectations, and it is not always a condition of violating a moral expectation that any intentional choice be made. It is therefore not clear that Wallace has provided a convincing rationale for the view that moral responsibility requires intentional choice.

IV. Neil Levy's Defense of Volitionalism

Neil Levy has recently established himself as one of the most vocal defenders of volitionalism among contemporary theorists of moral responsibility. Levy's positive defense of volitionalism appears in a paper where he criticizes George Sher's nonvolitionalist theory of moral responsibility (which I will examine in the next chapter of this dissertation).⁶⁸ In his paper, Levy tries to show that an agent is morally responsible for something only if intentional choice plays what Levy calls a "substantial role" in its production. Allow me to say a bit about why Levy aims to show this. Surely, there are many features of agents - e.g., their involuntary bodily movements, their dreams, or their genetic makeups - that we never count as even potential bases for morally assessing them. It also happens to be true that intentional choices play no role whatsoever in the production of these features of

something that it represent a violation of a moral obligation. The conditions of being morally responsible for that thing are almost surely weaker. Once this is noted, there appears to be an additional reason to doubt Wallace's claim that moral responsibility requires intentional choice.

⁶⁸ Neil Levy, "Restoring Control: Comments on George Sher," *Philosophia* 36 (2008), pp. 213-221.

agents. There are, however, other features of agents - e.g., attitudes, emotional responses, or feelings - that we at least sometimes count as actual bases for morally assessing them. Arguably, intentional choices at least sometimes play some role in the production of these other things. Levy hopes to show that these other features of agents are potential bases for morally assessing agents only when they are produced by intentional choices. He appeals to the notion of a "real self" as a heuristic device for distinguishing things that have been produced by an agent's intentional choices (and that are thus potential bases for morally assessing her) from things that have not. He tries to defend his commitment to volitionalism by appealing to a case that, he thinks, generates a strong intuition that agents are morally responsible for only those things that reflect their "real selves". His defense thus represents an case-based rationale for volitionalism. Unlike Wallace, Levy does not try to defend volitionalism primarily on theoretical grounds.

Here, I will quote in full the case Levy uses to defend volitionalism, so as to properly impress upon the reader its important details:

[Eileen and Eleanor] are well-intentioned and highly motivated people, with a strong sense of duty. Neither of them could justly be described as racist: indeed, each has campaigned, contributing both time and money, against what they regard as ongoing discrimination against people of non-white descent. Each, however, exhibits a weak preference for white faces over black on the [Implicit Association Test] (the result of having grown up in a society which, as they recognize, is racist). Aware of this fact, each makes an effort to combat their prejudice. By dint of reading black history, associating with black people and making an effort to judge people only on the basis of their relevant characteristics, they achieve considerable success: they reduce the extent of their preferences, as measured by the Implicit Association Test, and they prevent what small preference remains from impacting in any significant way on their behavior. But now consider what happens when their histories diverge. Suppose that, through no fault of her own, Eileen finds herself without the attentional resources to interrupt the link between stereotype and behavior. Whereas Eleanor is able to prevent her implicit attitude from corrupting her actions, because Eileen is under cognitive load - because her attention is divided, because the need to combat the stereotype is crowded out of consciousness by distractions, because she is tired or whatever the case may be - her behavior reflects her

prejudice. In that case, Eileen has behaved in a morally wrongful manner, whereas Eleanor has not. Is she to blame for her action?... Given that it is Eileen's bad luck, and only her bad luck, that she finds herself with a stain on her moral record, she is not responsible for her action. Since she is not responsible for the conditions that cause her alone to act badly, she is not responsible for the action that is the product of these conditions.⁶⁹

When considering this case, it is important to keep in mind that the question is whether Eileen's behavior reflects her "real self" and thus whether it intuitively represents a potential basis for moral assessment of her.⁷⁰ The question is not whether it would be appropriate to openly blame Eileen, nor even whether she is blameworthy on its basis. Levy claims, plausibly enough, that this example shows that Eileen's behavior is not reflective of her "real self". He thinks that the plausibility of this claim owes to the fact that, not only didn't she choose to harbor the relevant prejudice, when she behaved in a way that reflected this prejudice, her behavior did not at that time involve any intentional choices. Levy thinks this shows that she is not even potentially morally assessable for her behavior *because* it was not produced by any of her intentional choices. It is thus not reflective of her "real self". Although Levy never explicitly characterizes the notion of an agent's "real self", I will proceed by equating it roughly with the notion of an agent's character. We can therefore interpret Levy to be claiming that, if Eileen's behavior had been the product of conscious deliberation and intentional choice, then it would in fact reflect her character, and in virtue of this fact it would be a potential basis for morally assessing her.⁷¹

⁶⁹ Ibid, pp. 218-219.

⁷⁰ Levy's concern over "deep attributability" shows that he is interested in genuine conditions of moral responsibility. To say that an action is "deeply attributable" to an agent obviously doesn't imply that the agent is blameworthy or praiseworthy.

⁷¹ Ibid, p. 220. "Whereas, in the absence of consciousness, my decisions reflect only some subset of the subpersonal mechanisms that constitute me (just as Eileen's judgment reflects only a small portion of her psychology), when I deliberate consciously the resulting decision really reflects my real self.

This claim seems innocent so long as it expresses the idea that Eileen's behavior would reflect her character *if* it were the product of some intentional choice she made. But Levy needs to show that Eileen's behavior would reflect her character *only if* it were the product of such a choice. To see why it is implausible to restrict the contours of an agent's character to only those features of her that are products of intentional choices, consider Jolene, who harbors the same prejudices as Eileen and came to have them in more or less the same way (this is important, because Levy has assumed that Eileen's prejudice is not the result of any intentional choices she has made.) Both Eileen and Jolene generally try to do the right thing and are well-intentioned. Unlike Eileen, however, Jolene does not in any way struggle against her prejudice because she happens not to be very introspective, and is thus unaware that she harbors it. Although Jolene has a generally adequate understanding of what racism is in the abstract, she routinely fails to apply that understanding to her own behaviors in a way that would lead her to realize that certain things she says and does in fact reflect racist attitudes she holds. Jolene's behavior sometimes reflects these racist attitudes, although she is almost always oblivious to this fact. When others correctly identify her behavior as racist, she vehemently protests. Prone to defensiveness, she has been known to respond by disingenuously exclaiming, "I'm not racist - some of my best friends are black!" (even though she never actually associates with the few black people she does come into regular contact with).⁷² Last Thursday, while cleaning out the staff refrigerator at work, Jolene opened a styrofoam container that contained leftover

Hence, it is deeply attributable to me." I take this talk about an agent's "real self" to be a heuristic device for delimiting the contours of an agent's moral identity or character.

⁷² This sort of response is, of course, typically understood to constitute evidence *in favor* of the claim that the agent is racist.

barbeque spare ribs. Chuckling, she tossed them in the trash while absent-mindedly muttering to herself "Darnit, Zarah, you people sure do love those ribs." Zarah, Jolene's black coworker to whom the leftover spare ribs did not actually belong, happened to walk into the room just in time to hear Jolene say this, then promptly turned around and, feeling disgusted, stormed off.

Now, we are to assume all of the following: first, that Jolene is quite clueless regarding the extent to which she harbors racist attitudes; second, that she understands what racism is in the abstract and affirms that racist attitudes are morally bad; third, that her racist attitudes came about in much the same way as Eileen's; and finally, that like Eileen, Jolene's racist remark is not the product of any intentional choices she made. The remark just slipped out as part of the ongoing semi-internal dialogue she experiences while performing mundane tasks like cleaning or arranging, and at the time of the incident Jolene was completely unaware that anyone else was in earshot of her remark. Later, Jolene hears from another co-worker that Zarah was openly grumbling about Jolene's racist comment in the break room. Initially, Jolene doesn't even recall having made the comment but, despite this, she protests that there's nothing racist about a comment like that, since black people really do like ribs! Following Levy's volitionalist view, Jolene's racist remark can't even be a potential basis for morally assessing her because it is not a product of any of her intentional choices. It thus does not reflect her character.

Now I recognize that I have not argued for the claim that Jolene's racist remark *does* reflect her character. But, I think if we focus closely on what else Levy's view about the contours of an agent's "real self" or character commits him to saying, the argument for that claim will emerge rather naturally. Levy's view commits him to

saying that because, Jolene's racist remarks are not the product of any conscious intentional choices she has made, they are just as incapable of grounding moral assessment of her as, say, a sneeze, or a muscle spasm, or behavior that is caused purely by post-hypnotic suggestion would be. Levy is committed to the claim that Jolene's racist remarks are just as incapable of reflecting her character or "real self" as any of these other things. But, this implication of Levy's view should strike us as troubling. I think it is safe to assume that most people would agree that Jolene is at least slightly blameworthy on the basis of her racist remark. To the extent that we think Jolene is blameworthy on the basis of her remark - even if we think she is only slightly blameworthy on its basis - we are presumably committing ourselves to the claim that, in some way, it does reflect her character or "real self". She really is a racist; she is surely not as condemnable of a racist as some, but it is unclear why we should say that her remark cannot reflect her character or "real self" simply because it did not stem from any intentional choices she made. And even if no one thinks that Jolene is at all blameworthy (which is highly unlikely) for her remark, this still wouldn't entail that Jolene cannot be morally responsible for it. We should accept Levy's rationale for volitionalism only if he can provide a compelling reason why Jolene's racist remark cannot even be a potential basis for morally assessing her.⁷³

At most, Levy has shown that, in order for an agent to be blameworthy for

⁷³ Perhaps Levy would argue that, for all X, if A is morally responsible for X, then A is either morally praiseworthy or morally blameworthy for X. This would be a mistake, since the conditions of moral responsibility describe the kind of relationship A must have to X in order for X to be a potential basis for moral assessment of A. Presumably, this relationship is "evaluatively neutral"; that is, whatever that relationship is, it cannot be the sort of thing that is capable of being judged good or bad. To say that A is morally responsible for X, then, does not by itself say anything that could ground a specific judgment of praiseworthiness or blameworthiness. Therefore, it is not clear what reasons could be provided for the claim that if A is morally responsible for X, then A is either morally praiseworthy or blameworthy for X.

something that is not an intentional choice, it must be a product of an intentional choice, and it is doubtful that his example shows even that much.

Now that we see clearly just what Levy's view commits him to claiming about cases that involve agents like Eileen and Jolene, we can reject his claim that an agent's character or "real self" can be demarcated by distinguishing those features of her that are products of intentional choices from all the rest. On any plausible understanding of the notion of an agent's "real self", it would be quite hard to convincingly show that Jolene's racist remarks do not reflect her "real self" (that is, unless Levy assumes that it is *a priori* true that all and only those things that are products of intentional choices reflect an agent's "real self", in which case Levy's case-based defense of volitionalism would be question-begging.) Levy's appeal to Eileen's case cannot support his thesis about the relationship between an agent's "real self" and her intentional choices either. For it can be argued that the reason why Eileen's racist behavior does not reflect her "real self" or character is not that it is not a product of any of her intentional choices, but is instead that she actively struggles against her prejudices and tries as hard as possible to disassociate herself from them.⁷⁴ The same cannot be said for Jolene; although her racist behavior is assumed to be no more the product of any of intentional choices than Eileen's, it is at least arguably reflective of her "real self" because she shows no interest whatsoever in even *considering* whether others are correct to point out to her that she likely harbors racist attitudes that she ought to abandon. Far from suggesting that she is not a racist, this lack of interest is arguably characteristic of racists. It is therefore doubtful that an agent's character or "real self" can be demarcated by

⁷⁴ The notion of a "real self" is therefore not a historical notion. It doesn't depend upon factors that are extrinsic to it, such as the causal processes that led to it.

distinguishing those features of her that are products of intentional choices from all the rest.

Levy's example involving Eileen thus fails to represent a plausible case-based rationale for accepting volitionalism. He appealed to her case to try to show that, among the features of agents that are not themselves intentional choices, only those features that are products of their intentional choices can reflect their "real selves" and are thus potential bases for morally assessing them. A careful comparison of Eileen's and Jolene's cases reveals why it is not plausible to think that an agent's "real self" or character can be demarcated by distinguishing those aspects of her that are products of her intentional choices from all the rest. Jolene's racist remarks are not products of any of her intentional choices, yet there doesn't seem to be a compelling reason to say that they cannot even be potential bases for morally assessing her. Levy's case-based rationale for accepting the claim that intentional choice is required for moral responsibility is thus questionable.

V. Michael J. Zimmerman's Volitionalist Theory

In *An Essay on Moral Responsibility*, Michael J. Zimmerman defends a volitionalist theory of moral responsibility. Zimmerman neither explicitly argues for the claim that moral responsibility requires intentional choice, nor explains why he accepts it.⁷⁵ So, in what follows, I will do my best to infer, from certain elements of his theory of moral responsibility, a plausible candidate for the rationale he adopts. As I noted earlier, Zimmerman characterizes volitions as decisions that are "made in

⁷⁵ He does say that moral responsibility requires freedom of will and freedom of action, so perhaps he thinks that an agent's will is free with respect to only his volitions, and that an agent's actions are free because they stem from his volitions.

light of certain background beliefs that some event occur... [One] may, for short, speak of willing an *event e...*"⁷⁶ From this we can see that Zimmerman understands "willings" as involving background beliefs about what agents judge worthwhile to bring about. Intentional choices are thus made in light of further beliefs and attitudes regarding the significance, importance, worth, goodness, and so on, of whatever it is that is willed. This is important because, as Zimmerman puts it, a theory of moral responsibility should capture the idea that, "it's the thought that counts" when we are trying to determine whether an agent is praiseworthy or blameworthy for intentionally choosing to do something.⁷⁷ Because intentional choices are made in light of background beliefs about what things are valuable and worth doing or promoting, they reflect the kind of thoughts that count for purposes of morally assessing agents.

To see why this is so - that is, to see why these background beliefs reflect the kind of thoughts that count for this purpose - imagine two agents who each choose to donate to charity. Although both chose identically, it need not follow that both agents are equally praiseworthy for having donated. One agent might have donated to charity out of a genuine concern for the interests of those in need of assistance, while the other might have donated solely because he believes doing so would increase his tax refund at the end of the year. Intuitively, the agent who donated out of a selfish motive isn't nearly as praiseworthy as the agent whose donation was altruistically motivated. This supports the claim that the background beliefs in light of which the choice to donate to charity was made reflect the kind of thoughts that count for purposes of for determining whether, and if so to what degree, these agents are praiseworthy.

⁷⁶ Ibid, p. 19. One way to represent the notion of a volition is in terms of the conclusion of practical reasoning.

⁷⁷ Ibid, p. 36.

Zimmerman goes on to claim that only certain background beliefs have the kind of content that can reflect the thoughts that count for purposes of morally assessing agents. On his view, a choice renders an agent blameworthy if and only if he made the choice in the belief that, "by virtue of so willing, he would do [moral] wrong", and praiseworthy if and only if he made the choice in the belief that, by making that choice, he would be pursuing the right for its own sake.⁷⁸ This is to say that an agent's praiseworthiness or blameworthiness depends not on the contents of the particular choices he makes, but on the contents of the particular background beliefs in light of which he makes those choices. But the particular background beliefs in light of which choices are made that render agents praiseworthy or blameworthy must have a particular propositional content; those beliefs must be *about* the moral status of the choice itself.

Now, I think Zimmerman's claim that praiseworthiness and blameworthiness depend upon whether a choice was made in light of a belief whose propositional content incorporates such fine-grained semantic items as "moral", "right", and "wrong" is not immune from criticism. Imagine a committed moral nihilist, someone who sincerely holds the continual belief that he is neither doing right nor wrong nor going beyond duty. Zimmerman's view entails that the moral nihilist is never praiseworthy or blameworthy for anything he does, which should strike us as a very counterintuitive result.⁷⁹ Imagine another agent who is so enamored with morality that he does the right thing because he believes right action to be the only thing that has any value. He accords no value whatsoever to the interests and needs of

⁷⁸ Ibid, p. 40 and p. 51. As Zimmerman puts it, "[to] deserve praise he must will *e* for the sake of [moral] right; [moral] rightness must be the focus of a volition of his."

⁷⁹ Perhaps Zimmerman is conceiving of the moral nihilist as a kind of psychopath. Even if such agents genuinely do not have any moral beliefs, I do not think it can follow that they are never praiseworthy or blameworthy.

particular morally considerable beings. He may have a deep love and respect for morality, but most would contend that it is love and respect for *particular morally considerable beings* that intuitively renders an agent worthy of their praise and esteem. I think these examples provide good grounds for rejecting Zimmerman's view about the particular propositional contents the beliefs that ground praiseworthiness and blameworthiness must have. His more general claim that an agent's praiseworthiness or blameworthiness for an intentional choice depends crucially on the content of the background beliefs in light of which the choice was made is, however, very plausible. Another example, due to Robert Adams, can lend further support to his general claim:

It sometimes happens that two people sin approximately equally against each other although one of them offends greatly against the other in voluntary actions whereas the behavior of the second party is almost impeccable. The latter's offense is self-righteousness. He wants to be above the other person, to be in the right against the other person. The passion with which he clings to this superiority is what energizes all his wit and will-power to do his duty as he sees it - and to see his duty as he has done it. He thinks he would like the other to be a better person, but he would hate to lose his position of being in the right. He is more interested in that position than in friendship or the larger ends of morality... The offense of the self-righteous person is typically not in what he voluntarily chooses to do, but in the motivation and attitude with which he usually does what he ought to do.⁸⁰

The self-righteous person makes all the right choices, but he nevertheless does not appear praiseworthy on their basis because they reveal objectionable beliefs about what is important or worth promoting (namely, his own sense of moral superiority). He does not believe that genuinely moral considerations, such as sympathy or compassion for others, are important or worth promoting. This plausibly explains why he is apparently not as praiseworthy as someone who chooses to help others

⁸⁰ Robert Adams, "Involuntary Sins," *The Philosophical Review* 94 (1985), p. 5.

out of a belief that *they* are important, or that *their interests* are worth promoting.⁸¹ Zimmerman's general claim that the background beliefs in light of which a given choice was made determine an agent's praiseworthiness or blameworthiness for that choice is appealing, even if his claim about the particular contents these background beliefs must have is worthy of rejection.

However, we still haven't arrived at a plausible answer to the question of why Zimmerman holds that intentional choices are the only potential bases for morally assessing agents. That answer may be as follows: given his claim regarding the particular contents the background beliefs that ground moral assessments of agents must have, intentional choices are the only things that can implicate background beliefs of this sort. On Zimmerman's view, an agent is blameworthy or praiseworthy for intentionally choosing to do something if and only if he believes that, *by choosing to do that thing*, he would either be doing wrong or pursuing the right for its own sake. The propositional content of the background belief that would make the agent praiseworthy or blameworthy for the choice in question must, as I have already pointed out, include reference to the choice itself. It seems to follow that only intentional choices can render agents praiseworthy or blameworthy. Although some intentional choices need not reflect the kind of background beliefs that would render agents praiseworthy or blameworthy, they are the only things that *could* do this. This is just to say that intentional choices are the only potential bases for morally

⁸¹ Interestingly, Wallace seems to reject this view. He claims, on p. 130 of *Responsibility and the Moral Sentiments*, that "for purposes of apportioning blame, we generally do not care so much why people comply with the moral obligations to which we hold them, so long as they do comply with those obligations in fact." But in a footnote to this passage, he says "It is of course otherwise when questions of character assessment are at issue: there we do care very much what an agent's reasons for acting really were." This suggests that Wallace understands the content of our blaming attitudes to be restricted to such abstract considerations as whether a moral obligation has been satisfied or violated. This neglects the possibility that one can do the right thing for the wrong reason, and be blameworthy for doing it for that reason. For a sustained discussion of the ways that action-assessment and agent-assessment can come apart, see ch. 2 of T. M. Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame*, (Cambridge, MA: Harvard Belknap Press, 2008).

assessing agents. If this represents Zimmerman's answer to the question of why he holds the view that moral responsibility requires intentional choice, then it would indeed constitute a rationale for that view. But it would not constitute a *plausible* rationale for that view, since it would rest upon the very claim in Zimmerman's theory I have suggested is worthy of rejection.

Setting aside the cases of the moral nihilist and the agent who accords value only to right action, we can imagine other cases that show why beliefs that do not include reference to intentional choices can also constitute bases for morally assessing agents. Recall the male boss who routinely indulges in sexual fantasies about one of his female employees while she is presenting reports. He apparently doesn't believe that she is worth taking seriously in a professional context. This is an objectionable belief about *her value*, and it need not include reference to any intentional choices at all in order for the employee to be legitimately offended by it. Zimmerman concedes that it would be the boss's *thought* that counts for purposes of determining whether he is blameworthy. He is, however, mistaken about which particular thoughts count for this purpose. If his rationale for accepting volitionalism rests on the claim that only intentional choices can reflect the kind of background beliefs that render agents praiseworthy or blameworthy (because these beliefs must include reference to an intentional choice), then because there doesn't seem to be a strong reason to accept this parenthetical claim, there doesn't seem to be a strong reason to accept volitionalism on its basis.

None of the rationales for volitionalism I have reviewed in the foregoing three sections is immune from substantial criticism. This of course does not mean that a compelling rationale for volitionalism cannot be provided. From this point forward, I will assume that a compelling rationale for volitionalism can be provided.

Nevertheless, volitionalists cannot provide a compelling account of moral responsibility for unintentional omission. Or so I will now argue.

VI. The Tracing Strategy

Because volitionalists hold that the only potential bases for morally assessing agents are things that reflect intentional choices, and because unintentional omissions do not in themselves reflect intentional choices, volitionalists appear committed to the view that moral responsibility for unintentional omission must be indirect. According to this view, moral responsibility for unintentional omission (as well as anything else that is not an intentional choice) must be "traced" to moral responsibility for an intentional choice. In this section, I will show that this appeal to a "tracing strategy" cannot help the volitionalist provide a compelling account of moral responsibility for unintentional omission. But first, I want to make some preliminary remarks.

