The Problem of Pure Negligence

Gideon Rosen

We are morally responsible, not just for what we do on purpose, but also in many cases for what we do unthinkingly. If I leave my skates on the sidewalk in the usual careless way and you trip and fall, I am responsible for my act and the resulting injury even if I did not mean to hurt you and would never done what I did if I had stopped to think.

This fact raises two connected questions. When exactly are we responsible for negligent wrongdoing, and why are we responsible under those conditions? I won’t give complete answers, but I do want address a problem that arises as we think them through. As will emerge, certain dominant theories of responsibility imply that negligence is culpable only under highly restrictive conditions, whereas ordinary moral practice deems us culpable in a wider range of cases. This clash between theory and practice needs a response: one or the other needs adjustment. This paper makes a preliminary case for revising practice to conform to theory.

1. The Quality of Concern View

As I will understand the phrase, to be morally responsible for an action is to be liable to certain responses — the so-called reactive emotions — for having done it. The relevant responses include the forms of moralized anger Strawson calls ‘resentment’ and ‘indignation’, and on the positive side, responses like gratitude and admiration (Strawson 1962). On this view, the question whether \( X \) is morally responsible for \( A \) is a normative question about whether these responses are warranted or licensed by what \( X \) did, and the main theoretical task is to identify the conditions under which reactive praise and blame are warranted.\(^1\)

Most writers in this tradition follow Strawson in holding that the negative reactive emotions are responses, not just to the objective badness of the act, but also to the ‘quality of will’ that underlies it. This is often put by saying that \( X \) is blameworthy for \( A \) only if \( X \) showed ill will in doing it, though it would be better to speak of ‘insufficient good will’ (Arpaly 2006) or an objectionable pattern of concern (Rosen 2014, 2015). We expect people to care about the rights and interests of other people and other things of value. You don’t have to love me, but my dignity and welfare should matter to you in ways that bear on how you deliberate and act. We have no explicit theory that tells us how much and what sort of concern decency requires. But the manifold forms of ‘ill will’ — malice, contempt, indifference, selfishness, certain forms of bias — are all ways of caring too little about other people, or too much about things that should matter less. According to the received view, the negative reactive emotions are responses to perceived ill will of this sort, and

\(^1\) There are of course other ways of understanding talk of “moral responsibility”. See Zimmerman 2014 for a survey.
reactive blame is warranted only if this perception is accurate. Almost every writer in this tradition thus accepts the

**Quality of Concern View (QCV):** \( X \) is blameworthy for \( A \) only if in doing \( A \) \( X \) showed an objectionable pattern of concern.

To see the view in action, suppose I walk off with your umbrella after a party in the mistaken belief that it belongs to me. Stipulate that I exercised due care (so this is not a case of negligence): I glanced at the umbrellas by the door, saw one that looked like my signature pink umbrella, assumed it was mine and took it. Emergencies aside, it’s impermissible to take someone else’s property without permission, so my act is wrong in a sense. But it’s obviously not resentment-worthy. Why? The QCV says: An impermissible act merits resentment only if it shows ill, and this one doesn’t. More generally, the view explains a familiar battery of excuses — ‘I didn’t know …’, ‘I didn’t mean to …’ — by saying: These excuses work when they do, not by justifying the act, but rather by pointing out that justified or not, it does not manifest insufficient regard for those affected.

2. **Negligence**

This neat package has implications for the theory of negligence. As I understand the term, an act is **negligent** iff it creates an unjustifiable risk of harm to which the agent fails to advert in the deliberative run-up to the act. The first condition gives the actus reus of negligence. We are under an array of hard-to-specify obligations to limit the risk to others posed by our conduct. A negligent act violates this duty and is wrong for this reason. But so does willful murder, which is not to be reckoned negligent for present purposes. That’s where the second condition comes in. When an act creates an unjustifiable risk, there are two possibilities: the agent may act despite some inkling of the risk, or she may be oblivious. This obliviousness — inadvertence, unawareness — is the mental state that distinguishes negligence from recklessness and makes all the difference for present purposes.

Some negligent agents are in no position to know the risk that makes their conduct wrong. Suppose a doctor performs a procedure that has recently been shown to be dangerous, but that the news hasn’t reached her. (Suppose the journal in which the discovery was announced was stolen from her mailbox.) Her act is wrong because it creates what is in fact an unjustifiable risk, and negligent because she was oblivious to the risk. In this atypical case, the agent is clearly blameless for her negligence.

More typically, however, the agent could easily have been aware of the risk that makes her conduct wrong but for whatever reason fails to advert to it. There you are, driving down the highway when a text comes through. Out of habit you glance at your phone and start to answer without a thought for the risk involved. You know you’re texting, and that you’re driving; and you know that texting while driving can be dangerous. And yet these thoughts somehow fail to prompt awareness of the risk your action poses in the moment. For present purposes, this is a paradigm case of negligence.
What is it to advert to the risk posed by one’s conduct? To advert to a fact is to know or suspect that it obtains, but not all knowledge qualifies as advertence. Suppose we’ve arranged to meet for lunch but I forget and don’t show up. There is a sense in which I knew all along, even as I was surfing the internet at my desk instead of heading to the restaurant, that we were supposed to meet. (I certainly can’t defend myself by saying, “Sorry, but I didn’t know about the meeting.”) Still I fail to advert to the meeting in the run-up to the act. As we move through the world some but not all of what we know is poised to guide our conduct without further processing. Some of this available knowledge is conscious and occurrent. Conscious awareness is sufficient for advertence; but it isn’t necessary. As you walk down the sidewalk thinking about philosophy, you are guided in the relevant sense by your knowledge of the obstacles in your path and of countless counterfactuals about what would happen if you moved right or left. Most of this knowledge is not quite conscious. And yet it is ‘teed up’ to guide your conduct, and that’s what matters. The oblivious driver who texts while driving adverts to the cars in front of her, her destination, and the message she is typing, consciously or otherwise. But she does not advert to the risk that makes her action wrong. She may not cognize the risk at all; or she may cognize it subliminally but not in a way that renders it available as an action-guiding premise. Either way, this is a paradigm case of inadvertence.

