

Involuntary Consent

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Abstract

In this dissertation I take exception with a widely held philosophical doctrine, according to which agents are *only* blameworthy for the bad actions they have *chosen* to bring about. My argument strategy is to present cases in which agents are blamed for involuntary actions that are not in any way connected to their culpable and voluntary choices. These failures correspond, I suggest, to occasions of culpable ignorance where agents have been negligent or careless. More specifically, I claim that violations of natural duties of respect and consideration, and certain acquired role-type duties, are *blamed* without any voluntary consent. If my examples are persuasive, then the point is reached where a normative principle of 'voluntary consent' does not in fact coincide with people's actual practices and 'considered judgements'. In the final sections of the dissertation, I argue against the plausibility of keeping the principle and revising our judgements.

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Introduction

Choice has obvious and immediate moral significance. The fact that a certain action or outcome resulted from an agent's choice can make a crucial difference ... to our moral appraisal of that agent... (T.M. Scanlon, *The Significance of Choice*.)

I agree—choice does have an obvious and immediate moral significance. However, in my opinion, its significance is often over-emphasised. Indeed, this inflation of the importance of choice takes the form of a widely supported philosophical doctrine; the thesis that an agent is *only blameworthy* for bad actions he has *chosen* to bring about. This is the view I will challenge in this dissertation.

In Chapter 1 I propose that this thesis—PVC—has commanded such widespread approval on account of its connection with the most commonly recognised excusing conditions. More specifically, it has been deemed unfair to blame an agent for an involuntary action, for if he acted involuntarily, then he acted from ignorance or as a result of outside force. However, noting this connection only raises two more questions: (i) why should it be unfair to blame someone for an act done from outside force, or ignorance? (ii) how is it possible that *ignorance* does not always excuse?

In order to answer the first question, I embark on a discussion of some prominent accounts of the excuses. Finally, I settle on R. Jay Wallace's (1998) recent theory, and invoke some of his insights to construct a positive argument for PVC. As will be clear throughout the entire dissertation, this argument rests on the premise that a voluntary act or choice is necessary for the violation of a moral obligation.

In Chapter 2, I discuss the excusing condition of ignorance in some detail; it comes in two types: factual and moral, and is of special importance to my project. For when it does not excuse, so that the agent acts from

culpable ignorance, we apparently have an occasion where an involuntary action is thought to deserve blame. Therefore, acts done out of culpable ignorance are, at least *prima facie*, in conflict with PVC. Proponents of PVC, however, are not unaware of this difficulty and have a standard response, one that involves tracing culpable ignorance back to earlier voluntary and culpable actions and omissions. It is important to keep in mind that if one subscribes to PVC, then one is committed to explaining involuntary culpability in terms of voluntary actions.

One matter of complication is that ignorance of a moral rule may not straightforwardly render an act involuntary. Indeed, I propose that the possibility of moral ignorance arises only in connection with a class of moral rules that are not 'conceptually' related to determinate patterns of behaviour involving (e.g.) physical injury. To this class, I suggest, belong duties of respect and consideration and other 'positive duties' related to the idea of a role-requirement (these ideas are more fully explored in Chapter 3). My over-arching aim in Chapter 2 is to show how an advocate of voluntary consent is committed to modifying PVC in order to account for cases of culpable ignorance, factual, and moral, *suitably understood*.

In Chapter 3 I attempt to clarify concepts integral to this project, namely moral responsibility, blame, and blameworthiness. I do this by briefly presenting and criticising a common conception of moral responsibility, which links blame to states of character. Drawing from the lessons learnt here, I present and endorse R. Jay Wallace's (1998) reactive theory of responsibility, which I believe, both avoids the aforementioned troubles with the 'vice theory' and gives a highly satisfactory and illuminating account. One important idea that emerges from Wallace's theory is that a theory of blame must keep a close connection with the concepts of right, wrong and moral obligation. In this context, I explain the types of

obligations and duties which constitute the 'concept of right' (cf. Rawls (1972)), drawing a distinction between what I call 'negative duties', and positive duties.¹ Negative duties are specific duties, roughly related to the bringing about of injury, while positive duties are more extended and relate to the notion of a role-requirement. This is the idea that by virtue of occupying a place in society, or moral narrowly, an office or station, one acquires duties correlated with that role. The idea of a positive duty (in my sense) is one of a temporally extended duty, of high complexity, and requiring a high level of a care. This notion is of great importance for my argument in Chapter 4.

In Chapter 4, I present my own sustained argument against PVC, showing that our moral judgements concerning cases of culpable ignorance do not accord with the prescriptions of PVC (including the modification outlined in Chapter 2). My argument strategy is simply to present cases in which agents are blamed—using the conception of blame from Chapter 3—for involuntary actions that are not in any way connected to their culpable and voluntary choices. These failures correspond, I suggest, to occasions where agents have been neglectful, negligent or careless, such that they have failed to fulfil certain 'positive duties'. More specifically, I claim that violations of natural duties of respect and consideration, and acquired role-type duties, are blamed without any voluntary consent. If my examples are persuasive, and these are indeed occasions of blame for an involuntary act, we reach a point where the normative principle (PVC*—a refined PVC) does not coincide with people's actual practices and 'considered judgements'. In the final sections of the dissertation, I argue against the plausibility of keeping the principle and revising our

¹ The terms are originally Rawls' (1972), but I deploy them in a divergent manner.

judgements. I attempt to diagnose the temptation for PVC as a generalisation from a skewed sample of cases, arguing that a distinction must be drawn between types of moral obligations that do necessitate a measure of 'voluntary consent', and others which do not. This distinction corresponds to the difference between negative and positive duties, and is intuitively obvious in the disparity between the expressions, 'violate a duty', and 'fail to fulfil a duty'. I contend that the latter need only that the agent 'miss the mark', or fail to 'measure up' such that questions of voluntary consent are indeed quite irrelevant. I then consider the implications of the rejection of PVC for the excuses, and more specifically Wallace's arguments for PVC, ending off by trying to bring the scope of blame, once PVC is rejected, into proper perspective.

In sum, this dissertation has the negative aim of showing that contrary to popular philosophical opinion, agents may appropriately be blamed for wrong that is not related to their voluntary and culpable choices. Understanding why this is the case, will, I hope, provide some interest.

1. Voluntary Action and the Excuses

According to a doctrine that commands wide philosophical support, an agent is only to be held morally responsible for his voluntary actions and omissions. In this chapter (i) I explain what this thesis actually entails, (ii) suggest reasons as to why it has seemed so plausible to many philosophers, and (iii) construct a positive argument in support of the view.

1.1 The Principle of Voluntary Consent

To say that a person acted 'voluntarily' means that he really did perform an action and that he ended up doing what he intended to do. In this respect, the notion of the voluntary involves both a control and knowledge condition. An action or state is within a person's direct voluntary *control* if he can bring it about as a result of choosing or intending, while actions performed as a result of choosing or intending are voluntary only when the agent knew what he was doing, i.e. brought about the result that he had intended or foreseen.

It is a widely held philosophical view that a person is morally responsible only for voluntary actions in this sense. For example, Sabini and Silver write:

A central notion of our moral lives is responsibility, and responsibility presupposes choice; emotion is unchosen. We see emotions, desires, passions, and impulses as beyond the will, without control. It is unfair to blame people for what they cannot control (1987, p. 169).

Michael J. Zimmerman (1988) concurs:

... one is not free with respect to whether one is compassionate (or pitiless), kind or cruel, courageous (or cowardly) etc. If one is not free with respect to any such character trait, then one is not appraisable for

it; hence one is not appraisable for any character trait. A similar argument applies to emotions, desires and beliefs (p. 115).

In these passages the *control* aspect of 'voluntariness' is emphasised, formulated as the thesis that an agent cannot be fairly held responsible for states not within his voluntary *control*. However, although this tendency to focus on the control aspect of voluntariness is understandable—for without proper control, the need to 'know' what one was controlling would not arise—the epistemic element is no less crucial to voluntary action. *The Oxford Companion to Philosophy* puts the point as follows:

... one essential requirement for moral responsibility [is] that the wrongdoer should have known what he is doing and been willing to do it ... (p. 772)

That is, an 'essential requirement' for moral responsibility is that the agent has acted voluntarily, where this implies knowing what he is doing.

In this dissertation, I focus on moral responsibility for bad acts, and therefore on occasions when an agent is thought to deserve moral blame or sanction. In this regard, the view that agents' are morally responsible only for their voluntary acts and omissions entails that an agent is morally blameworthy for a bad act only if he knowingly brought about the act he intended. For convenience, I refer to this thesis as the Principle of Voluntary Consent; more formally,

(PVC) For any bad act x , A is blameworthy for x only if A voluntarily consented to x .¹

1.2 The Appeal of the 'Voluntary Consent'

Why has PVC seemed so plausible to so many philosophers? I suggest that the principle encapsulates the 'Kantian'—though not only Kantian—idea

¹ A quick note on terminology: A is morally blameworthy for some bad act iff A is morally responsible for that bad act. Since I am concerned only with responsibility for bad acts, I use the expressions morally responsible and blameworthy interchangeably.

that whatever moral worth an action has, derives solely from the agent's will in performing the action. 'The domain of the moral is the domain of the will expressed in action; it is the domain for which we are responsible' (Sabini and Silver, 1987, p. 165). But this means that 'external factors' beyond the control of the agent's will are not relevant to the moral evaluation of an agent. An analogous doctrine is also pervasive in legal responsibility, corresponding to the notion of *mens rea*, the requirement that the legal offender have a guilty state of mind.

... the concurrence of the will when it has the choice either to do or avoid the act in question, [is] the only thing that renders human action praiseworthy or culpable' (Blackstone, cited in Hart 1962, p. 174)

An agent's moral worthiness in action should not be determined by anything other than his own contribution. Furthermore, this idea is reflected in the existence of various kinds of 'excusing conditions', acknowledged as undermining an agent's moral responsibility for an action;² the presence of these conditions make it *unfair* to blame the agent for what happened. Persons are only morally responsible their voluntary actions because an involuntary action is one done in ignorance, or as a result of outside force or compulsion. This connection is conceptual and due to Aristotle, who *defines* an involuntary action as one done from force or ignorance.³ This suggests an obvious argument for PVC.

² The term 'excuse' is employed in a wide variety of contexts; it may indicate pleas as multifarious as (i) having been pushed, forced, or made a mistake; as well as (ii) being 'only a child', 'insane' or brainwashed. In this dissertation, I focus exclusively on the class of 'pleas' that undermine an agent's responsibility for an *act*, without challenging the presumption that he is anything other than a morally accountable agent; that is, those that do not entail the 'objective attitude' (Strawson, 1982). I call this type of plea an 'excuse' and distinguish it from an 'exemption' (cf. Watson 1987; Wallace 1998), which functions by questioning the agent's capacity for responsible agency. In line with Aristotle's definition of 'involuntary actions', the excuses may be fitted into two general categories—(1) force and (2) ignorance. The category of excuse by 'force' includes constraint, necessity, duress and coercion; knowledge-type excuses include inadvertence and mistake.

³ See the *Nicomachean Ethics* 1109b30-1111b5 (trans. David Ross). Aristotle distinguishes between 'not voluntary' and 'involuntary'. He thinks that bad actions brought about in ignorance are 'not voluntary', and but only those which produce 'pain and regret' (1110b2-1110b24) are involuntary. Someone's reaction to a bad consequence is surely a matter for ethical appraisal but it seems to have little to do with whether the act done was 'involuntary' or 'not voluntary'. I therefore treat 'not voluntary' and 'involuntary' as synonymous.

1.3 A First Argument for PVC

An action is voluntary when it is not involuntary. But, since an involuntary action is one done in ignorance, or as a result of outside force, it is therefore excused from blame; or more specifically, it is one which we regard as unfair to blame. Therefore, a voluntary action may be taken as an action that is not excused from blame, and one for which it is fair to blame the agent. In this sense we are only morally responsible for our voluntary acts and omissions.

This argument is too quick for two reasons. Firstly, for although involuntary actions are indeed those where some excuse is present, this does not answer the question of *why* it is unfair to blame actions where one of these 'excusing conditions' is present. If the connection between involuntary action and the excuses is conceptual, then assessing PVC requires as answer to *why* we do not think it fair to blame a person for actions done because of 'outside force' or in ignorance.

Secondly, it is well known that the excuses do not always get one completely off the hook—as Austin (1962) notes: 'the average excuse...gets us only out of the frying pan into the fire' (p. 177); notable in this regard is the excusing condition of ignorance, which will not succeed if the ignorance that led to the act's being involuntary was itself culpable. But this opens up the possibility that an involuntary action—one done in ignorance—may on occasion be culpable. But what does this imply for PVC? PVC says that, for all (bad) actions, if A did not voluntarily consent to the action then A is not blameworthy. If culpable ignorance is a counter-example to this, then PVC is false.

These two points prescribe the following course for our argument:

(1) Assessing PVC requires understanding *how* the commonly recognised excuses function to inhibit blame. For only once we know how the excuses serve to inhibit blame, will we know *why* it is *unfair* to blame an agent for

an involuntary action; i.e. we will know why PVC is correct. I devote the remainder of this chapter to an investigation of the excusing conditions; this is to enquire as to why it would be unfair to blame an involuntary action.

(2) Why do excuses sometimes succeed and sometimes not? Answering this presupposes an account of how the excuses work. Moreover, only if the reason why an excuse fails to exculpate is somehow related to the agent's voluntary actions will PVC be defensible, although in a modified form. Chapter 2 explores this question of 'excuses that do not excuse', more specifically (for reasons I explain in Chapter 2) culpable ignorance. I explain the strategies the adherent of PVC is committed to employing in order to maintain the view that the space of blame is the space of the voluntary.

1.4 The Principle of Alternative Possibilities

A first suggestion as to the functioning of excusing conditions is that excuses show that the agent 'could not have done otherwise'. Indeed, in the history of the free-will problem, most theorists—both Compatibilists and Incompatibilists alike—have agreed on this point: an agent is morally responsible for his action only if he could have done something different from what he did do (PAP). They have, of course, given markedly different accounts of what this ability to 'do otherwise' consists in.⁴

But the 'inability to do otherwise' is insufficient as an account of the functioning of excuses for two reasons:

1. It has nothing to do with the cognitive excuses: in this respect, we still need an account of why actions done in ignorance, are also thought to

escape moral sanction. What is it about an action done in ignorance that makes moral blame unfair?

2. To say that an action is excused if the agent could not have done otherwise is still not to say why we think it is unfair to blame him. Why should an agent be excused if he could not have avoided performing that very action? Although the principle of alternative possibilities (PAP) does present itself as a natural generalisation from various cases involving (e.g.) compulsions, post-hypnotic suggestions, and coercion, an explanation is still needed as to why the inability to do otherwise should always serve to undermine the appropriateness of moral blame.

In recent decades, the principle of alternative possibilities has come under attack on exactly this point. Harry Frankfurt has developed a style of counterexample to PAP in which an agent is unable to do other than he did do (unable to avoid the action), but who nonetheless appears to be morally responsible.⁵ Frankfurt's core insight is that the inability of the agent to otherwise is not what grounds our judgement to the effect that he is or is not responsible, and thus that an inability to do otherwise does not in and of itself excuse an agent from moral responsibility. According to Frankfurt, the agent's own higher order attitude to the motivations that move him to action is crucial in accounting for our willingness to judge him morally blameworthy.

Although there is some controversy as to the implications and success of Frankfurt style counter-examples with respect to determinism,⁶ it seems clear that Frankfurt has shown that the inability to do otherwise is not in

⁴ For a classic Compatibilist analysis, see David Hume's *An Enquiry Concerning Human Understanding*; also G.E. Moore's *Ethics*. For an Incompatibilist response to Hume, see Thomas Reid's *Essays on the Active Powers of Man*.

⁵ The original argument is presented in Frankfurt (1969).

⁶ Perhaps an agent need not have the ability to 'do otherwise' to be responsible, but needs to be the 'ultimate originator' of all his states; and determinism rules out this possibility.

and of itself *sufficient* to excuse an agent from responsibility. This means that although the inability to do otherwise might be what *unites* control-type excuses, it is not what actually does the work in undermining the appropriateness of blame. In sum, even if PAP is correct as a generalisation from the control-type excuses, it remains silent on the question of why this general feature is thought to undermine blame.

1.5 The Influenceability Theory

Traditional 'Utilitarian' accounts of moral responsibility have a standard answer as to why excuses inhibit blame. The strategy is well known: it is to point out that holding people morally responsible serves important deterrent and therapeutic functions, and then to note that when excusing conditions apply, the rationale for blaming or punishing is undermined. For when an agent acts from ignorance or as a result of (e.g.) coercion, he will typically not have displayed any bad motivation to begin with; there is therefore no reason to try to improve his motivations and blame loses its point. Compare this passage from Morris Schlick (1962):

When a man is forced by threats to commit certain acts we do not blame him, but the one who held the pistol at his breast. The reason is clear: the act would have been prevented had we been able to restrain the person who threatened him; and this person is the one whom we must influence in order to prevent similar acts in the future (p. 54).

The 'influenceability theory' does then offer an account of why we are morally responsible only for our voluntary acts and omissions. For when an act is involuntary—(e.g.) coerced or ignorant—it will not reflect any defect in the agent's volitional system, and since the point of moral blame is essentially to influence behaviour, this eliminates the rationale for moral sanction.

The influenceability theory has been subject to much criticism over the years; it will not be necessary to repeat all of these here. However, one

point of dissatisfaction bears directly on the question that we are now concerned (why do excuses render blame unfair?): an emphasis on forward-looking questions of utility, distorts the practice of blame. Justifying PVC requires saying why it would be *unfair* to blame the agent for an involuntary act, but the influenceability theory does seem to even address this issue. It tells us that blame loses its point when the excuses apply, but why does this make it unfair to blame someone for an involuntary action? This makes it very vulnerable to the well rehearsed criticism that it gives us no reason to sanction only the guilty. In sum, by over-emphasising the utility benefits of blame, the influenceability theory does not provide an answer as to *why* it would be *unfair* to blame an involuntary action.

In the next section, I discuss P.F. Strawson's reactive theory of moral responsibility, which gives a substantially improved account of the excuses.

1.6 The Quality of Will Theory

In *Freedom and Resentment*, P.F. Strawson (1982) notes that the influenceability theory, with its emphasis on social regulation, is greatly out of focus as a description of our actual practices:

The picture painted by [influenceability theorists] is painted in a style appropriate to a situation envisaged as wholly dominated by objectivity of attitude. The only operative notions invoked in this picture are such as those of policy, treatment, control. But thorough-going objectivity of attitude, excluding as it does the moral reactive attitudes, excludes at the same time essential elements in the concepts of moral condemnation and moral responsibility (1982, p. 62).

He seeks to correct this deficiency in the influenceability theory by shifting emphasis onto the reactive attitudes—the ways in which they are modified, and withdrawn—in our practices as participant members of a moral community. We place a great importance on the attitudes, feelings and intentions of others as expressed in their actions and demand that

they treat us with a measure of good will (Strawson 1982, pp. 63, 65). The reactive attitudes are bound up with the demands we hold people to, being responses to the degree this demand for good will has been met or flouted.

On Strawson's analysis, excuses share the feature of showing that the person did not violate the demand for good will. They therefore inhibit the reactive attitudes because these attitudes are responses to violations of the demand. This may happen in two different ways. Firstly, the excuse may altogether sever the connection between 'what happened' and the agent, as when someone 'knocked you over because she herself tripped, or suffered from an epileptic seizure. Body movements may in these sorts of cases not reflect any quality of will at all. In the second case, excuses show that quality of will displayed by the agent did not, after all, violate the demand for goodwill. For if someone knocked you down because she (falsely) believed that you were in danger, then although her action does express a particular quality of will, it is not one that merits your resentment. Strawson's analysis elegantly unifies both cognitive and control type excuses: both sorts demonstrate that the agent did not—appearances to the contrary—violate the demand for good will or proper regard.

It is worth pausing for a moment to consider Strawson's insight in more detail, since it will be very important in later argument. Strawson contends that excuses 'invite us to see the injury as one in respect of which a particular one of these [reactive] attitudes is inappropriate' (1974, p. 65) by showing that the person did not really *violate any moral demand*. The idea is then that moral demands regulate quite different states from other types of rules such as traffic or linguistic rules, both of which regulate *performances*. (I may violate and be accountable to traffic laws even when I

quite obviously exceed the designated speed limit.⁷) Moral demands or requirements however, regulate not states of affairs *per se* but qualities of will. Therefore, since moral demands pertain to adequate regard or good will, questions of whether someone has violated or complied with a demand are to be decided not by looking at what happened, but at the quality of the agent's will. In summary, excuses function by inhibiting the reactive attitudes because these are precisely responses to occasions where the demand for good will has been violated. One might say that on Strawson's analysis, excuses defeat the presumption of ill will.