Wallace and Zimmerman both explicitly endorse a tracing strategy to explain why agents appear to be morally responsible for unintentional omissions. Wallace says, "the claim that blameworthiness requires intention can be accommodated to cases of blameworthy omissions that are not themselves intentional... The idea is that in cases of this sort, there are different choices the agent has made" that explain her blameworthiness.⁸² In other words, to explain an agent's moral blameworthiness for an unintentional omission, we will have to, as he puts it, "trace the [agent's] moral fault to an earlier episode of choice".⁸³ Zimmerman holds that

⁸² Wallace, *Responsibility and the Moral Sentiments*, p. 142.

⁸³ *Ibid.*, p. 139.

"the question of [responsibility] for an [unintentional] omission arises *only* where there is an initial volition of which the omission in question is itself a consequence."⁸⁴ Zimmerman's claim straightforwardly implies that unintentional omissions (as well as other things that are not intentional choices) are never *in themselves* potential bases for morally assessing agents. For if an unintentional omission (or anything that is not an intentional choice) could *by itself* be a potential basis for morally assessing agents, volitionalism's central claim - namely, that moral responsibility requires intentional choice - would be false. Volitionalists are therefore clearly committed to the claim that the *only* things that are, in themselves, potential bases for morally assessing agents are intentional choices. What's more, unintentional omissions and other phenomena that are not intentional choices, but that are traceable to them, can never in themselves represent actual bases for morally assessing agents. Such phenomena appear to represent actual bases for morally assessing agents only because they *indicate* intentional choices, which must be the *real* bases for morally assessing agents. This is the sense in which volitionalists hold that moral responsibility for unintentional omissions (as well as other things that are not intentional choices) must be indirect.

John M. Fischer and Neal Tognazzini claim to disavow volitionalism, yet to accept a "control theory" of moral responsibility that requires the use of a tracing strategy. They explain how the tracing strategy can explain judgments of moral responsibility in a case from Angela M. Smith that involves unintentional omission.⁸⁵ This case is useful for seeing what volitionalist explanations of moral responsibility for unintentional omission look like. The case involves Smith herself, who plain

⁸⁴ Zimmerman, *An Essay on Moral Responsibility*, p. 93.

⁸⁵ John M. Fischer and Neal Tognazzini, "The Truth About Tracing," *Nous* 43 (2009), pp. 548-549.

forgot all about a close friend's birthday. Smith emphasizes that at no suitable prior point did she even so much as think about the friend's birthday, so it would be implausible to suppose that she either chose, or intended, or allowed, or even foresaw the forgetting. Fischer and Tognazzini take Smith's case to pose a significant challenge to volitionalist theories of moral responsibility as well as the theory they defend, since it is all but certain that she is morally responsible for forgetting the friend's birthday. They say that the case "requires that [Smith's responsibility be traced] back (directly or indirectly) to a choice, and [*sic*] action, or an omission."⁸⁶ Consider their explanation of how this might be done:

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. So, for example, perhaps Smith omitted to choose to put her friend's birthday on her calendar, or perhaps Smith failed to choose to set up her "email client" to alert her to her friend's birthday, and so forth. 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). This is just to say that your moral responsibility for forgetting *traces back* to these past omissions.⁸⁷

Given that the whole point of invoking tracing in this case is to explain how Smith can be morally responsible for her unintentional omission, we have no choice but to interpret Fischer and Tognazzini as claiming that Smith's moral responsibility must be traced back to some prior choice, action, or *intentional* omission of hers. Otherwise, they would be claiming that Smith's moral responsibility for forgetting must be traced back to some prior unintentional omission, and surely they do not mean to claim this. So what they must mean is that Smith at some suitable prior

⁸⁶ Ibid, p. 549.

⁸⁷ Ibid, p. 550.

point intentionally did, or omitted to do, something that resulted in her forgetting the friend's birthday. And they claim that Smith in all likelihood intentionally chose not to make a reminder of the birthday. (We should note how puzzling this is, since Smith describes the case so as to specifically exclude this historical rendering.)

In fact, there are other difficulties in addition to this puzzling historical rendering of Smith's case. It will not suffice to assert that Smith's forgetting resulted from some prior choice, action, or intentional omission of hers. Fischer and Tognazzini emphasize that "tracing only works if the [action or omission] to which we trace is one in which... the agent can be reasonably expected to know the likely results of that action [or omission]."⁸⁸ If Smith had in fact, at some prior point chosen (or intentionally omitted to choose) to do something that caused her to forget the birthday, then this prior intentional "performance" (i.e., action or omission) would make her morally responsible for forgetting only if her forgetting was reasonably foreseeable from the standpoint of this prior intentional performance. There must, as Zimmerman puts it, be a "cognitive connection between that for which an agent is directly [responsible] and its consequences", otherwise the consequence - in Smith's case, her forgetting the friend's birthday - is not something for which the agent can be indirectly morally responsible.⁸⁹ Philosophers commonly support this epistemic requirement on the tracing strategy by appealing to cases involving intoxication. If an agent had no way of foreseeing that a choice on his behalf to drink at a party

⁸⁸ Ibid, p. 532. For a thought-provoking critique of the tracing strategy that cites this very requirement as a complicating factor, see Manuel Vargas, "The Trouble With Tracing," *Midwest Studies in Philosophy* 29 (2005), pp. 269-291.

⁸⁹ Different theorists apparently disagree about just how strong of a cognitive connection is required. Wallace (p. 138 of *Responsibility and the Moral Sentiments*) seems to understand this cognitive connection as involving the consequence's *reasonable foreseeability* from the agent's perspective at the time of prior choice, while Zimmerman opts for *explicit foresight*. See Zimmerman's "Moral Responsibility and Ignorance," *Ethics* 107 (1997), pp. 420-422, as well as his *Essay on Moral Responsibility*, pp. 82-86.

might result in him subsequently driving while intoxicated (say, because he had no way of knowing that the punch he was drinking was heavily laced with vodka), then most would deny that he could be indirectly morally responsible for driving while intoxicated.

We can now see just how volitionalist explanations of moral responsibility in cases of unintentional omission are likely to go. Volitionalists must rely upon the following "tracing principle" to explain how agents can be morally responsible for unintentional omissions:

(Tracing Principle): A is indirectly (morally) responsible for S at T_n if and only if:

1. there is some R (an intentional performance) at T_{n-1} for which A is directly (morally) responsible, and
2. R causes S, and
3. S is, minimally, reasonably foreseeable for A at T_{n-1} , and
4. if A is either blameworthy or praiseworthy in the circumstance, then his blameworthiness or praiseworthiness is wholly fixed by R.

Volitionalists are thus committed to the claim that Smith is indirectly morally responsible for forgetting the birthday if and only if it is a reasonably foreseeable causal result of some prior intentional performance of hers. If Smith is blameworthy for forgetting the birthday, then the extent to which she is blameworthy is fixed entirely by the prior intentional performance.

Now that we have a clear understanding of how the tracing principle is supposed to work, I will argue that it does not permit the volitionalist to offer a compelling theory of moral responsibility for unintentional omission. I should preface my argument by saying that I will not argue that the tracing principle can never

explain why an agent appears to be morally responsible for something that is not an intentional choice. I will argue only that the volitionalist is mistaken to think that the tracing principle can successfully explain why agents are generally morally responsible for unintentional omissions. My aim is, in other words, only to show that the volitionalist's claim that moral responsibility for unintentional omission *must* be indirect is worthy of rejection.

Now, if the volitionalist theory of moral responsibility for unintentional omission is plausible, the tracing principle should be something we see people commonly deploy when they are trying to determine whether certain agents are morally responsible for unintentional omissions. In particular, we should expect people to refuse to judge agents morally responsible for unintentional omissions when they have good reason to think that those omissions do not satisfy the tracing principle's conditions. But, of course, nothing like this ever occurs. Imagine a husband named Mikael who, like Smith, forgot an important date: the date of his anniversary. Mikael's wife Sunna is furious with him. He feels terribly guilty, and reassures her that he did not mean to forget about their special day. Of course, this is just his way of expressing to her that he *totally* forgot about the anniversary, that he didn't deliberately do anything that he could foresee would cause him to forget it, such as deciding not to make a note to remind himself of the approaching anniversary. But, of course, his reassurance doesn't do anything to soothe Sunna's hurt feelings and anger; indeed, it just makes matters worse, for it confirms her suspicion that no thought of their special day ever "appeared on Mikael's radar" so to speak, and *this* is why she is so angry. Sunna has every reason to believe there was no intentional performance on Mikael's behalf to which his forgetting can be

traced. Yet it is hardly even imaginable that this alone would incline her to refuse to judge Mikael to be morally responsible and blameworthy for his unintentional omission. Similarly, imagine a father named Jonas, who overslept and as a result missed a little league game that he promised his fourteen-year-old son he would attend. Since making the promise three days ago, Jonas has been too preoccupied with a new romantic interest to even think about his son. It is doubtful that his son's hurt feelings and anger would subside should he come to believe that his father's failure to recall his promise is not traceable to any intentional performance of his. It is thus doubtful that people are inclined to refuse to judge those agents morally responsible for those omissions should they believe that the omissions do not satisfy the tracing principle's conditions. This casts some doubt on the adequacy of the volitionalist's theory of moral responsibility for unintentional omission because it shows that, in practice, we are not generally committed to the view that moral responsibility for unintentional omission *must* be indirect.

The cases involving Smith, Mikael, and Jonas remind us that there are apparently morally responsible unintentional omissions whose causal histories include no *conscious thoughts* from the perspective of which the subsequent unintentional omissions were reasonably foreseeable. Steven Sverdlik presents a case that is not unlike those involving Smith, Mikael, and Jonas, and that is of a kind that commonly appears in philosophical accounts of blameworthy negligence. It involves an agent who is doing a roof repair job in a busy urban area and who unthinkingly casts heavy two-by-fours off the roof onto the sidewalk below without even so much as considering the danger his action poses to pedestrians who may

be passing below.⁹⁰ It is not plausible to think that his negligent action is preceded by any conscious thought from the standpoint of which the negligent action is reasonably foreseeable for him. This is what Sverdlik calls a case of "pure negligence", involving the "violation of a norm, preceded by an indefinitely long period in which it never occurs to the person to consider the relevant risks."⁹¹ Borrowing Sverdlik's terminology, Smith's, Mikael's, and Jonas's cases are all cases of "pure unintentional omission". These cases involve unintentional omissions that violate moral expectations, and that are preceded by an indefinitely long period in which no conscious thought occurred from the standpoint of which the agent could reasonably be expected to foresee the subsequent unintentional omissions. Regarding such cases as these, the volitionalist will have to conclude that the relevant agents cannot possibly be morally responsible or blameworthy for the relevant omissions.

This conclusion implies not only that it would be, strictly speaking, inappropriate for Smith's friend, Sunna, and Jonas's son to feel any resentment or anger in response to the respective "omitters" for having been forgotten or overlooked, but that any guilt on the omitters' behalf for their unintentional omissions would also be unwarranted. But this implication of the volitionalist's view is, I take it, difficult to accept. Most of us would (appropriately, I think) feel morally guilty on the basis of certain "pure" unintentional omissions. Why should the mere fact that they cannot be traced to any prior conscious thoughts from the perspective of which the subsequent omissions were reasonably foreseeable entail that feeling morally guilty on their basis would be unwarranted? It is generally thought appropriate to feel

⁹⁰ Steven Sverdlik, "Pure Negligence," *American Philosophical Quarterly* 30 (1993), p. 137.

⁹¹ *Ibid.*, 141.

moral guilt when one recognizes that one has violated a moral expectation to which others one cares deeply about hold one.

Thus far, I have been trying to illustrate the reasonableness of the claim that, when an apparently blameworthy unintentional omission is not traceable to any prior intentional performances, that omission may still represent a potential basis for morally assessing an agent. Now, I want to focus on cases involving apparently blameworthy unintentional omissions that *are* traceable to prior intentional performances. In some of these cases, the tracing principle may not be able to explain why the relevant agent appears to be blameworthy. In other of these cases where the tracing principle appears positioned to be able to explain this - cases that are supposed to represent success stories for the volitionalist - the tracing strategy explains agents' blameworthiness in a manner that seriously distorts the nature and content of the moral responses we are inclined to exhibit towards them on the basis of their apparently blameworthy unintentional omissions.

Suppose that Mikael had suddenly realized, on the day before the anniversary, that it was fast approaching and that he should make dinner reservations at Sunna's and his favorite restaurant. At the time he realized this, he was driving in heavy traffic so he decided not to risk a car accident by calling to make the dinner reservations at that moment. He resolved to make the dinner reservations when he would arrive home. But then he became engrossed in a very interesting story on the radio about corporate malfeasance. This was the last time he thought of the anniversary or the dinner reservation - that is, until Sunna angrily reminded him of it. In this version of Mikael's case, we *can* trace Mikael's forgetting to a prior intentional performance of his. So, the volitionalist might conclude, the

tracing principle explains why he is blameworthy for forgetting the anniversary. But this conclusion would be unwarranted because Mikael is obviously not blameworthy for deciding to postpone making the dinner reservation until he could safely do so at home. This decision of his cannot represent a violation of a legitimate moral expectation. The volitionalist cannot respond that he must be blameworthy for this decision since he is intuitively blameworthy for forgetting. Alternatively, the volitionalist might respond that this decision didn't actually cause him to forget, although some other decision for which he is blameworthy did. But this response would clearly be *ad hoc*. This variant on Mikael's case shows that, even when an unintentional omission for which an agent is intuitively blameworthy can be traced back to an intentional performance, the intentional performance may not be able to explain why he appears blameworthy.

Now, I'd like to revisit the tracing "story" Fischer and Tognazzini told in Smith's case of the forgotten birthday. Indeed, they regard this particular story as evidence of the tracing principle's ability to explain an agent's blameworthiness for unintentional omission in certain cases. We should ask whether there is anything philosophically objectionable about *this* particular story, since I have thus far urged skepticism regarding the tracing principle on the basis of examples that no volitionalist (at least as far as I know) has explicitly considered. Assume counterfactually that Smith had noticed the date of the friend's birthday approaching yet chose not to set a reminder. Without considering whether her own powers of recollection might fail her, she innocently thought, "Oh, I'll be fine; I don't need a reminder - I always remember!" Let's just stipulate that Smith is blameworthy for having made this choice. Even if we grant the tracing apologist all of these

assumptions, relying on the tracing principle to explain *why* Smith appears blameworthy for forgetting forces a substantial distortion of the content of the moral judgments of Smith that would intuitively be appropriate in this case. This distortion consists in a diversion of our attention away from what would naturally appear to be the object of principal moral concern, i.e., the forgetting itself, which is what Smith appears to be blameworthy *for*. The tracing principle diverts our attention away from this unintentional omission toward Smith's prior choice not to set a reminder, effectively telling us that what Smith *appears* to be blameworthy for is not what she is *actually* blameworthy for. If Smith's friend feels hurt because Smith forgot her birthday, the tracing principle implies that Smith's friend is in some sense confused or mistaken as to the *reason* why she should feel hurt. If Smith's friend had all the relevant facts, she would instead realize that the forgotten birthday at best indicates something else that gives her reason to feel hurt. If Smith herself feels guilty for forgetting the birthday, then if she were more clear headed regarding the facts of her case, she would realize that it would have been appropriate for her to begin feeling guilty when she made the choice not to set a reminder. After all, Smith's blameworthiness is wholly fixed at this moment of prior choice. This is what Wallace means when he says that the "the degree of our moral fault [or credit] is determined essentially by the quality of the choices on which we act".⁹² But, surely, all of this represents a substantial distortion of the content of the moral judgments of Smith that would be appropriate in this case.

It is worth emphasizing that the full extent to which Smith is blameworthy in this version of the "forgotten birthday" example would be fixed by the prior choice I have assumed she is blameworthy for having made. If blaming responses (i.e., guilt

⁹² *Supra* note 3.

on Smith's behalf, resentment on behalf of Smith's friend) are appropriate, they are made appropriate by *that* choice, and nothing else. Instead of apologizing for forgetting, Smith might, were she more clear-headed, apologize to her friend for choosing not to make a reminder of her special day. Her forgetting should be acknowledged, in an attempt at reconciliation, only inasmuch as doing so serves as a path to acknowledgement of this prior choice, which is what the volitionalist tells us she is really blameworthy for. I think it is clear why this is a blatant distortion of the moral judgments that would be appropriate in this version of Smith's case. The unintentional omission is clearly the thing for which Smith is blameworthy, and a proper attempt at reconciliation would involve addressing *it*, rather than any choices that might have produced it.

There is really a deeper confusion lurking in this case that is worth exposing. I take it as uncontroversial that, if an agent is blameworthy for something, that thing represents a violation of a legitimate moral expectation. It is plausible to think that the moral expectation to which Smith's friend holds her, and that has been violated in the "forgotten birthday" example, is that Smith *remember* her birthday. But recall Fischer and Tognazzini's explanation of why tracing seems to be required to explain Smith's blameworthiness for forgetting:

Part of what it is to be a good friend is to take [certain] 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). This is just to say that your moral responsibility for forgetting *traces back* to these past omissions.

To explain Smith's blameworthiness for forgetting, Fischer and Tognazzini seem to be implying that the moral expectation to which Smith's friend holds her, and that was violated in this case, is an expectation that Smith do whatever necessary to

minimize the risk of forgetting the friend's birthday. Fischer and Tognazzini even manage to imply that this additional moral expectation is more important, in the friend's eyes, than her expectation that Smith remember her birthday. This obviously gets things quite backwards: obviously, the friend doesn't think it of greater moral importance that Smith do things to reduce the risk of forgetting her birthday than that Smith remember the birthday. The only reason why the friend would expect that Smith do things to minimize this risk is because the moral expectation that Smith remember the birthday is of primary importance to her. This confusion remains hidden in Fischer and Tognazzini's explanation of Smith's moral responsibility, but once it is exposed, I think it reveals yet another difficulty facing certain "tracing" explanations of blameworthiness for unintentional omissions.

Although the tracing principle might explain an agent's moral responsibility for unintentional omission in some cases, it cannot do so in the cases I have considered here. Moreover, it wouldn't seem acceptable for a volitionalist to flatly deny that the agents in these cases are morally responsible for their unintentional omissions. I think we can safely conclude that the volitionalist account of moral responsibility for unintentional omission, according to which such responsibility must always be *indirect*, is provisionally worthy of rejection. The account should be accepted only if no other account of moral responsibility for unintentional omission can be shown to be superior.

VII. Conclusion

My aim in this chapter has been to show that the volitionalist account of moral responsibility for unintentional omission is provisionally worthy of rejection. I

argued for this claim in two main steps. First, I argued that the rationales various philosophers have offered for volitionalism - namely, the view that moral responsibility requires intentional choice - are not strongly supported. Then I argued that, even if a plausible rationale can be offered for volitionalism, the tracing principle cannot explain agents' moral responsibility in certain important cases involving unintentional omissions. The practical upshot of my arguments is that we should investigate whether there is any nonvolitionalist theory of moral responsibility that can succeed where volitionalism has failed. In the next chapter, I will examine a recently developed, nonvolitionalist comprehensive theory of moral responsibility due to George Sher, to see if it can do just this.

Chapter 4: George Sher's Character-Based Account of Moral Responsibility

I. Introduction

In the last chapter, I argued that the volitionalist account of moral responsibility for unintentional should provisionally be rejected. Only if no alternative nonvolitionalist account of moral responsibility for unintentional omission could be shown satisfactory should we accept the volitionalist's claim that moral responsibility for unintentional omission must always be indirect. In this chapter, I will critically evaluate a recently developed nonvolitionalist theory of moral responsibility. George Sher explicates this theory in two of his books: *Who Knew? Responsibility Without Awareness*, and *In Praise of Blame*. Sher aims to provide a character-based account of moral responsibility that does not imply that intentional choice is required for moral responsibility. In *Who Knew?* Sher's project is to provide an account of moral responsibility for what he calls unwitting wrongdoing. On his understanding, one way to unwittingly do wrong is by way of unintentionally omitting to do something one should have done. My aim in this chapter is to determine whether Sher's theory represents a satisfactory alternative to the volitionalist account of moral responsibility for unintentional omission.

The plan for this chapter is relatively straightforward. In the next three sections, I will motivate and explain Sher's comprehensive nonvolitionalist theory of moral responsibility. His theory is (like volitionalism) comprehensive in the sense that it specifies both a basic condition of moral responsibility (the condition that

something must satisfy in order for it to be a potential basis for morally assessing an agent) and conditions of moral praiseworthiness and blameworthiness (the conditions that something must satisfy in order for it to be an actual basis for positively or negatively morally assessing an agent). Once Sher's comprehensive theory has been motivated and adequately explained, I will spend the remainder of the chapter critically assessing it. Ultimately, I will argue that his theory is unsatisfactory for two main reasons. I will conclude by drawing upon these two lines of criticism to construct a set of constraints that a fully adequate nonvolitionalist theory of moral responsibility should be able to satisfy. These constraints will ultimately guide the construction of my own positive account of the conditions of moral responsibility for unintentional omission, which I will present and defend in the next and final chapter of this dissertation.