Advertence so understood makes the difference between recklessness and negligence. The reckless agent adverts to the risk in the run-up to the act and so counts as choosing despite the risk. Because the risk is available to her as a premise, her choice will often show something about how the risked harm matters to her, about the sort of weight she gives it. The negligent agent, by contrast, chooses from a state of mind in which the risk is unavailable as a premise. Her conduct thus shows nothing in this immediate way about how the risked harm matters to her.

3. (Un)motivated Negligence

Negligent conduct may, however, reflect what matters to us more indirectly. When I forget our appointment because I don’t take you seriously enough to keep track of my obligations to you, my negligence ‘expresses’ my unconcern in a familiar sense. This sort of expression is different from what we see in cases of conscious choice, where the mental transition to the intention reflects (however imperfectly) the weights the agent attaches to the practical reasons of which she is aware. We don’t forget or fail to advert for reasons in the sense in which we act for reasons. Still the expressive connection between my attitudes and my inadvertence is not merely causal. The fact I fail to advert to — our scheduled meeting — is a fact I would have been disposed to downgrade as a reason had it come to mind. Even if I would have taken this fact as a decisive reason to show up in the end, the reason would have been less weighty for me than it would have been had I cared more. In such cases, the inadvertence is motivated and not simply caused by my unconcern. It would be nice to have a sharp analysis of this relation; but we can get along without one since the phenomenon is familiar. When you blame me for forgetting your birthday or for failing to notice that you’re having a rough day, you construe my
inadvertence as an occasion for hurt feelings because you take it to show, in the sense now at issue, that I don’t enough care about you.

The Quality of Concern View has no trouble explaining how we can be culpable for motivated negligence. But not all negligence is motivated. Someone who texts while driving may not care enough about the risks she poses; but she may also care exactly as she should. The psychological mechanisms that mediate advertence can fail for many reasons, or for none at all. Someone who is distracted or fatigued may fail to advert to pertinent facts for reasons that have nothing to do with what she cares about. And even in the absence of a conspicuous factor of this sort, a subpersonal glitch can lead to inadvertence for reasons that have nothing to do with the agent’s evaluative psychology. Cases of this sort are cases of pure or unmotivated negligence.

We face a question about how to classify cases in which the inadvertence is motivated indirectly, at one remove. Suppose I forget about our meeting, not because I don’t care but simply because I have lousy memory. If this is my first missed appointment there may be no ill will anywhere in the picture. But suppose it’s my hundredth missed appointment and that I should have taken precautions against forgetting but chose not to out of laziness. My forgetting in the present instance may have the same proximate explanation as my first innocent forgettings. And yet this episode manifests at one remove the unconcern (the laziness) that led me to skip the required precautions. For present purposes, these tracing cases, in which an episode of locally pure negligence is traceable to a prior episode of motivated negligence or recklessness, count as motivated. Pure negligence is negligence in which there is no pertinent ill will anywhere in the causal background.

4. The Problem of Pure Negligence

Questions can be raised about our responsibility for motivated negligence. It is tempting to think that even if a negligent act manifests the sort of unconcern that would suffice for culpability in a reckless act, because the motivating factors in negligence do their work behind the scenes, interfering with the unconscious mechanisms of advertence, an agent who suffers such interference lacks the ‘control’ needed for responsibility. We will return to this idea eventually. But for now the important point is that while QCV is consistent with the idea that motivated negligence is often culpable, it entails that pure negligence is never culpable. And this looks to be at odds with moral practice.

Marcia Baron discusses a British case in which a patient died because his anesthesiologist — one Adomako — failed to reattach a tube that had come loose in surgery:

Adomako didn’t notice that the tube was disconnected or that the patient had stopped breathing and was turning blue. He did attend to the alarm emanating from a machine monitoring the patient’s blood pressure (an alarm that went off about four minutes after the tube from the ventilator became disconnected), but his focus
seems to have been on the machine and determining whether it was malfunctioning rather than on what condition in the patient might have caused the drop in blood pressure, triggering the alarm … It was only after the patient suffered cardiac arrest (some eleven minutes after the tube became disconnected) that Adomako realized that the tube was disconnected and that his patient was not breathing (Baron 2014: 93)

Adomako was convicted of manslaughter and the House of Lords affirmed, holding that in the presence of a duty of care a defendant may be convicted of manslaughter if his departure from the required standard of care was “so bad in all the circumstances as to amount to a criminal act” (R v. Adomako 1 AC 191 [1995]). Baron endorses the legal result but is mainly concerned with moral culpability, holding that “barring an excusing condition it seems clear that Adomako is blameworthy” (Baron 2014, 93). Adomako’s negligence consists in his failure to check the ventilator. He would have an excuse if the omission could be traced to a blameless condition that impaired his capacity to advert to this requirement — a small stroke, for example; but absent some such impairment Baron finds it evident that Adomako is to blame for his negligence and the patient’s death.