However, it should be clear that Strawson's account, in its present formulation, does not actually support the Principle of Voluntary Consent. For the reactive attitudes are linked to the demand for good will, but there would seem to be nothing in the concept of 'good will' that entails that only an agent could violate the demand only through a voluntary action. For example, someone might violate the demand by displaying indifference, or failing to reciprocate love, or being negligent or careless, where these could not plausibly be thought to be things that we choose to do. What is important is simply whether or not the agent displayed an attitude that was expressive of ill will. Consequently, nothing in Strawson's account rules out the possibility of an unintentional violation of a moral demand.

However, according to R. Jay Wallace (1998), the basic deficiency in Strawson's account is exactly this point: Strawson does not properly delineate the 'qualities of will' that are relevant to *moral responsibility* (1998, p. 126). Wallace contends that Strawson's understanding of 'quality of will' as including 'attitudes of goodwill, affection or esteem on the one hand or contempt, indifference or malevolence on the other' (Strawson 1974, p. 63) is too broad. Many of these attitudes are not at all relevant to

⁷ These are strict liability offences. For a discussion see Hart (1968).

ascriptions of moral responsibility (Wallace 1998, pp. 126): although we can agree that it matters greatly to us as persons how others view us, and whether they treat us with affection or indifference, it is, at best, doubtful that one should be blamed for being indifferent or for failing to love someone. Accordingly Wallace claims that 'qualities of will' should be interpreted to correspond with occasions of specifically *moral responsibility* (1998, p. 126-127). In the next section I explain how Wallace does this.

1.7.1 Wallace's Theory of Excuses

Wallace begins his account of the excuses by drawing upon J.L. Austin's suggestion that excuses function by showing that although what occurred would normally be morally wrong, the agent did not really perform the action *intentionally*.⁸ However, as Wallace himself indicates, this is merely to restate PVC (1998, p 124).⁹ For we need to know *why* excuses inhibit blame for x, by showing that the agent did not intentionally do x. To this end, Wallace appropriates Strawson's idea that excuses show that the agent did not really violate the moral demand for good will, and therefore has not done anything wrong. But if the agent has not done anything wrong, then by a 'fundamental principle of desert'—'no blameworthiness without fault' (Wallace 1998, p. 135)—then it would be unfair to blame him. Let us spell out the argument in full.

For any bad act x and excusing condition y:

- (1) If an excusing condition (y) is present then A did not do x intentionally (Austin).

⁸ Excuses are to be distinguished from justifications, which grant that the agent intentionally performed the action in question but attempt to show that it was not really wrong, or was permissible, either in general, or in the circumstances (Austin 1970, p. 176).

⁹ A intentionally does x just in case A voluntarily does x.

(2) If A did not do x intentionally, then A did not violate a moral demand in x-ing (Strawson's suggestion).

(3) If A did not violate a moral demand in (x-ing) then A did not do anything wrong.

(4) If A did not do anything wrong, then A does not deserve to be blamed (for x-ing) (The Principle of Blameworthiness).

This gives us our conclusion:

For any bad act x and excusing condition y,

(6) If excusing condition (y) is present, then A does not deserve to be blamed for x-ing.

This is the broad outline of Wallace's theory of why it would be unfair to blame someone for an 'excused or involuntary action; put simply, excuses show that the agent has not done anything wrong, and it is unfair to blame someone if he has not done anything wrong (more specifically, has not violated a moral obligation). But, although this is, so far, a very intuitive and plausible account, it still does not show why an agent wouldn't have done anything wrong if he acted unintentionally, or involuntarily. There seems to be a step missing: granted, excuses show that the agent didn't act intentionally, but why does a lack of intention immediately imply that the agent did not do anything wrong? Why couldn't someone have done something unintentionally—say expressed some quality of ill will—and yet nonetheless have done something wrong? Recall that this is the point on which Wallace criticises Strawson.

To answer this, Wallace makes the following moves. Issues of moral responsibility arise when a person has violated a specifically moral obligation. This entails that the 'qualities of will' relevant to moral responsibility are those qualities that 'bear of the question of whether ... moral obligations have been violated' (1998, p. 128). And finally:

Only if an action expresses a choice of some sort can we say that a moral obligation has either been violated or complied with (Wallace 1998, p. 128).¹⁰

One can only violate a moral obligation intentionally (voluntarily), simply because moral obligations can only be violated intentionally. Therefore, moral obligations regulate not body movements, nor attitudes and motivations, but choices or intentions. This is a very strong claim, one I will consider in a moment.

To recap briefly, Wallace argues that all the most commonly recognised excuses can be understood as defeating the presumption that the agent intended to do something bad, or expressed a culpable choice. This undermines the appropriateness of blame because if there was no culpable choice, the agent did not violate a moral obligation.

1.7.2 The Argument for PVC

This, if correct, is a very neat argument for the Principle of Voluntary Consent. More formally,

- (1) A is blameworthy for x only if A has violated a moral obligation in x-ing (by 3&4; hereafter the Principle of Blameworthiness (PB)).
- (2) A violated a moral obligation in x-ing only if A voluntarily consented to doing something morally bad (i.e. x) (VM).

Therefore,

- (3) A is blameworthy for x only if A voluntarily consented to a morally bad action (x).

Or more generally,

- (PVC) For any bad act x, A is blameworthy for x only if A voluntarily consented to x.

But are these premises true?

¹⁰ Wallace specifies that 'choice' may equally well be understood as 'intention' or 'decision' (p. 128).

- (PB) An agent is blameworthy for x only if he has violated a moral obligation in x-ing.
- (VM) An agent can violate a moral obligation only through a choice to do something morally bad.

PB is analytic. It does not make sense to say that someone is morally responsible or blameworthy for a wrong action, but that he has not violated a moral obligation in so doing. Conversely, if a person is not obliged to do it, or does not have any duty in that regard, then it is plain that he cannot be blamed for not doing it. This suggests that everything rests on the premise VM, the idea that a moral obligation can only be violated through a choice to do something wrong. But how does Wallace support this claim: ‘... one cannot be said to have *violated* a moral obligation in the absence of a relevant quality of choice’ (1998, p. 132)? He writes:

The moral obligation of nonmaleficence ... is not simply an obligation not to make body movements that harm other people. Rather it is an obligation not to act in ways that express the *choice to harm other people*, in the ordinary pursuit of one’s own ends (1998, p. 128, my emphasis).

But this is inconclusive, for it shows only that the obligation of nonmaleficence, or more charitably, moral obligations concerning (e.g.) cruelty and cheating, logically imply a degree of improper intention of choice. Wallace continues:

Indeed, the degree of our moral fault is determined essentially by the quality of the choices on which we act, regardless of whether we achieve the ends fixed by these volitional states (1998, p. 128).

To illustrate, say that Aegisthus maliciously thrusts his spear toward Agamemnon, only for it to be deflected by the intervention of the beneficent goddess Aphrodite. In this circumstance, the would-be assassin, Aegisthus, seems to be morally blameworthy although he did not in fact succeed in bringing about harm. This is explained by acknowledging that

he did wrong when he made the choice that he did. Thus the appropriate target of moral assessment is the agent's will construed as his choice to performing the action that would bring about harm.

However, once again, this shows only that we are sometimes culpable for our choices independently from what we bring about; this does not necessarily imply that one can *only* violate a moral obligation through choosing to do something wrong. Although we do place great significance on the intentions with which actions are performed, this does not eliminate the possibility that some unintentional actions or states might also be morally blameworthy.

The inconclusiveness of this claim (VM) has an important consequence for Wallace's account of the excusing conditions.¹¹ For it is noteworthy that although the most commonly recognised excuses might very well function by showing that the agent did not intend to do anything wrong—did not express a culpable choice—this means that Wallace is only entitled to the claim that:

For a certain class of bad actions X,

(1) *If* A is excused from blame for x-ing, then A did not intentionally do x.

But this, of course, does not imply that,

(2) *If* A did not intentionally do x, then A is excused from blame.

This would only follow if it were true that *all* moral obligations are centred exclusively on the agent's culpable choices (VM). Without this claim, the possibility remains that an agent may sometimes violate a moral obligation even if he did not choose in a culpable manner.¹² Thus, although the kinds of moral obligations pertinent to the 'most commonly recognised

¹¹ I will refer to Wallace's account of the excuses as the Quality of Choice theory.

¹² When I refer to the Quality of Choice Theory I mean Wallace's demonstration that all the major excuses can be understood as defeating the presumption of culpable choice (See 1998, p. 136-147). The Quality of Choice

excuses might be those that require a culpable choice to be violated, this does not entail that there might be other obligations that do not require this degree of culpable intention. Perhaps then, only *some* moral obligations can be violated intentionally; perhaps some other moral obligations that *do not* govern choices. The most obvious candidates for blameworthiness without culpable choice are occasions of culpable ignorance: in these circumstances, ignorance does not serve as an excusing condition, although it does show that the agent did not intend to do anything wrong at the time of his action.¹³ These cases apparently violate VM, for although the agent did not choose to do anything wrong at the time of his action, he is not thought to escape blame.

Of course, Wallace is well aware of this difficulty and has a solution ready to hand. In the Chapter 2, I discuss ignorance as an excusing condition in some detail, and outline Wallace's explanation for culpable ignorance. However, before proceeding, I present Wallace's explanation for *why* moral obligations should be centred exclusively on agents' choices.

1.7.3 Choice and Reasons-Responsiveness

As already noted, Wallace infers from the premise VM—moral obligations can only be violated if the agent makes a choice to do so—that moral obligations regulate not body movements, nor qualities of emotion or desire or attitude, but the quality of choice, as it is expressed in action. By making this move, he excludes such attitudes as affection and indifference from the space of moral obligation. Since we do not choose to express such attitudes, they could never violate a moral obligation. In the previous sub-section, I suggested VM is at best inconclusive; however Wallace does

is independent from the claim VM, for all it requires is that *in the main types* of excuses, the obligations in question do pertain to an agent's choices. This is not the strong claim that all moral obligations are such.

¹³ Another potential difficulty concerns the law's recognition of strict liability offences, that is, offences that do not require any quality of intention (these are usually such things as traffic offences, or breaches of contractual agreements). Whether or not there are good legal reasons for these laws is a matter that I will not go into here.

provide an argument as to *why* moral obligations are focused on agents' choices.

Wallace claims—I think plausibly—that if someone genuinely accepts a moral obligation then he will have something to say—in the form of some or other moral principle—in support of that obligation. He sees this commitment to the justification of the moral principles that one accepts as a precondition for the stance of holding someone morally responsible.¹⁴ Furthermore, since the principles that justify moral obligations 'articulate reasons for acting in conformity with these obligations' (1998, p. 130), the stance of holding a person morally responsible involves a commitment to justifications that could motivate the person held responsible to comply with the obligations (Wallace 1998, p. 130). This implies that moral obligations must regulate states that are directly sensitive to the influence of reasons. Moral obligations do not extend to emotions, or feelings or bodily movements, since these states cannot be controlled simply by the 'belief that there are moral considerations which make them obligatory' (p. 132.).

As I have formulated it, the PVC is a principle about action, but it is plain that the principle naturally extends to any (e.g.) states, emotions or desires that are not brought about through an exercise of choice. According to Wallace's present argument, if a state is not within the agent's voluntary control, it is not directly susceptible to the influence of reasons. But since the stance of holding someone morally responsible involves a commitment to being able to motivate the agent towards compliance, Wallace argues that states not within the agent's voluntary control are not appropriate objects of moral obligation, and hence moral blame.

but suffice to say that the law may diverge from morality in some areas because it must take heed of a broader set of practical questions. See Hart (1968).

¹⁴ See Chapter 3

I will return to this argument later in Chapter 4, but for the moment just one quick point. The claim that moral obligations govern states that are directly susceptible to the influence of reasons is logically independent from VM, the principle that a moral obligation can only be violated through an intentional wrongdoing. For moral obligations might regulate states responsive to reasons without it being true that an agent can only violate a moral obligation through an intentional wrongdoing. The possibility I have in mind is one where some unintentional actions violate moral obligations, while it still being the case that stance of holding someone responsible necessarily involves a commitment to justifying the moral principle to which one holds that person, and to motivating compliance with that obligation.

1.6 Conclusion

My main aim in this chapter has been to understand the plausibility of the Principle of Voluntary Consent. I proposed that justifying PVC—confirming its adequacy as a normative principle regulating moral responsibility—requires explaining why it would be unfair to blame a person for an involuntary action. This entails that an account be given of why excuses should make blame unfair. To this end, I traced a route through various prominent theories, eventually invoking Wallace's Quality of Choice Theory in support of PVC. According to this theory, PVC is correct, simply because moral obligations regulate choices, such that one cannot, in fact, violate a moral obligation except through a culpable quality of choice. In the next Chapter, I explain how a proponent of PVC must explain the phenomenon of culpable ignorance.

2. Culpable Ignorance: Factual and Moral

The excusing condition of ignorance is of especial significance in assessing the Principle of Voluntary Consent. This is because, quite simply, it does not always excuse. Gideon Rosen (2002) illustrates:

Suppose I walk down a crowded sidewalk with my nose in a book. When I knock you over it does me no good to say, 'But I didn't know you were there!' This might be true, and in another context it might signal an excuse...In this case, however, while I do act from ignorance, in the sense that I would have acted differently had I known better, my ignorance is obviously no excuse whatsoever (p. 62).

Instances of culpable ignorance such as this apparently conflict with PVC because the agent did not intentionally do anything wrong, but nonetheless seems culpable for his action. As in Rosen's example, the agent was in fact ignorant that he would end up knocking another person over. However, he should not have been ignorant, for this was a busy city street. We may put the point more generally, and say that if one acts in ignorance, then one has not acted voluntarily; and yet, if that ignorance is not accepted as an excuse, then one might nonetheless still be to blame. Therefore, the possibility of culpable ignorance suggests an occasion where someone is blameworthy for an action despite having involuntarily done something wrong.

Ignorance as an excusing condition may be divided into two categories: (i) ignorance of fact, and (ii) moral ignorance.¹ And in both cases, there is a possibility that the ignorance will not excuse such that the agent may be blameworthy for an involuntary action. My aim in this chapter is to show

¹ It is noteworthy that, for Aristotle, ignorance of fact is the only type of ignorance that does excuse: he claims that persons are *blamed* for ignorance of universal moral rules: 'It is not mistaken purpose that makes an action involuntary (it makes men wicked), nor ignorance of the universal (for that men are *blamed*), but ignorance of the particulars, i.e. of the circumstances of the action and objects with which it is concerned. For it is on these that both pardon and pity depend, since the person who is ignorant of these acts involuntarily' (N. E., p. 51).

how a proponent of PVC is committed to explaining culpable ignorance, both factual and moral.

2.1 Ignorance of Fact

To be in a position to fully understand cases of culpable ignorance, I must say a few words on how factual ignorance excuses, when it does. I will do this in the context of showing how the Quality of Choice Theory explains a successful excuse from ignorance.²

On the Quality of Choice theory, excuses from factual ignorance show simply that the agent did not voluntarily do anything wrong. Ignorance defeats the presumption that a person did *x* intentionally, by showing the he did not know that what he chose would turn out to be of a kind *x* (Wallace 1998, pp. 136-137). For if a person thinks that he is choosing to do *y*, but he in fact brings about *x*, then he does not voluntarily choose to bring about *x*. Even if *x* is a state of affairs that might be described as objectively bad, he does not violate a moral obligation simply by bringing about this state. This is because, according to VM, a person can only contravene a moral obligation against doing *x* through a choice to do something that contravenes *x*. For example, a person can only violate the moral obligation of nonmaleficance by choosing to act in ways that harm other people (Wallace 1998, p. 128). Thus, it seems one cannot one cannot break a moral prohibition against doing *x* in ignorance.

The epistemic failure in which someone is ignorant of fact corresponds to the excusing conditions of inadvertence, mistake or accident (Wallace 1998, p 136).³ When someone does something inadvertently, he does not

² I refer to Wallace's account of the *excuses* as the Quality of Choice theory (QCT). Although, as noted in Chapter 1, QCT requires VM to explain why the lack of culpable choice should make blame unfair, QCT is strictly speaking not committed to the strong claim that *all* moral obligations require this degree of culpable choice. VM implies the QCT, but QCT does not entail VM, for QCT may plausibly cover occasions when someone does get off the hook. See Section 1.7.2.

³ The paragraphs on inadvertence, mistake and accident draw heavily on Wallace (1998, pp. 136-139).

anticipate that a certain consequence would occur when he chooses to embark on some activity. For example, a person may inadvertently set off the house alarm by brushing against the panic button as she rushes out of the house on her way to work. In gathering her things together and hurtling down the passage, she did not anticipate that she would set off the alarm. There is no culpability inhering in her 'choice' because she made a choice to rush off to work and not to set off the alarm; she may, however, be vulnerable to accusations of carelessness or recklessness (Wallace 1998, p. 137). By contrast, when someone does something by mistake, he may intend to perform an action of the *kind* that he does perform, but because of ignorance of some detail, does not perform the particular action he intended to. For example, I intend to borrow your umbrella since you'd said I could, but I make a mistake with the brollies, and take my landlord's instead. In this case, the excuse shows that I did not do anything morally wrong because I made an honest mistake: I did not steal my landlord's umbrella because theft requires an improper intention on my part and this is what my ignorance shows that I didn't have. Finally, the excuse 'by accident' shows that in the course of doing something a person intended to do, something 'befalls' him so that he does not execute the designs he had hoped. In this respect, when the agent set about whatever resulted in the accident, he did not know that he would end up bringing about this result.⁴ Furthermore, things omitted in ignorance, may also be excused if it can be shown that one has inadvertently, or mistakenly omitted to do something that one should have done. Someone may inadvertently omit to turn off the house alarm, if, say, she was listening to music on her headphones and did not know

⁴ To illustrate recall J.L. Austin's example:

You have a donkey, so have I, and they graze in the same field. The day comes when I conceive a dislike for mine. I go to shoot it, draw a bead on it, fire ... but as I do so, the beasts move, and to my horror, yours falls (1970, p. 185).

The excuse shows that Austin did not intend to shoot his neighbour's donkey, and in this sense did not violate any obligation against (say) destroying another's property. The excuse gets him off the hook because when he made the decision to shoot his donkey lacked the foreknowledge that he would end up shooting his neighbour's instead.

that the alarm had gone off. Similarly, one may mistakenly omit to turn on the house alarm, if one programmed the alarm for the basement instead. In my opinion, Wallace is correct when he claims that one cannot omit to do something by accident (1998, p. 137).

These then are the excuses from factual ignorance. The unifying theme has been that the excuse defeats the presumption that the agent has intended to do wrong. By VM, this entails that he did not violate any moral obligation. One qualification is in order in that the excuses from mistake or accident may not succeed if the choice to perform an action of the type the agent intended to perform—but did not succeed in bringing about—was itself culpable. Gideon Rosen (2002) formulates this as follows: ‘When X does A from blameless ignorance, then X is blameless for doing A, provided the act would have been blameless if things had been as the agent took them to be’ (p. 63). If a brazen thief decides to steal Jones’s car, but mistakenly steals Radley’s, he is hardly excused from blame since the intention to steal a car (any car) is morally culpable.

The Quality of Choice theory makes good sense of the excuses from ignorance of fact. In these cases, then agent is excused from moral responsibility because he did not voluntarily consent to doing anything wrong. In my opinion, our moral intuitions coincide with PVC here; more specifically, we can see that the moral obligations that were *not* violated were ones that would require a degree of improper intention. In the next section, I show how a proponent of PVC explains culpable ignorance.

2.1.1 Culpable Ignorance of Fact

How does an adherent of PVC cope with cases of culpable ignorance? To restate the problem, PVC says that for every blameworthy act, the agent must have voluntarily done something bad. But, when we say that someone acted from culpable ignorance we mean that he is blameworthy

for an involuntary action. Are these counter-examples to PVC? Let us re-examine the Rosen's example mentioned above; I restate it here for convenience:

Suppose I walk down a crowded sidewalk with my nose in a book. When I knock you over it does me no good to say, 'But I didn't know you were there!' This might be true, and in another context it might signal an excuse...In this case, however, while I do act from ignorance, in the sense that I would have acted differently had I known better, my ignorance is obviously no excuse whatsoever (Rosen 2002, p. 62).⁵

What does a proponent of PVC say about a case like this? Wallace (1998) writes:

[Ignorance may] not be accepted [as an excuse] if the ignorance that makes what one did unintentional is itself culpable. In that case, it will be taken not as a valid excuse, but evidence one of a difference family of faults that includes negligence, carelessness, forgetfulness and recklessness (p. 138).