II. Unwitting Wrongdoing

Before spelling out the details of Sher's comprehensive theory of moral responsibility, I want to begin by reviewing a few of the cases involving unwitting wrongdoing that Sher uses to motivate the need to develop a theory of moral responsibility that represents a satisfactory alternative to volitionalism. Each case involves an agent who appears to be morally responsible and blameworthy not for any episodes of intentional wrongdoing, but for episodes of unwitting (i.e., unintentional) wrongdoing. Because these episodes of unwitting wrongdoing do not appear to be traceable to any prior blameworthy intentional performances, the volitionalist seems committed to claiming that their agents are not morally responsible, let alone blameworthy for them. Sher finds this unsatisfactory because,

he claims, these agents would definitely be judged to be blameworthy (and, by implication, morally responsible) for their respective episodes of unwitting wrongdoing. Since volitionalism is committed to the claim that such judgments are mistaken, it should be supplanted by a nonvolitionalist alternative theory of moral responsibility. Here are the cases:

Hot Dog

Alessandra, a soccer mom, has gone to pick up her children at their elementary school. As usual, Alessandra is accompanied by the family's border collie, Bathsheba, who rides in the back of the van. Although it is very hot, the pick-up has never taken long, so Alessandra leaves Sheba in the van while she goes to gather her children. This time, however, Alessandra is greeted by a tangled tale of misbehavior, ill-considered punishment, and administrative bungling which requires several hours of indignant sorting out. During that time, Sheba languishes, forgotten, in the locked car. When Alessandra and her children finally make it to the parking lot, they find Sheba unconscious from heat prostration.

Caught Off Guard

Wren is on guard duty in a combat zone. There is real danger, but the night is quiet. Lulled by the sound of the wind in the leaves, Wren has twice caught herself dozing and shaken herself awake. The third time she does not catch herself. She falls into a deep slumber leaving the compound unguarded.

Jackknife

Father Poteet, a good driver, is gathering speed to enter a busy freeway. Because the merge lane is very short, he must either pull in front of a looming eighteen-wheeler or stop abruptly. He makes the split-second decision that he has room to merge, but he is wrong. The trucker hits the brakes hard, his truck jackknifes across four lanes of traffic, and many people are seriously injured.

Bad Policy

Sylvain, a college professor, is empathetic to a fault. He identifies readily with troubled students and freely grants their requests for opportunities to earn extra credit. Because he enters so completely into each interlocutor's perspective, he often forgets that there are

other less aggressive students who would eagerly welcome the same chance. As a result, his grading policy is inconsistent and unfair.⁹³

Although there are various respects in which these four cases differ, they all involve episodes of unwitting wrongdoing for which these agents would, Sher claims, legitimately be judged morally responsible and blameworthy.⁹⁴ Even if some would question Sher's claim, we should instead grant it to him for the sake of argument, and focus on what would have to be *true* in order for these agents to be morally responsible and blameworthy for the relevant episodes of unwitting wrongdoing.

Three of these cases involve blameworthy unintentional omission. In Alessandra's case, she is blameworthy for having forgotten Sheba in the car. Wren is blameworthy for failing to keep watch over the compound as she should. Finally, it can be assumed that Sylvain is blameworthy on the basis of certain unintentional omissions, e.g., failures to revise his extra credit policy, or to abandon it, or to consider whether he ought to modify it, etc. I include consideration of Father Poteet's case not because his unwitting wrongdoing represents an example of unintentional omission, but because the case will be useful later on when I critically assess Sher's comprehensive theory.

Sher recognizes that it can be claimed that what grounds each agent's moral responsibility and blameworthiness in each of these cases is that the unwitting wrongdoing (I will use this term to incorporate both wrong unintentional omissions and, in Poteet's case, choices whose wrongness the agent was not aware of at the time of choice) is traceable to some prior intentional choice for which the agent is morally blameworthy. But he rejects the adequacy of this very general appeal to the

⁹³ George Sher, *Who Knew? Responsibility Without Awareness* (New York: Oxford University Press, 2009), pp. 24 and 26.

⁹⁴ *Ibid.*

tracing strategy for the simple reason that, in none of these cases is it plausible to suppose that the episode of unwitting wrongdoing is causally connected to any of the agent's prior choices.⁹⁵ Since Sher categorically rejects volitionalist explanations of moral responsibility for these episodes of unwitting wrongdoing, it is up to him to present a theory of moral responsibility that can accommodate his claim that these agents are blameworthy for them. In developing his theory, he turns for inspiration to the David Hume's thought on responsibility. As we'll see, Sher thinks that only certain aspects of Hume's view are reasonable. We can better understand Sher's own theory by understanding which aspects of Hume's view he wishes to incorporate into it, and which aspects he thinks ought to be left out.

III. Hume and "Character-Expressiveness"

David Hume is often interpreted as having held that an action (or an omission) must be suitably reflective of an agent's *character* in order for it to represent a legitimate basis for morally assessing her.⁹⁶ He expresses this view in the following oft-quoted passage:

Actions are by their very nature temporary and perishing; and where they proceed not from some cause in the characters and disposition of the person, who perform'd them, they infix not themselves upon him, and can neither redound to his honour, if good, nor infamy, if evil. The action itself may be blameable; it may be contrary to all the rules of morality and religion:

⁹⁵ Sher, *Who Knew? Responsibility Without Awareness*, p. 36. Given the arguments I presented in the last chapter, Sher's rejection of the appeal to tracing would be justified even if some plausible tracing story can be told in one or more of these cases, since such an appeal would be open to the criticism that tracing will involve a substantial distortion of the actual moral judgments these cases incline us to make. Therefore, even if Sher's claim that in none of these cases is the agent's unwitting wrongdoing susceptible to explanation by the tracing strategy were rejected, it still would not follow that a volitionalist appeal to the tracing strategy provides the correct explanation of why these agents are morally blameworthy and responsible, assuming that they in fact are.

⁹⁶ See Ted Kinnaman, "The Role of Character In Hume's Account of Responsibility," *The Journal of Value Inquiry* 39 (2005), p. 11. "Mere actions therefore are not proper objects of moral praise and blame because they need not reflect what we are, and thus are not ours in the relevant sense."

But the person is not responsible for it; and as it proceeded from nothing in him, that is durable or constant, and leaves nothing of that nature behind it, 'tis impossible he can, upon its account, become the object of punishment or vengeance.⁹⁷

Ted Kinnaman helpfully paraphrases Hume's view as follows:

Mere actions... are not proper objects of moral praise and blame because they need not reflect what we are, and thus [need not be] ours in the relevant sense. Nor is intention essential to moral judgment [of agents], except in so far as the intentionality of a person's action is taken as an indication of "any thing durable" in "the sensible and thinking part" of the agent.⁹⁸

For present purposes, let us understand Hume's idea to be that actions and omissions that are not caused by relatively stable and permanent aspects of a person's mind cannot represent potential bases for morally assessing her. The notion of a "stable and permanent aspect of a person's mind" can be understood as a character trait. Hume can thus be interpreted as holding that agents are morally responsible for only those actions or omissions that reflect their *character traits*.

Support for this interpretation can be gleaned from other remarks Hume offered:

Men are not blamed for such evil actions as they perform ignorantly and casually, whatever may be their consequences. Why? But because the causes of these actions are only momentary, and terminate in them alone. Men are less blamed for such evil actions, as they perform hastily and unpremeditatedly, than for such as proceed from thought and deliberation. For what reason? But because a hasty temper, though a constant cause in the mind, operates only by intervals, and infects not the whole character. Again, repentance wipes off every crime, especially if attended with an evident reformation of life and manners. How is this to be accounted for? But by asserting that actions render a person criminal, merely as they are proofs of criminal passions or principles in the mind; and when by any alteration of these principles they cease to be just proofs, they likewise cease to be criminal.⁹⁹

Here, Hume seems to count actions that are performed "ignorantly and casually" or "hastily and unpremeditatedly", as well as actions that once reflected "criminal passions or principles in the mind" the agent has since forsworn as illegitimate

⁹⁷ David Hume, *A Treatise of Human Nature*, ed. L.A. Selby-Bigge (Oxford: Oxford University Press, 1960), book 2, part 3, section 2, 411.

⁹⁸ Kinnaman, "The Role of Character," p. 11.

⁹⁹ Hume, *Treatise*, pp. 411-412.

bases for morally assessing agents. The going idea seems to be that actions and omissions that cannot be understood to reflect relatively stable *dispositions* or *tendencies* in an agent are not proper bases for morally assessing him. To the extent that a comprehensive theory of moral responsibility can be inferred from Hume's remarks that theory could plausibly be thought to comprise the following two conditions: (1) agents are morally responsible for only those actions and omissions that reflect their character traits; and (2) agents are morally praiseworthy or blameworthy for only those actions and omissions that reflect their morally good or bad character traits. The matter of whether an action or an omission stems from any of an agent's intentional choices would seem to be irrelevant for purposes of determining whether it is something for which the agent can be morally responsible and either praiseworthy or blameworthy.

Although this element of Hume's view serves Sher's aim of constructing a nonvolitionalist theory of moral responsibility is, like Hume's, character-based, Sher thinks that any character-based theory that too closely resembles Hume's would have two unacceptable implications. First, Sher understands Hume's view to imply that unless an agent's conduct reflects some stable, integrated, and enduring bad trait of character or disposition - a *vice* or a character *defect* - she cannot be blameworthy on its basis.¹⁰⁰ This means that Alessandra can be blameworthy for forgetting about Bathsheba if and only if her unintentional omission reflects some *vice* or character *defect*, say, a tendency to display callousness towards animals. But, Sher asks, must we imagine that Alessandra is characteristically insensitive to animals' needs in order for her to be blameworthy for forgetting about Bathsheba?

¹⁰⁰ Sher, *In Praise of Blame*, pp. 17-18. See also, George Sher, "Blameworthy Character and Action," *Philosophy and Phenomenological Research* 64 (2002), pp. 381-392.

Or must we assume that Wren's conduct manifests a character *defect* - say, a persistent lack of concern for others' safety - in order for her to be blameworthy for failing to guard the compound as she should have? Sher thinks Hume's view implies "that we are never warranted in blaming an honest person who uncharacteristically lies, a brave soldier who uncharacteristically flees from danger, or a kind person who uncharacteristically lashes out cruelly."¹⁰¹ This implication strikes Sher as unacceptable, since surely agents can be blameworthy for bad actions that do not manifest broad tendencies or dispositions to act badly in a wide range of circumstances.¹⁰²

The second unacceptable implication Sher sees flowing from Hume's view is related to the one just discussed. He thinks Hume's view implies that in order for an agent to be blameworthy for an action or an omission, it must also show that she is by some measure a *bad person*. But, Sher wonders, must we suppose that Alessandra or Wren are *bad people* for their respective episodes of unwitting wrongdoing to render them blameworthy? If Hume's view implies that we must suppose this, then Sher quite reasonably claims this would render the view unacceptable. An agent's blameworthiness for something does not depend crucially upon whether that thing justifies the further judgment that she is a bad person, generally speaking. In fact, Sher claims, a satisfactory theory of moral responsibility should explain why it is at least sometimes appropriate to judge agents who are, generally speaking, very good people blameworthy for acting badly. Sher uses the following case to support his claim:

¹⁰¹ Ibid., p. 23.

¹⁰² See *In Praise of Blame*, pp. 23-25. Here, Sher reviews a variety of cases that are intended to strengthen the intuition that agents can be blameworthy even for conduct that appears to be inconsistent with their stable, enduring traits of character.

Celeste... is a person of ready and generous sympathy. However, Celeste is also given to enthusiasms, the most recent of which is a misguided confidence in the transformative power of searing honesty. Thus, confronted with someone who is both unattractive and self-conscious about it, Celeste does not accede [*sic*] to her strong inclination to steer the conversation to a safer topic, but plunges resolutely into a disquisition on the need to face up to the misfortune of ugliness. Although her native kindness reasserts itself in mid-disquisition, her interlocutor has by then caught her drift, and things have gotten tense. Because Celeste reacts to tension by losing her verbal suppleness, she cannot quite find the words to avert disaster when she realizes, too late, what she is doing.¹⁰³

Celeste is, by hypothesis, a very good person, yet she is still blameworthy for her callous remarks (or so Sher claims). He thinks her case provides good grounds for rejecting the view that an agent's blameworthiness for something depends upon whether it shows her to be a bad person. Sher wonders how any view too closely related to Hume's could fail to be worthy of rejection on this count. He suggests that a defensible theory of moral responsibility will accommodate the claim that "whether and to what degree [a good agent is] blameworthy depends exclusively on how badly [she has] actually behaved".¹⁰⁴

The reason why I have discussed these two distinct, but related problematic implications Sher sees flowing from Hume's view is because they motivate him to develop his comprehensive theory of moral responsibility in a particular way. Specifically, Sher does not want his own account of the conditions of praiseworthiness and blameworthiness to imply that an agent is praiseworthy or blameworthy for something if and only if it both (1) reflects a character *virtue* or a *vice*, and (2) provides evidence for judging that she is either a good or a bad person. But Sher does want his own account to retain the Humean implication that an agent is morally responsible for something if and only if it is suitably reflective of her character. Consequently, he aims to provide an account of the notion of an agent's

¹⁰³ Ibid., p. 24.

¹⁰⁴ Ibid, p. 30.

"character" that is identifiable neither with specific character *traits* nor with the agent as a whole. In other words, he wants to provide an account of "character" that allows an action or an omission for which an agent is blameworthy to be (1) caused by his character, (2) not indicative of any particular character *trait*, and (3) not indicative of his overall badness.

I have provided these preliminary remarks because they are important for understanding why Sher chooses to construct his comprehensive theory of moral responsibility as he does. As we will see in the next section, Sher provides an account of the conditions under which an action or omission can be said to be caused by an agent's character, and an account of the conditions under which the agent is blameworthy for it. This account avoids the implications that an agent's blameworthiness for an action or omission depends upon whether it indicates either a *vice* or *character defect* of hers, or her badness as a person.

IV. Sher's "Character-Based" Theory

Explicating Sher's comprehensive theory is a bit of a tricky affair because the theory emerges from two separate books of his that have decidedly different aims. In one of these books - *In Praise of Blame* - Sher's aim is to defend a non-Humean account of the conditions of moral blameworthiness. His character-based account of the basic conditions of moral responsibility emerges from this account of blameworthiness. Then, in his book *Who Knew? Responsibility Without Awareness*, Sher applies this account of the basic conditions of moral responsibility to explain the conditions under which agents are morally responsible for *unwitting wrongdoing*. In this section, I will first explain Sher's account of the conditions of moral

blameworthiness, taking care to explain what makes it non-Humean. Then, I will explain Sher's character-based account of the basic conditions of moral responsibility, taking care to explain the account of character on which it depends. Finally, I will explain how he applies this character-based account of the basic conditions of moral responsibility to the phenomenon of unwitting wrongdoing. Once all of this is done, Sher's comprehensive account of moral responsibility for unintentional omission will be clear.

Recall that there are two problematic implications that Sher sees flowing from Hume's account of the conditions of moral blameworthiness. First, he sees Hume's account as implying that agents are blameworthy for all and only those actions and omissions that are caused by *vices* or *character defects*. Second, he sees Hume's account as implying that an action or omission renders an agent blameworthy only if it indicates the agent's badness as a person. To avoid incorporation both of these implications into his own account, Sher proposes that an agent's blameworthiness for an action or omission requires that it is "rooted in" aspects of her character that need not *themselves* be bad.¹⁰⁵ If these aspects are not themselves bad, then surely the action or omission is neither caused by a *vice* or *character defect*, nor indicative of the agent's badness as a person. Sher's proposal commits him to the claim that an agent's blameworthiness is wholly a function of the moral quality of the action or omission itself, rather than a function of the moral quality of her character.¹⁰⁶ This, Sher thinks, permits us to extend our negative assessment of the action or omission to the agent herself, without thereby implying

¹⁰⁵ The proposal is laid out in detail in Ch. 3 of *In Praise of Blame*.

¹⁰⁶ See *Ibid*, p. 46. "Like Hume, I have appealed to certain facts about the agent's character [to explain why it is reasonable to condemn an agent when he acts badly]; but unlike Hume, I do not take these to include the fact that his character is bad. By invoking only the badness of the act itself, I have tried to block the implication that we would be no less justified in condemning the agent if he had the same bad character but lacked the opportunity to manifest it by acting badly."

that the agent has a character defect, or that she is, generally speaking, a bad person. The sense in which Sher's account of the conditions of blameworthiness is non-Humean, then, consists in its denial of Hume's claim that "actions render a person criminal, merely as they are proofs of criminal passions or principles in the mind".

Sher's account raises three important questions. First, just what does it mean for an action or an omission to be "rooted in" an agent's character? The answer to this question depends, in part, upon what Sher understands an agent's character to consist in. Second, what does it mean for an unintentional omission to be "rooted in" aspects of an agent's character? The notion of an intentional action or omission being "rooted in" an agent's character seems relatively straightforward; because intentions are mental states, and because mental states typically reflect character, it is not hard to imagine what it means for intentional actions and omissions to be "rooted in" an agent's character. Unintentional omissions are different because they do not essentially involve any particular mental states, so it is unclear how they can reflect character. Finally, how can an unintentional omission that represents an episode of unwitting *wrongdoing* be rooted in aspects of an agent's character that need not *themselves* be bad? Shouldn't the *wrongness* of the unintentional omission also indicate something about the agent's character that is bad? The answers to these three questions will both clarify Sher's account of blameworthiness, as well as help to expose the account of the basic conditions of moral responsibility on which it leans.

Let's proceed in order. Recall the role that the notion of "character" is supposed to play in Sher's project. By providing a comprehensive, nonvolitionalist theory of moral responsibility, Sher seeks to explain how an agent can be morally

responsible for conduct that does not reflect any of her intentional choices. He proposes that an agent is morally responsible for such conduct when and only when it manifests or reflects her character. So what he needs to provide is an account of the concept of "character" that does not imply that an agent's character is only manifested or reflected in her intentional choices.

To provide this account, Sher introduces the notion of a "constitutive feature". A constitutive feature is, first and foremost, an element of an agent's character. An agent's character is thus to be identified with the set of her constitutive features. For Sher, the set of an agent's constitutive features is the "collection of physical and psychological states whose elements interact to sustain [her] characteristic patterns of conscious and rational activity".¹⁰⁷ The use of the word "characteristic" here does not mean that Sher's definition is circular; rather, the word is intended to carry the sense of "frequent" or "regular" or "ordinary" for the individual in question. One's characteristic patterns of conscious and rational activity comprise the particular thoughts and manners of deliberation one frequently, or regularly, or ordinarily exhibits. Elsewhere, Sher offers what he takes to be a roughly equivalent definition: constitutive features are the "elements of [agents] whose causal interactions determine the contents of the conscious thoughts and deliberative activities in whose absence he would not qualify as responsible at all."¹⁰⁸ Another presumably equivalent formulation: an agent's constitutive features are "whatever psychological and physical structures sustain his normal patterns of intellectual functioning".¹⁰⁹ One way to get at the general idea behind Sher's notion of a constitutive feature is as follows. Start by noting the way a given agent typically thinks and deliberates:

¹⁰⁷ Sher, *Who Knew?*, p. 124.

¹⁰⁸ *Ibid.*, p. 121.

¹⁰⁹ *Ibid.*, p. 122.

what he normally tends to recognize, the things he typically finds salient when deliberating, the particular manner in which he usually goes about weighing the significance of various alternatives, the emotional responses he ordinarily exhibits, and what he characteristically finds to be worth doing. Then we ask, what are the particular mental (and, Sher allows, physical) states that causally explain *why* he usually thinks and deliberates in this way? Whatever these states are, they are his "constitutive features" and they are what constitute his character.

To provide a bit more illustration of the notion of a constitutive feature, it will be helpful to consider Sher's own remarks:

It is a commonplace that each person's theoretical and practical decisions are influenced by factors such as his background beliefs, his moral commitments, his views about what is good and valuable, and what he notices and finds salient. His decisions are influenced, as well, by his degree of optimism or pessimism, his attitude toward risk, and many other facets of his emotional makeup.¹¹⁰

Here, the person's theoretical and practical decisions themselves are not his constitutive features. Rather, his constitutive features are whatever background beliefs, moral commitments, evaluative views, emotions, and attitudes causally explain *why* he ordinarily makes those theoretical and practical decisions rather than others. A constitutive feature can thus be understood, roughly speaking, as a (mental or physical) state that causally explains why the agent regularly makes certain decisions and not others, or thinks in certain ways and not others, or notices certain things and not others. For example, consider a person who frequently notices what others are wearing. The best explanation of why this person notices this is that he has certain mental states (perhaps an interest in fashion, or a belief that "the suit makes the man") that a person who almost never notices what others

¹¹⁰ Ibid, p. 122.

are wearing does not. Whatever these mental states are, they are constitutive features and are thus aspects of his character. They are, in other words, aspects of his psychology that causally explain why he characteristically notices what others are wearing. They are constitutive features because they are aspects of his psychology that *consistently* contribute causally to his particular "mental life" (i.e., the way he characteristically thinks and deliberates).

It is important to pay close attention to the requirement that a constitutive feature be a *consistent* causal contributor to an agent's characteristic mental life. Presumably, Sher includes this requirement in order to explain why we do not count certain aspects of an agent's mental life as parts of his character. If certain thoughts or ways of deliberating cannot be explained in terms of any of the psychological features that *consistently* contribute to an agent's characteristic mental life, then it might represent a fluke or random occurrence that owes primarily to some aspect of his situation rather than *him*. This idea may explain why we sometimes say that generally polite people who act badly while under extreme stress or pressure have acted "out of character". Moreover, one of the reasons why it may be unreasonable to blame generally polite people for such "out of character" actions is that the states that caused her impolite behavior might not be states that *consistently* contribute to her characteristic patterns of behavior and thought. They are likely to be states that, in effect, do not operate "regularly" in her mental life. On Sher's account, they would not be counted among her constitutive features. We have, then, Sher's answer to the first question. An action or omission is "rooted in" an agent's character when it is caused by her constitutive features. This is, on Sher's view, all that is necessary and sufficient for an agent to be morally responsible for an action or omission.