But note: There is nothing in the story to suggest that Adomako didn’t care enough about his patient. The picture is rather one of rank incompetence. And while one may think that incompetent anesthesiologist who shows up for work thereby shows objectionable indifference (since he must somehow know that he’s incompetent), this idea does not figure in the record or in the holding, which simply requires a gross departure from the operative standard of care. So let’s suppose there was no ill will in the picture. Let’s assume that Adomako’s failure to advert to the risk he was creating by failing to check the ventilator does not manifest unconcern. If this version of Adomako is blameworthy, the QCV is false.

So this is our question: Is pure negligence of this sort blameworthy? We have a theory that says it’s not. But we also have this case and countless others in which many people find it obvious that the agent is culpable to some degree even if his quality of concern is beyond reproach. As Hart notes, “a hundred times a day persons are blamed outside the law courts for not being more careful, for being inattentive, and not stopping to think,” without any inquiry into why they did not stop and think (Hart 2008, 151). If I leave my skates on the sidewalk and you break your leg, you blame me even if you know nothing more about what I did than that I was careless. This is an indisputable fact about what we do. The question is whether we’re right to do it.

5. The Imputation Gambit

This aspect of our practice is an embarrassment for the “methodological Strawsonian” who endorses QCV on the ground that, as she sees it, the QCV is presupposed in our blaming practices (Ayars ms). In its strongest form this view sees the real norms for reactive blame as constituted by the norms implicit in our blaming practices in the sense in which the orthographic norms are constituted by the norms implicit in our orthographic practices. A more moderate version sees our practice with the reactive attitudes as the
indispensable starting point for any philosophical account of blameworthiness: the default first word, if not the last (Wallace 1994). On either view, the fact that we routinely blame people for negligence without inquiring into the quality of their will suggests that Strawson was simply wrong to see reactive blame as warranted by ordinary standards only in response to conduct that shows ill will.

The Strawsonian may reply by positing a tendency to construe all negligence as motivated — to take the negligent act as conclusive evidence that the agent did not care as he should. The inference from thoughtless act to insufficient concern is cogent enough in many cases. The signalman whose job is to signal the trains but who leaves his post to play cards with his buddies may say after the disaster: “Yes, I went off to play a game of cards; I just didn’t stop to think about the 10:15” (Hart 2008, 150). But in saying this he makes it clear that his pattern of concern was out of whack. The fact that we blame people for negligence without explicitly reaching the question of their underlying attitudes does not show that we are not imputing ill will and responding to imputed ill will when we blame. In some cases, res ipsa loquitur.

And yet one may wonder how persuasive this gambit should be. Consider the motorist who texts while driving and veers into another car. If we think her carelessness betrays insufficient concern for others, we should also think it shows an unusually low degree of self-concern, since her conduct equally risked harm to her. But that is not how we construe this driver. We think of her as thoughtless, not as risk-indifferent. And yet even as we think this we may also think: “There is no excuse for this sort of carelessness, especially when it causes damage. ‘I wasn’t thinking’ may mitigate culpability, but it is not a full excuse.” It is this feature of moral practice that should worry any friend of the QCV who thinks that ordinary practice should inform our philosophical account of the conditions of blameworthiness.

6. The Due Care View

At this point it will be useful to have an alternative to QCV. The view was originally invoked to explain why we are off the hook in cases of blameless mistake, as when I accidentally steal your umbrella despite having exercised due care. Strawson’s claim is that I am blameless in such cases because my act showed no ill will. The obvious alternative is that I am blameless because I was not careless.

As noted, we have a hard-to-specify duty to limit the risk posed by our conduct, and in particular to take precautions against inadvertence so as to ensure that we know what we ought to know before we act. I should examine the umbrella before taking it, though in normal cases a quick look will suffice. An anesthesiologist should check the ventilator when the alarm goes off. No one should text while driving. The detailed requirements of this duty will vary from case to case. But however they are specified we should consider the
**Due Care View (DCV):** Otherwise unexcused negligence\(^2\) is blameworthy iff the inadvertence stems from a violation of the “duty to take care”.

The relevant duties are of two sorts. Some are obligations to *do* this or that to ensure that one knows what one ought to know. These **procedural epistemic obligations** include both duties to overt conduct, like the duty to look both ways before pulling into traffic, and also duties to mental action, like the duty to reflect on one’s evidence or to ask oneself questions like ‘Have I forgotten anything important?’ (Rosen 2004). These procedural duties contrast with **non-actional epistemic obligations:** the duty to *notice* the cars coming from the left, or to *remember* our meeting, and more generally: the duty to *advert* to pertinent facts when the time is ripe, where advertence per se is not an action. Consider the parent who leaves his child in the back seat and heads into work having forgotten all about her — not from lack of concern but from an unmotivated lapse of memory (Diamond 2019). In the ordinary case there will be nothing he should have done by way of action to prevent the lapse. And yet it comes naturally to say that even so, he should have remembered. This ‘should’ points to a non-actional obligation to advert.

This contrast yields two versions of the DCV. One says that otherwise unexcused negligence is culpable when it reflects the violation of a procedural epistemic obligation (Rosen 2004). The other says that any violation of the duty to take care suffices. It seems clear that we do often blame people for negligence of the second sort. Hart’s signalman who walks off the job with no thought of the 10:15 is on the hook, as we normally think, regardless of whether he should have taken active precautions to prevent such inadvertence. So let’s focus on the second, less-forgiving version of the DCV, since this gives the sharpest contrast with the QCV.