This seems plausible in that G was reckless or negligent because, as a city-dweller, he is expected to keep a look out for others when he walks down the road (cf. Rosen 2002, p. 63). However, it is plain that this response only postpones the question: for to say that culpable ignorance is negligent, careless, forgetful or reckless now requires us to accommodate *these* faults within the framework allowed by PVC.⁶ For, granted, G was reckless, but does this mean that he voluntarily consented to some wrong action?

It does in fact, since recklessness involves the *foreseen* probability of harm, whereas in negligence, the agent is usually completely unaware of the quality of his actions (Houlgate 1968, p. 114). A reckless action is not

⁵ I refer to the culpable walker as 'G' to distinguish him from Rosen the philosopher.

⁶ Indeed the apparent tension in saying that an agent is *guilty* of negligence is usually overlooked. Guilt is supposed to require that an act have been voluntary (cf. Williams 1985, p. 178), but acts done through negligence are obviously not

then performed in ignorance of the possibility of risk, although the agent may not anticipate the gravity of the consequences he brings about. Presumably this means that G anticipated the possibility that reading his book might lead to him colliding with a passer-by.⁷ Therefore, when he chose to read his book anyway, he was not in complete ignorance of risk. He may therefore be to blame, at least, for the quality of will expressed in his choice to disregard the possibility of risk.⁸ Therefore, PVC is preserved: Gideon voluntarily consented to a culpable action, namely to walk down the road with his nose in his book.

Cases of negligence or carelessness are more difficult for they may be done in complete ignorance of the effects of one's actions. Although negligence is sometimes understood in terms of a 'failure to take reasonable precautions against harm', insofar as this expression connotes a *deliberate* failure to take precautions, it diverges from common usage in which the 'necessity for the precautions was *not appreciated*' and the 'failure to take them arose from a failure to attend to and appreciate the risks' (Hart, 1962, p. 259, my emphasis; cf. Wallace 1998, p. 139). Moreover, negligence as the 'failure to take reasonable precautions' seems most appropriate to cover cases where the activity is *done* in a *careless manner* (Hart 1968, p. 260). This is to note the distinction between 'doing an action carelessly', and 'carelessly doing an action', the former pertaining to the *manner* of executing an activity, while the latter, the actual doing of certain things (Hart 1968, p. 260). Consider for example the difference between, 'Radley waved the gun about carelessly', as opposed to, 'Radley carelessly waved the gun about'. The first conveys the idea that, while *performing* the action, the agent failed to exercise due care, while the

voluntary in this sense. Granted, the agent 'should have known', but then 'knowing' is also not within the scope of one's voluntary control.

⁷ Hart (1968) points out that there is some discrepancy in the law as to whether the term 'reckless' should be reserved for occasions where the agent 'consciously appreciated the gravity of the risk' or whether the agent was aware of *some risk* without 'appreciation of its gravity' (p. 261).

second suggests that the agent was not really fully aware of what he was doing in *performing* the act that he did.

Now, discussions of negligence are apt to be full of expressions such as 'acting without due care' and 'failing to act as a reasonable person might'; but how do these terms help to preserve PVC? They do not obviously indicate any link to an agent's choices. Moreover, in cases where a person has been negligent, we think that he deserves to be blamed for his behaviour. He may not have voluntarily performed any bad action, but he seems blameworthy anyway. As Barbara Herman (1993) remarks, when someone is negligent or careless and does not do what she ought to do, she very well might be acting on a 'routinely permissible maxim' that expresses her 'intention to do some ordinary action', while, without then recognising it, be violating a moral obligation such as (e.g.) breaking a promise (p. 99).⁹ The difficulty is then to explain how the agent could be to blame if he has not expressed a relevant culpable 'quality of choice' at the time of his action.

The Tracing Principle is offered as a way of doing this.

2.1.2 The Tracing Principle

In this section I explain the strategy an adherent of PVC is committed to employing in order to explain the phenomenon of culpable ignorance. In the last section, I explained that when a person is culpably ignorant-ignorance fails to excuse him—then he has been negligent or careless, and has not discharged his duties properly. However, for this to be any help in rescuing PVC, that person must have voluntarily and culpably failed to do his duties.

⁸ It is a difficult question as to what extent, and for what, the agent is morally responsible. If someone recklessly assumes some risk with disastrous consequences, is he more to blame than were he to fortuitously escape these consequences? The same question will arise with respect to negligence; I will discuss it in more detail below.

⁹ Herman's (1993) discussion is in the context of defending the Kantian view that 'willings' are exclusive bearers of moral worth: '[t]hings that happen are not themselves morally good or bad, right or wrong: only willings are' (p. 94). Her concerns are thus similar to Wallace's, with his commitment to the premise that a culpable choice is required for the violation of a moral obligation (VM).

And this is exactly what proponents of PVC do say: cases of negligence have to be traced to earlier episodes of choice (Wallace 1998, p. 139). Let us call this the 'Tracing Principle': ignorance is culpable if it is due to negligence, where having been negligent is to have previously made culpable choices, or culpably omitted to make choices. In this way, negligence is explained in terms of prior culpable actions or omissions (cf. Herman 1993). It is important to emphasise that these previous exercises of choice must themselves be *culpable*, since one could not be blameworthy on the basis of previous choices that were excused from blame (say if they too were made in ignorance).

This then is how adherents of PVC explain the culpable ignorance exemplified in negligent and careless actions: ignorance is culpable only if it is due to prior culpable voluntary actions and omissions, more specifically those that the agent knew might lead to his later failure to fulfil his duties. Accordingly, PVC is amended as follows:

PVC*) For any bad act x, A is blameworthy for x only if (1) A voluntarily consented to x, or (2) A's doing x is traceable to earlier bad acts which A voluntarily consented to doing.

The Tracing Principle does not locate the moral fault at the time of the action but 'looks back in time' to earlier occasions of moral fault. Indeed, part of the strategy here is to widen the scope of moral judgement, to look to maxims of 'preparation' that are adopted before the time of action (Herman 1993, p. 101). 'An agent with an obligation does not therefore stand in some simple relation to a required action' (Herman 1993, p. 101); rather the notion of obligation is extended to include a complex set of projects and sub-projects to which the agent becomes committed when he acquires the obligation. The implementation of a whole range of sub-projects may be required of the agent to ensure that he fulfils his duties and may form part of one and the same obligation (Herman 1993, p. 102). In this way, the Tracing Principle preserves VM: the agent who has been

negligent has violated an obligation, where this obligation is understood as involving many different culpable actions and omissions, all being part of the same moral obligation.

Cases of negligence or carelessness are thereby explained by looking to moral faults that correspond to the PVC—that is the agent chose to do something that he knew might lead to him doing something morally impermissible—located back in time from when the actual culpably ignorant action occurred. As Herman (1993) writes:

So at the time of the apparent moral failure, it is true that the agent's maxim of action is not faulty or impermissible. Yet we can identify her moral failure in what she did, or did not do, prior to the time of action, in maxims that were not adequate as means (p. 101).

In order to make the Tracing Principle clearer, let us apply the strategy to a concrete example. The most plausible examples to illustrate this principle are those where someone is explicitly informed of his duties, but voluntarily omits to adopt maxims of preparation such that he will ensure that he meets his obligations. Wallace illustrates with the example of someone—call him Brown—agreeing to act as a baby sitter, and then due to not taking sufficient measures to ensure the fulfilment of his duties, inadvertently treading on the young child's hand (Wallace 1998, pp. 138-139).

In this sort of case, Brown has voluntarily agreed to look after the child, and is presumably aware that this involves keeping track of the child's movements. However, instead of implementing a procedure to ensure that he meets his duties—'maxims of preparation'—he decides to watch television, cook himself some dinner, and drinks a beer. He intends to make regular checks on the child, but puts this off, telling himself that he will do so just a little later on. The result of Brown's slacking off is that that when he gets up to fetch another beer from the fridge, he does not realise that the child is crawling about around the corner and

inadvertently treads on the child's hand, causing some injury. Two issues are salient here:

1. Brown's ignorance of the child's whereabouts will serve to show that he didn't mean to step on his hand. The inadvertence with which he injured the child breaks the connection between his will and action, such that his act does not reflect a faulty choice at the time of the action. However, he is opened up to a charge of negligence, since he failed to take steps to properly uphold the agreement he had undertaken (p. 138): his responsibility resides in him not taking proper care to guard against the undesirable state of affairs.

2. How, precisely, does the Tracing Principle explain Brown's fault? As noted by Herman (1993), the failure in this sort of case resides in the agent's failures of preparation. Spelling this out in detail, Brown agreed to look after the child, and he knew that this involved keeping a careful rein on his movements. However, instead of sedulously checking on the child's movements, he culpably chose to watch television, and slack off in his duties. In this way he omitted to do what was required of him, by choosing to do something else instead of what would have led to his meeting his obligation. Brown's negligence is explained by his voluntary omitting to do what was required of him despite being fully aware of what was expected of him. These voluntary omissions are culpable because they are done in awareness that doing other activities instead might lead to a failure to measure up to his commitments.¹⁰

¹⁰ Another question that arises is, what, exactly is Brown is blameworthy for? Recall that his ignorance still serves, for that particular action, to break the identification between the outcome (treading on the baby's hand) and his intentions. He did not cause the injury on purpose, but he should not have caused the injury at all because he should not have been negligent. The question is whether he is to blame for consequences of his negligence, in Holly Smith's (1983) phrasing, 'the unwitting wrongful act(s)', or to blame only for the 'benighting act' or acts, that is, initial acts 'in which the agent fails to improve (or positively impairs) his cognitive position' (p. 547). In the case at hand, the question is whether Brown is to blame for the child's injury, or only for the choices to do something other than carry out the expected routine checks.

In summary, an adherent of PVC is committed to explaining the possibility of culpable ignorance by means of the Tracing Principle in order to preserve the thesis that agents are blameworthy only for their voluntary acts and omissions. More specifically, the Tracing Principle enables Wallace to preserve VM, the thesis that a moral obligation can only be violated through a culpable choice. As it seems to me, the Tracing Principle is at its most plausible in circumstances when the agent has entered into an well specified agreement and so voluntarily acquires duties to ensure that certain (arranged) states obtain. For in the case of a voluntarily acquired contract, he will not be ignorant of his duties, and his negligence will perhaps then be traceable to a *choice* to not pay proper heed to these duties—a choice not to take ‘reasonable precautions’. However it is far from clear that the Tracing Principle is tenable for a host of other cases. In Chapter 4 I argue that the Tracing Principle cannot account for all cases of culpable ignorance.

2.2 Moral Ignorance

In the last section I discussed ignorance of fact as an excusing condition: instances where a person is ignorant of some crucial factual detail of the circumstances, causing him to do something that he did not intend or choose to do. As already mentioned, the pertinence of ignorance as an excusing condition for evaluating the Principle of Voluntary Consent emerges through the possibility of culpable ignorance. In these cases, the agent does not intend to do wrong because he is ignorant—his infraction is involuntary—but he does not escape blame because he is culpable for having acted in ignorance. I showed how proponents of PVC are

This question is not central to my arguments in this dissertation. I require only that agents' be sometimes blamed for negligence and carelessness. If some instances of negligence or carelessness cannot be explained by the Tracing Principle, then my claim will go through irrespective of what, exactly, the agent is blameworthy for.

committed to explaining culpable ignorance—where this indicates negligence or carelessness—by means of the Tracing Principle.

However, in addition to factual ignorance, it also seems possible that someone may be ignorant of *moral* details particular to the situation. In this regard, Gideon Rosen (2002) suggests that ‘one can fail to know a general moral rule ... [or]... that people have certain rights, or that one has certain duties’ (p. 64).¹¹ If this is right, then moral ignorance serving in an *excuse* raises concerns analogous to those generated by factual ignorance. For, moral ignorance may also render an action unintentional, such that the agent would not have voluntarily consented to any bad action, and yet, his being morally ignorant might nonetheless be culpable. Therefore, culpable moral ignorance is also apparently in conflict with the Principle of Voluntary Consent.

However, as will become apparent in the next section, moral ignorance *may*—in contrast with factual ignorance—function to inhibit blame in another way than by rendering the action unintentional (and hence involuntary). But this means that there are cases of moral ignorance that do *not* pose a threat to PVC.

My aim in the next two sections is to show how ignorance of a ‘general moral rule’ is to be understood if it is to render and act involuntary. The way I do this is indirect: In Section 2.2.1 examine Gideon Rosen’s (2002) example of blameless moral ignorance of a moral rule in order to demonstrate that Rosen’s example *cannot* be conceived of in terms of moral ignorance rendering an act unintentional (involuntary). Then, by drawing on the themes emerging from this discussion, I show in Section 2.2.2 how moral ignorance might be understood so that it does provide a challenge to PVC, one that is analogous to that generated by culpable

¹¹ He also proposes a third and fourth: ‘one can fail to know what one should do in a particular case... and that a particular act is cruel or abusive’ (p. 64). As will become clear, once the distinction between moral ignorance serving in an excuse, and moral ignorance in a (morally) unjustified action is in place, it will be evident that these proposals are not candidates for ignorance serving to render an acts involuntary. They do not therefore pose a threat to PVC—examples that do are those where the act is *involuntary* and culpable. For this reason then, I omit discussion of these suggestions.

factual ignorance. The issue of whether Rosen is right in thinking that his is indeed a case of *blameless* moral ignorance is not something that I need to commit myself on.

2.2.1 Morally Unjustified Action

As an example of ignorance of a general moral rule, Rosen offers the example of chattel slavery, the kind of which took place in the Near East during the Biblical period. This kind of slavery differs from (e.g.) slavery in America, which rested on mistaken views concerning racial differences, in that almost anyone could become a slave through bad luck or imprudence (Rosen 2002, p. 65). In this respect, Rosen claims, chattel slavery is not an instance of factual ignorance, but of *moral* ignorance. Furthermore, in Rosen's opinion, a (morally ignorant) slave owner who (say) forces labour without compensation, or beats his slaves, is to be excused from blame, since he is ignorant of the moral status of his actions, and his ignorance is not in any sense, due to negligence. Quite on the contrary, says Rosen, it would have taken a 'moral genius' to 'see through the wrongness of chattel slavery' (p. 66).

Rosen employs the term 'excuse' to designate any 'fact that defeats the standing presumption of responsibility' (p. 61). However, recalling Austin's distinction between an 'excuse' and 'justification', we can see that there are important differences glossed over in Rosen's use of the term ('excuse'). For both excuses and justifications, if successful, serve to show that A does not deserve blame for his act. When someone attempts to escape sanction by *justifying* his conduct, he admits that he did x, but argues that doing x was a 'good thing, or the right or sensible thing, or a permissible thing to do, either in general or the special circumstances of the occasion' (Austin 1970, p. 176). On the other hand, Austin claims that excuses function differently in that the person will admit that x is bad, but

claim that he did not (straightforwardly) do x. 'In one defence, we accept responsibility but deny that it is bad: in the other we admit that it was bad but don't accept full, or even any, responsibility' (p. 176).¹²

With this distinction in place, it is plain that the Hittite slave-owner's ignorance to be described as a case of falsely believing that one is *justified* in performing certain acts. We may understand this by distinguishing between subjective and objective senses of justification for belief. The Hittite believes that he is entitled to certain forms of behaviour with respect to his slaves, and in this sense his belief is subjectively justified. However, his belief is not objectively justified since he is not, as a matter of moral fact, entitled to this sort of behaviour. I will refer to this kind of error as acting from an (objectively) *unjustified belief*.¹³

The sort of ignorance exhibited in an action from an *unjustified belief*, if it inhibits blame, does so in a quite different way than ignorance serving as an *excuse*.¹⁴ To see this, consider that when the slave-owner beats his slaves, he is not ignorant of what he is doing. He *intends* (or voluntarily chooses) to beat them because he (say) believes that they are his property and this therefore *justifies* this form of behaviour. If questioned as to what right he has to treat them in this way, he would presumably simply cite the fact that they are *his slaves*. Crucially, the Hittite accepts full responsibility (it was his action—he intended it) for his actions, but believes that beating his slaves is something he is entitled to do. He claims that he is fully

¹² To illustrate briefly, suppose that one rainy Monday, Gibbs takes Radley's umbrella with her to work. Later in the day, Radley, exceedingly irritated as having been soaked in the rain, confronts Gibbs and accuses her of having 'taken' her umbrella. It seems that Gibbs, should she want to defend herself of the charge, will likely say one of two things:

(1) She may claim that she did not realise that it was Radley's umbrella but thought it was her own, and thus that she took the umbrella by mistake.

(2) She may claim that she took the umbrella, but only because she was going to a job interview, and was late and couldn't afford to be wet.

Assuming that Radley finds this a good enough justification, Gibbs will escape blame in both cases. However, the way in which blame is inhibited is very different, in that in the first case, Gibbs denies that really she performed the culpable action, while in the second case, she attempts to show that it was not really a culpable action in the circumstances.

¹³ I omit for the most part the qualification 'objective'.

¹⁴ Following Austin (1970), this is in the sense of a particular kind of blame-inhibitor to be distinguished from cases where the agent tries to justify his behaviour.

responsible for those actions—he did them; they are his actions—but they are not morally impermissible in these circumstances.¹⁵

By contrast, in a typical case of ignorance as an excuse, the agent acts in a way other than he intends—he intends to perform an action of type X—but because of ignorance performs an action of type Y. He does not do what he intended to do (whereas the Hittite does exactly what he intended to do—there is no question of inadvertence or mistake here). Importantly, he believes that one should not do things of type X: he accepts the moral demand. However he tries to show that he is not responsible for happened (it was not really his action), because he was trying to do something quite different and something that is morally permissible (type Y).¹⁶ (Recall the qualification from Section 2.2: A is blameless only if he would have been blameless had things been as he took them to be. Thus if A was trying to do something morally unacceptable he will still be to blame even if he did not get to perform the action he intended to.)

As is evident from the above, the key difference between cases of ignorance as an excuse and being mistaken about whether a certain course of action is *justified*, resides in the role of the belief in the action. With inadvertence, mistake and accident, the agent lacks a certain relevant belief about the circumstances, such that he commits an infraction *unintentionally*. However, when an agent acts in a *morally unjustified manner*, this is due to his thinking such that an intentional performance of that very action would be justified.

¹⁵ Ignorance serves in an *action done from an unjustified belief* when:

- (1) S *intentionally* does x.
- (2) S does not believe that x is morally impermissible.
- (3) S believes that actions of *type X* are morally justified.
- (4) If S had access to other facts (moral or non-moral), S would realise that actions of type X are morally unjustified

¹⁶ Ignorance functions as an *excuse* under the following conditions:

- (1) S intends to do x.
- (2) x is not of a morally impermissible type.
- (3) On account of ignorance, S *unintentionally* does something of type Y.
- (4) Y is morally impermissible.

S will normally accept that Y is morally impermissible. This is because in the context of an excuse the agent is trying to show that he did not really do the wrong action: he is trying to escape sanction. Moreover, although it is possible than

Rosen's aim is to understand whether the principle of culpable ignorance—when a person acts from ignorance, he is culpable for his action only if he is culpable for the ignorance from which he acts' (p. 61)—extends to moral as well as factual ignorance.¹⁷ Whether or not this is correct, it is plain that the ignorance at work in the Hittite example functions quite differently from ignorance in a typical excuse. Ignorance of fact causes the agent to do something other than he intended, whereas in the examples Rosen provides, the agent's moral 'ignorance' contributes to his being mistaken in thinking certain of his (intentional) actions are *justified*.¹⁸

Why is this distinction important? Firstly, ignorance understood in this way (in terms of acting from an unjustified belief) poses no problem for PVC, for the agent's action in this type of case is fully voluntary. But PVC says that someone is blameworthy *only if* he has acted voluntarily, and not that if he acted voluntarily then he is blameworthy. Thus even if Rosen's examples are cases where the agent does deserve to be blamed, i.e. is not to be 'excused', they are not germane to my interests in this dissertation. Counter-examples to the Principle of Voluntary Consent could only be those in which the agent has acted involuntarily because of moral ignorance and yet, nonetheless, deserves to be blamed. But how could

someone might claim that he didn't do the act, but that he doesn't think it would be wrong if he had done it, this will amount to him thinking that the act would have been justified in that context (despite the fact that he didn't do it).