Now, what does it mean to say that an *unintentional omission* is "rooted in" an agent's character? In one respect, the answer is obvious: to say this is just to say that it is caused by her constitutive features. But the answer is more complicated than this: how can an unintentional omission, which centrally involves the *absence* of a particular intention, be caused by an agent's character? How can an agent's physical or mental states cause her *not* to have certain thoughts? Sher uses Alessandra's case to answer this question. He proposes that various of her constitutive features might have, on the occasion in question, interacted so as to have *prevented* or *hindered* her from thinking of Sheba, or from forming an intention to rescue her from the hot car. He explains:

Why, when Alessandra forgets about Sheba because she is distracted by the dispute at the school, should we suppose that the aspects of her psychology that account for her distraction - her concern for her children, for example, or her tendency to focus intensely on whatever issue is at hand - are anything but consistent contributors to the way she characteristically approaches practical and theoretical problems?¹¹¹

The particular constitutive features that prevented Alessandra from thinking of Sheba, or from forming an intention to rescue her from the hot car, are her concern for her children and her tendency to focus intensely on whatever issue is at hand. These constitutive features causally explain why Alessandra ordinarily thinks of certain things and not others, and why she typically deliberates in certain ways or not others, and so on. On the fateful day, Sher proposes, these constitutive features interacted so as to *prevent* or to *hinder* Alessandra from having certain thoughts which, had she experienced them, would have led her to remember Sheba. This, then, is how an unintentional omission can be "rooted in" an agent's character.

¹¹¹ Ibid., p. 123.

And, fortuitously, Sher's elaboration of Alessandra's case also provides an answer to the question of how a bad unintentional omission can be "rooted in" aspects of an agent's character that need not themselves be bad. Neither Alessandra's deep concern for her children nor her tendency to focus intensely on whatever issue is at hand seems to be evaluable as morally bad in itself. Hence, her bad unintentional omission need not be "rooted in" any aspects of her character that could be called *vices* or *character defects*, nor does it necessarily provide evidence that Alessandra is generally speaking a bad person, in order for her to be blameworthy on its basis.

Now is a good time to sum up. Sher's comprehensive nonvolitionalist theory of moral responsibility provides an account of the conditions of moral responsibility and of the conditions of moral praiseworthiness and blameworthiness. The theory states that an action or an omission is a potential basis for morally assessing an agent if and only if it is caused by some of her constitutive features. An agent's constitutive features are the physical and mental states that consistently causally contribute to her characteristic mental life. The theory states that an action or an omission is an actual basis for morally assessing an agent if and only if the agent is morally responsible for it, and it is either good (or right) or bad (or wrong). Alessandra is blameworthy for forgetting about Sheba if and only if the forgetting is both (1) caused by her character, and (2) assessable as bad (or wrong). Sher's theory is explicitly nonvolitionalist because intentional choices are not the only agential phenomena that are caused by constitutive features. The explication of Sher's comprehensive nonvolitionalist theory of moral responsibility is now complete.

V. Critical Evaluation of Sher's "Character-Based Causal Theory" of Moral Responsibility

An adequate comprehensive theory of moral responsibility should be able to accommodate those judgments of moral responsibility in which we have the highest degrees of confidence. In this section, I will appeal to specific cases to show why it is reasonable to think that Sher's theory cannot satisfy this aim. Specifically, I'll use these examples to show that Sher's theory does not provide a plausible specification of the basic conditions of moral responsibility. As we'll see, an agent can be morally responsible for conduct that does not appear to be caused by constitutive features. We'll also see that Sher's theory also allows certain agents who are rather obviously not morally responsible for their conduct to be responsible for it anyway.

To see why an agent can be morally responsible for conduct that is not caused by her constitutive features, imagine a middle-aged woman named Henrietta who lives alone and works as an office manager at an elementary school. She has never been much of a risk taker, and never has any thoughts about challenging authority or breaking rules. In fact, she's not even the sort of person who considers whether the rules she follows are worth following. If ever there were a contest to determine which citizens are most law abiding, Henrietta would in all likelihood win. She has never cheated or stolen anything from anyone, and she always pays whatever monetary costs she happens to incur. One day, Henrietta is waiting in line to enter a parking garage behind several other cars. As she inches closer to the gate, Henrietta suddenly has an uncharacteristic thought: it occurs to her that, if she were to trail very closely behind the car in front of her as it moves through the gate, she could enter the parking garage without having to pay! For what seems to her like

the first time ever, she wonders whether there is any good reason why she should have to pay for parking. Henrietta deliberates for a few moments about whether she ought to break the rules and, feeling excited at the prospect of breaking out of her usual rule-following routine, decides to just do it. She slips through the gate without paying and, in the throes of an adrenaline rush, wonders "My gosh, what came over me? Whatever it was, that was kind of fun!"

Based on the assumptions about Henrietta's psychology I laid out, it would be implausible to count the states that causally explain her decision to break the rules among her constitutive features, as Sher understands that term. Her desires to take a risk and to break the rules, her excitement at the prospect of doing so, her sudden questioning of her obligation to pay for parking, and the elation she feels in response to her daring and out of character act are unlikely to be mental states that consistently contribute to her characteristic "mental life". If this is right, then Sher's theory implies that that Henrietta is not morally responsible for intentionally choosing to cheat the parking garage. That is, her decision is not even a potential basis for morally assessing her. But this implication seems mistaken. Why should Henrietta's decision be counted as something that is as incapable of constituting a basis for morally assessing her as an involuntary body movement like a sneeze would be? She acted on her own, after having briefly deliberated about the risks of doing so, and her decision, however capricious, was neither coerced nor brought about by compulsion or neurosis. Her choice thus does not seem to be brought about by factors that ordinarily constitute grounds for excuse. Moreover, because she intentionally chose to act in full recognition of the fact that she would be violating a rule, even a volitionalist could accommodate the intuition that Henrietta is morally responsible for it. There simply doesn't seem to be any reason to see Henrietta as

not morally responsible for the choice she made. It is a mark against Sher's theory that it implies that Henrietta is not morally responsible for her decision to cheat the parking garage, since a judgment that she is morally responsible for it is one in which we are likely to place a high degree of confidence.

Here, it may be objected that there is a mistake in my argument. Given the assumptions I have made about Henrietta's character, her action really is so out of character for her that we have no choice but to regard it as a random occurrence, and hence as not truly reflective of *her* as an agent. She's normally a law-abiding citizen who takes her social obligations very seriously. Her decision to drive through the gate without paying, while surely intentional, is the kind of decision that she has never before made, nor that she is ever likely to make again. It is so out of character for her that it is doubtful that she can be blameworthy on its basis. Henrietta could be morally responsible for what she has done if and only if we had some reason to think that it reflected who she is as an agent, and since we have no evidence for thinking that she would ever make a decision like this again, it isn't reasonable to judge her worthy of blame on its basis. The argument I have advanced thus does not impugn Sher's account of the basic conditions of moral responsibility.

This objection fails in two ways. First, it conflates the issue of whether Henrietta is morally blameworthy for what she has done with the issue of whether she is morally responsible for it. It can be conceded that the question of whether her action renders her worthy of blame remains open. But the argument I advanced concerns an altogether different question, namely, whether Henrietta's action represents a potential basis for morally assessing her. Even on the assumption that her action does not render her worthy of blame, it could still constitute a potential basis for morally assessing her. In order for us to see her action as something that is

not even a potential basis for moral assessment of her, we'd need some reason to think that her action was wholly forced, or that it stemmed from compulsion or neurosis, or that it is fully causally explainable by factors that reflect aspects of her situation rather than aspects of *her*. Moreover, the objector needs to show why the improbability of her ever making a decision to cheat again entails that she cannot be morally responsible for *this* decision to cheat.

This last point reveals the second reason why the objection fails: it relies on a flawed conception of the role an agent's character plays in grounding moral assessment of her. The objection implies that an action can be a potential basis for morally assessing an agent only if it is the sort of thing she has either done in the past or is likely to do in the future. This is what the objector means when he claims that Henrietta's action is truly "out of character" for her; the action is *not* the sort of thing she is strongly disposed to do in general. But it is not necessary to accept this account of the role an agent's character plays in grounding moral assessment of her, for there is an alternative account that is more compelling. On this alternative account, the role an agent's character plays in grounding moral assessment of her is to distinguish those actions and omissions that stem from *the agent herself* (and that thus reflect upon *her*) from actions and omissions that stem from some aspect of her situation (and that do not reflect upon *her*). Actions and omissions that stem from an agent's character are potential bases for morally assessing her because they indicate that *she* is their source, rather than factors with which she has little or nothing to do. This alternative account incidentally helps to explain why moral responsibility is thought to require some kind of control on the agent's behalf. Sher admits that one important reason why we think control is necessary for moral responsibility is because conduct over which an agent exercises control "can be

traced back to *him* as opposed to some aspect of his situation or circumstances."¹¹²

And a very natural way of expressing the thought that an agent's conduct can be traced back to him as opposed to his situation is to say that it stems from his character, thereby implying that his conduct was in his control in the way that is relevant to moral responsibility.

Now, given the plausibility of this alternative account of the role an agent's character plays in grounding moral assessment of her, it is clear that the objection fails to show that Henrietta's decision to cheat is "out of character" for her *in the sense that is relevant to the question of whether she is morally responsible for it*. Surely, she was in control of it; it was not something that just happened to her. Moreover, although her behavior may have been "out of character" for her in the sense that she never before has, and likely will never again, decide to break rules, the decision was not "out of character" in the sense that it stemmed from some aspect of her situation or circumstances rather than from her. After all, she knew exactly what was at stake when she decided to break the rules, and although she is sure to be surprised to discover that she "had it in her" to decide to do such a thing (and that she could enjoy doing so!), it is implausible to suppose that her decision stems from factors that are largely independent of her agency. The objection thus fails because it relies on a flawed conception of the role an agent's character plays in grounding moral assessment of her. Henrietta's case therefore gives us reason to doubt the adequacy of Sher's basic condition of moral responsibility. Sher's claim

¹¹² See Sher, "Out of Control," and "Who's in Charge Here?: Reply to Neil Levy". Sher goes on to abandon his commitment to the view that moral responsibility requires control in *Who Knew?*, but only because he concedes that to say that an agent exercises control over her conduct is to say that she is consciously aware of what she is doing when she does it.

that an agent's conduct is a potential basis for morally assessing her if and only if it is caused by her constitutive features is not immune from criticism.

Now, I want to explain why Sher's theory allows certain agents who are rather obviously not morally responsible for their conduct to be responsible for it anyway. It is widely agreed that behavior that stems from genuine neurosis or compulsion cannot constitute a potential basis for morally assessing an agent.¹¹³ Volitionalists can easily explain this agreement: the reason a paranoid schizophrenic is not morally responsible for his behavior during a psychotic episode is because the compulsive nature of the behavior rules out the possibility that it stemmed from any of his intentional choices. Similarly, we think that genuine kleptomaniacs - who would be moved to steal no matter what intentional choices they happen to make - are not morally responsible for their compulsive stealing behaviors, and volitionalists can reasonably count this as further support for their account of the role that intentional choice plays in grounding moral assessments of agents.¹¹⁴ Any theory that claims to be a satisfactory alternative to volitionalism should be able to explain the widely shared intuition that in most, if not all cases, behavior that stems from neurosis or genuine compulsivity cannot represent a potential basis for morally assessing an agent.

I want to consider Sher's account in light of an example involving a person who suffers from agoraphobia. According to a definition provided by the Mayo Clinic, agoraphobia is an anxiety disorder that renders its sufferers susceptible to extreme panic in situations where public interaction is required. People who suffer from

¹¹³ There is no shortage of literature on moral responsibility that takes this thought as one starting point for constructing an adequate theory of moral responsibility. Fischer and Ravizza devote ample attention to this issue in their book *Responsibility and Control*.

¹¹⁴ For an illuminating discussion of cases like these, see ch. 5 of Nomy Arpaly's *Unprincipled Virtue*.

agoraphobia often find it impossible to venture out to places that are unfamiliar to them, and as a result tend to live lives that largely confine them to their homes.¹¹⁵

Let us assume that the fear of public interaction agoraphobics experience is more or less capable of producing in them genuine compulsions to avoid leaving their homes. For present purposes, we can understand a genuine compulsion as an irresistible effective desire; an agent who experiences an irresistible effective desire will most likely be moved to action by that desire no matter what else she desires to do. An irresistible effective desire is generally not capable of being overridden by, or subordinated to, any of other desires.

Now meet Carla, who has suffered from agoraphobia for several years.¹¹⁶ Carla's daughter, Maggie, has been engaged for two years to her partner Chelsea, and today is their joyous wedding day. For quite some time, Maggie has been talking to her mother about how much it would mean to her if she would attend the wedding. Maggie's hope is sustained by her knowledge that her mother is, on some days, able to overcome her strong desires to avoid public interaction, but her success in doing this is erratic and almost never seems to be in her control. There are days when she is able, after quite a lot of meditation, to get out of the house to go down to the crowded supermarket to shop for groceries, and other days when she is completely unable to overcome her fear of leaving the house. There have been situations in which, no matter how strongly Carla desires to get out of the house, she finds herself simply unable to do so. Carla's successful forays out of the house do not in any way correlate to how strongly she needs or desires to do

¹¹⁵ The Mayo Clinic, "Agoraphobia", <http://www.mayoclinic.com/health/agoraphobia/DS00894>. Accessed online: 6 Jul 2011.

¹¹⁶ Gary Watson discusses a similar example in "Volitional Necessities," *Agency and Answerability* (Oxford Clarendon Press: Oxford, 2004) pp. 88-124.

whatever requires her to leave her house. Given Carla's erratic and unpredictable success in overcoming the particular impulses that constitute her agoraphobia, Maggie hopes only that her wedding day happens to be one of those chance occasions on which Carla will find herself able to get out of the house, even if it means showing up at the wedding ceremony long enough only to see her walk down the aisle with her wife.

On the day of the momentous occasion, Carla simply cannot bring herself to leave her house, and she misses her daughter's wedding. Although everyone can sympathize with Maggie and understand the guilt Carla must feel, I think it is clear that Carla is not only not morally blameworthy for her failure to show up at the wedding, but that she is not even morally responsible for it. Her inaction in this circumstance does not, intuitively speaking, reflect anything about Carla *herself* that can serve as a potential basis for morally assessing her. Now, the problem this case poses is that it seems reasonable to say that Carla's inaction was caused by some of her constitutive features. After all, whatever the psychological states are that causally explain why Carla ordinarily thinks it better to stay indoors instead of venturing out into public, or typically spends hours deliberating painstakingly about whether the gains of social interaction are worth the efforts to try to overcome her strong desires to avoid it, they are very likely to be the same psychological states that causally explain why Carla failed to attend her daughter's wedding. In sum, the very same psychological states that causally explain part of Carla's characteristic "mental life" in all likelihood causally explain Carla's failure to attend her daughter's wedding. If this is right, then Sher's theory implies that Carla is morally responsible for her failure. But, intuitively speaking, Carla is not morally responsible for it because it stems from genuine compulsion.

Carla's case helps to reinforce our common conviction that, in order for behavior to represent a potential basis for morally assessing an agent, the behavior must in some significant sense be *up to the agent herself*. Carla's failure is not really *up to her*, so she cannot be morally responsible for it. Yet Sher's theory counts her as morally responsible for it anyway. The reason why Henrietta appears morally responsible for her decision is that it was intuitively "up to her" even though it was probably not caused by any of her constitutive features. This suggests that Sher has specified an account of character according to which it is *false* that an agent is morally responsible for her behavior if and only if it is caused by her character. Henrietta's behavior was not caused by her character, as Sher understands the term, yet she is morally responsible for it. Carla's failure was caused by her character, as Sher understands the term, yet she is not morally responsible for it.

Henrietta's and Carla's cases raise the question: what relation must an agent stand in to her behavior in order for it to be "up to her" in the sense that moral assessment of her on its basis would require? Sher's answer to this question is that the behavior must be caused by her constitutive features, and it is now clear that this answer is unsatisfactory. His theory states that the behavior itself must stem from aspects of the agent that causally explain why she ordinarily has certain thoughts and not others, or why she ordinarily deliberates in certain ways and not others. The problem with this is that the agent herself seems to be left entirely out of this relation.¹¹⁷ The reason why it is unacceptable that Sher's theory counts Henrietta as not morally responsible for her intentionally choosing to cheat the parking garage consists in the fact that the theory renders *Henrietta herself* irrelevant to the question of whether she is morally responsible for this choice.

¹¹⁷ Reference needed: Angie's review of Sher's *In Praise of Blame*.

Henrietta's intentional choice reflects her agency, yet Sher's theory treats this fact as irrelevant to the question of whether she is morally responsible for it. The reason why it is unacceptable that Sher's theory counts Carla as morally responsible for her failure to attend her daughter's wedding consists in the fact that the theory renders *Carla herself* irrelevant to the question of whether she is morally responsible for this failure. Carla's failure does not reflect her agency, and Sher's theory treats this fact as irrelevant to the question of whether she is morally responsible for it. Sher theory takes the "responsibility-grounding relationship" to consist in a causal relationship between an agent's behavior and various of her psychological (and physical) states, but the theory leaves *the agent herself* out of this relationship. This is, I think, why his account of the basic conditions of moral responsibility is unsatisfactory.

So far, I have argued that Sher's theory fails to specify a satisfactory account of the basic conditions of moral responsibility. His theory fails to accommodate certain judgments of moral responsibility in which we are inclined to place a high degree of confidence. Now, I will criticize the account of the conditions of moral blameworthiness Sher's theory specifies. To remind the reader, Sher does not want to defend any theory according to which it is the badness of an agent's character that ultimately grounds judgments of blameworthiness for bad conduct. This is because he thinks a satisfactory theory of moral responsibility should not tie an agent's blameworthiness for an action or omission to the question of whether it reflects a *vice* or *character defect*, or justifies a judgment that the agent himself is bad. The challenge he aims to meet is, as he puts it, "to show how [an] act's badness can be neither so direct a consequence of [an agent's] bad character as to warrant no independent condemnation nor so distinct from his character as to

warrant only condemnation that does not extend to him."¹¹⁸ The trick is to specify an account of the conditions of blameworthiness that allows negative assessment of an agent's conduct to extend to *him*.

Here, it is important to take a quick detour to explain some of Sher's thoughts on moral blameworthiness. Sher recognizes that agents are quite commonly thought blameworthy on the basis of things that are neither actions nor omissions. He argues that agents can be blameworthy for their morally bad character traits *as well as* their morally bad actions and omissions.¹¹⁹ Although "when we *do* blame someone for acting badly, we often seem to be condemning him precisely for what his act reveals about his character", he thinks that justified judgments of blameworthiness should not *require* a bad character. Otherwise, it would remain unclear how a person with a good character could ever legitimately be judged blameworthy for bad conduct. Consequently, Sher wants to distinguish questions about an agent's blameworthiness for bad actions or omissions from questions about his blameworthiness for bad traits of character. Although agents who appear blameworthy for bad actions or omissions very often do have bad character traits, it need not be true that, as Sher puts it, "our blame... [is] directed *at* his bad character".¹²⁰ This is why, for Sher, an agent can be morally blameworthy for a bad action or omission that is not caused by any constitutive features that are, morally speaking, bad in themselves. The badness of the action or omission can still justify negative moral assessment of *him*, as long as it is caused by his character.

I contend that this aspect of Sher's account of the conditions of moral blameworthiness is worthy of rejection. Unless we suppose that there is something

¹¹⁸ Sher, *In Praise of Blame*, p. 12.

¹¹⁹ George Sher, "Blame for Traits", *Nous* 35 (2001), pp. 146-161.

¹²⁰ Sher, "Blame for Traits", p. 146.

bad about *the agent* that is reflected in whatever he is presumed to be blameworthy for, then it is not clear how the negative assessment of his action or omission can be extended to *him*. In other words, if an agent's blameworthiness for a bad action or omission could imply only that it is caused by his character, then it remains mysterious in what sense the *agent himself* is worthy of negative moral assessment on its basis. Father Poteet's case is useful for illustrating the mystery. Sher claims that Father Poteet "would definitely be held responsible, would definitely be blamed, and might well be liable to punishment" for his decision to attempt to merge ahead of the eighteen-wheeler.¹²¹ Let us assume that, from the moral point of view, Father Poteet's decision is bad; he has moral reason not to make such a decision, given the serious risk of harm acting on such a decision would pose for other drivers. And it is plausible to suppose that Poteet's decision is caused by some of his constitutive features, none of which is negatively morally assessable in itself. Let me support this claim by filling in the details of Poteet's case a bit more.

Assume that Poteet's decision is caused by the interaction of at least three broad dispositions and a stable belief, all of which count among his constitutive features. One of these dispositions is his tendency to feel robustly confident in the wisdom of his split-second choices. Another is Poteet's tendency to feel nervous if his deliberations become too complicated. Sher even suggests that something like the mechanical way in which Father Poteet is disposed to process visual cues could count among his constitutive features.¹²² Another constitutive feature is Poteet's

¹²¹ Sher, "Out of Control", p. 288.

¹²² Ibid, p. 301. In this paper, Sher points out that he is not certain whether Father Poteet really is responsible and blameworthy after all, expressing reservations over whether Father Poteet's tendency to process visual cues rapidly could count as part of his character. At that time, Sher had not explicitly offered an account of character that would shed further light on this matter. In *Who Knew?*, however, Sher does provide an account of character, and I think it is fair to use the Father Poteet example to raise questions about the defensibility of this account of character. It is plausible to suppose that Father

belief that it is generally safer to drive assertively, a belief that he came to hold after hearing of many accidents that were caused by timidity and passivity on the road. If these aspects of Poteet's psychology are consistent causal contributors to Poteet's characteristic "mental life", as it is plausible to suppose they are, then each counts among his constitutive features. And it is plausible to suppose that these particular constitutive features caused Poteet's fateful decision to attempt the merge. Therefore, on Sher's theory, Father Poteet is morally responsible for his decision. And since this decision is negatively morally assessable in itself, Poteet is morally blameworthy for it. The content of the judgment that Poteet is morally blameworthy for his bad decision seems to be "The bad decision was caused by aspects of Poteet's character that are not themselves bad".