7. Against the Due Care View

The Quality of Concern View and the Due Care View agree in many cases, but disagree when it comes to unmotivated negligence. The QCV gives the signalman an excuse, along with the parent who forgets the child and Adomako, on the assumption that there was no ill will in the background. The DCV indicts them all, and this raises two connected problems: the problem of saying which (if either) view is right, and the problem of saying how we should decide.

The DCV fits better with ordinary judgments. But that counts in favor of it only if those judgments withstand reflective scrutiny, and I doubt they do. For note these ordinary judgments wobble when we *stipulate explicitly* that there was no ill will anywhere in the picture, but rather only a fluky glitch in the mind of an altogether decent person. Tell the story of the parent and stipulate that he was a normal loving parent with no history of absent-mindedness who was in every way blameless until the tragic moment at which, for no reason whatsoever, a thought that should have crossed his mind simply failed insert

\(^2\) By “otherwise unexcused” negligence I mean negligence on the part of a normal competent adult in ordinary circumstances.
itself into his thinking. Do we really think this parent merits resentment or indignation or the guilt he will inevitably feel? All I can say is that I don’t.

I want to dwell for a moment on this point. Suppose I’m right that when we paint the inadvertence as a one-off glitch in an altogether decent person, our blame evaporates. I say this counts against the Due Care Theory, but there is a confound. It is a familiar point that it can be inappropriate for one person to blame another even though the other is blameworthy. A thief may be culpable and yet it would be odd for other thieves to blame her. On one view of these matters, the blame emotions respond to the bad act and the attitudes that underlie it with an assertion of superiority. In resenting you I think (or presuppose): I would not have done that (Strabbing 2011). Blame is inappropriate when this thought is false, even when the target has no excuse and is thus blameworthy. In light of this idea, we may be tempted to explain our reluctance to blame in cases of glitchy failure as a reflection of the fact that we are all liable to such failures and so cannot think upon reflection: “I would never have done that”. If that’s right, these cases do not count against the DCV. The theory deems the parent blameworthy, but it can allow that even so it would be a mistake for us, flawed as we are, to blame him.

But this can’t be the whole story. Suppose you know for a fact that your memory is flawless and can honestly say that you would never forget a child in the back seat. Still, when we stipulate that the parent was a decent person who suffered an unforeseeable and altogether unmotivated lapse of memory, your capacity to blame is blocked. It is not just that you see the parent’s culpability as mitigated. Your incipient resentment looks for something in the act that it cannot find and so evaporates. In my opinion this counts decisively against the DCV.

8. The Defect View

It does not, however, count decisively in favor of the QCV, since there are other possibilities. The DCV indicts Adomako, but also the decent parent who just forgets. And yet there is a palpable difference. The parent is decent in every characterological respect. There is nothing wrong with him beyond the fact that in this one instance he failed to advert to a fact that should have come to mind. When we think of Adomako as culpable, by contrast, we think of him as inept, or perhaps has arrogant or stubborn. These features need not involve an objectionable quality of concern. An arrogant anesthesiologist may care about his patience as he should. Arrogance is (for present purposes) an epistemic defect: a tendency to treat one’s confident judgment as decisive when one should be more critical and open to alternatives. Ineptitude and arrogance so conceived need not involve ill will, but they are morally relevant flaws in the agent: more or less enduring features that dispose him to fail to advert to crucial facts. Ordinary morality is fairly confident that an arrogant doctor is culpable for his negligent mistakes. It is much less confident that the decent parent who suffers a one-off lapse should be reckoned culpable. So we should consider

The Defect View (DV): Otherwise unexcused negligence is blameworthy iff the agent’s inadvertence manifests a defect that disposes him to inadvertence.
This view distinguishes Adomako as we tend to think of him from the decent parent. It is also in keeping with Hume’s thought (EHU 8) that we blame for actions, which are by their nature transitory, only insofar as they manifest some more or less enduring “vice” in the agent.

The Defect View generalizes the QCV. The manifold forms of ill will are all defects that dispose us to inadvertence. The view thus counts motivated negligence as culpable. The difference is that it also counts some cases of pure negligence as culpable, namely those in which the inadvertence derives from a dispositional defect in the agent’s psychology that is not a matter of what she cares about.

In thinking about the DV we must emphasize that it sees culpability in the manifestation of a defect even if the defect is not traceable to prior culpable action or omission on the agent’s part. If the defect is the upshot of prior activity fueled by ill will, the QCV can agree with the DV in finding culpability. The DV’s distinctive claim is that any defect — even an innocently acquired and sustained defect — can ground culpability. In discussing the view we should therefore focus on cases in which it is stipulated that there is no ill will anywhere in the causal background of the defect or its manifestation.