¹⁷ It is noteworthy that Rosen (2002) rejects both the Quality of Will theory and (something recognisable as the) Quality of Choice theory because both fail to give what Rosen believes is the correct answer, namely that the Hittite is blameless. In my view the distinction between ignorance as an excuse, and ignorance resulting in an unjustified belief, may be invoked to bring things into perspective. Both the Quality of Choice and Quality of Will theories operate within the parameters of Austin's understanding of 'excuse': cases in which the agent accepts that the act is bad, and that the excuse (ignorance) renders the bad act 'unintentional'. Therefore, they do not even purport to explain the cases Rosen has in mind. A theory of the *excuses* will not necessarily cover cases of actions done because of being mistaken about the application of moral rules.

¹⁸ Rosen's other examples of moral ignorance seem even more obviously cases of acting from an *unjustified belief*. He gives the example of Smith, a 1950s sexist father who gives his sons opportunities denied to his daughters. However, once again this seems to be a case of someone believing that certain courses of action are justified in virtue of some or other fact. This need not imply that Smith has some developed theory of gender and the various capabilities that are distributed unevenly across the sexes; Rosen is quite correct to note that Smith simply takes it for granted—'as an undefended axiom of moral common sense' (p. 67)—that his sons will go on to have certain opportunities that will not be available to his daughters. The fact remains therefore that Smith does not act from ignorance such that he did not do what he intended to do, but acts voluntarily on a belief that he sincerely yet falsely believes to be justified.

moral ignorance render an act unintentional? This is the topic of the next section.

2.2.2 Moral Ignorance as an Excuse

There are a class of *general moral rules* that could never be unintentionally violated through moral ignorance. More specifically, for this class of moral rule (to anticipate Chapter 3, call these 'negative duties'), moral ignorance could only inhere in a morally unjustified action. What moral rules are these, and why is this the case?

Negative duties pertain to a class of action broadly relating to the intentional inflicting of injury. Charles Taylor (1989) highlights this in the following passage:

Perhaps the most urgent and powerful cluster of demands that we recognise as moral concern the respect for life, integrity, and wellbeing, even flourishing, of others. These are the ones we infringe when we kill or maim others, steal their property, strike fear into them and rob them of peace, or even refrain from helping them when they are in distress. Virtually everyone feels these demands, and they have been and are acknowledged in all human societies (1989, p. 4).

I claim that a moral obligation governing these forms of behaviour could never be violated unintentionally through moral ignorance. My argument is simply this: If an agent sets about to cause physical injury (let's say torture) then he knows what he is doing. But if he knows what he is doing, then either he thinks that he is justified, or he knows that it is wrong but does not really care. If he thinks it is justified then has a certain divergent conception of when this form of behaviour is appropriate. A normally functioning human agent could not be ignorant that inflicting severe physical injury is wrong *simpliciter*, for this type of action is one of a class of action that is, and has been throughout history, morally impermissible in some contexts. Therefore this agent, if he thinks he is justified, has a different idea of when to apply a moral rule prohibiting (e.g.) torture.

'Culture and upbringing may help to define the boundaries of ... relevant "others", but they don't seem to create the basic reaction itself' (Taylor 1989, p. 5). The point is that—as in the example of slavery—a fundamental principle against harm may be limited such that some people are thought to deserve to be treated one way, while others—for one or another reason—merit differential treatment. But, if inflicting severe physical injury is disallowed in one context, the continued performance of such actions requires justification when transferred into another context. If the action is not to be altogether avoided, then it must be justified. ('It is torture, but this is war!') This indicates that for a large class of moral demands—roughly speaking, those concerning physical wellbeing of others—ignorance of a moral rule can only be understood in terms of an ignorance of the scope of a moral rule. I think that similar considerations apply, *mutatis mutandis*, when someone fails to know that a group of people have certain rights: this is to believe that they don't have those rights, i.e. to believe that one is justified in treating them as though they don't.

On the other hand, consider the following statements: (1) 'I'm sorry, I didn't mean to be disrespectful; (2) I didn't know it was wrong'. The second claim may be understood in two distinct ways: (2a) ignorance of a general duty of respect; (2b) ignorance that one's behaviour *manifested* disrespect. ('I didn't know x was wrong because I didn't know that when I did x I would be taken as showing disrespect'.) I have two chief contentions here:

1. For reasons analogous to those outlined above, (2b) is not plausible: it is not likely that a morally responsible agent—one to whom moral judgements are apt—could fail to know that he had a general duty of

respect. It seems to be a fact about human beings that we do think that certain individuals are worthy of respect and honour.¹⁹

2. However, in my opinion, (1) is conceivable, and the reason it is conceivable is because (2b) is conceivable. Why is (2b) conceivable? I suggest, simply because there are no determinate patterns of behaviour that *constitute* a duty of respect. By this I mean the following: When our Hittite sets out to beat his slaves, he either thinks he is justified, or he thinks it is wrong but doesn't care. On the other hand, when I keep my hat on in a church, I may, plausibly be thought to not know that this form of behaviour may be taken to manifest disrespect.²⁰ Thus, whereas if I intentionally set about causing *physical injury*, I must know what I am doing, and I must think it is justified or wrong. However, when I omitted to remove my hat, I didn't realise that this was wrong at all; but neither did I think it was justified.

This suggests a strong disanalogy between negative duties and other moral rules. Negative duties say that one must not bring about certain physical (perhaps psychological) injuries. But this means that there are determinate forms of behaviour specified by the concept, such that the agent will only have succeeded in (say) torturing, only if he has brought about physical, emotional, and psychological suffering. Therefore, if he is not an intentional wrongdoer, he must think what he is doing is permissible in this context.

On the other hand, there is no determinate pattern of behaviour that might be regarded as being 'respectful' or 'disrespectful'. A duty of (e.g.) respect is realisable in ways that are not conceptually tied to the duty, where this means that certain acts and forms of behaviour will be taken to

¹⁹ Once again, see Taylor (1989) on this point.

²⁰ (It is important to note that I am not claiming I will have succeeded in being disrespectful. Perhaps being disrespectful *does* require some improper intention; in any event I have not established this claim, yet; this is one of my aims in Chapter 4)

bear on the question of whether this duty has been violated or complied with, which may not have any intimate connection with any particular form of behaviour. Indeed, the duty of respect is culture specific, such that what will count as showing respect in one culture or community might differ in another. Instantiations of a duty of respect will be determined by a community of people whose practices generate a certain code of conduct. In this way, a duty of respect might be linked to certain codes of etiquette, a point Wallace (1998) acknowledges as follows:

Some ... breaches of etiquette will be resented because they violate a distinctively moral obligation of respect or consideration (p. 37)

For these reasons, I suggest, moral ignorance as an *excuse* emerges in the context of a class of actions and set of duties, involving such requirements as 'mutual respect' (Rawls 1972), and various role-acquired duties such as parental duties, or duties of office or station. A parent has a duty to care for her children; a doctor has a duty to care for her patients, and so on. In each case, the forms of behaviour that are required of the agent are prescribed by the role, but even within a single role, these will take on very different shapes and forms. For this reason, a mother's statement: 'I didn't mean not to properly care for your educational needs; I didn't know x was required' seems to make perfect sense. It is compatible with a mother's knowing that she had a duty to care for her children that she fails to know that she ought to consider certain aspects of their education. Similarly, it is compatible with someone's knowing that he has a duty of respect that he fail to know that he should perform, or not perform, certain actions. The distinctive feature of this type of obligation is that there is not any determinate pattern of behaviour—concerning say, physical injury—binding the duty together. This seems to open up a gap between knowing that one has a duty and performing certain acts without

knowing that they are incompatible with meeting it. That is, one may fail to show respect without thinking that one was justified in not showing respect. In this sort of case then, moral ignorance renders the act of showing disrespect unintentional, and yet, this moral ignorance *might* itself be culpable.²¹

Consider another example to illustrate moral ignorance of this type: let us imagine that a certain form of behaviour, say looking at an elderly person face-on when conversing is considered highly disrespectful in a certain community; and further that everyone agrees that we have some sort of duty to be respectful where we can. Now imagine that a traveller in this foreign land—call her Cooper—addresses a village elder in this impermissible manner, eliciting the indignation of the villagers. Cooper should, I think, be excused from blame—assuming for the moment that she was not negligent—because of her ignorance that this form of behaviour is considered disrespectful. She intends to speak to the elderly villager, and does not believe that this is a morally bad action. However, on account of her ignorance, she *unintentionally* does something that is considered morally wrong and ends up showing disrespect.

Because the way the duty is realised is not conceptually tied to any sort of action (as it is with a duty not to cause injury), when Cooper intends to speak to the village-elder, she does not believe this is justified in the circumstances, for she has no reason to think it might be inappropriate, and hence (perhaps) in need of justification. Thus, although Cooper shares a moral principle of mutual respect with the villagers, she does not know how to comply with this principle in the circumstances.

This then is how to understand moral ignorance when it functions as an excuse such that the agent unintentionally fails to realise a duty. Moral ignorance of a general rule will serve as an excuse only in the context of being ignorant of how a *certain kind* of duty is fulfilled. For the way in

²¹ I explore the analogy and distinctive features of these types of duties in Chapter 3.

which this type of duty is fulfilled is not conceptually linked to any specific forms of behaviour, but may be instantiated in many contingently disparate ways. This allows for the possibility that someone may be ignorant of what is required to fulfil the moral obligation, and yet will not necessarily think that his actions are justified.

2.2.3 Culpable Moral Ignorance

I argued in the previous section that moral ignorance may serve as an excuse—i.e. render the action an unintentional violation of a moral demand—when the agent is ignorant of the detail of how a (certain type) moral demand might be fulfilled. This will be a moral demand that does not have any intrinsic relation to specific forms of behaviour. On some occasions, this type of moral ignorance will serve successfully in an excuse, but as with factual ignorance, an act done out of moral ignorance might be culpable if the agent was negligent or careless so that he ought not to have been ignorant; that is, a circumstance when he should have known that he would be violating a moral demand in doing as he did. In this respect, since the infraction is involuntary and yet blameworthy, the proponent of PVC is again committed to employing the Tracing Principle to explain cases of culpable moral ignorance.

To illustrate how the Tracing Principle would be put to work in the present context of moral ignorance, imagine that Cooper was negligent in not finding out about the moral codes of the culture she was visiting. The strategy here is clear: although she acted in ignorance and inadvertently caused offence, she is to blame insofar as being a traveller commits one to learning about the moral customs peculiar to the people she is visiting. She is culpable for not taking the steps to ensure that she would meet the moral demand for respect.

However, as with factual ignorance, I have doubts as to whether the Tracing Principle can adequately account for all cases of culpable moral ignorance. But I leave this argument for Chapter 4

2.3 Conclusion

In this Chapter I explored the excuse of ignorance—both moral and factual—investigating when the ignorance serves to get the agent off the hook, and when it does not, i.e. when it is culpable. I have done this in the context of showing how PVC must be extended to allow for cases of culpable ignorance. The basic idea here (to which a defender of PVC is committed) is that culpable ignorance is to be understood as being consequent on prior culpable and voluntary acts and omissions. Taking this thesis—the Tracing Principle—into consideration, PVC is amended as follows:

(PVC*) For any bad act x , A is blameworthy for x only if (1) A voluntarily consented to x , or (2) A 's doing x is traceable to earlier bad acts which A voluntarily consented to doing.

In Chapter 4, I argue that PVC* cannot accommodate all cases of culpable ignorance.

3. Emotions and Obligations

The aim of this dissertation is to show that the Principle of Voluntary Consent is false. In Chapter 4, my strategy unfolds in two distinct stages. In the first place, I show that there to be a substantial number of examples—cases of culpable ignorance and negligence—in which persons are *held* morally responsible or *blamed* for transgressions that are in no way related to their voluntary choices. In the second stage, I argue that these agents ought to be blamed because they have violated moral obligations: they are blameworthy.

It should therefore be clear that much of my argumentation in Chapter 4 depends on having articulate concepts of moral responsibility, blame and blameworthiness. However, these concepts are often used in many different contexts, in connection with quite different forms of personal and ethical assessments, including assessment of character, beliefs, motivations and emotions.¹ For this reason, I devote this chapter to clarifying the concepts of moral responsibility, blame and blameworthiness.

I do this as follows: first, I outline one common conception of blame and show why it is inadequate. I thereafter present Jay Wallace's theory of moral responsibility, an account which, as it seems to me, is very helpful in illuminating and clarifying some of the most crucial elements of the concepts of moral responsibility and blame.

¹ Compare Robert Adams (1985): 'The following reproaches clearly express blame for involuntary states; yet each would be appropriate, and deserved in some circumstance. You don't really feel sorry for what you've

3.1 Blame: The Vice Theory

In *Responsibility and the Limits of Evil*, Gary Watson considers the following common conception of blame (1987, p. 124):

To blame someone morally for something is to attribute it to a moral fault or shortcoming, or defect of character, vice, and similarly for praise. Responsibility could be constructed in terms of the propriety conditions of such judgements: that is, judgements to the effect that an action or attitude manifests a virtue or vice (Watson (1987, p. 124)).²

This account is inadequate for three important reasons:

1. The first is noted by Watson (1987): this notion of blame leaves out the special force of what we are doing when we are blaming someone. This is precisely what Strawson wants to avoid—that blaming could be done from the ‘objective’ attitude—in his reactive theory. ‘It is as though in blaming we were mainly moral clerks, recording moral faults for whatever purposes’ (p. 125).

2. The above theory says that persons are properly blamed for their actions and attitudes when these are attributable to faults in their character, or vices. But this is to neglect the large disparity between the kinds of faults we are prone to have. Vices and flaws of character come in a motley assortment, including being cruel, deceitful, cold-hearted, irritating, arrogant and tactless. However, the latter surely have little to do with moral responsibility. At the very least, a distinction needs to be made between those actions or attitudes reflecting vices bound up with wrong action and those that pertain to merely ethically disagreeable forms of

done! It really hurts my feelings that you don't feel anything about what I am going through. It is arrogant of you to think that you have a right to do that (p. 23).

² Watson attributes this view to Nozick, Milo and James Wallace.

behaviour. Another way of saying this is that some vices pertain to violations of duty, while others are aligned to the concept of 'good'.

3. Thirdly, one may be blamed for an action that is quite out of keeping with one's general dispositions. People can be blamed for 'spontaneous acts whose motives are extinguished after the deed is done' (Wallace 1998, p. 123). Blame is a response to wrongdoing; it is not then necessary that the character who did wrong be habitually disposed to these varieties of behaviour.

In my view Jay Wallace's reactive theory of moral responsibility does not suffer from any of these deficiencies. Indeed, I regard it as illuminating often murky concepts in some novel ways. I outline his theory in some detail below.

3.2 Wallace on Responsibility

Wallace's point of departure is P.F. Strawson's (1982) suggestion that responsibility must be understood in the context of the 'reactive sentiments': when we treat an agent as morally responsible for an action we respond to that person with a range of moral reactive sentiments. However, on Strawson's view, the reactive attitudes are broadly construed as the 'non-detached attitudes and reactions of people directly involved in transactions with each other (Wallace 1998, pp. 27-28); to this class belong sentiments as varied as resentment, gratitude, love, forgiveness, guilt, and hurt feelings.

For Wallace, this conception of the reactive attitudes is simply too broad to properly delineate the sentiments are peculiar to moral responsibility. For what does love or hurt feelings have to do with moral

responsibility or blame? He therefore argues that a narrow construal of the reactive emotions as primarily those of resentment, indignation and guilt. This move is merited for two independent reasons.

Firstly, it allows preservation of Strawson's insight that the reactive attitudes provide the key to understanding moral responsibility, while avoiding the consequence that attitudes such as love and hurt feelings, shame, and embarrassment may also be relevant here.³ Secondly, it permits us to see how the reactive attitudes 'hang together as a class', because resentment, indignation and guilt are distinguished from other personal sentiments in an important way.

On this second point, Wallace persuasively argues that the reactive sentiments of resentment, indignation and guilt are distinguishable from other 'personal attitudes', by being constitutively bound up with the expectations we hold people to. More specifically, we cannot understand these emotions without invoking the idea of holding persons to demands or expectations (Wallace 1998, p. 21).⁴ Resentment, indignation and guilt have an important cognitive dimension—a propositional object—so that there is something that one is guilty, resentful or indignant about. Furthermore, if I feel resentful because you did not respect my wishes, then the belief that you didn't respect my wishes—the demand that has not been met—both *explains* why I am in that emotional state, and *specifies* the content of that state. The explanation of the reactive emotion will always make reference to a belief that an expectation has not been complied with (Wallace 1998, p. 21). This is not so with other attitudes such as love, gratitude and embarrassment, which do not have any (close) connection with expectations.

³ Wallace adopts the term 'personal attitude' to denote these sentiments which we are naturally inclined to adopt toward other people (Wallace 1998, pp. 25-33).

⁴ The terms 'demand' and 'expectation' will be used interchangeably throughout.

However, it is noteworthy that distinguishing the class of reactive emotions through their connections with expectations does not provide a reductive analysis of the reactive attitudes (cf. Wallace 1998, p. 27). For the notion of an expectation (or holding someone to an expectation) is itself to be explicated in terms of being subject to the reactive attitudes (pp. 26-27). Therefore, holding someone to an expectation is not independent or prior to susceptibility to the reactive sentiments. However, beliefs as to the violation of a demand do have a priority in the sense that 'particular states of reactive emotion must always be explicable in terms of some belief concerning the violation of a demand' (p. 24); the belief about the violation of a demand confers the emotion with a propositional object.

This connection between the reactive attitudes and expectations may be described as a 'quasi-evaluational' stance of 'holding someone to an expectation'. More specifically, as a disjunction, inclusively understood: A holds B to an expectation (x) only if (1) A is susceptible to a certain range of emotions if expectation x is not met, or (2) A believes that it would be appropriate to feel those emotions if x is not met (Wallace 1998, p. 23). The first disjunct specifies that responding to someone with the reactive emotions when he did not meet a demand is sufficient for holding him to the expectation that he meet that demand. Thus, if a man or woman responds to another person with the reactive emotions, then he or she holds that person to some or other expectation. The second disjunct, allows for the possibility that someone may believe a demand has been violated, but not actually feel any emotion; in this case, Wallace claims, it is sufficient that he believe that the reactive emotions *would* be appropriate ('I ought to resent you, but I don't'). Holding someone to an expectation need not then imply the actual application of the reactive attitude: what is crucial is that the agent be an apt candidate for expressions of these 'retributive sentiments' on that occasion. (The stance

of holding someone to an expectation is still explicated in *terms of* the reactive emotions; the reactive emotions are required to make sense of the idea of 'holding to a demand'.) Indeed, if neither of these conditions is met and the disjunction is falsified, no one is being held to any demand.

However, this 'quasi-evaluational' stance of holding someone to a demand does not yet isolate the sphere of moral responsibility. Nothing in the idea of holding someone to an expectation dictates that it is to be restricted to moral concerns, for it is plain that we may hold each other to demands that are not in any sense 'moral'. For example, I might demand that you bring my tea at three o'clock every afternoon, being prone to indignation when you forget. Or, I may feel guilty for wasting my time watching television instead of concentrating on the work that I believe I ought to be doing.⁵ These occasions of proneness to the reactive sentiments have no interesting connection with moral responsibility.

In order to distinguish between the stance of holding someone to a non-moral demand from holding him to a moral demand, Wallace suggests that the moral reactive emotions are distinguished by the nature of the beliefs that explain them (1998, p. 36). The emotion in question is moral if the belief that an expectation has been violated is a belief about a moral expectation or demand. In this respect, the 'moral reactive attitudes' are those explained by beliefs concerning the violations of obligations understood as 'strict prohibitions and requirements' (p. 37).⁶

3.2.1 On *Holding Someone Morally Responsible*

As one might anticipate, Wallace's account of the stance of holding a person morally responsible draws upon on the notion of holding a person

⁵ The example is Gabriele Taylor's (1985).

⁶ I will explain these notions in more detail in Section 1.3.

to a demand. (As already remarked, Wallace understands the stance of holding someone to a demand or expectation in terms of a susceptibility to the reactive emotions.) So the framework is now in place: to *hold a person morally responsible* is to hold the person to the *moral obligations that one accepts*. We hold persons morally responsible only if we hold them to moral obligations. And since the stance of holding someone to an obligation is essentially a matter of being susceptible to the reactive emotions, the stance of holding him responsible is a matter of susceptibility to the (moral) reactive emotions (Wallace 1998, p. 62-63).