The trouble here is that the content of a judgment that Poteet is morally blameworthy for his decision should be something like "The bad decision reflects aspects of Poteet that are *themselves* bad, and that thus reflect negatively upon *him*". Sher's account of blameworthiness doesn't seem capable of explaining why Poteet's bad decision makes negative moral assessment *of him* appropriate. If none of the constitutive features that caused his decision are themselves bad, then in what sense does his decision render *him* worthy of negative moral assessment? Now, Sher does not deny that, if Poteet is morally blameworthy for his decision, then it makes negative moral assessment *of him* legitimate. This is just what it means for an agent to be blameworthy for something. But if there is nothing bad about *Poteet* that is reflected in his decision, then there doesn't seem to be anything left to

Poteet's failure to realize that he was acting wrongly is caused by certain psychological states that count as "constitutive" on Sher's understanding of what makes a psychological state "constitutive". My use of this case, then, does not seem to me to be problematic because there is a reasonable interpretation of Father Poteet's psychology according to which his behavior was caused by interaction among elements of his constitutive psychology.

negatively morally assess besides Poteet's conduct. And there is *ex hypothesi* nothing bad about Poteet that is reflected in his decision, since none of the particular constitutive features that caused his decision are negatively morally assessable, nor is it clear how the fact that they caused his decision can reflect negatively on Poteet himself. How, then, can our negative assessment of his decision justifiably be extended to him? Sher's account of the conditions of moral blameworthiness leaves it unclear how an agent's bad conduct can justify negative moral assessment of him.

Now, it may be objected that the particular aspects of Poteet's psychology I supposed caused Poteet's decision neither caused it nor plausibly count among Poteet's constitutive features. But this objection is not pertinent to my criticism of Sher's account. However one wishes to flesh out Poteet's example, Sher's account allows Poteet's blameworthiness for his decision to somehow be independent of the moral quality of whichever aspects of Poteet's character caused it. Sher makes this allowance so that his own theory does not incorporate the problematic implications he sees stemming from Hume's account, namely, that blameworthiness for an action or an omission requires either that it stem from a character *vice* or *defect*, or that it show the agent to be an overall bad person. Sher thinks that even if Poteet is assumed to be a good person, or that nothing bad about him is reflected in his decision, we should still be able to say he is morally blameworthy for it since it is morally bad. But if we do say this, then it is difficult to see in what sense Poteet is worthy of negative assessment for his bad decision.

There is another way to bring out the force of this criticism of Sher's account of the conditions of moral blameworthiness. We can ask what, on Sher's view, would have to be true for Poteet to *not* be blameworthy for his decision. There are two ways an agent can fail to be blameworthy for a decision on Sher's view. Either (1) he

is not blameworthy for his decision because it is not morally bad, or (2) he is not blameworthy for his decision because it was not caused by his character. Now, if Poteet's decision is not morally bad, then it doesn't obviously follow that he is not blameworthy for it, since it is not a necessary condition of blameworthiness for an action or an omission that it actually be bad or wrong.¹²³ Agents can be blameworthy (and praiseworthy) for actions or omissions that are morally neutral, just as they can be blameworthy for performing morally good actions for wholly evil or sinister motives. So, (1) is not always true. And if (2) is true, then Sher's account apparently cannot distinguish between agents who are not blameworthy for bad behavior but who are still morally responsible for it, and agents who are not blameworthy for bad behavior *because* they are not morally responsible for it.

It is important for a theory of moral responsibility to be able to recognize such a distinction because it tracks a further distinction between *justifications* and *excuses*. Justifications are commonly thought to undermine blameworthiness for behaving badly without also undermining moral responsibility, while excuses are commonly thought to undermine blameworthiness for behaving badly by undermining moral responsibility (which is itself a condition of blameworthiness). We should be able to distinguish, for example, between an agent who causes harm to someone he has good reason to believe would attack him,¹²⁴ and an agent who causes harm to someone while in the throes of a psychotic episode. The first agent is not blameworthy for his bad action because he has a justification for acting as he

¹²³ This, I take it, is a point about which theorists of moral responsibility are in wide agreement. For more on how moral assessment of conduct and moral assessment of agents can come apart, see T. M. Scanlon, *Moral Dimensions: Meaning, Permissibility, Blame* (Cambridge, MA: Harvard Belknap Press, 2008), especially ch. 2.

¹²⁴ I take it that this is not an instance of behaving *well*, or doing the *right* thing. The action involves causing harm to another agent, which is generally a morally bad thing to do. Any hesitancy to say that the agent acted badly probably reflects a refusal to judge him blameworthy for what he has done, and not an implicit judgment that the agent did not act badly.

did, but he is still intuitively morally responsible for it. The second agent is not blameworthy for his action *because* he is not even morally responsible for it; psychotic behavior (however bad it may be) is by definition out of an agent's control, and is thus commonly thought to undermine blameworthiness by undermining moral responsibility. Sher's account of the conditions of blameworthiness does not seem capable of respecting a distinction between excuses and justifications: an agent can fail to be blameworthy for bad behavior he is nevertheless morally responsible for. Because it is important for a satisfactory theory of moral responsibility to be able to respect such a distinction, we should conclude that claim (2) above is false. Sher's account of what would have to be true in order for an agent *not* to be blameworthy for something he has done represents a false dilemma. An agent can fail to be blameworthy for bad behavior that is caused by his character.

Where has Sher gone wrong in constructing his account of the conditions of blameworthiness? Recall that his account of these conditions is intended to explain how good people like Celeste can nevertheless be blameworthy for bad behavior. Celeste mistakenly believes she is doing something good when she callously implores her unfortunate looking interlocutor to face up to the "misfortune of ugliness". Moreover, we are invited to think that Celeste's bad action reflects neither an underlying character *defect* or *vice* nor her overall badness as a person. Cases like Celeste's motivate Sher to claim that "whether and to what degree [a good agent is] blameworthy depends exclusively on how badly [she has] actually behaved".¹²⁵ But I think Sher has glossed over two very important points in arriving at this claim.

First, although it can be agreed upon reading the description of Celeste's case that she is overall a good person, it need not follow that she is a *wholly good*

¹²⁵ Ibid, p. 30.

person. We should be able to distinguish an *overall* good person (whose bad tendencies and dispositions are not so numerous or significant as to render her an overall bad person), from a *wholly* good person (who has no bad tendencies or dispositions at all). The claim that Celeste is a good person is best interpreted to mean that she is an overall good person who nevertheless has some bad tendencies or dispositions. This interpretation is required in order for it to be true that she is blameworthy for anything at all. A *wholly* good person would by definition have no features that are worthy of negative moral assessment, and so could not be blameworthy for anything at all. Assuming, then, that Celeste is an overall good person, if she is blameworthy for her bad behavior, then it must reflect certain of her constitutive features that are negatively morally assessable. In fact, her bad behavior may reflect her obsession with honesty, as well as her failure to accord equal significance to both her interlocuter's feelings *and* her desire for self-transformation. If her bad behavior reflects these bad constitutive features, then we have a handy explanation of how it can render her worthy of negative moral assessment. The fact that she behaved badly is consistent with her being an overall good person.

Now, as Sher describes the case, Celeste's bad behavior is caused by her confidence in the transformative power of searing honesty, her "native kindness", and her tendency to lose "verbal suppleness" when she becomes tense. None of these constitutive features seems bad in itself, yet she still seems blameworthy for her callous remarks. This is why Sher thinks it important to construct an account of the conditions of blameworthiness that allows a *good* agent's blameworthiness for acting badly to depend exclusively on how badly she has behaved. But Sher ignores the possibility that, although Celeste is an overall good person, her bad behavior is

nevertheless caused by aspects of her that are themselves negatively morally assessable. His failure to consider this possibility leads him to conclude that she is blameworthy for behaving badly although her bad behavior reflects nothing about her that is bad. And this is what inspires Sher to claim that "whether and to what degree [a good agent is] blameworthy depends exclusively on how badly [she has] actually behaved".¹²⁶ This is the first point that Sher has glossed over in arriving at this claim.

The second point that Sher glosses over in arriving at this claim is that an agent's blameworthiness for an action or an omission may not actually require that it be bad. This, I think, is a fairly central aspect of our common sense thinking about moral responsibility. Agents can be blameworthy for actions that are, morally speaking, good. Imagine a doctor who (in a disaster circumstance) allows one person to die so that he can save two others. Although he could not have saved all three people, the reason why he chose to allow the one person to die is that he knew she had some diamonds in her pockets which the doctor hoped he could steal to sell on the black market. Although the doctor's action of allowing one person to die to save the other two is good, his motivation for performing this action is so evil as to render him blameworthy for it. Sher seems to think that it is especially important for a theory of moral responsibility to make an agent's blameworthiness for his behavior an exclusive function of its badness, as though blameworthiness for an action or an omission requires that it be bad. While it is very often true that agents who are blameworthy for their behavior have behaved badly, it is not *necessarily* true. This is the second point that Sher has glossed over in arriving at his claim.

¹²⁶ Ibid, p. 30.

Given the criticisms I have raised, it is reasonable to conclude that Sher's comprehensive nonvolitionalist theory of moral responsibility cannot represent a satisfactory alternative to volitionalism. Although it is a strength of his theory that it does not imply that moral responsibility requires intentional choice, his theory is flawed in two main ways. First, it does not specify a compelling account of the relationship that must hold between an agent and his behavior in order for it to be a potential basis for morally assessing him. As I noted, Sher seems to leave *the agent himself* entirely out of this relationship, and this produces unacceptable implications. Second, the theory does not specify a compelling account of the conditions of moral blameworthiness for an action or an omission. It is implausible to think that an agent can be blameworthy for an action or an omission that is not caused by any features of the agent that are negatively morally assessable. For these two reasons, it seems reasonable to continue the search for a compelling nonvolitionalist theory of moral responsibility, one that can be used to formulate a fully satisfactory account of moral responsibility for unintentional omission.

VI. Moving Forward

These two lines of criticism of Sher's comprehensive theory of moral responsibility suggest a set of constraints that any satisfactory alternative to volitionalism must be able to satisfy. First, the alternative theory must provide a plausible account of the relationship that must hold between an agent and her behavior in order for it to represent a potential basis for morally assessing her. Volitionalism is mistaken in its commitment to the claim that this relationship must always include an episode of intentional choice. Sher's theory is mistaken in its

commitment to the claim that this relationship can consist in just the agent's behavior and certain aspects of her mental life. As Henrietta's case showed, an agent's behavior can fail to be causally related to what Sher regards as the requisite aspects of her mental life, yet still represent a potential basis for morally assessing her. Carla's case showed that an agent's behavior can be causally related to the requisite aspects of her mental life, and yet fail to represent a potential basis for morally assessing her. A satisfactory nonvolitionalist theory must provide a better specification of the "responsibility-grounding relationship". And second, the theory must ensure that the content of a judgment that an agent is blameworthy for an action or omission is that it indicates aspects of *her* that are negatively morally assessable.

In closing, I must say that one virtue of Sher's theory is his novel explanation of how an unintentional omission for which an agent appears to be morally responsible is related to certain of the agent's mental states. Volitionalists implausibly hold that such an unintentional omission must be related to mental states that are *intentional choices*. Sher's strategy - namely, to explain how an unintentional omission for which an agent appears to be morally responsible is related to mental states that are not intentional choices - is headed in exactly the right direction. He has in all likelihood failed to specify a proper account of which mental states the unintentional omission must be related to in order for it to represent a potential basis for morally assessing an agent. My main aim in the next (and final) chapter of this dissertation is to develop a theory of moral responsibility for unintentional omission that correctly specifies which mental states an unintentional omission must be related to in order for an agent to be morally responsible for it.

Chapter 5: Moral Responsibility for Unintentional Omission

I. Introduction

Let me begin by reviewing the central claims I have thus far defended in this dissertation. The main conclusion of the second chapter is that omissions (whether intentional or unintentional) are potential bases for morally assessing agents because they constitute deviations from, or violations of, reason-generating normative standards. This conclusion raised the following question: what kind of relationship must hold between an agent and her unintentional omission in order for it to be a potential basis for morally assessing her? In chapter 3, I examined the volitionalist account of this "responsibility-grounding relationship". Because volitionalists hold that anything for which agents are morally responsible must reflect their intentional choices, they are committed to the claim that all and only those unintentional omissions that are causally and epistemically related to their intentional choices are potential bases for morally assessing agents. I argued, first, that volitionalists have not provided strong reasons to accept their claim that anything for which agents are morally responsible must reflect their intentional choices and, second, that there are good reasons to provisionally reject the volitionalist's account of the conditions of moral responsibility for unintentional omission. In chapter four, I considered whether Sher's nonvolitionalist theory could provide a better account of the "responsibility-grounding relationship" for unintentional omissions. Sher holds that all and only those things that are causally related to agents' *characters* (i.e., that are caused by what he calls *constitutive*

features) are potential bases for morally assessing them. I argued that Sher's general account of the "responsibility-grounding relationship" fails, principally because it cannot accommodate certain judgments of moral responsibility in which we have a very high degree of confidence. I concluded that Sher's nonvolitionalist theory of moral responsibility for unintentional omission, although an improvement over the volitionalist account, is not immune from criticism. In this final chapter, I will appeal to another family of nonvolitionalist theories of moral responsibility to construct a fully defensible account of the "responsibility-grounding relationship" for unintentional omission.

The plan for this chapter is as follows. In the next two sections, I will explicate two very closely related nonvolitionalist theories of moral responsibility. According to these theories, an agent is morally responsible for something if and only if, roughly speaking, that thing reflects some of her judgment-sensitive mental states. As we will see, there is a bit of puzzle in understanding how an unintentional omission can reflect an agent's judgment-sensitive mental states. I will propose a resolution to this puzzle. Specifically, I will propose that unintentional omissions essentially involve *failures of awareness* that can be taken to reflect an agent's judgment-sensitive mental states. After developing this proposal, I will show that the account of moral responsibility for unintentional omission it implies avoids all the problems that face volitionalist theories and Sher's character-based theory of moral responsibility. If my arguments are successful, then they will provide adequate justification for the claim that this nonvolitionalist theory represents the best available account of the conditions of moral responsibility for unintentional omission. I will conclude by defending this account against several objections that are likely to be raised.

II. Scanlon's "Judgment-Sensitivity" Account of Moral Responsibility

At the end of the last chapter, I concluded by explaining that the volitionalist theory and Sher's theory both fail because neither specifies a proper account of the kind of mental states an unintentional omission must be related *to* in order for an agent to be morally responsible for it. In the next two sections, I will review two closely related theories of moral responsibility that ultimately ground an agent's moral responsibility for something (be it an action, omission, or an attitude) in a certain kind of mental state. Because both of these theories aim to show that agents can be morally responsible for things that are neither intentional choices, nor traceable to intentional choices, they may be able to specify a superior account of the "responsibility-grounding relationship" for unintentional omission. The first of these theories is due to T. M. Scanlon.

Scanlon's account of the basic conditions of moral responsibility is premised upon a particular conception of what is essentially involved in morally assessing agents. According to a familiar rival conception, when we assess an agent morally, we are trying to elicit either positive incentives (praise) or negative sanctions (blame) for the purpose of motivating his compliance with constraints on behavior.¹²⁷ Scanlon rejects this conception of what is essentially involved in morally assessing an agent. He contends that when we assess people morally, we are non-instrumentally evaluating them on the basis of their judgments about the significance

¹²⁷ T. M. Scanlon, *What We Owe to Each Other*, (Cambridge, MA, Harvard Belknap Press: 1999), p. 268. Elsewhere, Scanlon calls this conception of moral assessment "The Influenceability Theory". See his article titled "The Significance of Choice", in *Free Will*, Gary Watson ed. (2nd edition), (Oxford, Oxford University Press: 2003).

of normative reasons of a certain sort.¹²⁸ The purpose of praising and blaming people is, therefore, not to try to motivate them to adhere to certain moral rules, but is instead to judge them in light of the degree of significance they attach (or fail to attach) to moral considerations. Blame (what Scanlon calls "moral criticism") fundamentally involves a claim that an agent has "ignored or flouted requirements flowing from another person's standing as someone to whom justification is owed".¹²⁹ "Ignoring and flouting" such requirements fundamentally involve failures to attach proper significance to moral considerations, considerations Scanlon says are "grounded not just in some value that others also recognize but in *their own* value as rational creatures".¹³⁰

If blame - i.e., negative moral assessment of a person - fundamentally entails a claim that the person has failed to attach proper significance to moral reasons, then it seems that the only kinds of things it can be appropriate to blame a person for are things that can provide information about whether he has accorded proper significance to these reasons. This does not entail that all such things constitute proper bases for blame; it entails only that such things *can* constitute proper bases for blame. This explains why it cannot be appropriate to blame an agent on the basis of bodily movements she exhibits while in the throes of a sudden epileptic seizure. Such behavior is not even capable of providing any information regarding the

¹²⁸ I will use the locution "of a certain sort" to indicate that only a restricted set of an agent's judgments about normative reasons can ground actual moral assessments of her. See notes 5 and 11 below.

¹²⁹ Scanlon, *What We Owe To Each Other*, p. 271.

¹³⁰ *Ibid.*, pp. 271-272. The idea is that actual negative moral assessment of an agent, or "blame", involves an assessment of an agent's judgments about the significance of normative reasons of a particular sort - reasons that are grounded in the value of a rational being to whom justification is owed. To contrast, I can have normative reason to care about being informed regarding contemporary political issues. But this normative reason is presumably not grounded in the value of a rational being to whom justification is owed as such. A normative reason that is grounded in the value of a rational being to whom justification is owed as such is what Scanlon calls a "moral reason", and is a consideration that flows from principles for the general regulation of behavior that no one could reasonably reject. Moral criticism - blame - involves an assessment that an agent has either ignored or flouted a moral reason.

agent's judgments about the significance of moral reasons, and so such behavior is not even a potential basis for morally assessing her.

For Scanlon, then, the basic conditions of moral responsibility, understood as what he calls a precondition of moral assessment, are the conditions something must satisfy in order for it to make *requests* or *demands* for normative justification appropriate in principle. Here, the sense of "appropriate" that is at issue here is that of "intelligibility". Not only would it be *in practice* inappropriate (because it would be insensitive and utterly bizarre) to ask a person to provide normative justification for the bodily movements he exhibits while in the throes of an epileptic seizure, it *could not even make sense to do so*.¹³¹ It could not make sense to ask "Why did you think that moving your body in that way was a good thing to do?" Bodily movements like these do not, and cannot, depend in any way upon judgments about the significance of normative reasons. Similarly, it could not make sense to ask a person to defend the particular genetic makeup he has with normative reasons. It could not make sense to ask a person "Do you really think it is defensible for you to have that particular bone structure you inherited?" Things that reflect a person's genetic makeup cannot possibly depend upon any of his judgments about the significance of normative reasons, and thus cannot even in principle make any requests or demands for normative justification appropriate. Scanlon's contention is that agents are potentially morally assessable for all and only those things that can, in principle, make such requests or demands appropriate. This contention explains why people are usually not taken to be morally responsible for aspects of themselves that essentially owe to their genetic inheritances, e.g., eye color, height, bone structure,

¹³¹ Ibid, p. 22. I can ask for an explanatory reason of why your eyes are blue. But I cannot ask for a normative reason of why your eyes are blue. Your eye color is not something that is even in principle sensitive to any of your judgments about normative reasons.

and so on.¹³² It also explains why people are usually not taken to be morally responsible for behaviors that arise due to genuine compulsion or neurosis. As Scanlon puts it, "states or occurrences that are independent of any conscious agent are clearly excluded" from the range of things that are potential bases for morally assessing agents.¹³³

So what is included in the set of potential bases for morally assessing agents? Many things besides just intentional choices are included in this set.

Scanlon elaborates:

most, perhaps even all, of the things that are included are attitudes of rational agents such as beliefs, intentions, hopes, fears, and attitudes such as admiration, respect, contempt, and indignation... The class of attitudes for which [normative reasons] can sensibly be asked for or offered can be characterized, with apparent but I think innocent circularity, as the class of "judgment-sensitive attitudes". These are attitudes that an ideally rational person would come to have whenever that person judged there to be sufficient reasons for them and that would, in an ideally rational person, "extinguish" when that person judged them not to be supported by reasons of the appropriate kind.¹³⁴

Scanlon identifies the set of things for which agents are morally responsible as the things that both *constitute* and *reflect* their "judgment-sensitive attitudes". Certain mental states are themselves "judgment-sensitive attitudes", e.g., beliefs and intentions. Other mental states - fears, hopes, aversions, sadness - *reflect* judgment sensitive attitudes insofar as they depend upon such attitudes for their existences. For Scanlon, then, agents are morally responsible for all and only those things that either constitute or reflect their judgment-sensitive attitudes. It is crucial to note that Scanlon does not think that an attitude or a mental state must have arisen causally

¹³² In the future, it may become possible to ask people to defend these things with normative reasons. I take it, however, that right now it is not possible to regard people as morally responsible for their inherited traits.

¹³³ Ibid, p. 20.

¹³⁴ Ibid.

from some explicit conscious judgment the agent has made in order for it to be judgment-sensitive. A causal relationship to conscious judgment does not "confer" judgment-sensitivity upon a given mental state. It is also important to note that there are many non-judgment-sensitive mental states (e.g., pain, some kinds of hunger) that do not arise from any conscious judgments agents make. But this is not the reason why these mental states are not judgment-sensitive. A given mental state is judgment-sensitive if and only if it is, as Scanlon puts it, "in principle 'under the control of reason'".¹³⁵ And it need not be true that a mental state must have arisen from conscious judgment in order for it to be, in principle, under the control of reason. This helps to illustrate the explicitly nonvolitionalist orientation of Scanlon's general theory of moral responsibility: in order for something to reflect a judgment-sensitive attitude and thus represent a potential basis for morally assessing an agent, it need not be causally related to his conscious judgments or intentional choices.

