

The Backward-Looking Puzzle of Responsibility in Negligence: Some Preliminary Thoughts for Understanding Inadvertent Actions.

By Veronica Rodriguez-Blanco (University of Surrey Centre for Law and Philosophy)*

§ 1 Introduction

Inadvertent actions¹ in relation to legal and moral responsibility have been represented as puzzling on many occasions. In this paper I aim to show they are puzzling for different reasons than those usually proposed². Before I do this it is important to clarify some assumptions and presuppositions. First, the paper presupposes that intentional action constitutes the paradigm

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¹ I will use the term ‘inadvertent action’ to avoid the debate on the key conditions for responsibility in negligence and to limit the discussion. I will remain neutral on the kind of deficiency that is required to characterise negligent action, i.e. awareness, belief or/ and knowledge. Most of the contemporary literature in the field focuses on either sceptical views of negligence e.g. H. Hurd and M. Moore, ‘Punishing the Awkward, the Stupid, the Weak and the Selfish: The Culpability of Negligence’. In: *Criminal Law and Philosophy* (2011), pp. 147-198, and G. Rosen, ‘Skepticism about moral responsibility’, *Philosophical Perspectives* (2004), pp. 295–313; or views that engage in complex and subtle explanations concerning the key components of negligence and the way we need to grasp them, i.e. directly via our expectations of knowledge that people ought to have, or derivatively by tracing the point of knowledge/belief that actors actually had prior to the negligent action. The standard view is that two or more of these key components will offer the ground for responsibility for negligent action, e.g. Husak, D., ‘Negligence, belief, blame and criminal liability: The special case of forgetting’, *Criminal Law and Philosophy* (2011), pp. 199-218; Ferzan, K. K., ‘Opaque Recklessness’, *Journal of Criminal Law and Criminology* (2001), pp. 597-652; Ferzan, K. and Alexander, L., *Crime and Culpability* (Cambridge: CUP, 2012); Fitzpatrick, W., ‘Moral Responsibility and Normative Ignorance: Answering a New Skeptical Challenge’, *Ethics* (2008), pp. 589-613; Stark, F. *Culpable Carelessness* (Cambridge: Cambridge University Press) 2016; Yaffe, G., ‘Intoxication, Recklessness and Negligence’, *Ohio State Journal of Criminal Law* (2012), pp. 545-583; Zimmerman, ‘Moral Responsibility and Ignorance’, *Ethics* (1997), pp. 410-426. However, both the sceptical and non-sceptical views either remain silent on what they understand by action, or advocate a model of action in terms of mental events, i.e. beliefs as mental events, conscious/pre-conscious processes as mental events, knowledge as justified beliefs which should be represented as mental events, or attitudes that are construed as beliefs. In some cases, authors have offered solutions in terms of virtues and vices, but the conception of action that is presupposed seems voluntaristic and therefore takes us back to either the control/choice/conscience or belief/desire models, e.g. see Yaffe, G., ‘Negligence and Norms of Ability’ in this volume and Fitzpatrick, ‘Moral Responsibility and Normative Ignorance: Answering a New Skeptical Challenge’, p.605; cf. E., Mason, ‘On Moral Ignorance and Negligence. In: *Philosophical Studies*, 2015, pp. 3037-3057.

² The usual puzzles around responsibility for negligence and negligent acts emerge from the need to distinguish the kind of awareness/belief/knowledge or mechanism that is present in negligence, when our actions are careless, ignorant or oblivious, from acting recklessly or intentionally. Further puzzles revolve around the grounds of blameworthiness and responsibility for negligent actions.

of action.³ Second, it presupposes that intention and intentional actions run parallel to practical reason, and that the first-person perspective is the primary perspective to explain intentional action.⁴ Inadvertent actions seem to be an important challenge to this conception and this study aims to pave the way for thinking about negligence in the context of the first-person perspective. The aim of the paper is modest in the sense that it neither offers an account of negligence, nor a criticism of the views that have been advanced in the literature, but identifies a puzzle that arises in the context of actions from the first-person perspective and gestures towards a possible methodology for thinking about negligent actions. I see this as a necessary and preliminary task before engaging with the nature of negligent acts and responsibility for negligence.