Therefore, to hold someone morally responsible is to (1) be susceptible to a certain range of moral reactive emotions (explained by a belief about a moral obligation), or, (2) to believe that these sentiments would be appropriate, or (3) to feel the reactive emotions in question *and* to believe that they are appropriate.⁷ However, one final amendment need to be made to eliminate cases of irrational reactive emotions, notably 'irrational guilt', in which the agent feels the reactive emotion but disavows it by believing that he ought not to feel as he does. This would be unacceptable for an account of *holding someone morally responsible*, since it would imply that the agent is holding someone responsible for something he does not believe is required of that person. Taking these considerations into account, Wallace supplements his theory with the condition that the agent must really *accept* the moral obligation, that is, be prepared to offer some justification for the obligation in question.⁸

⁷ A question that might be raised here is that if the second disjunct—believing that it would be appropriate to adopt the reactive attitudes—is sufficient for holding someone morally responsible, then aren't those beliefs fundamental to the stance? (This is Scanlon's (1988) criticism of Strawson's position in *Freedom and Resentment*.) Wallace responds: 'the reactive emotions are needed to explain [the] attitudinal aspect of true moral blame, and its natural connection with sanctioning behaviour' (1998, p. 78). The idea here is that without reference to the reactive emotions the 'special force of moral blame' will be lost, since beliefs about violations of moral demand would amount to a 'mere description' of the situation. I find this response plausible (cf. Scanlon (1988, 1998)), but this is not crucial to my later argument; what will be important is the connection between one's 'prone-ness' to these emotions and blaming.

⁸ For more on the notion of acceptance, see Wallace (1998, pp. 40-50).

It should be clear that the language of 'holding someone responsible' is naturally cast into the language of 'blaming' and 'blameworthiness'. To regard a person as deserving of blame, or blameworthy, does not require that one actually blame (or sanction) him. However, if I count a person blameworthy then I will deem certain responses as appropriate. On the other hand, when I blame myself, I will feel guilt and remorse, and when I blame another, resentment and indignation. In this respect, to blame a person is actually to feel the force of the reactive emotions toward that person.

This completes the Wallace's account of the stance of holding a person morally responsible or counting him as blameworthy. However, to anticipate an objection, there is surely a difference between *being held morally responsible* and *actually being responsible*. What is the connection? Wallace interprets the latter normatively:

(N) S is morally responsible (for action x) if and only if it would be appropriate to hold S morally responsible (for action x) (1998, p. 91).

More specifically, the conditions for appropriateness are to be explicated in terms of the moral norms of fairness and reasonableness (Wallace 1998, pp. 106-107). Norms of reasonableness relate to questions of whether an agent is a fitting recipient of moral judgments, that is, pertain to questions of responsible agency;⁹ since I am not concerned with this issue, I restrict attention to 'appropriateness as fairness'. Another more familiar way of formulating N is that:

(N*) A is morally blameworthy for x just in case it is fair to blame A for x.

⁹ By this I mean whether or not the agent is, generally speaking, an apt candidate for moral appraisal.

Since blame is understood in terms of the reactive sentiments, this translates as the claim that it would be fair to feel resentment, indignation or guilt. But then how is fairness here to be understood? When is it appropriate to feel the reactive emotions constitutive of moral blame? As already noted, Wallace claims that the reactive emotions are moral only when the belief that explains the emotion is a belief about the violation of a moral obligation (Wallace 1998, p. 133). But this means that moral blame—i.e. resentment, indignation and guilt—is fair only when the agent *really has* violated a moral obligation. This is what Wallace calls a ‘fundamental principle of desert, ‘an abstract moral conviction in which reflective moral judges have the highest confidence’ (1998, p. 135): no one deserves to be blamed if he has not in fact done anything wrong, or more specifically, no one deserves to be blamed if he has not violated a moral obligation (this is what I call PB, in Chapter 1). There are two important questions that remained to be answered: (1) when can someone be said to have violated a moral obligation? (2) What is one morally obligated to do?

With respect to the first question, I have already explained, in Chapter 1, that Wallace is committed to VM, the claim that a moral obligation can only be violated through a culpable choice. VM is therefore an account of what it takes to violate a moral obligation. On Wallace’s account, moral blame is unfair unless the agent has violated a moral obligation by expressing a culpable choice. In Chapter 4, I resist this last inference, from the notion of violation of moral obligation to the notion of a culpable choice, that is, the idea that a moral obligation can only be violated *voluntarily*. On the other hand, since moral blame is due only when someone has violated a moral obligation (PB), it is a strongpoint of Wallace’s theory that his notion of responsibility *makes explicit* this connection between the blame and moral obligation, through beliefs

explaining the moral reactive emotions. Moral reactive emotions are fair only when the agent really has done something morally wrong by violating an obligation.

However—the second question—this is not yet to say how the content of moral obligations is to be defined. We have a theory of what it takes to violate a moral obligation (VM), but we do not yet know what we are obliged to do. For not all ethically relevant forms of behaviour are pertinent to the concept of right. For example, someone is hardly violating a duty if she decides *not* to donate all her money to charity. The aim of the next section is to gain a better understanding of the content of moral obligations.

3.2.2 Moral Obligations

Wallace argues that a reactive emotion is moral if and only if it is constitutively bound up with moral reasons supported by moral justifications. He refers to the expectations that allow of such moral justification as *obligations* (Wallace 1998, p. 36), or the class of distinctively moral prohibitions or requirements (p. 63). This sphere of the ethical accords with what Rawls (1972) calls the ‘concept of right’ or in Scanlon’s (1998) evocative phrase, ‘what we owe to each other’.

To see the distinction between the space of moral obligation and other ethical concepts, note that concept of right is broader than the concept of justice, because some moral obligations prohibit actions that are not specifically matters of justice; for example, an obligation against cruelty (Wallace 1998, p. 63). On the other hand there is also the sphere of the supererogatory action, including as it does acts that are ethically relevant, but not strictly required of us. Compare Bernard Williams (1985):

There are actions that are either more or less than obligations. They may be heroic or very fine actions, which go what is obligatory or



demanded. Or they may be actions that from an ethical point of view it would be agreeable or worthwhile or a good idea to do, without one's being required to do them (p. 181).

In addition, there are also other ethical modalities of value such as various traits of character that we value in others, and some more that we disapprove of. These too are situated outside of the concept of 'right'.

Furthermore, according to Wallace (1998), these other 'modalities of moral value' (p. 38) correspond to a different set of moral sentiments, distinct from the *moral reactive attitudes* in terms of which the concept of blaming is essentially defined. 'The moral reactive emotions are explained by the belief that a moral obligation has been violated' (p. 37), whereas other moral beliefs concerning acts of beneficence, or kindness may elicit sentiments such as gratitude and admiration. Moreover, sometimes the moral reactive emotions may even coincide with other moral emotions: recall Rawls' (1972) example of the man who cheats and feels both shame and guilt: guilt because he has wronged others by selfishly advancing his own interests, and shame because he has shown himself to be unworthy of the trust of his associates (p. 445). However, the key difference between moral resentment, indignation and guilt and other moral sentiments is that they are necessarily explained by beliefs concerning the violation of strict prohibitions and requirements.

We have now distinguished between the concept of right and the other modalities of moral value. However, what sort of things are 'strict prohibitions and requirements, and how are these acquired?' Drawing on Rawls (1972) I propose the following taxonomy: (1) 'acquired' as opposed to 'natural' duties; (2) positive vs. negative duties. These distinctions will be very important to my arguments in Chapter 4. I therefore spend some time explaining them below.

Acquired duties are those obligations acquired through contracts and promises and covenants. These are essentially defined by an agreement,

institution or practice, the rules of which specify what it is that one is required to do': these assume that we have, in some sense, 'taken them on by voluntarily (cf. Rawls 1972, p. 113).¹⁰ Moreover, the concept of right also incorporates what Rawls' labels natural duties—the class of duties that 'apply to us without regard to our voluntary acts'. Natural duties are incumbent on us as human agents and are not voluntarily acquired through participation in any practice. Natural duties include the duty 'not to injure', the duty 'not to harm the innocent' (Rawls 1972 p. 109), the 'duty to help one another' (p.114, p. 338), the duty to 'uphold justice', and a duty of mutual respect (p. 337).

Related to both aforementioned categories are duties or responsibilities acquired in virtue of occupying a distinct role or station (cf. Hart 1968, pp. 212-214). Such duties include a general's duties to protect and preserve his army, a mother's duty to care for her children, and a lifeguard's duty to monitor and ensure the safety of swimmers. These duties may be voluntarily acquired, as when a doctor pledges an oath to care for her patients, or they may be obtained simply by having a certain relation to others as for example, a mother's duty to her children, and sons and daughters' duties to their parents.

In my opinion these latter duties relate in an interesting way to Rawls' notion of positive duties (Rawls, 1972, p. 114). According to Rawls, the intuitive difference between positive and negative duties resides in that positive duties require us to do 'good for another' (p. 114), while negative duties prohibit us from doing something morally bad. In this sense the duties to, uphold justice, render mutual aid, and give mutual respect, require positive effort on our part to do good for others. However, as Rawls (1972, p. 114) himself notes, the distinction between positive and negative duties often collapses, since doing good to another

¹⁰ Rawls reserves the term 'obligation' for voluntarily acquired duties.

will, of course, entail not doing bad. For this reason, for example, the duty of mutual respect will also involve not showing disrespect to other persons.¹¹

However, it seems to me nonetheless, that there is another way of understanding the notion of a positive duty that gives it a more robust and useful formulation. This is through a link with the idea of a role requirement.¹² As I will understand the term 'positive duty', it has a relation to the concept of looking out for, caring, and preserving the interests of those covered by a role-requirement. As Hart (1968, p. 213) notes: '[role-responsibilities] are duties of a relatively complex or extended kind, defining a "sphere of responsibility" requiring care and attention over a protracted period of time.' Consider the requirement that parents care for their families. A parent must exercise a great deal of effort in order to actually fulfil this duty: caring for his or her family calls for great attention to the many different aspects (material, emotional and physical) in which this duty might be realised. Indeed, a duty to care for one's family—though equally definable as a duty not to fail to care for one's family—requires only that one fail to measure up. Whether this kind of failure is explicable in terms of an agent's culpable choices is something I will discuss in Chapter 4, but for now, note that a failure to comply with this type of duty requires only a lack of assiduousness on the part of the agent, and not any active effort to do wrong. When a parent fails to do good for her family, and fails to ensure a reasonable degree of flourishing, she has failed to fulfil her duty. She may fail to realise her duty in many different ways contingent upon many of the particular details of the circumstance.

¹¹ In my view the word prohibition captures best the sense of a negative duty, while a requirement is most perspicuously employed in the context of a positive duty; but I will not insist on this.

¹² I here depart from Rawls' (1972) understanding of the difference between positive and negative duties.

By construing the notion of positive duties in terms of duties that (i) are extended over time, (ii) complex, and (iii) require a high level of diligence, I suggest that we can include at the outer limit, the duties of mutual respect and justice. We may say that these are role-acquired duties—in virtue of membership of a community—and that they last an entire lifetime, involving many different facets and requiring much attention to measure up to.

Furthermore, the class of duties which Rawls' calls negative duties—not to injure, not to inflict unnecessary suffering, and so on—are distinguished from positive duties in an important way. For, in fact, these require a great deal of effort in order to *violate* them. The duty not to be cruel implies that one ought not to cause suffering to another, but the act of causing suffering actually requires a great deal of care and sensitivity:¹³ substantial effort is necessarily required to *violate* the duty. Of course, one may unintentionally cause harm, but this would not constitute a violation of that type of duty. As Wallace correctly notes, to violate the duty of nonmaleficence requires that one act in ways that express the choice to harm other people (1998, p. 128). This entails active effort. Furthermore, we might say that negative duties are 'linear duties': there is some straightforward specification of what violation of the duty will entail. Should someone actively set out to inflict suffering on another individual, and succeed, then he will have acted in a cruel manner.¹⁴ Nothing less than physical or psychological injury will here constitute a violation of the duty. On the other hand, with a duty to respect, or care for one's family, there are a multitude of different forms of behaviour which constitute failures to meet the duty.

¹³ As Nietzsche remarked, cruelty contrasts with brutality in that it has to share, rather than lack, the sensitivity to others' suffering that is displayed by kindness (*Routledge Encyclopaedia of Philosophy*, p. 629).

¹⁴ I will also use the term 'linear duties' to denote well specified contractual type duties. In this respect, negative duties are only one type of 'linear duty'.

In summary, let me offer the following taxonomy of the space of right, the space in which the concept of moral responsibility belongs. The duties which bind an agent may be natural or acquired obligations. Furthermore, they may be positive or negative. Positive duties, in my sense, are duties which are characterised by temporal extension, complexity, and requiring a high degree of diligence for compliance. On the other hand, negative duties are marked by their relation to physical (or psychological) injury, and are linear because of this relation. Furthermore, they are duties which demand much effort to violate.

For later argument, I am most interested in the set of positive duties, perhaps especially those naturally acquired; included in this category are duties of 'mutual respect', 'mutual aid', and the duty to uphold justice; along with many disparate role-defined duties¹⁵

3.3 Conclusion

Three distinct strands have emerged from this attempted clarification of the concepts of moral responsibility and blame. (1) The relation between the moral reactive emotions and moral obligations. (2) The relation between moral obligation and blame. (3) The difference between positive and negative duties.

In Chapter 4 I demonstrate that PVC cannot be sustained once we have clarity on these distinctive features of blame and responsibility.

¹⁵ One objection that might be raised against this conception of blame, with its reliance on an articulate notion of obligation is that there has been deep disagreement between (say) Utilitarians and Deontologists on how these duties are generated. Thus it might be thought that the content of obligations will differ substantially according to which high-order principle (e.g. 'Utility') one subscribes to. Any notion of blame dependent on the outcome of these long-debated issues is therefore liable to be 'unsteady' (meaning that it may be the acts that are deemed blameworthy might be substantially altered, depending on the outcome of these higher-order ethical debates. A way to bypass this issue is, following Wallace (1998, p. 112), to anchor one's moral principles in our considered convictions: in this respect, it seems to me that any higher-order principle must coincide with certain fundamental prohibitions and requirements against (say) inflicting injury. In this regard, Rawls' taxonomy outlined in the text above seems to capture many of our most central concerns about 'what we owe to each other'.

4. Involuntary Action, Consideration and Blame

In this Chapter I argue against the Principle of Voluntary Consent. To begin the argument I present some examples in which, I contend, someone is *held morally responsible* for an involuntary action or actions, and further, that these actions are not traceable to prior culpable voluntary consent. This exercise is conducted in the context of Wallace's argument for PVC, which I outlined in Chapter 1. As emphasised throughout, this argument relies on the premises VM and PB. Since I accept PB—moral blame is due only when someone has violated a moral obligation—to cast doubt on PVC* is to call VM into question. One important point that I will repeatedly mention, is that when our intuitions do not coincide with PVC*, they are also at odds with VM.

Once I have established that these instance of culpable ignorance cannot be explained by PVC*, I turn to the question of whether our moral intuitions are in need of revision, or whether PVC* should be rejected. It is important to keep in mind that PVC* is a normative principle purporting to allocate fair blame. Thus, it does not follow from there being certain practices in which we blame persons for actions not conforming to PVC*, that PVC* is false; it might very well be that those practices are somehow unfair, and in need of revision. This raises important issues concerning methodology, and the relation between normative principles and our 'considered judgements'.¹ I say more about this in Section 4.6 with reference to the method of 'reflective equilibrium' (Rawls, 1972). However, to anticipate somewhat, I will argue that the implications of revising our moral intuitions to coincide with PVC* are highly counter-intuitive, and that PVC should be rejected. Finally, I

¹ This is Rawls' (1972) term. See pp. 48-51.

attempt to diagnose the temptation for the principle, and to show its relevance in a modified conception of the bounds of responsibility.

4.1 Against Voluntary Consent

Consider the following:

Suppose I have a house with a view of the sea: a view that I have much enjoyed over the years. Suppose further that Mason buys the plot in front of mine, and builds his house such that it occludes my view, let's say, by constructing an unsightly protuberance on the top of his roof. I rage in private against Mason, at his inconsiderateness, that he did not take my interests into account.

Let me specify the following three details concerning the example:

- (i) Mason did not think he was justified in constructing his house as he did. That is, he not consider his action and (say) conclude that he was entitled to build his house as he liked, since it was, after all, his land. (If so, he would have acted intentionally; he may then, at best, have acted from an *unjustified belief*.)
- (ii) Mason did not think that he would *not* be occluding my view: he simply did not think about it. This eliminates the possibility that he did fulfil his duty to consider my interests but made a mistake in the calculation.
- (iii) I do not think that Mason built the house to spite me: I believe that Mason was inconsiderate.

So, why does this example pose a problem for PVC*?

1. The first point to emphasize is that Mason did not intentionally do anything wrong. When he decided to build his house as he did, he did not realise that he would be blocking my view. Recalling our definition of an intentional action *x*, it is plain that, at the time of his action, Mason did

not have any awareness that his actions might be considered as of a type x. That he was blocking my view and thereby failing to show proper consideration was furthest from his mind when he acted. However, it seems to me that he should have realised this and that his building his house as he did shows a certain lack of regard for me. His fault resides in not realising something that he should have realised and in this respect implies a degree of negligence or carelessness on his part.

Mason is ignorant of a factual detail of the situation (that he would be blocking my view), but this ignorance is culpable because, so to speak, he should have known better. And his being ignorant in this culpable way conveys upon his action the moral property of 'inconsiderateness'. He is, of course, then also ignorant that his action displays this quality. (In factual ignorance the agent does know that an action of that type would be impermissible, but does not know that his action is of that type. By contrast, with moral ignorance the agent is unaware that an action of the type he intends to perform constitutes a violation of a moral duty.²)

2. As noted in Chapter 2, a proponent of PVC is committed to the view that cases of culpable ignorance can be explained by means of the Tracing Principle. However, the problem here is that Mason *just did not* think about his action. It simply never crossed his mind that in acting as he did, he might be disregarding my interests. And there is surely no written manual which landowners are obliged to read concerning neighbourly relations; it is plausible that Mason simply bought the land, and set about constructing his house without thinking about the effects upon his neighbour.

The Tracing Principle apparently requires that the agent know both what his obligation is and what meeting it requires, such that his

² See Section 2.2.2.

culpability resides in his not having taken proper measures to ensure that he would end up fulfilling it. But since the obligation of 'proper consideration'—if it is that—which Mason violates is not due to any voluntarily acquired contract, and, more importantly, it is one which may be violated or complied with in many different ways, there are no specific measures that someone can take to ensure that he meets it at all times.³ To be sure, Mason does know that he has an obligation to consider the interests of others, but on this occasion, he quite unintentionally fails to realise this duty.

3. Finally, let me stipulate that I (as the owner of the house) feel indignant towards Mason because I believe that he ought to have respected me more; ought to have considered my interests. Now, insofar as indignation is indicative of moral blame, and the belief that explains the indignation is a belief about a duty of 'proper consideration', it seems then that I blame Mason. This means that I must think that he has done something wrong.

There we have, or so I propose, an example that stands at odds with the idea that the violation of a moral obligation requires a culpable choice (VM). In conflict with PVC*, I blame Mason for building his house in my view because I think he has done something wrong; his involuntary fault resides in his being inconsiderate and not thinking about his neighbour when he drew up the plans for his house.⁴

It follows that this example stands in conflict with PVC*.

³ In the terminology of Chapter 3, it is a positive duty. See Section 4.3.

⁴ We might also think that Mason has devalued my property by constructing his house in this way. (Thanks to Tom Stoneham for this point.)

4.2 The Supererogatory, Character and Blame

How may this conclusion be averted? I will consider two possible responses.

1. Any demand of considerateness is supererogatory, that is, it is something that it would be nice if people did, but they are not to be blamed for their failures in this regard. Therefore, even if I do feel indignant toward Mason, it would be analogous to my being indignant at someone for not conforming to a certain rule of etiquette. Although I might feel indignation (or resentment), these emotions do not meet the criteria for moral blame since the belief that explains the emotion does not correspond to any moral obligation.

I don't think this is plausible. For it seems to me that we do have a duty to look out for the interests of others, and to be considerate. Furthermore, this corresponds to some degree with what Rawls calls the natural duty of *mutual respect* (Rawls 1972, p. 337): the duty to respect other persons and to try and understand their aims and interests (p. 338). In this respect, Wallace himself writes:

... it is much easier to comply with the moral prohibition on murder, than with the obligations on kindness or consideration (1998, p. 180).