Due to its nonvolitionalist orientation, perhaps Scanlon's general theory can yield a satisfactory account of moral responsibility for unintentional omission. That account would take the following shape: an agent is morally responsible for an unintentional omission if and only if it reflects some of his judgment-sensitive attitudes.¹³⁶ But this application of Scanlon's general theory to the phenomenon of unintentional omission raises a question. How can an unintentional omission reflect an agent's judgment-sensitive attitudes? Scanlon does not explicitly address this question, although he does assert that an agent can be blameworthy for having "simply [failed] to take notice of considerations" that she has moral reason to take

¹³⁵ Ibid, p. 272.

¹³⁶ Obviously, unintentional omissions cannot themselves *be* judgment-sensitive attitudes, so I assume that they must reflect judgment-sensitive attitudes if they are things for which agents are morally responsible.

into account. Scanlon would in all likelihood agree that someone like Alessandra can be morally responsible for her failure to notice that the administrative debacle is of less significance than Sheba's welfare. But how exactly can this failure reflect her judgment-sensitive attitudes?

To make the issue clearer, consider why it makes sense to take intentional performances to reflect judgment-sensitive attitudes. To intend to do (or not to do) something is, according to a fairly standard view, simply to have settled a question about what one will (or will not) do.¹³⁷ As Pamela Hieronymi explains,

Intentions, like beliefs, involve a certain sort of answerability. It is now quite standard, in philosophy of action, to think of intending as settling the question of what one will do. Having settled that question... leaves one open to certain questions and criticisms. If I intend to do some grading tonight, or to clean my apartment, then I am committed to grading or to cleaning in a way that I am not if I merely wish to, hope to, or predict that I will. I can be asked why I think [grading] is the thing for me to do, and my intention to [grade] can be inconsistent, in familiar ways, with both my other attitudes and my actions.¹³⁸

An intention is thus something for which normative justification can always appropriately (i.e., intelligibly) be requested. If I intend to clean my house this evening, then it would make sense for anyone to ask me why I think cleaning my house this evening is a good thing to do. The intelligibility of this request for normative justification shows that the intention reflects my judgment-sensitive attitudes. My intention reflects my judgment-sensitive attitudes because of its nature; I cannot intend to do something without judging there to be *some* normative reason to do it. If I really do intend to clean the house, then I must (however implicitly) judge there to be normative reason for doing it. Intentions reflect judgment-sensitive

¹³⁷ See Pamela Hieronymi, "Controlling Attitudes," *Pacific Philosophical Quarterly* 87 (2006), p. 56.

¹³⁸ *Ibid.*

attitudes because they are *constituted by* such attitudes.¹³⁹ There is, in other words, a conceptual connection between intention and judgment-sensitive states. Therefore, intentional performances necessarily reflect judgment-sensitive attitudes: the relevant intentions are constituted by such attitudes.

Now, unintentional omissions necessarily preclude intention. That is, it is an essential element of an unintentional omission that it be constituted by *no intention* to do whatever was omitted. For this reason, it is not clear what it would mean for an unintentional omission to reflect a judgment-sensitive state. Let me illustrate the unclarity with an example. Imagine that Lina promised to water her neighbor's beloved gardenia by 9:00 a.m. It is now 9:50 a.m., and Lina is still asleep. She has unintentionally omitted to water the gardenia by the time she promised to do so. But how can her unintentional omission reflect any of her judgment-sensitive attitudes? It cannot be supposed that any thought or mental activity occurred in the moments prior to the unintentional omission. Lina's example illustrates why it is not clear what it would mean for an unintentional omission to reflect a judgment-sensitive state.

This example should not lead us to conclude that it is impossible for an unintentional omission to reflect an agent's judgment-sensitive attitudes. All it shows is that unintentional omissions do not reflect these attitudes in the way that intentional performances do. Unlike intentional performances, unintentional omissions are neither conceptually connected to judgment-sensitive attitudes, nor are they typically caused by any of the agent's conscious judgments about reasons. So it just isn't clear what it means to say that an unintentional omission reflects an agent's judgment-sensitive attitudes. Volitionalists might take this as an opportunity to assert that Scanlon must concede that some connection to intentional choice is

¹³⁹ Scanlon, *What We Owe to Each Other*, p. 21.

required to explain how an unintentional omission can reflect an agent's judgment-sensitive attitudes. In order for a Scanlonian account of moral responsibility for unintentional omission to represent a superior alternative to volitionalism, then, it would need to incorporate a satisfactory explanation of how an unintentional omission can reflect judgment-sensitive states without being connected to any intentional choices.

So, to sum up, Scanlon's general theory of moral responsibility appears at first glance to have the resources necessary to produce a nonvolitionalist account of moral responsibility for unintentional omission. This is because the theory excludes any requirement that a judgment-sensitive attitude be related to intentional choice in order for the attitude to represent a potential basis for morally assessing an agent. Yet it is not clear what how an unintentional omission can reflect a judgment-sensitive state. To help resolve this unclarity, I will appeal to another theory of moral responsibility that is very closely related to Scanlon's.

III. Smith's "Rational Relations" View

Angela M. Smith defends a nonvolitionalist theory of moral responsibility that she calls the "Rational Relations" view. Smith's theory represents a substantial development of some of the basic elements of Scanlon's general theory of moral responsibility. To motivate the nonvolitionalist orientation of the Rational Relations view, Smith draws our attention to the vast array of phenomena other than intentional choice that we commonly take as legitimate bases for morally assessing agents. We morally assess agents on the basis of such things as their patterns of

awareness, their spontaneous reactions, and even their emotional states.¹⁴⁰ These things are neither intentional choices nor typically traceable to them, yet we do not in virtue of this fact alone refuse to assess agents morally on their basis.

Smith shares Scanlon's view about what is involved in morally assessing an agent, namely, the view that moral assessments of agents fundamentally involve evaluations of their judgments about the significance of moral reasons.¹⁴¹ But Smith refers to the fundamental bases for moral assessments of agents in slightly different terms than Scanlon does. In one statement of her view, she calls them "evaluative judgments", which she describes as "tendencies to regard certain things as having evaluative significance... [tendencies that] comprise the things we care about or regard as important or significant."¹⁴² In a footnote to this claim, she goes on to more or less equate the notion of an evaluative judgment with that of an evaluative commitment, which she describes as a "continuing and relatively stable [disposition] to respond in particular ways to particular situations, and not merely [a] onetime [assessment]."¹⁴³ In another expression of the Rational Relations view, Smith says, "To say that an agent is morally responsible for some thing... is to say that that thing reflects her rational judgment in a way that makes it appropriate, in principle, to ask her to defend or justify it."¹⁴⁴ Although Smith does not commit to a single term for the kinds of things that are fundamental bases for morally assessing agents, she would surely stress, like Scanlon, that however they should be called, they "do not always arise from conscious choices or decisions, [and need] not be consciously

¹⁴⁰ Angela M. Smith, "Responsibility for Attitudes: Activity and Passivity in Mental Life," *Ethics* 115 (2005), pp. 240-250.

¹⁴¹ *Ibid.*, p. 267.

¹⁴² *Ibid.*, p. 252.

¹⁴³ *Ibid.*

¹⁴⁴ Smith, "Control, Responsibility, and Moral Assessment," *Philosophical Studies* 138 (2008), p. 369.

recognized by the person who holds them."¹⁴⁵ Whether moral responsibility is ultimately grounded in evaluative judgments, evaluative commitments, or rational judgments, then, it does not require intentional choice.

Space does not permit me to comment extensively on the intuitive differences between an "evaluative judgment", an "evaluative commitment", and a "rational judgment", but these differences need not concern us for present purposes. Each of these distinct notions is helpful for purposes of illustrating the kinds of mental state that count as a "judgment-sensitive". For simplicity, I will refer to these mental states as "rational judgments". For present purposes, then, I will interpret Smith and Scanlon as holding that agents are morally responsible for all and only those things that reflect their rational judgment.

Unlike Scanlon, however, Smith does say quite a bit more about what it means for something that is not an intentional performance to reflect an agent's rational judgment. Through the use of several poignant examples, Smith points out that we ordinarily take there to be some kind of connection between an agent's rational judgments and the particular things she happens to notice and that occur to her. She relates an example, due to Bernard Williams, of a man who "in the course of a discussion of how to deal with political or business rivals says, 'Of course, we could have them killed, but we should lay that aside right from the beginning.'"¹⁴⁶ Smith claims that in order for "such an appalling alternative even to 'come into thought' as a serious option, this person must either not accept, or not be fully committed to, the [rational] judgment that killing others is not an acceptable way of

¹⁴⁵ Smith, "Responsibility for Attitudes," p. 252.

¹⁴⁶ Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge, Mass, Harvard University Press: 1985), p. 185.

furthering one's own interests."¹⁴⁷ Smith's idea is that it should not even have occurred to the man in Williams' example to kill his business rivals unless he holds certain rational judgments. This suggests that the man's *thought* is reflective of his rational judgment; if he really judges that furthering his own interests is not a good reason to kill others, then the thought of killing his rivals should not have occurred to him at all.¹⁴⁸ Smith says that the "'should' in question here is the should of rationality and, therefore, marks a normative ideal which our actual attitudes may not always meet".¹⁴⁹ To illustrate this normative ideal by way of example, if I sincerely judge that there is nothing life-threatening about air travel, then I should not have certain thoughts when flying. I should not *notice* every little bump the plane happens to encounter, nor should I *wonder* whether this will be the last time I will fly in an airplane. The fact that I do experience certain thoughts while flying - thoughts that are characteristic of only a vague fear of flying - indicates that I (like most people) do not really judge there to be nothing life-threatening about air travel; indeed, I judge (however implicitly) there to be some reasons to be fearful of it. Moreover, these thoughts provide evidence that I implicitly judge in this way *even if* I happen to consciously and reflectively endorse the view that there is no reason to be fearful of flying. Our thoughts (understood as the particular things that we notice and that occur to us) then, reflect our rational judgments in the sense that they provide *evidence* that we hold certain judgments (however implicitly) and not others.

Let me say a bit more about this connection between our thoughts and our rational judgments. It is no matter of coincidence that, when we glance at menus or

¹⁴⁷ Smith, "Responsibility for Attitudes," p. 246,

¹⁴⁸ I assume, alongside Smith, that the man was not simply attempting to lighten the mood with a joke. I assume that the man really did, for a moment, think that perhaps the option of killing his rivals should be on the table.

¹⁴⁹ *Ibid.*, p. 253.

flip through magazines together, my best friend Jessie, who works in graphic design, notices minor details I do not like font style, text arrangement, color usage, and other design elements.¹⁵⁰ She cares far more than I do about all things related to design; she thinks it is important for certain colors but not others to be used in combination, and for font sizes to be used in ways that structure the presentation of information in a coherent and organized manner. The fact that I do not notice the design elements on menus or in magazines provides evidence for concluding that we hold different rational judgments. If she and I held relevantly similar rational judgments, then I *should* notice these design elements as well. To be clear: when Jessie and I glance at menus together, we both *see* the same things; the difference consists in the particular thoughts that occur to us as a result of what we see. To give another example, it is not simply a random fact about my mental life that I tend to notice (to an extent that strikes my friends as somewhat bizarre) the headings and locations of passenger jets flying over my house in Seattle on their approach and departure routes. Ever since I was young, I have loved civil aviation. My father and I used to sit in our backyard together and spend hours identifying planes on their approaches to Los Angeles International airport according to their types and livery. And this interest of mine can explain why I *hear* certain things that other people do not hear. On one occasion, I heard a jet passing overhead and did not say anything about it until it was out of earshot. Then, I asked my friend with whom I was walking if he noticed that a jet that had just passed overhead. He looked at me like I was crazy. Upon reflection, he admitted that he must have heard the engine noise, but he denied having noticed it. Although we both heard the same noise, only I experienced a particular thought as a result of this auditory perception. It is thus not a random fact

¹⁵⁰ Smith provides a similar example involving fashion on p. 245 of "Responsibility for Attitudes".

about me (or him) that I noticed the engine noise and he did not. This difference in what we noticed on this occasion was explainable in terms of the difference in what we each judge to be important or significant.

Finally, consider the implications of being a conscientious driver. They not only exhibit certain behaviors while they are on the road, but it is constitutive of their driving *conscientiously* that their patterns of awareness depend crucially upon their judgments about the importance of obeying traffic laws, watching out for sudden movements in traffic, and so on. A person who exhibits such patterns of awareness, but who does not hold these judgments, would not only be an intriguing case study for cognitive psychologists, but could not possibly be a *conscientious* driver. And a person who does not exhibit such patterns of awareness can be presumed to lack certain judgments about the worth or importance of driving safely.¹⁵¹ All of these examples lend support to the claim that, generally speaking, the things an agent notices and that occur to her provide some evidence for concluding that she holds certain rational judgments and not others. This is what it means for an agent's thoughts to reflect her rational judgments: the "reflection" relation is evidentiary. Smith's claim is that these thoughts generally reflect rational judgments. And because they reflect rational judgments, they represent potential bases for morally assessing agents.

Smith's "Rational Relations" view thus represents a substantial development of Scanlon's account of moral responsibility because it provides a fuller explanation of how things that are *not* intentional choices can reflect an agent's rational judgments. The sense in which these things can reflect an agent's rational

¹⁵¹ I say "can be presumed" to account for cases involving genuine motivational failures, although I doubt that a person who sincerely judges it to be important to drive conscientiously, yet who generally fails to exhibit the patterns of awareness that are typical of conscientious drivers, is an actual possibility.

judgments is *evidentiary*. If an agent notices something, then his noticing it reflects his rational judgments in the sense that it provides some evidence that the agent holds certain rational judgments and not others.

In the course of explicating and defending her "Rational Relations" view, Smith does not explicitly address the phenomenon of unintentional omission itself, although she does relate a personal case in which she happened to forget all about a long-time friend's birthday. Smith thinks she is clearly morally responsible for this unintentional omission. But she does not explain how her unintentional omission reflects her rational judgments. Her account is, however, perfectly poised to provide just such an explanation.

IV. Moral Responsibility for Unintentional Omission

Before I present my own account of moral responsibility for unintentional omission, let us briefly revisit some of the cases of unintentional omission that have been guiding the discussion throughout this dissertation. Harriet forgot to do something nice for Gwendolyn on her birthday; Abby fell asleep on the job and thus failed to assist a struggling swimmer; Yolanda overlooked the stop signs; Alessandra failed to recall that Bathsheba was in the hot car; Wren fell asleep on duty and failed to keep watch over the compound; Sylvain routinely fails to implement a fairer alternative extra credit policy. I've also considered Lina, who unintentionally omitted to water the neighbor's gardenia by the time she promised to do so. On Scanlon's and Smith's accounts, each agent is morally responsible for his or her unintentional omission if and only if it reflects his or her rational judgments.

Now I will explain how an unintentional omission can reflect an agent's rational judgments.

To provide this explanation, I will need to make what I think are some plausible assumptions about these cases. In each case, the relevant agent has failed to notice something that it was reasonable to expect him or her to have noticed.¹⁵² Harriet did not notice that Gwendolyn's birthday was approaching; neither Abby nor Wren noticed that they were at risk of falling asleep on the job; Yolanda did not notice the stop signs (not because they were hidden by trees, but because she was so absorbed in the phone conversation); Alessandra did not notice just how long she was spending sorting out the administrative nightmare; Sylvain does not notice the unfairness in his extra credit policy; and prior to going to bed, Lina did not think of her commitment to water the neighbor's begonias. These are just my assumptions about the details of these cases. I am not claiming that any plausible rendering of the details of these cases must incorporate my assumptions. Rather, I am claiming only that these cases can plausibly be imagined to involve the relevant failures of awareness.

In the last section, I explained how a given instance of noticing (or failing to notice) something can be taken to reflect an agent's mental states. If an unintentional omission involves a failure to notice something, then that failure may reflect some of the agent's rational judgments. If the failure does reflect some of the

¹⁵² It is not an essential part of the account I will propose that the failure of awareness that is characteristic of unintentional omission constitute a failure to notice something that it was reasonable to expect the agent to have noticed. Generally, when an agent unintentionally omits to do something, it will intuitively be reasonable to expect her to have noticed something that is causally related to her omission. So, for example, when Yolanda fails to stop at the stop signs, this is presumably because she did not notice them, and it is intuitively reasonable to expect her to have noticed them. However, I doubt that it is true that all and only those things that it is reasonable to expect a person to notice are failures of attention that reflect rational judgments. It is therefore not an essential part of the account I will propose that the relevant failures of awareness represent deviations from standards of reasonable expectation.

agent's rational judgments, then she is morally responsible for it. As my example cases show, unintentional omissions characteristically involve such failures. Therefore, unintentional omissions characteristically reflect rational judgments. And since unintentional omissions characteristically reflect rational judgments, agents are generally morally responsible for them. This, then, is my proposal: an agent is morally responsible for an unintentional omission if and only if the unintentional omission reflects his rational judgments (by way of a failure to notice something).

It is important to note just what is being claimed. Intentional omissions, I take it, *necessarily* reflect rational judgments. Intentions are mental states that necessarily reflect rational judgments because intentions are conceptually related to rational judgments. There cannot be an intention whose existence does not depend upon an agent's rational judgments. By contrast, my claim is not that all failures of awareness must depend for their existences upon an agent's rational judgments. My claim is that failures of awareness are the kinds of things that *can* depend for their existences upon an agent's rational judgments, and in virtue of their doing so, can provide evidence that an agent holds certain rational judgments and not others. There can be (and surely are) failures of awareness that do not depend for their existences upon (and thus do not reflect) an agent's rational judgments. If a person was slipped mind-altering drugs without his knowledge or consent, then he will in all likelihood fail to notice certain things while in his altered state. But these failures of awareness should not necessarily be understood to depend for their existences upon his rational judgments. Rather, the mind-altering substance should be understood to disrupt the standard connection between his patterns of awareness and his rational judgments. So, my claim is not that every failure of awareness reflects rational judgments. My claim is only that failures of awareness *can* reflect

rational judgments. When they do, agents are potentially morally assessable for them. Unintentional omissions characteristically involve failures of awareness. When these failures of awareness reflect rational judgments, then the unintentional omissions are potential basis for morally assessing agents.

Let me apply this proposal to Lina's case, which I take to pose special challenges for explaining how an unintentional omission can reflect an agent's rational judgments. The reason why this case poses a special challenge is because the unintentional omission itself is preceded by a sustained period of *unconsciousness* on Lina's behalf during which it cannot properly be said that she exhibits any failures of awareness. It is therefore necessary to locate the relevant failure of awareness in the time period before Lina fell asleep. Now, it is reasonable to suppose that the reason Lina unintentionally omitted water the begonias is that, at some point prior to the omission itself, she failed to have any thought of the commitment she made. She did not, at any suitable prior point, recall her promise, and so did not (for example) set her alarm so as to ensure that she would wake up in time to fulfill it. Once again, I feel it important to emphasize that I am not claiming that this failure of awareness necessarily reflects her rational judgments.¹⁵³ I am claiming only that her failure of awareness *can* reflect her rational judgments. It can provide some evidence that she doesn't judge watering the begonias to be that important. If she sincerely judges it to be important to fulfill her promise, then she *should* have thought about her promise at some suitable point. The fact that she did

¹⁵³ Imagine that Lina has just returned from the hospital where she was visiting her best friend who was just involved in a very serious car accident and now lingers unconscious in critical condition. Emotionally exhausted, she collapses into bed without thinking about setting her alarm clock so that she wake up in time to water the begonia. Here, we would be highly unlikely to suppose that her failure of attention reflects this lack of commitment.

not have this thought provides *prima facie* evidence that she does not sincerely judge it to be important to fulfill her promise. As long as there are no further conditions present that would defeat this evidence (such as her suffering from extreme stress) then her unintentional omission reflects her rational judgments.

My account, then goes as follows:

An agent is morally responsible for unintentionally omitting to do something if and only if the unintentional omission involves a failure of awareness that reflects (i.e., provides evidence regarding the content of) some of the agent's rational judgments.

This account takes the "responsibility-grounding relationship" for unintentional omission to consist in a connection between the failure of awareness that the unintentional omission involves and the agent's rational judgments. Two points of clarification are immediately in order. First, whether this connection holds does not depend upon whether anyone else is in a position to *know* that it holds. The account merely states what kind of connection must hold between an unintentional omission and an agent in order for the omission to constitute a potential basis for morally assessing her. It is not a precondition of an agent's being morally responsible for an unintentional omission that anyone *know* (or be able to know) that she is morally responsible for it. Second, the account takes the failure of awareness that is typically involved in unintentional omission, and *not* the inaction itself, to be the locus of the agent's moral responsibility. All unintentional omissions involve inaction; Alessandra *did not do anything to prevent Bathsheba from suffering heat exhaustion*; Yolanda *unintentionally omitted to stop at the stop signs*; Wren *did not guard the compound*; Lina *did not water the neighbor's begonia*, and so on. But these inactions are not the locii of the agents' moral responsibility. Rather, the locii of the agents' moral

responsibility are the rational judgments reflected in failures of awareness that are involved in these unintentional omissions.

This account of the conditions of moral responsibility in cases of unintentional omission draws upon the resources in Scanlon's and Smith's nonvolitionalist theories. In particular, it draws upon Smith's claim that agents are at least sometimes potentially morally assessable for what they do and do not notice. Typically, if an agent unintentionally omits to do something, then the agent will not have experienced any thought of doing it at any suitable prior point. This "not having experienced any thought of doing that thing" constitutes the failure of awareness that, in turn, makes the agent morally responsible for the unintentional omission it involves. If, for example, Abby is morally responsible for unintentionally omitting to assist the struggling swimmer, then her omission involves some failure of awareness that reflects her rational judgments. The same can be said for all the cases of unintentional omission that have thus far guided the discussion in this dissertation.

