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The Puzzle of Involuntary Omissions

1. INTRODUCTION

It is a general and consensually accepted demand of theories of moral responsibility that they comply with some central and robust intuitions of ours. Common examples go back to Aristotle: we would consider a theory deeply inadequate if it could not explain why we exempt people from responsibility if they are young children or suffer from serious mental illnesses, or if they acted under compulsion or in ignorance. However, once we have accomplished this task, others will arise: most probably our theory will still yield some counterintuitive results once it comes to more complicated cases.

One such group of problematic cases includes involuntary omissions: instances of carelessness, forgetfulness, absent-mindedness, negligence and the like. Examples are numerous: we hold responsible and blameworthy the driver who caused a car accident by not paying sufficient attention; the teenager who forgot to keep her (otherwise sincere) promise to her parents; the babysitter who did not pay heed to one part of a child's dietary restrictions and consequently caused a severe allergic reaction. I assume that the central puzzle about involuntary omissions comes from the acceptance of the following three claims:

(1) We are morally responsible only for those things over which we exercise control.
(2) People do not exercise control when acting carelessly, forgetfully, absent-mindedly, etc.
(3) People are responsible for (at least some of) their involuntary omissions.

It is beyond the scope of this paper to give an analysis of (1) or to argue for its truth—for our present purposes it is enough to accept that due to its intuitive appeal it would be unreasonable to refute it without any further argument.

As we will see, (2) is probably the most often contested claim among the three. Still, it is not hard to see why we tend to think that we do not exercise control over our involuntary omissions. Although there is not any kind of general consensus about the responsibility-relevant notion of control, traditionally the concept of control is tied up with the notions of intentionality, choice and

consciousness. These features of paradigmatically responsible conduct are obviously absent in the case of involuntary omissions: not only do we not *choose* or *intend* to forget, not to notice or not to care about certain things—usually we are not even *aware* of our wrongdoing at the time of its happening. Forgetting, not keeping in mind, not noticing and not paying attention essentially involve the lack of awareness of certain facts, considerations or reasons. Whatever we happen to think about the exact conditions of control-execution, involuntary omissions will most probably fail to fulfill those criteria.

In what follows I will not discuss those accounts which aim to reconcile the tension between the three statements by denying (3) (see e.g. King 2009). Contrary to the central intuitions about responsibility I mentioned earlier, the threat posed to theories of moral responsibility by cases of involuntary omissions can legitimately be rebutted by introducing revisionism—that is, to argue that despite appearances people are not morally responsible for their careless, negligent, forgetful etc. behavior. All the same, here I will restrict my attention to those theories which do intend to account for responsibility for involuntary omissions and examine how successful they are in solving the puzzle. Ferenc Huoranszki writes: "Negligent behavior is a lot more frequent phenomena than intentional wrongdoing." (Huoranszki 2011: 47.) I couldn't agree more; exactly because involuntary wrongdoings make up the vast majority of ordinary moral transgressions, it is of utmost importance to give a feasible account of their place within the scope of responsible agency.

In the following I will first present two promising and popular solutions to the puzzle of involuntary omissions, and discuss their virtues and deficiencies. Then I will turn to Ferenc Huoranszki's treatment of involuntary omissions in *Freedom of the Will: A Conditional Analysis* and point out its advantages over rival accounts. Finally I make an attempt to answer a serious worry concerning the fairness of holding people responsible for things over which they did not exercise actual intentional control.

2. TRACING THEORIES

Indirect or *tracing* theories constitute the most sizeable and popular camp when it comes to explaining responsibility for involuntary omissions. For a clear-cut example of such theories it is worthwhile to examine Holly Smith's account of culpable ignorance (1983). Smith assumes that in all cases of culpable ignorance there is a sequence of actions: a so-called "benighting act", when the agent "fails to improve (or positively impairs) his cognitive position" (Smith 1983: 547), followed by the "unwitting wrongful act". To take her central example: the doctor who, unbeknownst to him, caused a premature infant severe eye damage because he used an unnecessarily high concentration of oxygen, is blameworthy

for blinding the infant, because at a prior time he failed to read the latest issue of the medical journal which published a study describing these effects. According to Smith, the following things must be true in order rightly to blame the agent for committing the unwitting wrongful act (blinding the infant): (1) the benighting act (not reading the journal) must be culpable, i.e., it has to be morally wrong and the agent has to be responsible for committing it, and (2) the unwitting act must fall (known to the agent) "within the risk" of her benighting act, that is, the agent must be aware that with her culpable action or omission she runs the risk of committing the latter unwitting act.