The belief that explains my indignation can therefore plausibly be deemed a belief about the violation of a moral obligation, suggesting that my indignation represents moral blame.

2. A second response is closely related to the first: according to this reply, my reaction and judgement of Mason is not blame, but corresponds to another ethical idea, namely that Mason has a selfish or inconsiderate

character. Perhaps then, Mason may be 'reprehensible in some *other* way...' than being morally blameworthy (Zimmerman 1988, p. 116). Therefore, my stipulation is wrong, and I would not plausibly feel indignation toward Mason, but rather angry, irritated and disappointed—or one of the many other ethically relevant personal attitudes that do not indicate moral blame, but assessment of another kind: assessment of him as a certain sort of character.

To respond to this objection, let us assume that Mason really is a *singularly* inconsiderate character. He has the vice of inconsiderateness. Following Nagel we may understand vices as

... states of character that influence choice, but are certainly not exhausted by dispositions to act deliberately in certain ways. A person may be greedy, envious, cowardly, cold, ungenerous, unkind, vain or conceited, but behave perfectly by a monumental effort of will. To possess these vices is to be unable to help having certain feelings under certain circumstances, and to have strong spontaneous impulses to act badly. Even if one controls the impulses, one still has the vice (Nagel 1979, p. 181).

However, as Scanlon (1998) points out, this account requires a clarification in that vices are not *spontaneous impulses* to act badly, but 'tendencies to see certain considerations as reasons for acting in certain ways' (p. 273).

To illustrate, someone who is greedy, places (say) an undue emphasis in his acquiring certain assets, such that his reasoning process is weighted by the importance he places on these ends. However, as Nagel notes, a greedy person may know that he is greedy, and not actually want to be that way. Furthermore, he may, by virtue of some 'monumental effort of will', act perfectly well. But this suggests that there may be two forms of assessment relevant on that occasion. It is to his credit that he restrained himself and acted in an exemplary fashion, but he would still be a better

person if he did not have the vice.⁵ To be sure, he acted blamelessly, but he is still a greedy person.

However, the vices of inconsiderateness and selfishness differ from (say) greediness in that the inconsiderate person is typically unaware that he has the vice. In my view there are number of similar 'vices of ignorance',⁶ such that a degree of negligence or carelessness is constitutive of the vice.⁷ For a person with this kind of vice may act in ways that do not give proper heed to others without even realising that he is doing this; this tendency not to properly consider other people's interests is what constitutes the vice. In this respect, being inconsiderate or selfish entails being negligent, in that the inconsiderate person does not 'look out' for the interests of others. The visual metaphor captures the idea that the agent fails to do his duty to 'look'—make checks—to see that whether and how his behaviour is affecting others.

⁵ See Scanlon 1998, p. 274.

⁶ I mentioned selfishness and inconsiderateness; to this list may be added ingratitude and arrogance. The term 'vices of ignorance' is meant to mirror Julia Driver's (1989) 'virtues of ignorance'.

⁷ Consider this passage from Dickens' *Martin Chuzzlewit*:

Martin's nature was a frank and generous one; but he had been bred up in his Grandfather's house; and it will usually be found that the meaner domestic vices propagate themselves to be their own antagonists. Selfishness does this especially; so do suspicion, cunning stealth, and covetous propensities. Martin had unconsciously reasoned as a child, 'My guardian takes so much thought of himself, that unless I do the like by myself, I shall be forgotten.' So he had grown selfish.

But he had never known it. If anyone had taxed him with the vice, he would have indignantly repelled the accusation, and conceived himself unworthily aspersed (p. 449).

This passage illustrates two important points concerning the vice of selfishness. 1. Martin has never known that people considered him to be selfish; thus someone may entirely oblivious to the fact that his actions are regarded as selfish. 2. If someone had 'taxed him with the vice', he would have, after the fact, justified his actions as being ones that he was entitled to.

More generally, a selfish, inconsiderate or ungrateful person may fall into two categories: (1) He may be someone who is mistakenly believes his actions are justified, or (2) someone who does not realise that his actions have the effects that they do. In the first category, he may believe that he is entitled to certain activities, when he is not, and it is these beliefs about his entitlements that actually constitute his selfishness. Or in the case that presently interests me, in the case of vices in the second category, someone may be quite unaware that his actions have the effects that they do. Since it is only in this latter category that the agent acts unintentionally, and thus becomes a candidate for an excuse, I restrict my attention to this class.

It is possible that someone may declare outright that he knows that he is selfish, and thinks that this is justified, or does not really care. Whatever we make of this, however, it does not imply that he knows when he is acting in a way that might be thought selfish. This suggests that even in this kind of case, selfish actions will not be entirely subsumed under the class of actions from an unjustified belief. See Section 2.6. (Thanks to Veli Mitova for bringing this passage from Dickens to my attention.)

On a given occasion of inconsiderateness—an inconsiderate action—it seems to me that there are two forms of assessment relevant. As in the case of greed, sometimes the appraisal of action and of character may come apart, but when they don't one may still say that an action violated a moral demand *and* that that the agent has a nasty character. To see this, consider an occasion when someone deliberately causes injury to another person. For this action to be 'objectively' describable as cruel, it is not necessary that a cruel person has done it. We can allow that people who are normally models of blamelessness can sometimes act wrongly. (Of course, if it happens too often, then the stipulation that the agent is 'not cruel' is undermined.) And the reason why an otherwise kind person can be blamed for an act of cruelty is simply that he, by so doing, has done something wrong; he has violated a moral obligation. Blame is linked to the violation of moral obligations, so that there need not be any stable link to a flaw in character.⁸

This shows that my stipulation that Mason is a 'singularly inconsiderate character' is quite inessential to Mason's blameworthiness on this occasion. There is no incoherence in the idea that Mason might in fact be a rather normal human being, with customary foibles, strengths and weaknesses. But say I go and confront him and he is immediately horrified at what he has done. 'I am so sorry old chap', he says, 'I can't believe that I didn't even think about that. I'll immediately make arrangements to have that unsightly piece of tin moved out of your way'.

In such a case, it would seem harsh of me to go on feeling indignant toward Mason. However, I don't think that this suggests that Mason is not blameworthy. His own reaction indicates that he has done something wrong, although not intentionally so. Furthermore, although his response to what happened is ethically admirable (and this may go some way to

⁸ See Wallace 1998, p. 122.

placating me), it does not change the fact that *he should have considered me* in the first place. Indeed the manner in which my attitude is mollified seems to be closer to accepting his apology and thinking well of him for rectifying the situation, than thinking that I was unwarranted in my indignation.⁹ Compare Strawson (1982):

To ask to be forgiven is in part to acknowledge that the attitude displayed in our actions was as such as might be properly resented, and to repudiate that attitude for the future; and to forgive is to accept the repudiation and to forswear the resentment. (p. 63)

Thus, it seems to me that my softening my attitude to Mason does not show that I never blamed him in the first place and nor does it show that he is not blameworthy. Although his ignorance modifies the quality of will attributable to him so that he did not intentionally wrong me, this alteration does not undermine the fact that a negligent quality of will is also morally objectionable.

The temptation to think that the fact that Mason 'just did not think about it', and his willingness to make amends undermines the legitimacy of my previous indignation emerges from the conception of blame discussed in the last chapter.¹⁰ For Mason's response to his fault does show that he is not really an inconsiderate man, and that he tries to respect his neighbours; however, it would only show that my indignation was unfair if we thought I felt indignant toward him for being an inconsiderate man. More specifically, if we thought that my judgement that he was blameworthy was a judgement about the propriety of attributing a certain flaw of character. However, as we have seen with the example of cruelty, there is considerable leeway between someone's acting cruelly on occasion, and his actually being a cruel person; but this does not mean that he is not

⁹ On a similar note Adams (1985) remarks: 'In repentance you repudiate this opposition, not as an evil existing outside the inner circle of your selfhood, but as your own; and you reproach yourself for it' (p. 16).

¹⁰ See Section 3.1.

to blame for his spontaneous and rare acts of cruelty. Similarly, someone may be to blame for acts of selfishness or inconsiderateness irrespective of whether they conform to a habitual pattern of behaviour.

Let us explore this a little further. I have claimed that the question relevant to moral blame is whether the offender has actually done something wrong; more specifically, has violated a moral obligation. Therefore, it is not in fact relevant to a person's blameworthiness, that he be habitually prone to such shortcomings—although this may have a bearing on the force of the reactive emotion. (A willingness to accept 'responsibility' and to make amends will tend to mitigate the force of the blame.) On the other hand, it seems to me that having a 'vice of ignorance' provides a deep explanation of why the Tracing Principle will be hopeless in explaining the apparent culpability of selfish and inconsiderate actions. For if someone displays certain tendencies to see things in ways that entail the subordination of others' interests—that is, he has the vice—and, the vice is one of having a blind spot, and the agent is typically unaware that his way of thinking has this consequence, then his moral failures of negligence are directly attributable to a trait of character, one which he does not even know he has. But this means that the Tracing Principle cannot explain his (purportedly) culpable actions and omissions, for these occasions of deficient consideration are the upshot of a systematically distorted pattern of thought. (It is not that the agent does not accept the obligation: it is just that having the vice means that he is very bad at meeting it.) For one thing, it is unlikely that we are ultimately responsible for the creation of our own characters.¹¹ For another, even if we were able to affect our characters to some considerable extent, since a person with the vice is often unaware that he has it, there is, in his mind,

¹¹ See G. Strawson (1994, pp. 5-24, especially, p. 5-7).

no moral fault to take responsibility for—whatever indirect control we have over our own characters is thereby rendered irrelevant.

So in these cases, having a certain vice of ignorance explains why the agent fails to fulfil his duties. However, he is not to blame for having the vice: rather, he is to blame because he has done wrong by not doing what he should he and discharging his duties. This point—that having the vice is not necessary for blame—is illuminated in the following example from the bible. Consider this passage from Numbers (20: 1-12; King James Bible; the italics are mine):

1. Then came the children of Israel, even the whole congregation, into the desert of Zin in the first month ... 2. And there was no water for the congregation: and they gathered themselves together against Moses and Aaron. 3. And the people chode with Moses, and spake, saying, Would God that we had died, when our brethren died before the Lord! 4. And why have ye brought up the congregation of the Lord into this wilderness, that we and our cattle should die there? 5. And wherefore have ye made us come up out of Egypt, to bring us into this evil place ... 6. And Moses and Aaron went from the presence of the assembly unto the door of the tabernacle of the congregation, and they fell upon their faces ... 7. And the Lord spake unto Moses, saying, 8. Take thou rod and gather the assembly together, thou, and Aaron thy brother, and speak ye unto the rock before their eyes; and it shall give forth his water ... 9. And Moses took the rod from before the Lord, as he commanded him. 10. And Moses and Aaron gathered the congregation together before the rock, and he said unto them, Hear now, ye rebels; must *we* fetch you water out of this rock? 11. And Moses lifted up his hand, and with his rod, he smote the rock twice: and the water came out abundantly, and the congregation drank, and their beasts also. 12. And the Lord spake unto Moses and Aaron, Because ye believed me not, *to sanctify me in the eyes of the children of Israel, therefore ye shall not bring this congregation into the land I have given them.*

Deuteronomy 32 verse 52 clarifies the nature of Moses' sin:

52. Because ye trespassed against me among the children of Israel at the waters of Meribah-Kadesh, in the wilderness of Zin; because *ye sanctified me not* in the midst of the children of Israel.

Let us set aside any questions about culpability for a lack of faith, and understand the account in terms of someone failing to give proper respect and credit when it is required. Yahweh holds Moses to the demand that he show Him the proper honour and respect, such that he give Him proper credit for bringing forth the waters. Moses failed to do this; that is, he failed to meet the requirement of giving the honour to God. However, he did not intentionally take the recognition for himself: his failing to show proper respect was furthest from his mind when he committed the sin. However, Yahweh regarded his ignorance as culpable: he should have remembered. The issue of whether it is fair for God to have blamed Moses is difficult,¹² but for the moment, note that Moses was, as is well known, a righteous man, someone who won favour in God's eyes. However, the circumstances were such that the children of Israel were complaining about being led out of Egypt into a desert land; furthermore, they apparently 'blamed' Moses for leading them to this uncongenial setting. Thus, it seems that Moses was angry with them, irritated at their ingratitude at having been led out of Egypt and constant whinging. It was then in anger that he spoke these words: 'Hear now ye rebels, must *we* fetch you water out of this rock?'

It is plain that Moses respected God, and did his best to serve Him. However in his anger and irritation he failed to pay heed to the fact that it was not he who was bringing forth the water but God Himself. But where does Moses' fault lie? Once again, it seems that the Tracing Principle is hopeless to explain Moses' failure. Even if he had entered into a covenant with God ('Honour the Lord thy God!'), it would still be true that there could have been any specific maxims of preparation that he could have adopted lest he fail in this way. Therefore, to repeat a point from Section

¹² I say more about his in Section 4.7. Clearly, nothing central to the example necessitates the divinity and ultimate justice of God.

4.1, this suggests that what is central to cases where the Tracing Principle won't work is not that the obligation in question is one voluntarily acquired, but rather that it be a *positive duty*,¹³ that is, of such a nature that it be extended over time, and one in which a person may fail to measure up to in multiple different ways: many disparate forms of behaviour—which are not of any determinate pattern—may constitute failures in this regard. Furthermore, it seems to me that someone may fail to fulfil a positive duty simply through a *loss of orientation*, where this loss of orientation is not due to something that the agent has culpably chosen.

4.3 Positive Duties: Losing Orientation

In this section, I further explore the possibility of involuntary failures in the context of positive duties. I aim to show that even when—in contrast with the cases of Mason and Moses—there are determinate patterns of behaviour that an agent must abide by, it will not necessarily follow that his failures will be intelligible in terms of voluntary choices not to adopt certain maxims of preparation.

To see this, consider the following example of a failure to meet a positive duty, this time one specified by a practice. The example is the case of *Regina v. Finney*, as provided by J.L. Austin (1970) in *A Plea for Excuses*:

Prisoner was indicted for the manslaughter of Thomas Watkins. The prisoner was an attendant at a lunatic asylum. Being in charge of the lunatic, who was bathing, he turned on hot water into the bath, and thereby scalded him to death. The facts appeared to be truly set forth in the statement of the prisoner before the committing magistrate, as follows: 'I had bathed Watkins [the deceased], and had loosed the bath out. I intended putting in a clean bath, and asked Watkins if he would get out. At this time my attention was drawn to the next bath by the new attendant, who was asking me a question; and my attention was taken

¹³ See Section 3.2.3.

from the bath where Watkins was. I put my hand down to turn water on in the bath where Watkins was. I did not intend to turn the hot water, and I made a mistake in the tap. I did not know what I had done until I heard Thomas Watkins shout out; and I did not find my mistake out until I saw the steam from the water. You cannot get water in this bath when they are drawing water at the other bath; but at other times it shoots out like a water gun when the other baths are not in use...' (p. 196)

The verdict was 'not guilty'. This example is important because the accused was not acquitted of manslaughter because he was entirely *innocent of negligence* but because 'the lunatic had such possession of his faculties as would enable him to understand what was said to him, and to get out of the bath' (p. 196). (And perhaps that the degree of culpability did not amount to manslaughter—'A culpable mistake, or some degree of culpable negligence, causing death, will not support a charge of manslaughter; unless the negligence be so gross as to be reckless (Counsel Young's speech, p. 196). Presumably this means that he had foreseen the probability (or at least possibility) of risk.¹⁴) This illustrates that a person might fail to properly do his duty, and be liable to blame, without any culpable choice on his part. The fact that the prisoner was acquitted of manslaughter does not imply that he was not to blame for negligence.

The point here is that being an attendant in an asylum with incumbent duties, one is obliged to be very careful to make sure that one fulfils these duties; one must make regular checks and take extra precautions to ensure the safety of one's wards. In this respect, being distracted by someone asking you a question does not show that one met those duties; indeed being so distracted seems to indicate that one was not careful enough, and therefore negligent.¹⁵

¹⁴ See Section 2.2.1 on recklessness.

¹⁵ This suggests that when someone gets off the hook from a charge of negligence, it will be shown that the circumstances were such that the agent was prevented from meeting his duties. For example, should the prisoner have been distracted by the violent jolt of a bomb blast, he would likely be judged innocent of negligence. (Since I have reserved the term 'excuse' for a blame-inhibitor which indicates that an action was

A theme I want to emphasise here is that when the duty in question is a positive duty, such that there are many things that might constitute failures to measure up, the less likely it will be that the failure is traceable to culpable choices on the part of the agent.¹⁶ This is evidenced by the examples of Mason, Moses, and Austin's prisoner. For in all of these cases, due to their obligations being positive duties of 'taking care' to (i) be considerate, or (ii) show honour, or (iii) ensure the safety of one's wards, there are many different ways in which they might fail. Indeed, we might say that circumstances will dictate what meeting this obligation will require. As with Austin's prisoner, even when an agent voluntarily acquires such a duty and implements maxims of preparation (cf. Herman (1993)), this will not entirely safeguard him against failure. There is no simple series of steps one can take to ensure that one measures up. Of course, sometimes circumstances will thwart the agent and he will not then be to blame, but other times, he will simply miss something, or temporarily forget, thereby failing to protect, honour or consider.¹⁷

To illustrate further, consider Robert Audi's example of the 'happy-go-lucky couple who unthinkingly fail to provide for their children's future' (1991, p. 306)—call them the Turners. Once again, it seems to me that the Turners may be resented for their failure, and, again, the failure in question is the failure to meet a positive duty. Thus, while it is true that parents cannot really fail to know that they have a duty to care for their children, they may easily fail to know exactly what might be required of

'unintentional'. I will therefore speak of an 'excuse' from negligence. Context should make this clear.) However, a qualification is in order: the nature or severity of the intervention that prevented him from fulfilling his duties is only relevant if he was indeed doing those duties. It also needs to be shown that agent was in the process of carrying them out and that this distracting force caused him to fail to fulfil them (or prevented him from doing them). An 'excuse' for negligence or carelessness should show that the agent was in the process of meeting his obligations when the extenuating event occurred, resulting in the agent becoming disoriented toward his duties through no culpable failure on his part.

¹⁶ See Section 2.3.3.

¹⁷ The idea of something being foreseeable is invoked in this context. It may be said that if he should have foreseen the danger, then he may be to blame. Of course, this notion of 'foreseeability' is not necessarily

them to fulfil that duty. Let's say that the Turners are a fun-loving couple who, when they decide to have children, know that this will require them to make some changes in their lifestyle to carry out their parental duties. However they only think of the obvious: clothes and schooling and whatever else springs to mind. Perhaps it is true that they do not think hard enough about what might be required of them, but then it is hard to know what this standard of 'due consideration' might be.¹⁸ Are they required to read Spock's entire chrestomathy on childrearing? In this sense, although they are not ignorant of their general duty to look after their children, they are ignorant that (perhaps) saving for their children's future is, in fact, part of what it would mean to be doing the job properly. And although this ignorance may stem from a certain lack of assiduousness on their part, this failing is itself an involuntary fault, and one that cannot be accounted for by the Tracing Principle.

In contrast with all these temporally extended and complex positive duties, consider an obligation with a very precise specification of what is required to meet it, such as the duty to pay off one's debts at an arranged time. The agent who acquires this obligation can be left in no doubt as to what he must do to meet his duty: he must set whatever mechanisms in place to ensure that when the time comes he will be in a position to pay his debts. To be sure, he might be failing in his duty even before the actual time comes when he cannot pay, but the point is that the steps that he should take are relatively straightforward and specifiable. This makes this linear type of duty, a good candidate for the Tracing Principle.

In my opinion, this suggests that the Tracing Principle is effective only in cases where it is relatively obvious what the agent needs to do to meet his commitments, and the agent is informed of exactly what this might

connected with any voluntary choices the agent may have made. If he simply didn't foresee the danger, then it was not through any choice on his part.

¹⁸ See Adams (1985, p. 19).

entail. To this extent, his failure might be due to a culpable choice not to do what he should do, a choice not to take 'reasonable precautions'. However, when the requirement is a positive duty and sufficiently complex, there can be no specific set of procedures that one may adopt: there is not any simple end for which to strive. In this circumstance, there may be no culpable choice of which to speak, for the reason the agent failed to take reasonable care, is that he did not appreciate all the demands that were placed on him.¹⁹

In this respect, Audi's example is best understood as a failure to become properly oriented to the needs of the situation—what is required to fulfil the positive duty, while Austin's example is best understood in terms of a loss of orientation. Culpability will depend on whether there is some condition that prevented the agents' from gaining or maintaining their perspective, and on whether what they are required to do is really obligatory.