On a somewhat more subtle note: In thinking about the view we should focus on defects which, while they dispose the agent to inadvertence, are not so severe as to be disabling. We have been focusing on the conditions under which an otherwise unexcused agent is responsible for negligence. A small child or an impaired adult may fail to advert to an unjustifiable risk. But if she is substantially incapable of appreciating the risk or taking it into account, then in the relevant sense she is ‘otherwise excused’. When I speak of cognitive and motivational ‘defects’ in this connection, I always mean the sort of defect that disposes the agent to inadvertence without rendering her substantially incapable of advertence. As it is sometimes put, the relevant cases are cases in which agent should have and could have adverted to the risk. It is famously unclear just what this means. But if the notion of an unexercised capacity makes sense at all, then the decent parent satisfies this condition — he was capable of adverting to the crucial fact; he just didn’t. The same goes for Adomako as we have imagined him. The difference is that in Adomako’s case the negligence points to a dispositional flaw (arrogance or ineptitude) whereas there is nothing at all wrong with the parent beyond the glitch.

9. The Rational Defect View

Adomako as we have imagined him fails to advert to the ventilator out of arrogance or ineptitude. Contrast this version of Adomako with the parent who forgets the child, not thanks to a one-off glitch, but because he is forgetful or fatigued or easily distracted. These are defects in the agent that dispose him to inadvertence, but they differ from arrogance and ineptitude in what may be morally relevant respects. When the arrogant version of Adomako fails to advert to the ventilator, the explanation presumably runs as follows. He hears the blood pressure alarm and for whatever reason assumes it must be malfunctioning. Perhaps that is a reasonable first thought to have. After a time, however, given his evidence, he should step back and contemplate alternatives. But out of excessive
confidence in his own first thoughts, he persists. So understood, his arrogance is a rational defect: a tendency to respond badly to the evidence one is aware of. Memory, by contrast, is not a rational capacity. When a known fact enters consciousness in a way that makes it available as a resource for deliberation, the transition is not a case of reasoning. A poor memory is thus a defect, but not a rational defect.

And so we might entertain:

**The Rational Defect View (RDV):** Otherwise unexcused negligence is blameworthy iff the inadvertence manifests a defect in the agent’s disposition to respond to reasons.

This view agrees with the QCV in a range of cases. Insufficient concern can fuel bad reasoning, as when indifference leads me to fail to draw a conclusion I should have drawn. When insufficient concern leads to inadvertence by this route, the inadvertence manifests both an objectionable pattern of concern and a rational defect. The views disagree in cases of motivated forgetting or failure to notice. When you forget our lunch date because you don’t respect me, the failure of the relevant thought to insert itself into your deliberation manifests ill will; but it need not manifest a disposition to reason badly from available information. In cases of this sort, the QCV finds culpability, as does the DV, but the RDV does not.

RDV is a close cousin to Michael Smith’s proposal that a person is responsible when his conduct manifests a failure to exercise a rational capacity that he possesses (Smith 2003). Smith’s view, like the RDV, distinguishes the forgetful parent from Adomako on the ground that memory is not a rational capacity. The difference is that Smith’s view finds responsibility in cases of isolated, one-off failures to respond appropriately to reasons, as when someone whose habits and dispositions are non-defective fails to draw an inference she could and should have drawn thanks to a local glitch. The RDV requires the culpable failure to be a manifestation of something more enduing: a dispositional feature like arrogance or ineptitude. Both views merit consideration, but for present purposes I’m going to focus on the RDV. The considerations adduced against it count equally against the proposal that any rational failure on the part of an otherwise competent agent suffices for culpability.

9. **The Alethic View of Blameworthiness**

---

3 Smith’s theory is not a theory of responsibility in our sense, i.e., liability to reactive blame. See Ayars (ms) for a defense of a Smith-style theory of reactive blameworthiness.

4 The ‘enduring’ feature need not be long-lived. The relevant dimension of endurance is modal. When a failure manifests a disposition to reason badly, it would or might well have occurred even if the circumstances had been slightly different and is thus not altogether accidental.
We have the Quality of Concern View and some alternatives. Which (if any) view is right? The QCV is on the ropes as an articulation of the view implicit in ordinary practice, since it deems Adomako blameless if his pattern of concern is decent, whereas some of us (including Baron) are inclined to blame him. The DCV is likewise at odds with ordinary thinking, as is shown by judgments about cases where the inadvertence shows no defect in the agent’s dispositional psychology, but is rather down to a one-off glitch (the decent parent). None of this would be decisive even if our pretheoretical views were clear, since ordinary practice is never the last word in ethics. But we can say at this point that some version of the defect view recommends itself as an alternative to the QCV with which we started.

At this point it will help to zoom out. Our question concerns the conditions under which negligence merits reactive blame. The challenge throughout has been to say when resentment and indignation are warranted by negligent wrongdoing. How we proceed depends on how we understand this normative relation.

There are several approaches to the issue, but I will focus on the account I find most promising. The reactive emotions, like all emotions, are intentional states with representational content. To resent X for A is in part to construe A as having certain features (Roberts 2003), i.e., to entertain certain belief-like thoughts about the case. The central tenet of the alethic view is that resentment of X for A is warranted (licensed, merited) if and only if and because the thoughts that constitute resentment are true of X and A (Rosen 2015). It seems clear, for example, that in resenting X for A we inevitably think of A as something X should not have done (Cf. Graham 2014). Given this, the alethic view entails that A is blameworthy only if X should not have done it. This is maximally unsurprising, of course. The interest of the view lies in its explanation of this fact. Why is impermissibility a condition of blameworthiness? Because (a) resentment of X for A essentially involves the thought that A was impermissible, and (b) for resentment to be appropriate just is for the thoughts constitutive of resentment to be true.

On the alethic view our question about negligence comes down to this. Do the negative reactive emotions essentially involve a thought that is false when the act is done from unmotivated negligence? The view thus recasts our normative inquiry into the conditions of blameworthiness as inquiry into the natures of the reactive sentiments, hence as a problem in the metaphysics of the emotions.