Tracing theories claim that we are indirectly responsible for an involuntary omission if and only if it is a foreseeable result or consequence of an earlier action or omission for which we are directly responsible. The core idea is that the control which we exercise when we perform free and responsible actions is transferred to some of the consequences of the action, and thus the traditional connection between responsibility and control can be reestablished. Tracing theories dissolve the tension with which we started out our discussion by refuting (2): they assume that we do (although indirectly) control our involuntary omissions.

So far, so good. It would be hard to deny that there is something obviously appealing about tracing theories. First, they preserve the connection between control, voluntariness and responsibility. And second, they reflect an important intuition of ours: that exercising control over something means, at the very minimum, that *we can do something about it*. Arguably, we would think differently about our involuntary omissions if we knew for sure that we did not have any means whatsoever to prevent them. Every time we hold someone responsible for such cases we implicitly assume that there was something the agent could have done, even if only in principle, to avoid the wrongdoing.

But tracing theories have constant and notorious problems regarding the scope of responsibility attribution. That is, it seems that indirect theories can explain only a small, if not negligible subset of those cases for which we ordinarily hold people responsible in the absence of voluntary control. To illustrate the typical shortcomings of tracing theories, take George Sher's often cited example, *Hot Dog*:

> Alessandra, a soccer mom, has gone to pick up her children at their elementary school. As usual, Alessandra is accompanied by the family's border collie, Bathsheba, who rides in the back of the van. The pickup has never taken long, so, although it is very hot, Alessandra leaves Sheba in the van while she goes to gather her children. This time, however, she is greeted by a tangled tale of misbehavior, ill-considered punishment, and administrative bungling which requires several hours of indignant sorting out. During that time, Sheba languishes, forgotten, in the locked car. When Alessandra and her children finally make it to the parking lot, they find Sheba unconscious from heat prostration. (Sher 2006: 286–287.)

Most of us would agree that Alessandra is responsible and blameworthy for risking Bathsheba's life, although, in the traditional sense, she did not control her forgetfulness. If we are to explain Alessandra's responsibility by means of an indirect account, we have to trace Alessandra's responsibility back to a prior action or omission over which she had control.

The most fundamental problem, as Sher rightly points out, is that we do not find any suitable candidate for this role. What should have Alessandra done in order to ensure that she wouldn't leave the dog in the car? Since the row at the school was unexpected, Alessandra could see no reason to break a daily routine which had proved to be safe and comfortable for all parties.

Yet, strictly speaking there would have been countless ways to prevent her forgetfulness. For instance, if she hadn't become so deeply irritated by the headmaster's tone, it surely would have come to her mind that Sheba was in the car. However, this obviously won't do, since getting irritated is clearly not something over which we have control. The prior event from which the agent's present responsibility is derived has to be an undisputable case of controlled, responsible agency—otherwise we cannot re-establish the connection between responsibility and control.

Finally, let's say that we find such a prior action or omission. Some would say that at the end of the day Alessandra's mistake was to carry the dog with her instead of leaving her in the air-conditioned apartment. However, as I previously said, the happenings in the school were quite unexpected, so Alessandra could not reasonably foresee that by carrying Sheba she would run the risk of leaving her in the hot car for hours. But how could we hold her responsible for the consequences of her forgetfulness, if she couldn't possibly foresee that her prior voluntary actions and omissions would lead to such a terrible result?

These charges are raised quite frequently against indirect theories (see e.g. Sher 2006 & 2009, Vargas 2005) and are regularly refuted (with varying degrees of success) by the theory's representatives (see e.g. Fischer & Tognazzini's reply to Vargas 2009). Again, according to tracing theories in order to establish the agent's responsibility for her involuntary omission we need to find such a prior action or omission, where the agent's responsibility is undisputed and it was reasonably foreseeable (or, depending on the particular theory, actually foreseen) for her that this prior action or omission might result in the present wrongdoing. When we add up all these requirements, it turns out that cases of indirect responsibility are hard to come by.

3. ATTRIBUTIONISM

Attributionism is a fairly new type of theory of moral responsibility, represented primarily by Thomas Scanlon's concept of responsibility as attributability (1998) and Angela Smith's so-called rational relations view (2005, 2008, 2012).[1] According to Neil Levy's formulation, "on the attributionist account, I am responsible for my attitudes, and my acts and omissions insofar as they express my attitudes, in all cases in which my attributes express my identity as a practical agent. Attitudes are thus expressive of who I am if they belong to the class of *judgment-sensitive attitudes*" (Levy 2005).