We can think about inadvertent actions through the paradigmatic example of actions, i.e. intentional actions. This entails unpacking action in terms of the first-person or deliberative perspective⁵. This way of explaining action is mainly forward-looking, this means that it focuses on what we bring about with our bodily movements from the point of view of the person who is engaged with the action. This perspective concentrates on the ideas of *movement, change and transformation*. By contrast, in our practices of responsibility, when we attribute responsibility for an action, we focus on the past; our assessment is backward-looking and the action is conceived as an *event*. There is no movement or transformation. Something happened, and the change and transformation in the world has already been effected at the point of the attribution of responsibility. The puzzle of negligence that I will focus on can initially be formulated in an intuitive way as follows:

³ I have defended this view in my book *Law and Authority Under the Guise of the Good* (Oxford: Hart-Bloomsbury Publishing, 2017) and in ‘Is Practical Knowledge Prior to Theoretical Knowledge in Action? Reflecting on Anscombe’s Institutional Transparency’, *Journal of Value Inquiry* (2018), pp. 257-267.

⁴ Ibid.

⁵ This is different from the ‘subjective’ point of view where the focus is on motivational or internal reasons. The idea of the first-person or deliberative stance concentrates on action and practical reason. See my book *Law and Authority Under the Guise of the Good* for further reflections on this.

If the individuation of an inadvertent action is through the lens of the deliberative or first-person perspective and its respective description, which is forward-looking and, furthermore, if it concerns changes and movement and their grounding logos or reasons, then it is puzzling how we can grasp the action as an event and something that has already happened in the past. Events are not progressive and do not involve future changes and movements. Philosophically speaking, we need something that seems conceptually impossible: we need a sound backward-looking perspective for the purposes of legal and moral responsibility in negligence, which at the same time grasps the forward-looking perspective. This seems conceptually impossible because it entails a concept that grasps both the changes and movements of inadvertent and intentional actions as seen from the deliberative stance, and the inadvertent and intentional actions as events occurring in the past.

The literature on negligence attempts to identify the key features that characterize negligence but analyses tend to be too quick on the sound conception of action as preliminary to determining the constitutive features of negligence. Nearly all authors have assumed that there is a symmetry between the observer or third-person perspective and the perspective of the deliberator or first-person perspective. The tendency, therefore, is to collapse a) the first person or deliberative perspective into the third-person or observer perspective and b) the forward-looking perspective into the backward-looking perspective. This solution is proposed for intentional actions and, derivatively, it is thought could work for inadvertent actions. In other words, as performers of an intentional action that happened and brought about a result, object or state of affairs in the world, we give a report of what happened from the third-person or observer perspective. In the case of negligent actions, legal theorists and philosophers aim to identify the action from the third-person perspective and determine what happened to the

agent when she acted inadvertently. For example, legal theorists and philosophers have engaged in trying to determine the ‘absent key element or condition’ that will enable us to say that the performer of an action acted negligently. Some examples of the questions posed are: did the agent fail to *form the belief* that there was a risk in her action? Did she fail to *know* that there was a risk? Was there a *process*, which is the result of an interplay of pre-conscious/conscious states, that will explain the required control for responsibility in negligence? Can we identify *a point in the past where the agent chose* to have a defective character that led her to the negligent action? Other authors have concentrated on conscience⁶, unexercised capacities⁷ and character as factors in⁸, but these accounts neither sufficiently explain nor satisfactorily theorise on the kinds of action that are presupposed.

The following example might illustrate the symmetrical thesis. Let us suppose that I make a cup of tea whilst an observer watches my bodily movements, eg. boiling the water, putting a teabag in a cup and, a few minutes later, putting the prepared cup of tea on my kitchen table. The observer will attribute to me the mental state of believing that if I boil the water and pour it into a cup with a teabag I can make a cup of tea, and will also attribute to me the desire to make a cup of tea.

According to this view, if I ask myself whether I acted intentionally, I will also explain the action in similar terms: I will say that I was in the mental state of believing that I will produce a cup of tea and that I had the desire to make a cup of tea. This view assumes that there is a symmetry between the deliberative stance and the observer stance, ie. third-person

⁶ Yaffe ‘Negligence and Norms of Ability’ in this volume.