Every plausible version of the alethic view sees the negative reactive emotions as involving the deontic thought mentioned above: the thought that X should have done otherwise — and also some hard-to-specify competence thought: some thought that is true when X is a normal adult whose capacity for moral understanding and self-control is unimpaired at the time of action, and false when the target is a small child or a seriously (and blamelessly) impaired adult. These thoughts are true in every case of negligence we have considered. But they are also true in cases of blameless mistake of fact, as when I take your pink umbrella by mistake. Our task is to identify the thought implicit in reactive blame that is false in these cases but plausibly true in at least some cases of negligent wrongdoing.
The Strawsonian who endorses the alethic view can say: resentment involves the **quality of concern thought**: the thought that $X$ showed insufficient concern in doing $A$ (Rosen 2015). The other views suggest alternatives: the thought that $X$ was careless, or showed a (rational) defect in doing $A$. These are proposals about the thoughts that constitute the blame emotions. On the alethic view, the theoretical challenge posed by negligence is to identify this third thought implicit in resentment and indignation whose truth or falsity is at issue in the range of cases we have considered.

10. Methodology in the Alethic View

This would be easy if the representational content of the emotions were transparent. Emotions are conscious states, after all, so the thoughts that constitute them must be conscious in some sense. Still, it is not always easy to articulate the content of the thoughts, or to distinguish the thoughts that constitute and emotion from others that tend to accompany it. Anyone can agree that in many cases we resent when we construe the act as an expression of ill will. The question is whether this construal is constitutive of the emotion, and that can be hard to know.

The alethic view has a number of tools for identifying the thought we’re after. Any proposal should get the clear cases right: the thought should be false in cases of blameless mistake but true in cases of egregious motivated negligence. Call this the **fidelity constraint**. There is also the **naivety constraint**: any thought implicit in resentment must be a thought that anyone capable of resentment can think. The resentment that makes for blame is a relatively unsophisticated emotion. Unlike Weltschmerz or Schadenfreude, it is an emotion that a 4-year old can feel. And this means that the thoughts constitutive of resentment cannot involve recherché concepts that four year-olds do not possess. The quality of concern condition arguably satisfies these constraints. It does not take much to construe an action as unkind or offensive. By contrast, I would be surprised if a four year-old could distinguish rational defects from defects like absent-mindedness. If that is right, it counts against a version of the RDV according to which resentment of $X$ for $A$ constitutively involves the thought that $A$ reflects a distinctively rational defect in $X$.

For our purposes, the most important methodological tool licensed by the alethic view is what Sam Preston calls the **evaporation heuristic**. Suppose you initially blame me for stealing your umbrella and I then make it clear that I didn’t take it at all, or that I took it but needed it to save a life in an emergency. When you hear the rest of the story your resentment evaporates in a phenomenologically distinctive way, and the alethic view knows why. Resentment essentially involves the thought that $X$ should not have done $A$. When you get conclusive evidence against this thought, it evaporates, if you are rational; and because the thought is constitutive of the emotion, the emotion evaporates in its train. (We are not perfectly rational, so the emotion will not always evaporate, and even when it does, certain aspects of it, including the somatic agitation, may linger.) In general, when new information about a case extinguishes resentment in this distinctively decisive way, *destroying the emotion by refuting it*, that is evidence that the information refutes a thought.
implicit in resentment. The heuristic does not identify this thought. There will in general be many candidate thoughts that would be undermined by the new information and would vanish with it. Still the heuristic provides a tool for probing the thoughts implicit in the emotions. Given a case in which resentment evaporates when we imagine receiving new information, the heuristic instructs us to find a thought constitutive of the emotion that would be undermined by that evidence. Since any proposal will be subject to the other constraints mentioned above, this is a potentially a fruitful way of getting at the content of the blame emotions.

11. Applying the Evaporation Heuristic

With this in mind, return to the DCV, which indicts the decent parent who fails to advert to an unjustifiable risk thanks to an isolated glitch that shows no dispositional defect. We noted earlier that ordinary moral practice does not clearly embrace this view. We are often ambivalent about whether to blame the parent when for all we know his inadvertence shows no deeper defect. I would now make the stronger claim: Suppose you at first blame the parent for leaving the child in the car, or Adomako for failing to check the ventilator. Now imagine that you learn beyond any doubt that the inadvertence was an isolated glitch. It may have no cause, or a fragile and utterly contingent subpersonal cause; but it involves no ill will, no absent-mindedness or arrogance or anything of the sort. Suppose you learn, in other words, that the agent was in all dispositional respects an excellent human being whose passive capacity to advert to the crucial facts simply failed to fire. I claim that when we imagine learning this our blame evaporates in the phenomenologically distinctive way described above: it stands refuted. This suggests that some thought implicit in resentment is false when there is no dispositional defect in the agent. The methodology thus disfavors the DCV, I would say decisively.