V. Avoiding the Objections to Volitionalism and Sher's Character-Based Theory

I want to show that the account of moral responsibility for unintentional omission I have presented represents a superior alternative to the rival accounts by volitionalists and George Sher I have considered. To show this, I will demonstrate that the account I have presented avoids all of the criticisms I raised against those rival accounts. Let me start with the main criticisms I raised against the volitionalist account of moral responsibility for unintentional omission, which states that such

responsibility must always be *indirect*.¹⁵⁴ First, I criticized the account for implying that the mere untraceability of an unintentional omission to a prior intentional choice entails that the agent cannot be morally responsible for it. This implication does not accord with our actual practices of moral judgment; as a matter of fact, we do not categorically refuse to judge agents morally responsible for unintentional omissions we believe cannot be traced back to intentional choices. My own account can explain why this is so: we may suspect that the "untraceable" unintentional omission involves a failure of awareness that reflects an agent's rational judgments. Even if it is supposed that Yolanda's failure to stop at the stop signs is "untraceable", her failure to notice them may nevertheless reflect her implicit judgment that the phone conversation is, at the time, more important than driving carefully. It is in principle appropriate to ask her to defend this judgment with normative reasons. We will not refuse to judge her morally responsible for her unintentional omission simply because it is not causally and epistemically related to any of her intentional choices. We would, however, refuse to judge her morally responsible for her unintentional omission if she overlooked the stop signs only because they were obscured from her view by some tall trees. This is because it would be in principle inappropriate, in such a case, to ask her to defend her failure of awareness with normative reasons. We would have no choice but to conclude that her failure of awareness cannot reflect her rational judgments, whereas this conclusion would not be forced by the mere knowledge that it is not traceable to any of her prior intentional choices. My account explains why agents can be morally responsible for unintentional omissions that are not traceable to prior intentional performances.

¹⁵⁴ In the second chapter of this dissertation, I stated five criticisms of volitionalist explanations of moral responsibility in cases of unintentional omission. Here, for convenience and brevity, I will lump these five criticisms into just three.

Second, I criticized the volitionalist account of moral responsibility for unintentional omission due to its inability to explain how an agent can be blameworthy for a unintentional omission that is traceable to a prior intentional performance that is morally neutral or even praiseworthy. I used the case of Mikael, who chose not to make dinner reservations for his and his wife's anniversary date because, at the time he thought of doing so, he was driving in heavy traffic and did not want to put other drivers at risk. This is, intuitively, a decision that reflects certain of Mikael's morally admirable qualities. The thought of the anniversary did not occur to Mikael again until after it was too late. Although his forgetting the anniversary is traceable to a prior intentional choice, the volitionalist cannot allow that Mikael might still be blameworthy for forgetting, since he cannot reasonably be thought blameworthy for the prior choice. My own account can explain why Mikael might still be blameworthy for forgetting. If, for example, his forgetting directly reflects problematic rational judgments, then he can be blameworthy for it.

Finally, I criticized the volitionalist account of moral responsibility for unintentional omission due to its inability to properly explain the philosophical basis for blameworthiness for unintentional omissions that *are* traceable to prior blameworthy choices. I used a modified version of Smith's case of the forgotten birthday to illustrate why the volitionalist's explanation of this basis is improper. In this modified version of the case, I assumed that Smith forgot the birthday *because* she intentionally omitted to set a reminder of the important date, and I stipulated that she is blameworthy for this intentional performance. The volitionalist is committed to the problematic claim that, although Smith would appear to her friend to be blameworthy for forgetting the birthday, she is actually blameworthy *only* for the intentional performance. This claim is problematic for two reasons. First, it

counterintuitively implies that Smith's intentional performance, and not the unintentional omission, is the object of principal moral concern. Second, it counterintuitively implies that the moral expectation that is of primary significance to the friend is that Smith take steps to minimize the likelihood of forgetting her birthday, and that the significance of the friend's expectation that Smith *remember* the birthday is derivative of the significance of this other moral expectation.¹⁵⁵ But this must be incorrect: the only reason why the friend would expect Smith to take steps to minimize the likelihood of forgetting her birthday is that she expects, in the first instance, Smith to *remember* the birthday. My own account can avoid these counterintuitive implications. First, it is really Smith's failure of awareness - the failure to even think about the birthday - that is the principal object of moral concern, and the reason why it is of primary moral concern to the friend is its potential to reflect problematic rational judgments Smith holds. Intuitively, the friend is most likely to be concerned that Smith's forgetting indicates that she is not very important to Smith, and not that Smith incorrectly judges her memory to be reliable. Second, because my account allows the forgetting to represent a standalone basis for morally assessing Smith, it does not require us to suppose that the moral expectation she violated, and that would ground her blameworthiness, regulates an intentional choice to set a reminder of the birthday. The moral expectation she violated, and that grounds her blameworthiness, regulates what Smith *thinks about*.

¹⁵⁵ As I explained in the second chapter, the first claim reveals confusion about the priority of moral expectations: it is less certain that Smith's friend is principally concerned that she do something that will help her to remember the birthday than it is that the friend is concerned that Smith actually remember the birthday. It matters most to the friend, in other words, that Smith *experience certain thoughts*, not take certain preventative measures. The second claim implies that Smith would be just as blameworthy for choosing not to set a reminder and then remembering the birthday, as she would be for choosing not to set a reminder and then forgetting. Intuitively, this is the wrong result: barring extraordinary circumstances that show that Smith's remembering or forgetting is in no way reflective of any of her mental states, Smith is presumably more blameworthy in the second circumstance than she would be in the first (and it is unclear why she would be thought blameworthy in the first circumstance at all).

It is worth pointing out the reason why volitionalism fails to specify a fully satisfactory account of moral responsibility both generally speaking, and for unintentional omission in particular. Volitionalists are correct that agents are generally morally responsible for their intentional choices and for things that reflect these; intentional choices necessarily reflect rational judgments. Volitionalists are incorrect, however, that intentional choices are the only things that can reflect rational judgments. Because moral assessment of an agent fundamentally involves evaluating her on the basis of her judgments about the significance of certain normative reasons, and because intentional choices are not the only things that can reflect this kind of rational judgment, it follows that a potential basis for morally assessing an agent need not be an intentional choice or something that reflects an intentional choice.

Now I will explain how my own account can avoid the criticisms I raised against Sher's character-based theory. First, I used Henrietta's case to show that Sher's theory would counterintuitively count some agents as *not* morally responsible for certain intentional choices they make. My own account can explain why Henrietta would correctly be counted morally responsible for her decision to enter the parking structure without paying. Although her decision is unlikely to be caused by any aspects of her that are consistent contributors to her characteristic "mental life", she is morally responsible for it because intentional decisions necessarily reflect rational judgments. She must have made this decision for some normative reason or other. Even if the decision is "out of character" for her in the sense that it is not the sort of thing she ordinarily does or would do again, the decision is not "out of character" for her in the sense that is relevant to the question of whether she is morally responsible for it. Her decision does not stem from aspects of her situation; it stems

from her because it reflects her rational judgments, and thus is not "out of character" for her in the sense that is relevant to questions of moral responsibility. Second, I used Carla's case to show that Sher's theory would counterintuitively count some agents as morally responsible for behavior that results from compulsion or neurosis. Whichever aspects of Carla's psychology caused her to stay inside on the day of her daughter's wedding, they can plausibly be thought to be consistent contributors to her characteristic "mental life". Sher's view counts her as morally responsible for her failure to attend her daughter's wedding, even though her failure stems from genuine compulsion. But the reason why Carla should not be counted as morally responsible for it is that she would have failed to attend her daughters wedding no matter which rational judgments she holds. Her failure is therefore not the sort of thing for which normative reasons can be offered or requested, and she is therefore not morally responsible for it.

Sher's theory fails to specify a satisfactory account of the basic conditions of moral responsibility because it provides an incorrect account of the kind of mental state something must reflect in order for it to be a potential basis for morally assessing an agent. It can be appropriate to request normative justification for something that is not caused by a mental state that is a *consistent contributor* to an agent's characteristic mental life. The mere fact that mental state frequently or regularly brings about in an agent certain patterns of thought and deliberation does not show that it is *sensitive to the agent's judgments about reasons*. Since my account states that the "responsibility-grounding relationship" must obtain between something (an action, omission, attitude, etc.) and an agent's *rational judgments*, and since the agent herself is necessarily implicated in her rational judgments, my

account ensures that *the agent herself* is part of the "responsibility-grounding relationship".

Finally, I criticized Sher's theory for its improper specification of the conditions of moral blameworthiness. I used Celeste's case (the woman who, as a result of a belief in the transformative power of brutal honesty, carelessly insults an acquaintance without realizing it) to show that Sher is mistaken to claim that judging a good agent blameworthy for acting badly requires that her blameworthiness be fixed entirely by the badness of her behavior. Sher's mistaken claim leads him to assert that an agent can be blameworthy for an action or an omission that is not caused by any aspects of her that are themselves worthy of negative moral assessment. The content of a judgment that Celeste is blameworthy for her bad behavior should be something like "Celeste's bad behavior indicates aspects of her as an agent that are themselves bad." And it is plausible to think that Celeste's bad behavior does indicate aspects of her as an agent that are themselves bad, namely, her judgment that the feelings of others are not as important as her desire to achieve self-transformation through unbridled honesty. Although my account of moral responsibility for unintentional omission does not specify an account of the conditions of moral blameworthiness, the account is nevertheless positioned to provide a compelling account of these conditions. Since rational judgments themselves can be judged worthy of negative moral assessment, and since rational judgments are intrinsic features of agents, agents are blameworthy for actions or omissions that reflect rational judgments that are worthy of negative moral assessment.¹⁵⁶ Moreover, this does not imply that an agent's blameworthiness for an action or an omission indicates that she either has a *character defect* or a *vice*, or

¹⁵⁶ I will not provide an account of which rational judgments are worthy of negative moral assessment.

is generally speaking a bad person. The account of the conditions of moral blameworthiness that my own account of moral responsibility for unintentional omission is positioned to provide thus avoids the problematic implications Sher sees as flowing from Hume's view. It therefore avoids the problems Sher undertook to resolve in constructing his own, non-Humean comprehensive theory of moral responsibility, without running afoul of the problems that face his own view.

In conclusion, the account of moral responsibility for unintentional omission I have presented represents a superior alternative to the rival accounts by volitionalists and George Sher because it avoids all the criticisms I raised against those rival accounts.

VI. Meeting Some Objections

In this section, I will defend my own account of the conditions of moral responsibility for unintentional omission against six objections that are very likely to be raised against it.

Whence Control?

Because my account draws heavily from Scanlon's and Smith's theories of moral responsibility, and because it is commonly objected that their theories violate the principle that moral responsibility requires control, it will surely be objected that my account violates this principle as well.¹⁵⁷ Now, whether a theory of moral responsibility really violates this "control principle" depends crucially upon what the

¹⁵⁷ Levy, McKenna, Watson?

principle means. The control principle is commonly understood to involve two components: the first is a knowledge component that requires that, as George Sher puts it, "the agent be consciously aware of all relevant facts" about his situation, and the second is a volitional component that requires that (again, in Sher's words) "the agent either could have done what he failed to do or could have refrained from doing what he did".¹⁵⁸ On this understanding of the control principle, my account of the conditions of moral responsibility for unintentional omission does imply that control is not required for moral responsibility. Specifically, my account does not take conscious awareness (whether at the time of unintentional omission or at any prior time) to be a requirement of moral responsibility for unintentional omission. Neil Levy claims that this is a reason to doubt the adequacy of any nonvolitionalist theory of moral responsibility. He claims that, because moral responsibility requires control, and because "... we do not exercise control over anything of which we are unaware", nonvolitionalist theories of moral responsibility are unsatisfactory.¹⁵⁹ Therefore, my nonvolitionalist account of moral responsibility for unintentional omission is unsatisfactory, according to this line of objection.

There are two reasons why this line of objection is unconvincing. First, the claim that an agent does not exercise control over a failure of awareness would seem plausible if the interpretation of the control principle under consideration - as requiring conscious awareness of all the relevant facts - fit our common understanding of what it means to exercise control with respect to something. But, plainly, our common understanding of what it means to exercise control with respect to something does not include a requirement that one be consciously aware of that

¹⁵⁸ George Sher, "Kantian Fairness," *Philosophical Issues* 15 (2005), p. 180. See also Fischer and Ravizza...

¹⁵⁹ Neil Levy, "Restoring Control: Comments on George Sher," *Philosophia* 36 (2008), p. 216.

thing. Few would assert that I do not exercise control with respect to the way my turn signal switch moves while I am driving simply because I am not consciously aware that I lift it or lower it whenever I anticipate needing to make a turn. Few, if any, of us are aware of every executive command that we issue while driving, yet it cannot be true that we do not control the objects of those commands simply because we are not, at the relevant time, consciously aware of them. Levy, however, seems to think that this *is* true. He explains:

It is not sufficient for an agent to be able to cause an alteration in a state of affairs, or even actually to cause such an alteration, for that agent to control that state of affairs. If I do not know either *that* I cause such changes, or *how* I alter the state of affairs, then I do not control it. We causally interact with many, many things without controlling them - the blades of grass we crush and bend as we walk, the air molecules we breathe in and out, and so on. Intuitively, then, if moral responsibility requires control, then it requires that we know what we are doing.¹⁶⁰

Levy's view implies that I do not control the movement of my turn signal, or the speed of my car, if I am not consciously aware of the relevant movements I make. I think, however, that the unreasonableness of this implication suffices to show that our common understanding of what it means to exercise control with respect to something does not require that one be consciously aware, at the relevant time, of that thing. Admittedly, common understandings are not decisive regarding whether the interpretation of the control principle under consideration specifies a correct account of the kind of control that is required for moral responsibility. So, instead, I will argue against that interpretation of the control principle on theoretical grounds.

¹⁶⁰ Neil Levy, "The Good, The Bad and the Blameworthy," p. 5. It would seem to follow, on Levy's view, that what makes it true that I control the movement of my turn signal is that I am consciously aware that I do so. The difference between someone who controls the movement of his turn signal and someone who does not, then, is that the one who controls is consciously aware of the fact that he causes the movement of his turn signal. This seems absurd; if he causes the movement of his turn signal, then it is unclear how he does not exercise control with respect to it.

The kind of control that is required for moral responsibility is not *conscious* control. What kind of control is required for moral responsibility, then? Scanlon suggests an answer when he states that "[being] in principle 'under the control of reason,' and arising from conscious judgment or choice, are two different things".¹⁶¹ The interpretation of the control principle currently under consideration ignores the possibility that moral responsibility only requires what can be called "rational control". It is difficult to formulate an abstract definition of rational control, so I will illustrate what is involved in rational control through the use of examples. Rational control is the sort of control one exercises when one unconsciously flips one's turn signal prior to making a turn; the bodily movement results from a judgment about the importance of signaling one's anticipated movements to other drivers. Rational control is the sort of control one exercises when one unconsciously maintains roughly two car lengths of distance between one's car and the car ahead while driving on the highway; this "maintenance" activity results from judgments about the correct amount of distance one should hold between one's own car and the car ahead. Rational control is the sort of control we exercise with respect to at least some of our states of awareness; I have already illustrated the way in which at least some of what we notice results from our judgments about normative reasons. Rational control is the sort of control we exercise with respect to many of the mental states that form the basis for our theoretical and practical decisions; these decisions are influenced by myriad background beliefs of which we are not consciously aware, but which depend for their existences upon further rational judgments. In all these examples, the rational judgments that control the relevant bodily movements and states of awareness are in principle capable of being revised should one judge that

¹⁶¹ Scanlon, *What We Owe to Each Other*, p. 272.

there is reason to do so.¹⁶² It therefore makes sense to claim that those rational judgments, as well as the things they control, are ultimately "up to the agent", and are thus in his control.

Now, although it must be granted that failures of awareness lie outside of the scope of an agent's conscious awareness, at least some of these failures must be in the agent's rational control. Yolanda could have avoided her failure to notice the stop signs if she sincerely judged it to be of greater importance to drive safely than to pursue her phone conversation. Her failure of awareness can thus be in her rational control even if it is not in her *conscious* control. Moreover, rational control, not conscious control, is the kind of control that would seem to be most important for moral responsibility, given what I have claimed moral assessment actually involves. What ultimately makes something a potential basis for morally assessing an agent is its in principle capacity to be defended with justificatory reasons. It is difficult to see why conscious awareness of something is required in order for that thing to be in

¹⁶² Levy objects to the thought that one controls a mental state because that state is in principle capable of modification or revision based on other judgments about reasons. He claims that in order for it to be true that one controls one's beliefs, one either must have controlled them or be able to control them. Since a mental state's being "in principle under the control of reason" implies that the mental state is the sort of thing that, in an ideally rational agent, depends for its existence on the agent's rational judgments, it need not be true of an *actual agent* that the mental state depends for its existence on that agent's rational judgments. In other words, the agent *as she is* may not be able to do anything to change that mental state. I believe, however, that the proper response to this line of Levy's objection is to say that the issue of whether an agent *as she is* can do anything to change that mental state matters most for settling questions about whether any specific moral assessment of her on the basis of that mental state is appropriate. The mental state is still the sort of thing for which reasons could be offered; it is counted among the agent's mental states because it is in some way dependent on other of her judgments about reasons. The agent *as she is* may not find it easy to rid herself of or modify that mental state, and the fact that she is unable to control it as she is can affect whether (and to what extent) she is praiseworthy or blameworthy on its basis. But the mere fact that she is unable to consciously access the rational judgments on which the mental state depends does not by itself show that the mental state is not the sort of thing for which reasons could be offered or requested. Since there is little at stake, from the perspective of the agent, in saying that she is morally responsible for it, it is not clear why it should be a condition of her moral responsibility that she be able in some way to modify or revise the mental state itself, i.e., that she be able, as she is, to control it. Alternatively, if there really is nothing she can do to control that mental state, then this might lead us to wonder whether it is in fact judgment-sensitive after all. By this, I do not mean that if the agent cannot help judging that there are certain considerations that count in favor of it, the mental state is not judgment-sensitive. I am grateful to Angela Smith for helpfully pointing out this ambiguity in what it means to be able to "control" a mental state.

principle capable of being defended with justificatory reasons. Although it is inappropriate to regard an agent as morally responsible for something that in no way is controlled by her judgments about reasons, it is not always inappropriate to regard an agent as morally responsible for something of which she was not consciously aware. The kind of control that is most important for moral responsibility, then, is not conscious control but rational control. And failures of awareness can be (and in some cases are) in an agent's rational control. The interpretation of the control principle under consideration, then, provides an incorrect account of the kind of control that is required for moral responsibility. Although my own account violates *that* principle, it is not thereby rendered unsatisfactory because that principle does not specify an account of the kind of control that is required for moral responsibility.

Conscious Awareness and Rational Judgment

Another objection that is likely to be raised against the account I have provided goes as follows. Upon closer inspection, my account involves a sort of covert volitionalist tracing. The account states that agents are morally responsible for unintentional omissions involving failures of awareness that reflect rational judgments. What else could it mean to say that a failure of awareness reflects an agent's rational judgment, but that it has arisen from a prior episode of conscious judgment? To judge rationally that one should clean the house is essentially to have a conscious thought about cleaning the house, and then to consciously judge some other consideration (e.g., that mom is coming over later and hates to see a dirty house) to count in favor of cleaning the house. All rational judgments thus originate in conscious mental acts of judging. Once this is recognized, my account implies

that failures of awareness for which agents are morally responsible reflect rational judgments that originate in conscious mental acts of judging. On my account, then, moral responsibility for these failures of awareness can be traced back to conscious mental acts. But my account was supposed to represent an *alternative* to the volitionalist view that moral responsibility for an unintentional omission must be traceable to prior conscious mental acts. Therefore, my own account cannot represent a genuine alternative to volitionalism.

This objection depends crucially on the controversial claim that all rational judgments originate in conscious mental acts of judging. It does not seem to be implicit in the very *idea* of a rational judgment that it have originated in a conscious mental act of judging. As Angela Smith explains, "these judgments are often things we discover about ourselves through our responses to questions or to situations. For example, I may not realize, until I am faced with a choice, that I value the intellectual freedom and autonomy associated with a career in academia more highly than the economic rewards and benefits associated with a career in law."¹⁶³ Smith's is not an unfamiliar story. Moreover, it cannot be claimed that Smith's conscious judgment to decline the career opportunity in law *causes* her to hold a rational judgment that intellectual freedom and autonomy are more important than higher pay; the rational judgment is what forms the basis for the conscious judgment. Most, if not all of us, have been in situations like hers, where we discover that we hold particular rational judgments that were never consciously made. At least some of our rational judgments are (somehow) made below the surface of our full conscious awareness, and need not be products of conscious mental acts of judging. There is no

¹⁶³ Smith, "Responsibility for Attitudes," p. 252.

conceptual reason to accept the objector's claim all rational judgments originate in conscious mental acts of judging.

But suppose that there were some reason to accept this claim. It would not follow that my account depends covertly on a kind of volitionalist tracing. My account does not state that it is *because* a rational judgment originates in a conscious mental act of judging that it constitutes a potential basis for morally assessing its agent. It constitutes a potential basis for morally assessing its agent because it is the kind of mental state for which the agent could, at least in principle, offer justificatory reasons. The mere fact that the mental state originated in a conscious mental act of judging does not make it the kind of state for which justificatory reasons can be offered; it is this kind of state in virtue of its *intrinsic* content, and not in virtue of any of its *extrinsic* relational properties. So, the objection fails either because the claim on which it rests - all rational judgments originate in conscious mental acts of judging - is unjustified, or because it rests on a misunderstanding about what *makes* a rational judgment a potential basis for morally assessing an agent. My account does not rely on any covert volitionalist tracing.