The version of attributionism developed by Angela Smith aims to solve the puzzle of involuntary omissions by denying (1): she presents the rational relations view as an alternative to so-called volitional views, "which share a common assumption, namely, that choice, decision, or susceptibility to voluntary control is a necessary condition of responsibility" (Smith 2005: 238). Instead, according to the rational relations view,

> what makes an attitude "ours" in the sense relevant to questions of responsibility and moral assessment is not that we have voluntarily chosen it or that we have voluntary control over it, but that it reflects our own evaluative judgments or appraisals. (Smith 2005: 237.)

Smith's key example is the following: I have forgotten my friend's birthday. Most would say that I am responsible and blameworthy for my forgetfulness. But how can we explain and justify this judgment of responsibility? Smith presents the problem in the following fashion:

> But what, exactly, was the nature of my fault in this case? After all, I did not consciously choose to forget this special day or deliberately decide to ignore it. I did not intend to hurt my friend's feelings or even foresee that my conduct would have this effect. I just forgot. It didn't occur to me. I failed to notice. And yet, despite the apparent involuntariness of this failure, there was no doubt in either of our minds that I was, indeed, responsible for it. (Smith 2005: 236.)

According to the rational relations view, the things which occur to us and those which we completely neglect—our general sensitivity or insensitivity to certain aspects of our environment—can be the proper subject of moral assessment because they express our evaluative judgments about the weight and importance of these things. As Smith summarizes it:

[1] Also, Gary Watson (1996) and Pamela Hieronymi (2006, 2008) are often considered as attributionists.

> if one judges some thing or person to be important or significant in some way, this should (rationally) have an influence on one's tendency to notice factors which pertain to the existence, welfare, or flourishing of that thing or person. If this is so, then the fact that a person fails to take note of such factors in certain circumstances is at least some indication that she does not accept this evaluative judgment. (Smith 2005: 244.)

Smith's argument goes as follows: if one holds the evaluative judgment that *x* is important, then one will be disposed to notice factors relevant to *x*'s welfare. Thus, by using contraposition, we can conclude that, if someone is not disposed to notice relevant factors to *x*'s welfare, she does not hold the evaluative judgment that *x* is important. This lack of judgment is why we hold her responsible.

The attributionist solution to the problem of involuntary omissions has some major advantages. First, as we have seen in the discussion of tracing theories, authors have constant difficulties with establishing the connection between responsibility and voluntary control in such cases. By simply denying the relevance of any such connection, attributionist accounts relieve the discussion of this burden and offer a relatively easy solution to the puzzle. Second, attributionist accounts do an excellent job in identifying the *content* of moral criticism. Indeed, it seems to be the case that I am blameworthy because I do not care enough about my friend, not because of any conscious or voluntary action or omission of mine. It is the lack of concern which triggers moral criticism.

However, it was exactly the idea of rational inferences (the very heart of the rational relations view) from the agent's attitudes or conduct to her evaluative judgments that was recently to come under fire. Matt King (2009) argues that such inferences are usually based on repeated evidences, while blameworthiness for behaving negligently does not presuppose any such regularities:

> The power of the evidential relation surely rests on the reliability of the inference from conduct to ill qualities of will. The reliability of such an inference requires, it seems, some regularity in its connections. (…) Of course, any conduct can count as some evidence for the underlying quality of will, but we generally require more before we are justified in actually drawing the inference. (…) But ascriptions of responsibility in cases of negligence need not rest on regularities. (…) [O]ne transgression is sufficient for negligence, and if negligence itself is to be sufficient for responsibility, then it seems that quality of will views (on the evidential reading) fare no better in explaining it, for the transgression itself won't be sufficient evidence for an ill quality of will. (King 2009: 584.)

Holly Smith echoes King when she writes:

> In such cases, no *stable* faulty attitude could be attributed to the agent in light of his or her one-time failure to take notice. Indeed it may not even be plausible to ascribe to the agent a *momentary* faulty attitude of the kind shown by an exhausted soldier who shoots at a movement in the house he is searching, too tired to care about the risk that he is shooting an innocent civilian rather than an enemy combatant.
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> In cases such as these, in which we can't reasonably impute a faulty evaluative attitude to the negligent agent, the attributionist strategy for imputing blame to the agent for her culpably ignorant act seems to fail. (Smith 2011: 120.)