The real issue is whether this methodology favors the QCV over some version of the Defect View. Take Adomako again. We hear the facts described in the report and we are (as Baron was) disposed to blame. Now we imagine learning that his failure to check the ventilator was due, not to ill will, but to incompetence — a tendency to miss inferences that no competent anesthesiologist would miss — or stubbornness: a tendency to stick with one’s first thoughts when the evidence warrants reconsideration. As before, in order to get a telling version of the case we stipulate that Adomako’s inadvertence and the defect it manifests are not traceable to prior unconcern. The view, after all, is that negligence is culpable when it manifests a (rational) defect even when there is no ill will in the picture. We can reinforce this stipulation by supposing that while Adomako was in fact incompetent or stubborn, he had no reason to suspect that he was, perhaps because his defect had never had occasion to manifest itself. The case is now far-fetched. And yet it seems clear to me that when we imagine receiving this package of stipulations, the new information dispels resentment in the phenomenologically distinctive way we have been describing. The spectacle is one of a well-meaning but incompetent anesthesiologist who has no reason to believe that he's incompetent fiddling with irrelevant devices as his patient turns blue and dies. The spectacle is maddening and we may feel moved to blame. “What an idiot!” we think. But when we bear in mind that he was a well-meaning idiot who had no reason to
think that he was, and who was reasonable in showing up for work and relying on his (badly trained) habits and instincts, he registers as pathetic and the episode as tragic, but we cannot blame. This suggests that a thought implicit in resentment is false in this case. The thought that agent acted from a (rational) defect is not false. The thought that he acted from ill will is.

12. Does the Argument Show Too Much?

These considerations favor the QCV. We do sometimes blame in cases of unmotivated negligence, especially when the agent was notably stupid or incompetent. But when we reflect in this focused way, forcing ourselves to attend to the stipulation that the agent’s quality of will was impeccable throughout, reactive blame dissolves. The alethic view offers an explanation: blame dissolves because resentment constitutively involves construing the action as ill-willed. It then concludes that blame is warranted only when this thought is true, from which it follows that unmotivated negligence is not blameworthy.

To get this result we had to make artificial stipulations about the cases. In particular we had to stipulate that there was no ill will anywhere in the causal background of the defect or the agent’s choice to place himself in circumstances where it might do damage. Before we endorse the QCV on this basis we must therefore subject it to the same test. So let’s consider Adomako one last time. There he is, fiddling with the blood pressure alarm as his patient turns blue. As in every version of the case, he does not advert to the risk of ignoring the ventilator. In this version, however, the inadvertence reflects ill will. Perhaps he dislikes the patient, or cares too much about wrapping things up so he can play golf. But for the objectionable pattern of concern, we now stipulate, he would have adverted to the risk and checked the ventilator. To make the case as close as possible to the others, however, we should stipulate that Adomako is not responsible for his ill will (which has come on quietly and not as a result of ill willed choices) or for showing up for work, perhaps because he is blamelessly unaware of his ill will. None of this negates the premise of the case, that Adomako’s negligence manifests ill will. The effect of the stipulations is to ensure that while the inadvertence is motived, it is not the upshot of prior culpable wrongdoing. The case is therefore one in which motivated negligence would be the original locus of responsibility.

To apply the heuristic we should imagine that we are initially inclined to blame but then learn all of this: that Adomako’s negligence was motivated, but that he was not culpable for any relevant prior conduct and was thus not responsible for the ill will from which he acted. The question is whether this new information extinguishes resentment in the direct way we have been discussing. For if it does, the argument refutes the QCV along with every other view we have considered.

Speaking for myself I will report that my resentment is not quite extinguished when I imagine learning that the agent acted from animus or unconcern even when it is stipulated that the animus is not his fault. The result would be different if the animus rendered him incapable of adverting to the risk; but we have set literal incapacity to one side. Given this, we have a doctor who killed his patient through egregious negligence because he didn’t
care enough. This is obviously less culpable than reckless killing. But resentment is not blocked altogether, or so I find.\(^5\)

But I won’t pretend to be confident about this. When I focus on the fact that Adomako’s decision-making was subverted *behind the scenes* by an attitude of which he was (for all we’ve said) blamelessly unaware, I waver. An agent in such case can seem like a mathematician who must add up a column of numbers but who has been unwittingly drugged with a potion that makes him an unreliable calculator. Even if the drug does not render him altogether *incapable* of getting the right answer, it’s hardly his fault if he doesn’t. Adomako faces a practical problem: What to do about the alarm that keeps going off? His background animus is like a drug that makes it hard for him to get the right answer. By stipulation, it’s not his fault that he’s been drugged or that the drug is distorting his patterns of advertence. Frame the case in this way and Adomako looks more like a victim of his unconscious attitudes and less like a fit object of resentment.

The deepest question in this area is whether there exists a disanalogy between the case in which the inadvertence is traceable to an objectionable pattern of concern for which the agent is not independently responsible, and the case in which it’s traceable something else: a drug, a lousy memory, or a disposition to reason badly. My own tentative sense is that there is. In the first sort of case Adomako’s victim can say: “What you did reflects your view of how my interests matter”. In the other cases this cannot be said.

12. A Skeptical Moral

But suppose I’m wrong. Suppose resentment is blocked in this case. This means that we are not responsible for otherwise unexcused negligence *whenever* it manifests insufficient concern. But it does not refute the basic Strawsonian idea that ill will is *necessary* for culpability. One view consistent with this verdict is the

**Quality of Choice View**: Otherwise unexcused negligence is blameworthy when the inadvertence was the foreseeable upshot of a prior culpable ill-willed choice.