Conscious Awareness, Rational Judgment, and Moral Responsibility

I have claimed that many rational judgments agents hold did not originate in conscious mental acts of judging. As Smith's example shows, there are cases where a person finds that he has a rational judgment he did not consciously make. Although he may have never consciously judged that poor people deserve their disadvantaged positions in society, a young Ayn Rand devotee may simply hold this judgment after having read *The Virtue of Selfishness* and *Atlas Shrugged*. Moreover,

he may not be aware that he holds it until he finds himself in a heated debate with an egalitarian who draws his attention to the logical implications of his view that economic redistribution is inherently wrong. At that moment, the young Rand devotee discovers that his view does depend upon his judgment that poor people deserve their disadvantaged positions in society.¹⁶⁴ When pressed by his egalitarian interlocuter for normative justification of this judgment, he finds it difficult to respond; he is not at all sure what reasons he takes to count in favor of that judgment. Nevertheless, he does not forswear it. Because he did not arrive at his judgment that poor people deserve their disadvantaged positions in society as a result of conscious deliberation, he finds it difficult to offer normative justification for it. This suggests that unless a rational judgment was consciously made, its agent cannot offer normative reasons in defense of it. And since, on my view, moral responsibility for something requires that the agent be able to offer normative justification for it, it follows that agents cannot be morally responsible for things that reflect rational judgments that were not consciously made.

This conclusion leads to the objection that my own account *should* rely on some kind of volitionalist tracing. Ultimately, my account should include a condition on the kinds of rational judgments that can be potential bases for morally assessing agents: because only those rational judgments that were consciously made can be defended with normative justification, moral responsibility should require conscious mental activity. The objector urges that my account should be modified to state that an agent is morally responsible for an unintentional omission if and only if it reflects rational judgments that were consciously made.

¹⁶⁴ In other words, he does not make this judgment at the moment that he realizes that his position on taxation requires him to do so. Rather, it is what lies at the bottom of his position on taxation, and he was previously unaware that his position on taxation depends on this judgment he holds.

This objection fails because it rests upon a faulty conception of what moral assessment involves. To say that something is a potential basis for morally assessing an agent is not to say that the agent can in practice provide normative justification for it. It is, rather, to say that it is the sort of thing for which normative justification could *in principle* be provided, and thus the sort of thing for which requests or demands for justificatory reasons *in principle* make sense. The distinction between things that are potential bases for morally assessing agents and things that are not tracks a distinction between mental states for which justificatory reasons could *in principle* be offered (e.g., beliefs, intentions, some desires, some emotions, etc.) and mental states for which justificatory reasons could not even *in principle* be offered (e.g., pain, some states of hunger, some states of thirst, etc.). Just because an agent is not capable, in practice, of providing normative justification for a belief or an attitude, it doesn't follow that it is not even in principle possible for him to do so. Beliefs and intentions are the kind of mental states for which normative justification can in principle be provided because they are mental states with propositional content.¹⁶⁵ The young Rand devotee's belief that poor people deserve their socially disadvantaged positions in society is the sort of mental state for which normative justification can in principle be provided, even if he cannot in practice determine which normative reasons he implicitly takes to count in its favor. The objector's claim that, unless a rational judgment was consciously made its agent cannot offer normative reasons for it, is false. Although it is true that, on my view, moral responsibility for something requires that the agent be able to offer normative justification for it, it does not follow that agents cannot be morally responsible for

¹⁶⁵ Angela Smith provides an illuminating discussion of the particular mental states that fall under this description in "Responsibility For Attitudes". See pp. 257-262.

things that reflect rational judgments that were not consciously made. The objector has not shown that my account *should* rely on some kind of volitionalist tracing.

Consciousness, Rational Judgment, and Endorsement

There may be another reason why my account *should* rely on some kind of volitionalist tracing. I have claimed that agents are morally responsible for failures of awareness that reflect rational judgments they either may not be consciously aware they hold, or may not have made as the result of conscious deliberation. But it may be objected that my claim implies that agents whose behavior reflects certain rational judgments that have been *inculcated* in them are just as morally responsible their behavior as agents whose behavior reflects rational judgments that have come about as a result of their own processes of conscious deliberation. Susan Wolf's case of JoJo may help to illuminate the worry that underlies this objection. JoJo is

the son of Jo the First, an evil and sadistic dictator of a small, undeveloped country. Because of his father's special feelings for the boy, JoJo is given a special education and is allowed to accompany his father and observe his daily routine. In light of this treatment, it is not surprising that little JoJo takes his father as a role model and develops values very much like Dad's. As an adult, he does many of the same sorts of things his father did, including sending people to prison or to death or to torture chambers on the basis of whim. He is not *coerced* to do these things, he acts according to his own desires... In light of JoJo's heritage and upbringing - both of which he was powerless to control - it is dubious at best that he should be regarded as responsible for what he does.¹⁶⁶

It is plausible to assume that the greater share of JoJo's rational judgments did not result from his own processes of reflection and conscious judgment, but were

¹⁶⁶ Susan Wolf, "Sanity and the Metaphysics of Responsibility," reprinted in *Free Will*, Gary Watson ed., 2nd edition (Oxford, Oxford University Press: 2002), pp. 379-380. Wolf uses the case of JoJo to elicit the intuition that, even if JoJo *endorses* his desires to perform wicked acts, he is not morally responsible. Since real-self views state that JoJo is morally responsible for his wicked acts so long as they reflect desires he endorses, Wolf takes the case to show a problem with real-self views since it is, in her view, highly counterintuitive to regard him as morally responsible for those acts.

inculcated in him. Perhaps the young Rand devotee's rational judgment that the poor deserve their socially disadvantaged positions in society was inculcated in him as a result of living in a highly individualistic society that glorifies the value of personal responsibility. It is doubtful that, among those of us who were born and raised in the United States, those of us who hold the rational judgment that all people are moral equals came to hold it as a result of our own processes of reflection and conscious deliberation.

Wolf thinks that JoJo is not morally responsible for his wicked behavior, and perhaps the reason he is not morally responsible for his wicked behavior is that it reflects rational judgments he came to hold as a result of factors wholly independent from his own processes of reflection and conscious deliberation.¹⁶⁷ Perhaps the young Rand devotee should not be regarded as morally responsible for his refusals to donate to charity, at least not if the rational judgments reflected in these refusals came about by societal inculcation rather than by his own deliberations and conscious judgment. This line of thought leads to the objection that my own account *should* rely on some kind of volitionalist tracing. A satisfactory account of moral responsibility should be able to distinguish between JoJo, who we are not inclined to hold morally responsible for his wicked behavior, and JoJo* who, because he arrived at the same rational judgments by his own conscious deliberations and reflection, should be held morally responsible for his wicked behavior. Similarly, a satisfactory account of moral responsibility should excuse the young Rand devotee if his insensitivity to the needs of the poor reflects societal inculcation, but should not excuse his counterpart whose insensitivity stems from his own reflections and conscious deliberations. For this reason, a satisfactory account of moral

¹⁶⁷ As far as I can tell, this is *not* why Wolf thinks JoJo is not morally responsible for his behavior.

responsibility for unintentional omission should hold that agents are morally responsible for all and only those failures of awareness that reflect rational judgments that have been reflectively and consciously adopted.

Why might it be thought that a satisfactory account of moral responsibility for unintentional omission *should* hold this? One response is that rational judgments that result from an agent's own conscious deliberation and reflection can be seen as having been *endorsed* by the agent. If JoJo did not come to hold the rational judgment that torturing his subjects just for fun is a perfectly fine thing to do as a result of his own deliberative processes, then he does not truly *endorse* torturing his subjects just for fun; he does it simply because he was told that this is how he should behave towards them.¹⁶⁸ And if he does it simply because he was told this, then his wicked behavior cannot be seen as truly his own. His wicked behavior could be seen as truly his own if it reflected rational judgments he endorsed *via* his own deliberative processes. Similarly, if the young Rand devotee did not come to hold the rational judgment that poor people deserve their socially disadvantaged positions in society as a result of his own deliberative processes, then his refusals to help poor people cannot be seen as truly originating from him. His refusals originate from societal and contextual forces, and thus reflect aspects of his situation rather than aspects of him. And in order for behavior to constitute a potential basis for morally assessing an agent, it must reflect *his* agency rather than aspects of his situation or circumstances. Behavior that reflects rational judgments that did not arise as a result of the agent's own deliberative processes thus cannot reflect *his*

¹⁶⁸ This is essentially the objection that Neil Levy raises against so-called "attributionist" views of moral responsibility. See Neil Levy, "Restoring Control: Comments on George Sher," pp. 218-220.

agency, and must instead be seen as reflective of his situation or circumstances. This is why my own account should rely on some sort of volitionalist tracing.

This objection fails because it relies upon the suspicious claim that endorsement must always occur at the level of explicit *conscious reflection*. If JoJo is inclined to defend his views about the proper way to deal with his subjects - if he feels no willingness whatsoever to reconsider them - then it seems natural to say that he endorses them. His endorsement of them is not precluded by the mere fact that they were inculcated in him. Moreover, if he were to one day *consciously* and *reflectively* endorse them, his doing so would not by itself entail that he does endorse them. Similarly, if the young Rand devotee goes to great lengths to admonish others for their benevolent actions, then this would provide all the evidence we would need to conclude that he endorses his rational judgment that the poor deserve their socially disadvantaged positions in society. No act of conscious, reflective endorsement of this judgment would provide additional evidence for this conclusion. It is therefore highly doubtful that endorsement must always occur at the level of explicit *conscious reflection*. Moreover, the objection does not make a good case for the claim that only behavior that reflects consciously endorsed rational judgments can reflect the agent himself rather than aspects of his situation. Even if JoJo never explicitly consciously endorses the rational judgments he was inculcated to hold, they need not forever count as aspects of his situation or circumstances. As Angela Smith explains, "If a person continues to hold [objectionable rational judgments] even after she has reached rational maturity, it is reasonable to attribute that attitude to her and to ask her to defend the [further] judgments it reflects."¹⁶⁹ In sum, I accept the objector's claim that in order for behavior to constitute a potential

¹⁶⁹ Smith, "Responsibility for Attitudes," p. 268.

basis for morally assessing an agent, it must reflect *his* agency rather than aspects of his situation or circumstances. However, the objector has not provided a good reason to accept the claim that behavior that reflects rational judgments that did not arise as a result of the agent's own deliberative processes cannot reflect *his* agency, and must instead be seen as reflective of his situation or circumstances. The objector has not provided adequate reason to think that my account should rely on some kind of volitionalist tracing.

Degrees of Blameworthiness

My account of moral responsibility for unintentional omission specifies basic conditions of moral responsibility, but does not specify conditions of praiseworthiness or blameworthiness. It can therefore be asked what would make an agent blameworthy for an unintentional omission. Smith suggests that an agent's blameworthiness for something requires that the rational judgments reflected in it are "substantively mistaken, inappropriate, or otherwise objectionable" from a moral point of view.¹⁷⁰ Scanlon claims that blame is appropriate in cases where an agent "has either failed to take account of or knowingly acted contrary to a reason that should, according to any principles that no one could reasonably reject, have counted against his action."¹⁷¹ Whether or not these suggestions can be expanded into full accounts of the conditions of moral blameworthiness is not my present concern. For now, I will assume that Smith and Scanlon generally agree about the conditions of moral blameworthiness, and that their specification of these conditions

¹⁷⁰ Ibid, p. 254.

¹⁷¹ Scanlon, *What We Owe to Each Other*, p. 271.

is plausible. If an agent is morally blameworthy for an unintentional omission if and only if it reflects rational judgments that are substantively morally mistaken, then this could lead to a problem for my account. The problem is that my account seems to allow that an agent could be just as blameworthy for an intentional episode of wrongdoing as she would be for an unintentional episode of similar wrongdoing. For example, Harriet could be just as blameworthy for intentionally ignoring Gwendolyn's birthday as she would be for forgetting it. This could be so if the rational judgments her conduct reflects in both scenarios are substantively morally mistaken. In both scenarios, her conduct reflects the same substantively morally mistaken rational judgment, namely, that Gwendolyn's birthday is not important. If her conduct reflects the same substantively morally mistaken rational judgment in both scenarios, then she will be as blameworthy for intentionally ignoring Gwendolyn's birthday as she will be for forgetting it. Intuitively, however, this seems to be a mistake: surely Harriet would be blameworthy to a greater degree for intentionally choosing to ignore Gwendolyn's birthday than she would be for forgetting it. A plausible explanation for this intuition is that greater moral significance rests with rational judgments that are implicated in episodes of intentional choice than with other rational judgments. Although Harriet's conduct reflects the same rational judgment in both scenarios, the rational judgment is implicated in an episode of intentional choice in one scenario but not the other. My account thus does not represent a satisfactory alternative to volitionalism because it, unlike volitionalism, fails to accord proper moral significance to rational judgments that are implicated in episodes of intentional choice.

I will grant that "insensitive" Harriet would be blameworthy to a greater degree for than than "forgetful" Harriet would be, but this does not show that greater moral significance rests with rational judgments that accompany intentions. The

reason why insensitive Harriet would be blameworthy to a greater degree is that her intentional performance would reflect *different* rational judgments than forgetful Harriet's unintentional omission would. Insensitive Harriet's intentional choice would reflect not only the rational judgment that Gwendolyn's birthday is not important, but an *additional* judgment that hurting Gwendolyn's feelings is not something she should avoid doing. After all, insensitive Harriet must have realized what the consequences of this choice would be. And she must have realized that one consequence of this choice would be that Gwendolyn's feelings would be hurt. Her choice thus reflects a rational judgment that Gwendolyn's birthday is not important, and an additional rational judgment that the bad impact her choice to ignore it would have on Gwendolyn is of little or no moral significance. But forgetful Harriet surely did not realize what the consequences of forgetting the birthday would be. It would therefore be implausible to attribute to forgetful Harriet an additional rational judgment that the bad impact her forgetting would have on Gwendolyn is of little or no moral significance. Both insensitive Harriet's and forgetful Harriet's conduct reflects a substantively morally mistaken rational judgment, namely, that Gwendolyn's birthday is not important. But insensitive Harriet's conduct reflects an additional substantively morally mistaken rational judgment, namely, that the bad impact her choice would have on Gwendolyn is of little or no moral significance. Therefore, the reason why insensitive Harriet is more blameworthy than forgetful Harriet is because the former's conduct reflects *more* substantively morally mistaken rational judgments than the latter's. These cases do not show that greater moral significance rests with rational judgments that are implicated in episodes of intentional choice than with other rational judgments. It has not been shown that my account does not represent a satisfactory alternative to volitionalism.

Ineliminable Semantic Components

Finally, I want to address an objection that George Sher has raised against theories of moral responsibility in the "Scanlon-Smith" tradition, theories he and other philosophers have begun to call "attributionist theories". Sher understands attributionist theories to claim "that agents are responsible only for those features of their acts that reflect the judgments that in turn express their practical identities".¹⁷² Sher thinks attributionists are committed to the claim that an agent can be morally responsible for an unintentional omission only if it "expresses a cavalier attitude toward the relevant type of [conduct]".¹⁷³ He goes on to say that

If we accept the attributionist account, then we will have to attribute Alessandra's responsibility to a judgment that Sheba's safety doesn't matter much, or to a lack of good will toward the dog... However, although it is certainly possible to suppose that Alessandra... [has] made such judgments, [her] responsibility doesn't appear to depend on this. Alessandra would surely remain responsible if she cared a lot about Sheba but was simply distracted by the volume and intensity of the dispute.¹⁷⁴

The problem, Sher suggests, consists the attributionist theory's apparent inclusion of "an ineliminable semantic component" in their specifications of the conditions of moral responsibility. By this, he means that attributionist theories would allow, for example, Alessandra to be morally responsible for her unintentional omission to care properly for Sheba if and only if it reflects a rational judgment whose propositional content is about Sheba. Similarly, attributionist theories would allow Abby to be morally responsible for unintentionally omitting to assist the swimmer if and only if it reflects a rational judgment whose propositional content is about

¹⁷² George Sher, "Who's In Charge Here? A Reply to Neil Levy," *Philosophia* 36 (2009), p. 225.

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*, p. 226.

assisting swimmers (or perhaps even assisting *the particular swimmer* who needed assistance on the fateful day). Sher thinks attributionist theories hold that an agent's moral responsibility for an unintentional omission to do something depends crucially upon whether the rational judgments it reflects are properly semantically related to that thing. Sher uses this point to object to attributionist theories on grounds that they will "take the responsibility-creating relation to hold in a smaller range of cases" than his own.¹⁷⁵ Sher thinks that his account is superior to attributionist theories because it could explain why Alessandra would be morally responsible for her unintentional omission even if it doesn't reflect any rational judgments that are about Sheba, and instead reflects only her preeminent concern for her children. And, intuitively speaking, Alessandra *should* be counted as morally responsible for her unintentional omission if reflects rational judgments that are about Sheba.

Sher's objection fails because it involves a substantial misunderstanding of the attributionist theory's specification of the conditions of moral responsibility. Nowhere in Smith's or Scanlon's specifications of the basic conditions of moral responsibility do they include a semantic restriction on the rational judgments that ground moral responsibility in any given case. My attributionist-inspired account holds that an unintentional omission for which an agent is morally responsible necessarily reflects a rational judgment with propositional content. But my account does not hold that an agent is morally responsible for an unintentional omission to do something if and only if it reflects a rational judgment that is properly semantically related to that thing. I should note, however, that Alessandra's blameworthiness for forgetting about Sheba may require that it reflect a rational judgment that is semantically related to Sheba herself. That is, if Alessandra's forgetting does not in

¹⁷⁵ Ibid.

any way reflect any problematic judgments about Sheba or about the importance of caring for her pet, then it may be harder to explain just why she is blameworthy on its basis. All of this is to say that Sher has probably mistaken the attributionist theory's specification of the conditions of moral responsibility for its likely specification of the conditions of moral blameworthiness. For this reason, Sher's objection does not show that so-called "attributionist" theories of moral responsibility, and my attributionist-inspired account of moral responsibility for unintentional omission, represent inferior alternatives to his own theory.

VII. Conclusion

The main conclusion of this dissertation is that agents are generally morally responsible for unintentional omissions because unintentional omissions involve failures of awareness that reflect rational judgments. This is the most defensible account of the "responsibility-grounding relationship" for unintentional omission. An unintentional omission does not need to be causally and epistemically related to an agent's intentional choices in order for it to represent a potential basis for morally assessing her. Nor does an unintentional omission need to be causally related to states that are consistent causal contributors to an agent's characteristic "mental life" in order for it to represent a potential basis for morally assessing her. In order for an unintentional omission to represent a potential basis for morally assessing an agent, it need only depend on some of her rational judgments. The failures of awareness that are characteristic of unintentional omissions can, in at least some cases, depend upon agents' rational judgments. My account provides a compelling explanation of what would have to be true in order for each agent in the

example cases that have guided the discussion in this dissertation to be morally responsible for their unintentional omissions. Yolanda is morally responsible for failing to stop at the stop signs if and only if her unintentional omission reflects some of her rational judgments. It is plausible to suppose that Yolanda's failure to notice the stop signs reflects her judgment that the phone call (or the matter that is being discussed) is of utmost importance at the moment. Yolanda could, at least in principle, defend this judgment with normative reasons. The failure of awareness that reflects it is thus a potential basis for morally assessing her, since moral assessment involves evaluating an agent on the basis of things that reflect her judgments about a certain class of normative reasons. Similarly, Alessandra is morally responsible for forgetting the family dog in the hot car if and only if her failure of awareness reflects her rational judgment. She may have failed to recall Sheba because she (however implicitly) judges it to be of utmost importance that she resolve the administrative difficulty to her own liking. Alessandra can, at least in principle, defend this judgment with normative reasons; she is thus morally responsible for the failure of awareness that reflects it.

In closing, I would like to draw attention to an aspect of the theory I have presented that reinforces my claim that it specifies the most compelling account of the conditions of moral responsibility for unintentional omission. There is no question that almost all contemporary theories of moral responsibility take an agent's capacity to guide his conduct in light of normative reasons to be a fundamental requirement of moral responsibility. John M. Fischer and Mark Ravizza's theory of moral responsibility states that an agent is morally responsible for something if and only if

it is brought about by a process that is suitably sensitive to normative reasons.¹⁷⁶ Nomy Arpaly defends the view that an agent's praiseworthiness or blameworthiness for her conduct depends upon the extent to which that conduct reflects "moral concern", and an agent's degree of moral concern correlates to the degree of significance she accords to moral reasons.¹⁷⁷ R. Jay Wallace defends the claim that an agent's capacity to guide his behavior in light of normative reasons is sufficient to make him a member of the community of morally responsible agents, i.e., beings who are candidates for the distinctly normative forms of assessment involved in moral praise and blame.¹⁷⁸ The theory of moral responsibility for unintentional omission I have defended reflects the consensus among contemporary philosophers that being morally responsible for something fundamentally involves a relationship between that thing and an agent's judgments about normative reasons. My theory implicitly appeals to this consensus to explain why we commonly take agents to be morally responsible for things that do not reflect intentional choices. Moreover, my theory does not attempt to undermine the claim that intentional choices are paradigmatic instances of morally responsible phenomena. Philosophers have not been mistaken to claim that agents are generally morally responsible for their intentional choices. But volitionalists have been mistaken to claim that all moral responsibility originates in intentional choices. I hope my contribution to contemporary debates about moral responsibility consists in the way my theory of moral responsibility for unintentional omission emphasizes the moral significance of certain agential phenomena that are not intentional choices. Like intentional choices,

¹⁷⁶ John M. Fischer and Mark Ravizza, *Responsibility and Control*, (Cambridge, Cambridge University Press: 1998).

¹⁷⁷ Nomy Arpaly, *Unprincipled Virtue: An Inquiry into Moral Agency*, (Oxford, Oxford University Press: 2003).

¹⁷⁸ R. Jay Wallace, *Responsibility and the Moral Sentiments*, (Cambridge, MA, Harvard University Press: 1994).

these agential phenomena are morally significant in virtue of their capacity to reflect judgments about normative reasons.

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