The problem which King and Smith highlight is especially apparent in our previous example of Alessandra and Sheba. There is no hint in the story which would suggest that Alessandra's failure to notice that Sheba is in danger would be due to any kind of disregard or general carelessness toward the dog. But we can equally imagine an alternative scenario in which Alessandra's failure to take notice of Sheba is in perfect harmony with her views about the relative unimportance of animal life or her low opinion of Sheba in particular. Either way, Alessandra's behavior remains an instance of both responsible and blameworthy conduct. Involuntary omissions such as forgetfulness and negligence, *pace* Smith, can come about with or without evaluative commitments being manifested in them—thus we cannot discriminate between responsible and non-responsible agency on this basis.

4. CONDITIONAL ANALYSIS

For those who have read the introductory article of this volume it is not necessary to give a detailed overview of Ferenc Huoranszki's account of free will, understood as a (the crucial?) condition of moral responsibility for our actions and omissions (as opposed to responsibility for consequences and mental states, of which Huoranszki's theory does not aim to give an account). Thus I will restrict my attention to the central claims of *Freedom of the Will: a Conditional Analysis*, without going into the details of the metaphysical and action theoretical discussions which underlie them.

Following classical compatibilist authors (primarily John Locke and G. E. Moore), Huoranszki develops a conditional account of free will, according to which:

> *S*'s will is free in the sense of having the ability to perform an actually unperformed action A at *t* iff *S* would have done A, if (1) *S* had chosen so and (2) had not changed with respect to her ability to perform A at *t* and (3) had not changed with respect to her ability to make a choice about whether or not to perform A at *t*. (Huoranszki 2011: 66.)

In Chapter 3, Huoranszki discusses at length the case of involuntary omissions and their connection to intentional control and the ability to choose and act otherwise. In his argument, he takes it for granted that people are often morally responsible for their involuntary omissions: his examples involve cases of carelessness, forgetfulness and negligence. Thus he accepts (3), which leaves him with two options: to deny either (1) or (2). Huoranszki opts for the first strategy: while he heavily criticizes tracing theories (on slightly different grounds than I do), he maintains that agents can possess freedom of the will without exercising actual intentional control. Also, although he admits that it is a legitimate move to choose intentional control over freedom of the will as the condition which grounds moral responsibility, he argues that it is the latter which we should consider as the relevant criterion—that is, contrary to (1), control is *not* a necessary condition of responsibility.

It would be a mistake, however, to conclude that the conditional analysis offered by Huoranszki completely dismisses the significance of control in establishing responsibility. The core idea of the conditional analysis is that freedom of the will is an ability, which the agent did or did not possess at the time of her action or omission: the ability to choose and act otherwise. That is, although in most cases of involuntary omissions the agent did not exercise (neither direct nor indirect) intentional control over her omission, she still retained her ability to avoid her omission, had she chosen to do so (and she had the ability to so choose). She did not exercise control—but she could have exercised it.

I find this analysis compelling and illuminating. The intuitive reason why we can attribute responsibility to people for their involuntary omissions, despite the unconscious and unintended nature of their conduct, is that those abilities which would allow them to prevent the omission seem unimpaired. Neither some general incompetence of the agent, nor momentary epistemic or physical obstacles can explain the omission, which suggests—in accordance with the conditional analysis—that the omission comes about because the agent *fails to exercise* her (otherwise intact) abilities.

Huoranszki's account of involuntary omissions has major advantages over tracing and attributionist theories. On the one hand, while preserving the link between responsibility and control execution, contrary to tracing theories it does not restrict drastically the scope of responsibility. We often retain our ability to choose and act otherwise, despite the fact that we do not actually exercise it, neither prior to nor at the time of our omission; whereas tracing theories would,

contrary to our ongoing moral practices, exclude these cases from responsible agency, according to the conditional analysis in these cases we do possess freedom of the will and consequently are potentially appropriate targets of responsibility attribution.

On the other hand, although having free will means having the ability to choose and act otherwise, this ability is highly specific and can be identified only by referring to such external features which obtain at the time of the action. Thus, contrary to attributionism, according to conditional analysis the agent's responsibility does not stand or fall on such fairly long-standing mental states (evaluative judgments), which might well be absent without thereby undermining either responsibility or blameworthiness.