4.4 Interlude: Drawing the Threads

Let us pause for a moment to emphasise the themes that have emerged from the above examples and to generalise them in one respect. In the first example, Mason was ignorant of the fact that by building his house as he did, he would be blocking my view. In this respect, Mason was ignorant of some fact that he should not have been ignorant of; had he realised what he was doing he would not have done it, for he does accept that he has an obligation to consider the interests of others. He did what he did

¹⁹ Audi (1991) ponders whether the couple's culpability (1) depends on any basic acts (such as having chosen to 'lavishly entertain friends' (p. 306), or whether it is merely (2) intelligible in terms of 'basic acts': 'For if I am criticisably responsible for a state of affairs having occurred which I did not bring about by something that I did, there must have been some option I should have taken and did not' (p. 307). These suggestions are of no help to PVC. The problem with the first option is that those basic acts will not be culpable unless the agents knew that there was something they should be doing instead. The problem with the second is that the 'option that one should have taken' will not necessarily be in the agent's purview. For example, Mason should have checked to see whether he was blocking my view (this is the option he should have taken), but this does not explain his culpability because his failure to take this option resulted from his complete lack of thought.

inadvertently, but his inadvertence does not excuse because he was negligent. Mason's failure is then a failure to meet a natural positive duty through a loss of orientation, and moreover, one that he accepts.²⁰ (This is under the assumption that he is not really a singularly inconsiderate character: if he was, then we might say that he is always disoriented.)

On the other hand, the prisoner in Austin's example acquired his duties by virtue of having 'joined' a practice. His failure then amounts to failing to fulfil an acquired positive duty; and something similar, may, I think, be said of Moses. (Say he entered into a covenant with God: 'Honour the Lord thy God'.²¹) The prisoner in Austin and Moses (through his anger and irritation) both lose their orientation with respect to their duties, although it is easier for the prisoner to take precautions because his duty is not quite as complex. Finally, the Turners are never properly oriented to begin with.

Furthermore, it should be clear that there is no important difference between negligent actions as opposed to omissions; in either case, if what he did do—his actions—or what he didn't do—his omissions—display a measure of negligence or carelessness, the agent may be morally blamed.

1. Someone may perform a negligent *action* because of a want of 'due consideration' or a failure to take proper preventative measures. Although the agent 'could have thought about it' or he 'could have taken more careful measures' these failures do not conform to VM since the agent's 'choice' not to take those measures is not culpable if it is done in ignorance that they were required. The examples of Mason, Moses and

²⁰ One difference between natural and acquired duties resides in that, when one makes a promise, or signs a contract, one knows exactly what the obligation requires. This will make it 'easier' to take measures to meet that acquired duty. On the other hand, some 'positive' acquired duties are themselves very complex making this difference one of degree rather than of kind.

²¹ Although we all might have a duty to honour God, whether we recognise it or not, this will essentially entail a susceptibility to blame. On the other hand, if one makes a promise, one takes it upon oneself to behave in certain ways. Some promises may even be linear duties. See Section 3.

Austin's prisoner are cases in which an action's being unintentional does not undermine the agent's susceptibility to blame because the ignorance that made it unintentional was itself culpable.

2. By contrast it seems to me that the Turners fail to live up to their duties as parents by *omission*. Indeed they do not do the things that they should be doing because they are too busy doing other things that they should not be doing. Some omissions are actions, and should be construed on the model of a choice not to act in a certain way: these may be called 'abstentions' (Audi 1991, p. 306). (Someone may be fully aware that a certain course is required of her, but abstains from doing what she should. In such a circumstance, her omitting to do the right thing is consequent on her choosing not to do it.) But not all omissions are actions, for some are simply *non-performances* (p. 306). And these are not connected to choices. The Turners culpably omit to perform the actions they should, without these failures being dependant on any choices they have made.

However, what is common to all the examples discussed above is that the agents do, in some sense, accept the demand (positive duty) to consider, honour, or care and protect, but fail to measure up. I have suggested that it is not crucial that the duties be natural as opposed to acquired; what is crucial is that they be positive duties, that is, duties of high complexity and temporal extension, requiring active effort to fulfil. However, the existence of *natural duties* does open up the possibility of another way in which someone may be ignorant, and *prima facie*, culpably so.²² For someone might just not have realised that he *has* a certain positive duty.

²² The importance of the duty being 'natural' resides in the fact that this duty is never specified. All acquired duties are specified, such that one could not fail to know that one had the duty. However, although a natural duty binds all moral agents, it is something we are supposed to learn through an adequate moral development. The possibility I raise in the next section is one where an agent of sufficient moral capacity has 'let one get through the net', so to speak.

This example is different from the other examples above in that those persons presumably realised that they had certain obligations—to sanctify God’s name, or look out for the interests of others, to take care of one’s children, etc. Holmes however does not realise this at all. He has never considered the question of whether he might in fact owe his father some sort of appreciation or gratitude. But, once again we may say that the ‘meaner domestic vices’ have been bred into Holmes such that he has acquired certain behavioural tendencies. And, once more, the Tracing Principle is hopeless since because we are here dealing with a ‘vice of ignorance’: there can be no culpable choice in ignorance. This means that since the vice of ingratitude may involve an unawareness that one is being ungrateful, and additionally, the agent does not know that he ought to be grateful, it is not conceivable that his moral failure might be traceable to preceding failures to take reasonable precautions. But nonetheless, as in the case of Holmes, the agent’s actions may still manifest the moral quality of ingratitude. Holmes’ father expects some sort of gratitude and recognition, and *holds* his son to this demand. We may plausibly imagine him to feel resentful or indignation towards his son.

It seems compatible with a person’s failing to know that he has a duty of ‘gratitude’ that he does realise that he has a duty to respect his father. This compatibility resides in the agent’s not realising that being grateful is one way of showing respect. Holmes does not realise that he ought to show gratitude, although he does know that other forms of disrespect are blameworthy. Thus, Holmes will not tend to disobey his father if he

services to you’ (p. 179)—argues that it is not clear that these are duties at all, unless the benefactor has a right to expect a return. ‘And he could only acquire a right if there was some implied promise’ (p.179)

This can’t be right if it rests on the premise that an ‘implied promise’ is required for the acquisition of a duty. For this would entirely limit the sphere of obligation to voluntarily acquired contracts. This is unacceptable since it would also eliminate obligations against cruelty and nonmaleficence. Williams’s comments likely stem from his general scepticism about morality construed as a system of obligation. See Williams (1985), especially, Chapter 10. Compare Taylor (1989): ‘“Morality”, of course, can be an often is defined purely in terms of our respect for others (p. 14).’

forbids him from a certain course; and neither will he simply shrug off or disregard any formal request his father might make ('Please don't leave the car unlocked'). However, he is also ungrateful because he has come to expect things, almost as though he believes that he is entitled to receive them. But he has never thought this through; he has become disposed to behaving ungratefully, without ever thinking that gratitude is required of him.

So, in the case of Holmes, there are two things of which he is ignorant. He is ignorant that his actions constitute a failure to show proper gratitude. And he is ignorant that he actually has any duty of gratitude. His ignorance of the latter ensures that he will never know when he is 'failing' or 'complying' with this requirement. I don't mean to suggest that a fully articulated conception of one's duties is necessary for compliance with a moral obligation; rather a more rudimentary sense in which one does tend to choose things for appropriate reasons (cf. Wallace 1998, p. 132) seems to be compatible with someone's fulfilling a demand. On the other hand, I contend that a complete unawareness of such requirements and a disposition to do things that reflect a lack of compliance is enough for a failure to comply. It is not necessary for the violation of a duty of gratitude or respect that one actually know that one has this duty. However, in the case of a duty of respect, it is unlikely that a normal agent of sufficient moral development could entirely fail to know that this is required of him. I thereby understand the Holmes example in terms of Holmes' knowing that he has some duty to respect but not knowing that he has a duty of gratitude, because being grateful is just one way of showing respect, one way that is, which he fails to know.

This example illustrates that we expect of each other a certain level of ethical sensitivity, a certain awareness of the nuances of interpersonal relationships and accompanying norms of respect and consideration, and

what constitutes compliance and violation of these.²⁵ For these general principles—to respect others, or be grateful to one’s benefactors—may be violated in many different ways, which will be determined by a web of cultural practices generated by an embedding in a community. In this sense, the analogy with role-requirements is tight: duties of respect arise not only out of our membership in a moral community, but are realised in different form according to more specific social communities.

To illustrate, recall the example of Cooper the traveller in Chapter 2. Cooper’s ignorance resided in her ignorance of a particular instantiation of the duty to respect, namely that a certain posture and manner of speech was regarded by that community as a violation of the requirement. However assuming that she was not negligent, she seems to be blameless for her error since it could not be reasonably expected of her to know that this behaviour would constitute a violation of the duty of respect. Or to take another example, consider another sub-duty of the duty of mutual respect, the requirement to respect another’s privacy, bearing in mind that in certain islands of Samoa, people live in houses without any walls dividing them. Now, imagine that an islander arrives in the West, and he seems to display no regard for anyone’s privacy at all. He continually pokes his head into your house, and turns up late at night in your garden. It would seem that if this foreigner were from a land in which there was no duty of privacy (or perhaps more accurately, a duty of privacy was realised in very different ways), then he would not be to blame for his failures. And this is simply because we cannot reasonably hold him to an obligation that he has not had a chance to learn. However, we can blame Holmes because he is—by assumption—a fully-fledged member of the moral community. Failures of positive duties of respect are relative to a

²⁵ It is plausible that in a ‘flash of self-consciousness’ Holmes may realise that he has been behaving ungratefully, and that he has never thought about the need for gratitude. In this respect he will realise that he has not displayed the appropriate level of ethical sensitivity.

community, such that (fully fledged) participant members are expected to have a grasp of these rules of conduct. We are expected to know what our (sub)duties are, and that certain acts are regarded as violations of these duties. 'Don't look away when I am talking to you; that's very rude.' 'Don't look at your elders' straight on: show some respect.' These forms of behaviour are taken to reflect a certain blameworthy 'quality of will'.

This condition, that the agent must be the right kind of being—including having a certain social history—for moral judgement is further illustrated by the notion of partial exemptions (cf. Wallace 1998, p. 179). Consider one more reformulation of the Mason example: Say I go and confront Mason and, as before, he is horrified at what he has done. 'I am so sorry old chap, he says, 'I can't believe that I didn't even think about that. It's just that so much has been going on: we've had some family troubles of late, and with the stress with the whole building process and all, I really haven't been myself. You won't hold it against me will you?'

The point here is that Mason is not citing some condition to show that he is not accountable for building the house as he did, because he did it inadvertently. He accepts that he should have thought about things more carefully. However, he tries to show that circumstances being as they are, his ability to uphold various moral obligations have been impaired by the extreme stress. This is to say that he asks that I not resent him for his failure to comply with a moral demand, because he was during this time not a fully responsible agent. In fact, Wallace (1998) makes this very point:

The effectiveness of this kind of mitigating condition [stress] would presumably be selective, however: the stressed-out agent may not be fully responsible for acts of rudeness, inconsideration or minor cruelty, but stress alone would not seem to mitigate the agent's moral responsibility for, say, elaborately plotting and executing the employer who fired her (p. 179).

The requirements for proper respect and consideration are binding on all agents who are fully functional members of the moral community. And failures of these positive duties are not in any interesting sense exhausted by what the agent chooses to bring about.

4.6 Methodological Interlude

Where are we in the argument? According to PB, an agent is blameworthy for *x* only if he has violated a moral obligation in *x*-ing. Furthermore, by VM, if someone has violated a moral obligation in *x*-ing then he voluntarily consented to doing something morally bad (i.e. *x*), or his violating an obligation is traceable to some earlier culpable choice. In the previous section, I presented cases where agents failed to fulfil their duties, without their failures being traceable to voluntary choices. Furthermore, the reactive attitudes which may be elicited in these cases are *moral reactive* attitudes because they are explained by beliefs about the violation of moral requirements. If this is correct then these agents are blamed for their failures. This means that the only response left to the defender of voluntary consent is to say that the blame in these cases is not appropriate blame, but is somehow unfair. Recall that on the conception of blame that I am working with:

(N*) A is morally blameworthy for *x* just in case it is fair to blame A for *x*.

The dilemma we have reached is whether to say that the agent unintentionally violated a moral obligation (or more accurately, unintentionally failed to fulfil his duties), or to say that the blame judgements and reactions in these cases are unwarranted and our intuitions must be revised to accord with the Principle of Voluntary Consent. 'These agents are not blameworthy, because they haven't done

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anything wrong, because one can only do something wrong voluntarily'. Thus, if my arguments are correct, we have reached a point where our moral intuitions do not coincide with the normative principle PVC*: the question is whether to maintain VM or revise our moral intuitions.

This impasse raises important questions about how our normative moral principles are generated, and how to go about refining and theorising about them. In his discussion of the method of seeking a 'reflective equilibrium' Rawls writes:

This state [of reflective equilibrium] is reached when after a person has weighed various proposed conceptions and has either revised his judgements to accord with one of them, or held fast to his considered convictions (1972, pp. 48).

Rawls' idea is to examine our considered judgements about different cases and to 'explore patterns in these judgements and to seek to find general principles that systematise and illuminate them' (Fischer and Ravizza 1998, pp. 10-11). The process is dialectical in that we draw out principles from consideration of our moral intuitions from a wide number of cases, in turn subjecting these principles to further moral scrutiny. This is to say that unless one has independent reasons to opt for a thoroughgoing revisionism, it should be plain that our normative principles ought to coincide with our moral intuitions concerning particular cases insofar as possible.

To this extent it is possible that our normative principles are based on mistakes derived from skews in the sample of cases we are considering, or from misunderstanding the nature of the particular examples. For example, as discussed in Chapter 1, the Principle of Alternative Possibilities (PAP) presents itself as a generalisation from a wide number of cases (involving (e.g.) coercion, constraint and duress) in which the agent seems to be excused from blame because he lacks the ability to do

otherwise. However, if Frankfurt, Strawson and Wallace are right, then PAP is essentially due to a confusion generated by a failure to pay proper attention to the actual details of the case. It is not in fact relevant that the agent could not do otherwise, but relevant that the agent wanted to will as he did will (Frankfurt), violated the demand for good will (Strawson), or chose to do something wrong (Wallace).

In the sections that follow, I suggest that something similar is true of PVC. To show this, I need not only point to cases that do not coincide with these principles (as I have done above), but also to diagnose why these conclusions have seemed attractive. We should hope to achieve an explanation for the errors that resulted in these mistaken normative principles.²⁶

4.7 Against Revision

I am inclined to think that PVC is faulty because it is a generalisation from a skewed set of samples. To set the stage, consider that a statement to the effect that someone has failed to do his duties properly does not immediately evoke any connotations of a choice to do wrong. It seems to convey primarily a meaning of inactivity, or failing to 'measure up', a 'missing of the mark'.²⁷ It is quite different when we say that someone has violated a moral obligation: this connotes activity, the idea of choice, or of an intentional wrongdoing.

Similarly the notion of negligence, insofar as it denotes moral faults of 'failures to take reasonable precautions against harm' (Hart 1968, p. 258), conveys the idea of 'not attending to one's duties', where it would seem somewhat artificial to insist that all such instances of a lack of attention are

²⁶ Wallace's entire book, *Responsibility and the Moral Sentiments* (1998) is an excellent example of this method of diagnosing the temptation for the faulty generalisation he sees inhering in Incompatibilist views on moral responsibility.

²⁷ Interestingly enough, the Greek word for 'sin' conveys precisely this meaning: a 'missing of the mark'.

somehow traceable to one's culpable choices. We think that the Turners were negligent and should have thought about saving for their children: we do not think that they (culpably) chose to do (or not do) things that may lead to their violating their parental duties. But all this is perhaps inconclusive. However, there is a very telling reason for thinking that the violation of some moral obligations does not require any measure of voluntary consent.

Once we consider the nature of the obligations of (e.g.) consideration or respect, it seems very odd to think that these obligations can only be violated intentionally. In fact, it seems strange to think that they *can* be violated intentionally. Consider that if someone went out of his way to be inconsiderate, trying to be as inconsiderate as possible, then he could (paradoxically) probably not be regarded as inconsiderate. Deliberate violations such that one tried to impinge on the interests of others correspond more to obligations against maleficence or spitefulness, than inconsiderateness or disrespect. The only exception here is that someone might think that he *ought* not to respect someone else's interests. He may then shrug off a duty of consideration, acting in ways that he knew contravened the duty, without making an active effort to be inconsiderate. In this case we might still refer to his actions as selfish or inconsiderate, despite his explicit rejection of the duty. However, this is probably quite rare; suffice to say that most violations of obligations of inconsideration or respect *are* cases of negligence. But, as I have shown above, one is very often negligent not because one culpably failed to take reasonable precautions, but because one simply failed to appreciate the demands of the situation. But in these cases, when an agent did not realise that he was failing in a duty of consideration, it seems impossible to connect this failure to any voluntary and culpable choices on his part.

These comments pertain to natural positive duties; these are very general duties that we acquire simply through embedding in a moral community. But as already remarked, there are other duties which we acquire in virtue of a particular station in society, or as a result of occupying a formal office. And with respect to these duties, it is even odder to think that some degree of culpable intention is required to violate them. A failure as a parent, officer, or sentry, will almost invariably be as a result of some failure to appreciate the situation properly. This may very well indicate negligence, but not always, even usually, of the type that will be traceable to choices to disregard the requirements of duty. In fact, the kinds of examples I have provided can be easily multiplied.²⁸

For these reasons then, I suggest that the PVC* is in fact counter-intuitive as a principle pertaining to the type of moral obligation I termed a positive duty, that is, an obligation characterised by the high level of care required to meet it over an extended period of time. Furthermore, taking the option of revising our practices to conform to PVC*—saying that agent's are not to blame in these cases—has another unappealing consequence. It would commit us to admitting that someone was blameless because his vice of (e.g.) selfishness or inconsiderateness prevented him from doing his duty.

Of course, I have claimed that a person does not actually need to have a vice of ignorance in order to be blamed for failing to fulfil his duties. And furthermore, although we are inclined to blame someone *more* if he

²⁸ I'll perhaps mention one more example here: consider Smith's (1983) example of the doctor who treated an infant's respiratory distress with high concentrations of oxygen, thereby causing severe eye-damage. This is a case of culpable ignorance because the doctor should have known better; he should have read the latest medical journal that published a study indicating the dangers of this form of treatment. Once again, the doctor's failure to read the journal, although culpable is not necessarily traceable to any choice he has made, though it is possible to describe the case so that this is so: say his nurse tells him the journal has just arrived, but he elects to play golf instead (cf. Smith 1983, p. 547). On the other hand, it could just be that he failed to fulfil his duty to keep up with the latest medical news because he forgot, was too busy, or whatever. In these circumstances he will, I think, be culpable because he failed to take reasonable precautions against harm; though not to say that he chose, or intended to do this. His failures may simply be the result of a long succession of non-performances, where these are due to forgetfulness and carelessness on his part.

displays these habitual tendencies, this is not because he has the vice—though we might appraise him for that too—but because not having the vice usually entails an attitude of repentance and an eagerness to (try to) repudiate this behaviour for the future. By contrast someone who is really selfish or inconsiderate is more likely to justify his behaviour as something he is entitled to, although this is well after the fact.

Indeed, when the agent is especially selfish or inconsiderate, this vice—or tendency to see certain considerations for action and to not see others—actually explains why he loses his orientation and fails the requirement. Or perhaps more accurately, he is always slightly disorientated with respect to how he stands in relation to his duties. But if we understand an excuse as a condition which renders an action unintentional, then it would seem that whatever causes an agent to be ignorant (and so act unintentionally) is the explanation of why he is not culpable. For example, let's say that Radley buys his new boss chicken for lunch, because his colleague told him that she loved chicken, but she is in fact allergic to chicken. In this circumstance Radley is blameless because he was tricked. His ignorance inhibits blame because it was not culpable: he did the right thing, but was unfortunate enough to be tricked by his mischievous (or spiteful) colleague. Thus the fact that Radley was tricked is the explanation of why he is blameless: why his ignorance is *not* culpable.