On this view, motivated negligence is never a locus of original responsibility, but is rather culpable only when traceable to some prior culpable choice.\(^6\) As noted earlier, an agent’s pattern of concern is expressed in a distinctive way in choice. To speak metaphorically, when an agent chooses she thereby *ratifies* the pattern of valuation that rationalizes her choice, whereas no such ratification is possible when the agent’s attitudes work behind the scenes to modulate the facts to which she advert. It is conceivable that resentment responds, not just to ill will in the causal background, but to ill will ratified in choice. If that is right, negligence will be culpable if, but only if, the it is traceable to a prior reckless choice that manifests ill will.

---

\(^5\) This is a change of heart from Rosen 2008.

\(^6\) I have defended the Quality of Choice View in the past (Rosen 2002, 2004, 2008), though not under this name.
I find it hard to choose between the Quality of Concern View and the Quality of Choice View, so let me close by saying why the issue matters, not just for theory, but for practice. One important question for any account of responsibility is whether the conditions it identifies as necessary for blameworthiness are readily knowable under ordinary conditions. For if not, the view will lead to skepticism about responsibility: the view that in a range of cases we cannot know whether people are responsible for what they do (Rosen 2004).

Any view that requires ill will for culpability will trigger skeptical worries. It can be hard to know whether any given bit of inadvertent wrongdoing reveals an objectionable pattern of concern. But in many cases it’s not that hard. The factory owner who blocks the fire exists without a thought to the risk he thereby creates gives us excellent evidence that he cares more about money than worker safety. In egregious cases, the facts speak for themselves. The Quality of Choice View, however, raises an especially acute skeptical worry. Confronted with a negligent omission that clearly manifests ill will at some level, it may still be hard to tell whether the inadvertence is traceable to a prior culpable choice. That aspect of the causal history leaves no distinctive signature and is often buried in the past. If the main contenders in the theory of negligence are the Quality of Concern View and the Quality of Choice View, the choice is a choice between a view that allows for tolerably confident judgments of culpability in many cases and a view with what may be a sweeping skeptical upshot. This observation does not favor one view over the other. The theoretical choice must be made on other grounds if it can be made at all, at which point a certain limited skepticism about responsibility will either follow or not as the case may be.7

13. Discussion Note Added for Cornell

Since this is a Law and Philosophy seminar let me say a brief word about the implications of this discussion for the law.

It’s a regulative principle of criminal law in the United States that people should be subject to serious criminal punishment only when they are morally culpable for their conduct. I don’t think this is a deep or essential feature of criminal punishment. But so long as punishment retains the expressive function it has in the US as a form of serious public moral condemnation, it will be so, since we should not be in the business of condemning people who do not merit condemnation.

Given this, the Quality of Concern View implies that criminal liability for negligence is only warranted when the negligent conduct shows ill will. The Quality of Choice View would add the more stringent requirement that the negligence be traceable to

---

7 I am grateful to Alisabeth Ayars, Sherif Girgis, Lawrence Sager, Mark Greenberg, Seana Shiffrin, David Kaplan, Selim Berker, Caspar Hare, Rachel Achs, Zoe Jenkin, Sam Preston and to audiences at Harvard and the UCLA Legal Theory Workshop for valuable discussion.
a prior reckless or knowing choice. The Due Care View, by contrast, would allow criminal liability for careless harm causing regardless of the agent’s state of quality of will.

Criminal law practice disfavors criminal liability for ordinary negligence but does tolerate liability for “gross” or “criminal” negligence. (It is sometimes said that “criminal negligence” must be more egregious than “gross” negligence as understood in torts.) Statutory definitions often define the standard as follows:

A person acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a *gross deviation from the standard of care that a reasonable person would observe in the situation.* (New York Penal 15.05.4)

This suggests a version of the Defect View: if a reasonable (i.e., normally prudent) person would have adverted to the risk, then failure to advert shows a defect in the agent. However the inadvertence must reflect a *gross* deviation from the ordinary standard of care, and this suggests a different standard. As the default jury instruction puts it:

CRIMINAL NEGLIGENCE is not the same type of negligence you may be familiar with from a civil lawsuit seeking a money judgment. The carelessness required for criminal negligence is appreciably more serious; it must be such that its seriousness would be apparent to anyone who shares the community’s general sense of right and wrong. (NY Jury Instruction for Criminally Negligent Homicide, rev. 2009)

This suggests that the relevant question is whether the defendant’s inadvertence reflects a deviation from ‘the community’s general sense of right and wrong’. But that is to say the question is whether defendant’s failure to advert to the arm reflects a serious defect in his pattern of concern. This is in keeping with the Quality of Concern View.

That said, it must be emphasized that the statutory formulation — “gross deviation from the standard of care that a reasonable person would observe in the situation” — does not point unambiguously to the QCV. This is the sort of formulation that convicted Adomako of manslaughter under UK law, and that formulation can be construed to find liability for extreme carelessness without regard for the agent’s underlying mental state.

From the present point of view it would be desirable to sharpen these formulations. Just as reckless killing that would otherwise be manslaughter is chargeable as murder when it manifests a “depraved heart”, so negligent killing that would otherwise be merely tortious may be rendered criminal when the negligence reflects indifference to human life or to the rights and interests of those potentially affected. On this conception, the jury would have to find that the negligence was (in our terms) motivated by a seriously objectionable pattern of concern. This will reserve serious criminal liability for cases in which the inference from negligent act (and other pertinent evidence) to objectionable unconcern is cogent. A
rule of this sort would have given Adomako a defense, and that seems to me to be the right result.

REFERENCES


Ayars, A. ms. Blaming for Unreasonableness. Princeton University manuscript.