5. CONTROL AND FAIRNESS

Despite the apparent advantages of conditional analysis, proponents of tracing theories might still insist that it is unfair to hold someone responsible for her involuntary omission, given that it wasn't a foreseeable consequence of her intentionally controlled conduct. They may ask: what is the moral significance of an unexercised ability of choice? Cases of carelessness, forgetfulness or negligence arise exactly because certain reasons, facts and considerations do not even cross the agent's mind. But how could we fairly hold anyone responsible for something over which they did not have any kind of conscious control?

There is something definitely compelling in this line of thought, and it is doubtful whether it could be silenced for good by any argument. Here I only offer another consideration which can help to strengthen the position of Huoranszki's account.

When supporters of tracing theories hold to the condition of actual direct or indirect intentional control, they rely on an attractive moral principle, which we often implicitly assume while talking about the conditions of responsibility—i.e., the principle that it would be unfair to hold someone responsible for things beyond their control. Since, as George Sher astutely points out, this principle "is more often baldly asserted than carefully defended" (Sher 2005: 180), its exact content and the concepts involved are rarely discussed. Probably the most pressing issue is what we mean by something being "beyond our control". Tracing theories interpret the principle as stating that it is unfair to hold someone responsible for things over which she did not exercise actual (direct or indirect) control.

However, our ordinary way of talking about control suggests that this is not the most natural interpretation of the principle. This becomes especially apparent when—as we often do—we talk about losing or not having control over something. For the sake of simplicity I will here illustrate my point with an ex-

ample in which we talk about controlling an external object instead of our own behavior.

Let's suppose that a perfectly competent driver causes a car accident which could easily have been avoided. When the police inquire as to what happened, the driver claims that she lost control over the car. Naturally, the police ask for further details: was the brake broken or the steering wheel disabled? Did she have a seizure, making her unable to handle the situation? Her reply is this: "No, everything functioned perfectly. It's just that I did not press the brake. It did not cross my mind." Not only is this a ridiculous excuse, it is also a deeply puzzling one: we did not get any adequate explanation of why the accident occurred. But whatever explains the accident, it won't be the lack of control: although we might say that the driver did not control her car (although this claim might also sound somewhat odd), it is indisputable that she *could have controlled* it—and this is the fundamental question which we aim to settle when talking about someone retaining or losing control over something.

Obviously, this case is not analogous to our previous example *Hot Dog*. Alessandra's failure to rescue Sheba is not mysterious at all: her forgetfulness is adequately explained by the school row which distracted her attention and thus broke the usual course of events. Also, it is an intriguing issue how serious a distraction should be to exempt the agent from responsibility. If upon arrival at the school Alessandra had been informed that her son was in the intensive care unit of the local hospital, we would excuse her forgetfulness. In a similar vein, if the driver's failure to push the brake were explained by his catching sight of some brutal and violent crime taking place on the street, we would consider letting her off the hook. However, the existence of these apparently exempting conditions further strengthens Huoranszki's position, since arguably what we consider in both cases is whether the distraction was large enough to deprive the agent of her ability to choose (and consequently act) otherwise.[2]

The car driver example suggests that—contrary to what tracing theories assume—the principle that we cannot fairly be held responsible for things beyond our control should be interpreted, faithfully to the ordinary usage of the terms involved, as a claim concerning our *ability* to exercise control instead of the presence or absence of *actual* intentional control. Once we have replied to the tracing theorist's worry about unfairness by showing it to be unwarranted, we removed a major obstacle which rendered it more difficult to endorse the conditional analysis of involuntary omissions.

[2] I'm grateful to my anonymous referee for pushing me to clarify these points.

6. CONCLUSION

Cases of involuntary omissions such as absentmindedness or negligence pose a major challenge to any theory of moral responsibility which aims to explain how an agent can be responsible for an omission despite its taking place without their conscious or intentional activity. In this paper, I first presented two popular solutions to this puzzle and presented their most serious drawbacks. Then I argued that the conditional analysis of free will offered by Ferenc Huoranszki proves to be more successful and intuitively more illuminating than its rivals. Although the exact details of the theory are in many respects crucial, I suspect that any theory of responsibility which shares Huoranszki's emphasis on the *ability* to exercise intentional control, and therefore which analyzes involuntary omissions in terms of the agent's *failing* to exercise this ability, can do an equally good job in explaining and justifying responsibility attribution for these common instances of human agency. Without this conceptual framework, however, the puzzle of involuntary omissions might well remain unresolved.

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