But this would seem to imply that when it is a vice that actually causes the agent to fail in his duties—his thought-patterns are systematically distorted—then his vice is the reason why he failed in his duty. But this transforms his vice into an explanation of why his ignorance is *not culpable*. But this surely commits us to the following rather odd statements:

'Why did Mason build his house as he did?' 'Oh he never thought about it really'. 'Why didn't he think about it?' 'Because he is so inconsiderate that he never takes anyone else into account'.

'Holmes, why have you behaved so ungratefully to your father?' I just, well, came to expect things from him. I never thought I might owe him anything'. 'But why didn't you realise this?' 'Well, I am rather an ungrateful teenager, as teenagers' are prone to be.'

But these expressions function as indictments, and not excuses! Granted, they may be indictments on the person's character, which may something different from blaming him for a certain action, but nonetheless it seems very odd indeed to think that a vice of ignorance could get someone off the hook for his negligence or carelessness. They are not of the right kind to exempt an agent from blame, because it would seem that we have an obligation to eliminate or at least take precautions against influences that might cause us to fail in our duties. For example, epilepsy poses a threat to the achievement of certain tasks, such as (e.g.) piloting an aircraft. Therefore, a pilot has a duty to monitor her health in order to ensure that she does not have an epileptic seizure when in control of that aircraft. Analogously, it seems that a moral agent would have a duty to ensure that he did not act in ways that systematically impinged on the interests of others. Therefore, a person who habitually violated a moral obligation because of a distortion in his character would seem to acquire a similar duty to ensure that this flaw in him was corrected, such that he could properly fulfil his duties. However, with regard to a 'vice of ignorance' the agent might not even be aware that he has this flaw in his thinking and be unaware that he is systematically impinging on the interests of others. However, this would not alter the fact that he does have this duty: it would simply mean that he has a duty of which he does not know. To think that someone could escape the bounds of duty because of his own failures to know what is required of him—his own neglect—is very counter-intuitive indeed.

Something similar can, I think, be said on occasions where the agent is not really a vicious character but loses his orientation temporarily. For example, Moses lost his orientation because he was angry and irritated.

'Why Moses, did you fail to give proper credit to God?' 'Because I was so angry and irritated and felt slightly foolish after leading the Israelites into the wilderness without water.'

Once again, these factors do not really seem to be of the right kind to exculpate someone from blame for failing to do his duty. We should attempt to guard against those responses that might prevent us from exercising proper care. A failure to control these responses will not entirely inhibit blame, although it may demonstrate that the agent did not intentionally do wrong.

In contrast with the above, there are other 'pleas' that might very well exculpate someone from a charge of negligence. In Austin's example, the prisoner claimed that his 'attention was drawn to the next bath by the new attendant', who was asking him a question (1970, p. 196). This seems to be a much better candidate for getting him off the hook from blame, but whether or not it is accepted depends on the circumstances of the situation. If a person were (say) in control of a large passenger aircraft, then such an excuse would not be accepted. But a bomb-blast in the cabin would be. Therefore, the success of an 'excuse' from negligence will depend on the requirements of station and what level of care or diligence is demanded in that context. More generally, it will depend on the kind or severity of the distraction in proportion to the level of care demanded of the situation. However, as noted in Section 4.2, the force of outside intervention will only mitigate if it played a direct causal role in the agent's failure to do his duty, i.e. it prevented him from taking the care that he was already showing.

In sum, I suggest that the option of revising our convictions to accord with PVC is very unappealing.

4.8 Diagnosing the Temptation for PVC

PVC may be seen as generalisation from certain 'prohibitions' (negative duties), cases in which the agent would need to display a culpable choice in order to violate the obligation. The tendency to use these kinds moral prohibitions as paradigmatic instances of blame is intelligible in that they really do comprise some of our most earnest and deep-seated moral convictions. However, by shifting focus onto the occasions where we fail simply by not doing what we should because we lack some knowledge, it becomes clear that blame is also appropriate for failing to meet these expectations. Indeed, fulfilling these positive duties requires active choice on our part. I explain this in more detail below.

I suggest that there is a relatively sharp distinction between types of moral obligations in relation to the notion of voluntary consent. A measure of culpable intention is required to violate duties not to be cruel, or not to inflict injury. For when an agent can be shown to have involuntarily brought about these results, the presumption that he was cruel, or set about to injure, will be defeated. He will therefore not be held responsible for violating that type of obligation. If his causing injury was unintentional but negligent, then he may still be guilty, but this will not be for (e.g.) cruelty, but for violating a moral obligation of a different sort. For then it may be shown that he did not properly comply with the duty not to harm others in the course of his ordinary pursuits, because he did not show the measures of care required of a reasonable person. However, I have argued at length that this measure of care cannot always be traced to any culpable choices on the part of the agent. We expect of each other

an ethical sensitivity, a certain level of moral competence that is not essentially tied to what we choose to bring about. Blame is the proper response to this kind of failure, because it involves non-compliance with a moral duty.²⁹

Furthermore, properly understanding the relation between obligations and voluntary consent, allows us to see why the Quality of Choice theory does provide a plausible account of all the most commonly recognised excuses. To recall, Wallace argues that all the excusing conditions may be understood as defeating the presumption that an agent has intentionally performed the wrong action: (1) If A is excused from x-ing (where x is any morally bad act), then the excuse shows that A did not intentionally do x. Furthermore, Wallace invokes VM to explain why this lack of intention should undermine the appropriateness of blame. His thought is that without a culpable choice, there can be no moral violation, and without a moral violation, there is no blame due. However, if I have successfully shown that PVC* cannot be sustained, then I have undermined VM, since PB is an analytic truth. But this is not to say that VM cannot do the proper work in the context of the 'most commonly recognised excuses'. For all these excuses do indeed show that the agent did not express any culpable quality of choice. However, of course, it does not follow from this that (2) if A did not intentionally do x (the morally bad act), then A is necessarily excused from blame. This would only follow if moral obligations were exclusively tied to choices (as Wallace thinks). But though a lack of improper intention is necessary for a successful excuse it may not be sufficient: for some obligations *do not* require a degree of improper intention. Showing that the agent did not choose culpably will get him off the hook for violating a moral prohibition against (e.g.) being malicious, but it may not do so for requirements to respect and consideration.

²⁹ In this I echo some of Adams remarks, albeit in a weaker form (p. 27).

The asymmetry between types of moral obligations with respect to intention means that 'excuses'—understood as factors mitigating blame—will function very differently in the context of a charge of negligence or carelessness (or a selfish or inconsiderate action—these are just a subset of the former two). They will actually show that the agent chose correctly. That is, such an 'excuse' will show that the agent made a proper effort to fulfil his duties but was thwarted by the intervention of an outside force, or made some other blameless error. As already noted, circumstances will dictate whether this excuse will be accepted, for the degree of care or diligence demanded will be determined by the particular context.

As it seems to me, this idea fits neatly with Strawson's Quality of Will Theory that treats the demand for good will or proper regard as fundamental. As noted in Chapter 1, Strawson's account allows that one could to violate a requirement for good will or proper regard by unintentionally displaying an objectionable quality of will. What is of importance is only whether or not the agent *did display* an attitude that was expressive of ill will. Many excuses will show that the agent did not intend to do wrong, but this is only one way of showing that the agent accepted the demand for proper respect. As indicated above, when it is demonstrated that the agent is not guilty of negligence, it will be because he has met the demand for proper regard. An 'excuse' must show that the agent did fail to meet the demand for good will *simpliciter*.

Of course, this re-opens the difficulty that Wallace identified, that the demand for proper regard is too broad—including as it does, affection, indifference and so on—to isolate the sphere of moral responsibility. Wallace departs from this more generic demand for 'proper regard' and emphasises choice because he wants (understandably) to capture what is *distinctive* about moral responsibility. He is right in thinking that we are not usually morally blamed for being indifferent or failing to reciprocate

love. But the narrowing of the class can be achieved in another way, without placing *all* the emphasis on the agent's culpable choices.

I suggest that we can follow Wallace in saying that the qualities of will which are pertinent to moral blame are indeed those that bear on the question of whether or not a moral obligation has been violated. In this respect, excuses undermine blame by showing that the agent did not violate a moral obligation. This implies that Strawson's notion of good will or proper regard must be interpreted to encompass only the sphere of moral obligation.

However, we should resist the inference from PB—moral blame is due when someone has violated a moral obligation—to VM, that a moral obligation can only be violated through an exercise of voluntary consent. We can do this by acknowledging that the *content of the moral obligation* will specify its own rules concerning the kinds of performances or choices that will constitute failures and compliances. For example, obligations on murder and on cheating, and cruelty do this, being conceptually structured to track the agent's choices. On the other hand, obligations of consideration and respect include within themselves a requirement not to be negligent, where this does not necessarily involve any choice on the part of the agent. And something similar is true of the multitudes of different positive duties generated by role-responsibilities: these similarly specify the duties included in that office. The requirement is simply to keep a look out, and that is exactly what must be done; the agent must be active about maintaining his orientation with respect to the interests of others, and is blameworthy to the extent that he loses this orientation (assuming, of course, that he is not to be excused for having lost orientation). In fact, Wallace comes close to recognising this point when he writes:

This reflects the reasonable view that it is anyway much easier to comply with the moral prohibition on murder, than with the obligations on kindness or consideration (1998, p. 180).

In summary, I suggest that the Quality of Choice theory is successful as an account of the (most commonly recognised) excuses not because VM is true—and that choice is required for a moral wrong— but rather that the common excuses pertain to a set of moral obligations that do share a feature of improper intention. By rejecting VM however, we may say that *if* then agent gets off the hook, then he will not have done anything wrong. But his not having done anything wrong will not be determined by whether he has voluntarily consented to his action, but whether he has—whatever this may entail—simply, measured up, or fulfilled his duty. With the class of ‘commonly recognised excuses’, this will imply that he didn’t choose to do anything morally bad; on the other hand, measuring up to other obligations require not only that he did not choose to do wrong, but that he chose to do good, that is, was active in fulfilling his duty. For the class of obligations requiring improper intention VM is true: If A did not choose culpably, then A did not do anything wrong. However, for another class of obligation, this will be false: the lack of a culpable and voluntary choice will not be enough to undermine blame.

4.9 PVC and Responsiveness to Reason

In this section I show how the foregoing discussion and proposal in favour of rejecting PVC nonetheless allows the preservation of Wallace’s contention that moral obligations regulate states responsive to reasons. This argument was briefly presented in Section 1.7.2.

Wallace claims that the reason why moral obligations are centred on choices is that choice is directly responsive to reasons, such that the stance

of holding someone to a moral obligation effectively includes a commitment to motivate the agent toward compliance with the relevant moral obligation. He writes:

... moral obligations can only be focussed on phenomena that are susceptible to being influenced directly by reasons (1998, p. 131).

And furthermore,

... we make choices precisely on the basis of reasons we grasp and accept; it is only through the mediation of our choices that the reasons expressed in moral principles may influence either our emotions or feelings or the bodily movements we make. This means that one can be said to have complied with a moral obligation only when there is present a relevant quality of choice ... Similarly, one cannot be said to have violated a moral obligation in the absence of a relevant quality of choice (p. 132).

In my opinion, it does not follow from the fact that moral obligations are focussed on phenomena susceptible to direct influence by reasons, that 'one cannot be said to have violated a moral obligation in the absence of a relevant quality of choice'. The claims that (1) moral obligation must be focussed on states responsive to reason, and (2) VM, are logically independent.³⁰

However, the stance of holding someone morally responsible might include a commitment toward motivating the agent towards compliance even if VM is false, because the stance of holding someone responsible for (e.g.) failing to show proper respect can motivate him to comply with this obligation. But, this will proceed simply by attempting to influence the choices he makes in the future, through providing new reasons and justifications to motivate him toward compliance. Holding a person morally responsible for a violation of disrespect, involving as it does a commitment to justifying the demands to which one holds that person,

may therefore serve the dual purposes of expressing (backward-looking) indignation at his missing of the mark, and the forward looking therapeutic aim of encouraging him toward greater care.

This completes my arguments against PVC; before concluding however, I want to make a brief attempt to allay the concern that rejecting voluntary consent will entail a preponderance of blame.

4.10 Blame: Keeping Perspective

A proponent of voluntary consent may fear that once we have admitted that someone may violate a moral requirement involuntarily, it will follow that persons are to blame for all sorts of things, many of which they really cannot help doing, having or being. That is, he may think that once we abandon the link between choice and blame, there will be no useful criteria to use to demarcate the sphere of things for which we are potentially blameworthy. He will, understandably, fear that blame will rapidly multiply into endemic proportions, with the result that that we might be blamed for thinking certain things, for having certain desires, and emotions, and for, more generally, not being moral saints. This concern may however be brought into proper perspective.

1. As I have already noted, the content of moral obligations differ with regard to their criteria of success. And furthermore, PVC is correct with respect to moral prohibitions or negative duties. This is because VM is correct with regard to negative duties: one cannot violate a moral prohibition without voluntarily choosing to do so. But this is not because the violation of any obligation requires a measure of culpable choice, but because there are a class of moral prohibitions conceptually tied to

³⁰ Note that I am not endorsing the view the obligations can only be centred on states directly responsive to reasons. I am merely noting that the position I am advocating allows us to preserve this thesis.

choices.³¹ However, the Principle of Voluntary Consent (in its more general formulation, PVC*) is false when it comes to an agent's failure to fulfil a positive duty, because a failure to attend to a positive duty does not conceptually require a quality of culpable choice. It requires only a moral carelessness, where this need not entail any prior 'intentional' failures to take reasonable precautions.

However, since in the first place, natural positive duties are duties of (e.g.) mutual respect, and gratitude and consideration, these kinds of failures are of far less severity—in terms of matters of life and death—than many moral injunctions not to steal and cheat and murder. It seems fair to say that the moral wrong involved in a failure to pay proper respect is far less than that involved in a calculated and deliberate murder. Secondly, with respect to 'acquired positive duties', in most cases where the consequences of the negligence are very grave, these failures will tend to be closely related to the agent's culpable choices. By this I mean that the moral wrong will usually be explained by the agent knowingly failing to take precautions to ensure that he meets his duties with their characteristic connection with the prevention of harm.³² Why is this true? Why are many of these grave failures of positive acquired duties related to agents' choices?

It seems simply to be that when someone shoulders a large responsibility (to care for a family, or to manage a hospital), he cannot help but be aware of many of the primary things required of him in meeting that duty. For example, if a person did not know that she was, as a parent, required to clothe her children, we would not intelligibly be able to regard her as a normally functioning moral agent. Similarly, if a

³¹ See Section 2.4.3

³² Strictly speaking, this kind of failing in which the agent is aware of the dangers of his failing to meet his duties is more aptly characterised as recklessness than negligence, because the agent did appreciate the potential risks of his failing to carry out these duties. However, as Hart (1968) observes, in a legal context, the

surgeon did not know that she was obliged to clean her instruments before use, this would raise questions as to whether she was really was a trained professional. Or consider Holly Smith's (1983, p.552) example of the lifeguard who neglects to learn cardio-pulmonary resuscitation: the reason why this 'benighting act' is wrong is that it is obviously part of her duty as a lifeguard to know this technique, and having voluntarily entered into this occupation, she cannot plausibly be thought not to know this.

In these cases then, the agent's negligent omissions or acts will be linked by the Tracing Principle to the relatively obvious patterns of behaviour required to 'take reasonable precautions against harm'. To be more specific, the most important patterns of behaviour demanded of agents in these capacities are specified by the role-requirement, such that the agent can hardly fail to aware of them.³³ Indeed the most important duties acquired voluntarily through joining a practice will be just those required for the maintenance of that practice. Therefore, by virtue of joining the practice, the agent will always have these kinds of duties in mind. If they are 'negligent' (or reckless) about fulfilling these duties, it is very likely that they decided to do or not do something that they knew might lead to their failures to meet these demands. To this extent, the gravity of the moral wrong will be explicable in terms of the agent's culpable choices.

On the other hand, there are things that are also required of agents' in these positions, some of which (1) they may fail to know or (2) fail to do because of forgetfulness or carelessness. Taking the latter case first, consider again Smith's (1983) example of the doctor who caused severe eye-damage in an infant through mal-informed treatment. I mentioned

term negligence is extended to cases where the negligence is intentional, or at least, 'accompanied by a clear appreciation of the risks involved' (p. 259).

³³ This theme—the more determinate the pattern of behaviour with respect to the duty, the closer the link to choice—emerges often. It seems that the more easily specifiable the duty, the more often the agent will tend to 'have it in mind'.

previously, that this case can easily be described so that there is no link to any culpable choices. The doctor's fault could simply be due to a long series of non-performances; however he does not entirely escape blame, though bear in mind that worse consequences do not necessarily entail greater wrongs, and thus a higher degree of culpability. For this reason, the doctor may only be guilty of failing in his duty to keep informed and may not be blameworthy for the infant's blindness.

I suggested that the cases of 'negligence' in which consequences are very dire tends to correspond to occasions of deliberate negligence or recklessness. And I think that this is generally true, although, as in the example of the doctor, this is not always so. However, it is plain that when a practice has legislated a set of requirements key to the maintenance of that practice, it will emphasise all the most important preventative measures. (Recall the lifeguard example.) But, there may be other requirements important to the practice that are not legislated (such that the participant may simply not think of them), or which are legislated but underplayed. Thus, for example, the negligent doctor may have failed to remember to read all the latest medical journals, though he could not plausibly have 'forgotten' to attend the annual medical forum. For this reason, *bad consequences* due to negligence will be *limited* by the duties proscribed and emphasised by the practice that the agent has joined.

Secondly, there are some acquired positive duties that are not formally legislated—often because this would be a practical impossibility—and thus that the agent may, through some degree of negligence or carelessness, simply fail to know. For example, there is no formal set of guidelines to which parents must adhere in childrearing. (In view of the varied nature of family circumstances, it would be impossible to set forth a list of regulations to which a parent must accord.) However, one might say, a parent is nonetheless obliged to 'think about it all'. Thus the Turners may

fail to know that they should save for their children's futurity, and are blameworthy for their omission. Furthermore, although requirements on childrearing are not formally proscribed, once again, the things that agent's fail to think about will tend to be distal from the nucleus of parental obligation.

These considerations demonstrate that the most serious moral wrongs will indeed tend to correspond closely to agents' culpable choices. This ought to be of some comfort, at least.

2. It is not really, I think, counter-intuitive that we are 'to blame' very often all the time. Morally assiduous persons always make sure that they maintain their orientation, so that they do not fail to fulfil their obligations. But, most of us are not moral saints, and many of us are sometimes, to greater or lesser extents, selfish, careless, insouciant, and ungrateful. By this I mean that we act selfishly, carelessly, insouciantly, and ungratefully. And it seems to me that we are *blameworthy* for all these occasions in which we 'miss the mark' in our dealings with others.

However, a view of blame as a kind of moral accounting may be tacitly driving this worry about the preponderance of blame. But this is precisely where Wallace's reactive theory may be used to bring things into perspective. Being held morally responsible is understood in terms of a specific stance of being held to a moral demand. In this sense, actual blame is constituted by the reactive emotions such that the agent who is blamed is (e.g.) resented, or criticised or punished in a way that serves to express the reactive emotions. To this extent, being blamed presupposes that there is someone doing the blaming. This being blamed is to be distinguished from being blameworthy, since this is only to be worthy of resentment or indignation (or guilt in the first person case). Therefore, for an agent to be blameworthy is for it to be fair for *someone* to blame

him. But this is formulated as a hypothetical in that although it would be fair to blame him, there may be no actual judge present who believes that he should be blamed; that is, there may be no-one to hold him morally responsible. We are only *held* morally responsible when someone holds us to a demand, but this means that although we are often apt candidates for being held responsible (not only in the sense that we are morally accountable agents but also because we have done things wrong), we are not as often *held* morally responsible.

Since blaming is not thought of as a moral accounting, but tied to the actual responses and practices of responsible agents, the fear that some moral judge with our entire besmirched ledger may call us to account is somewhat allayed. Furthermore, to cast something Robert Adams says into this context, persons will often not be held to any moral demand, on the principle that 'people who live in glass houses should not throw stones' (1985, p. 23). We will often merely note the fault of another and at the same time think of how often we have failed in a similar manner. It is very often none of our business to hold others to moral demands.

4.11 Conclusion

In conclusion, the Principle of Voluntary Consent is false. Blame is fair when someone has failed to fulfil his duty and failures to fulfil one's duties need not be linked to any voluntary and culpable choices. This is because positive duties—respect, consideration, and role-acquired duties—do not require any culpable intention to fail in, but rather activity and diligence to meet.

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