⁷ See Hart, H.L.A., *Punishment and Responsibility* (New York: Oxford University Press, 1968), pp.149-52; Raz, J. Responsibility and the negligence standard, *Oxford Journal of Legal Studies* (2010), pp. 1–18; Raz, J. ‘Being in the World’, *Ratio* (2010), pp. 422-452; Simester, A., ‘Responsibility for Inadvertent Acts’, *Ohio State Journal of Criminal Law* (2005), pp. 601-6. For a discussion of Hart’s and Raz’s positions, see Herstein, O., ‘Responsibility in Negligence: Discussion of From Normativity To Responsibility’, *Jerusalem Review of Legal Studies*, (2013), pp. 167-184; cf. Hurd and Moore, ‘Punishing the Awkward, the Stupid, the Weak and the Selfish: The Culpability of Negligence’, pp. 164-5.

⁸ Yaffe ‘Negligence and Norms of Ability’ (in this volume); Duff, A., ‘Choice, Character and Criminal Liability’ (1993), pp. 345-383, *Law and Philosophy*, pp. and *Intention, Agency and Criminal Liability* (Oxford: Blackwell, (1990); Sher, R., ‘Out of Control’ *Ethics*,(2006) pp, 285-301 and *Who Knew?* (Oxford: OUP, 2009).

perspective. Most importantly, within this position, there will be another symmetrical conflation and this time between the backward perspective and the forward-looking perspective. This means that when I was acting, I was acting because I was in the mental state of believing I will produce a cup of tea and the mental state of desiring to make a cup of tea. When I look back at the result of my action, I will also explain my action in terms of my mental states, i.e. desires and beliefs.

When we think about our practices of responsibility, theorists tend to engage in a similar conflation. For example, you make a cup of tea at work but spill your hot tea over, and consequently burn, your work colleague who you hate for spreading rumours about you. You make a cup of tea and when you approach your colleague, you pour the hot tea on her hands, but you pretend that it is an accident. The observer could attribute responsibility stating that you had the intention to burn your colleague as you had the mental state of believing that with your actions you could burn her and also the desire to burn her because she had spread rumours about you. The result of the action is burned skin. We can now attribute a causal link between the mental state, ie. a belief in the ability to and the desire to burn a colleague who is considered an enemy, and the result of the action, i.e. an injury. However, from the deliberative perspective, you only think about how she has spread malicious rumours about you, how your reputation has been damaged, and how your act constitutes a true act of secret revenge. You make a very hot cup of tea and think how to walk by and pretend that spilling it is a pure accident. Your focus is on what actions are required to ‘pretend’ that the hot cup of tea slipped from your hands resulting in injury. The structure of the agent’s practical reasoning is present and gives a different intelligibility to the act. The focus is on the becoming or unfolding of the action, e.g. the process of exacting revenge and the pretending as key to the appearance of an accident. In the former description, we assume there is a fact of the matter and a causal link between the mental state and the state of affairs in the world that needs to be disentangled and

which determines whether the person is responsible. In the latter description, we focus on the process of practical reasoning and the becoming of the action. At first glance, there does not appear to be any substantive distinction in explaining the action, we can assume the conflation with no loss as it seems that the observer perspective captures the first-person perspective.⁹ However, problems arise when we think about inadvertent actions.

Let us imagine the following example:

DRIVING ABOVE THE SPEED LIMIT

You are driving at slightly over the speed limit in a school zone, i.e. the speed limit is 20 miles/hr and you are driving at 25 miles/hr at the same time as listening to loud music. A child crosses the street, you fail to notice him, and consequently run him over, causing him to be injured.

In explanatory terms, the observer will say that you were in the mental state of being distracted and therefore you drove at a high speed and this caused the injury of the child. The ‘but for’ or counterfactual test of causation will explain that your mental state of distraction caused the injury of the child. The observer could also say there was a foreseeable risk that you ought to have grasped but did not.¹⁰ How would we explain this in terms of mental states and the observer’s point of view? We could say that you were responsible because you *were not in* the mental state of believing in the foreseeable risk and you *should have been*. You *ought to*

⁹ For a criticism of this conflation of intentional actions, see my monograph *Law and Authority Under the Guise of the Good* (Oxford: Hart-Bloomsbury, 2017).

¹⁰ I omit the complex doctrinal views of legal negligence because, in my judgment, a piecemeal approach to understanding negligence in the ordinary and philosophical senses will help us to illuminate and evaluate the doctrinal perspective in both criminal and tort law. For example, in English Tort Law, it has been established that a defendant is negligent if it can be shown that the defendant had a duty of care towards the plaintiff, breached that duty of care and it is proved that the defendant caused the harm as a result of her action. The duty of care is determined in terms of both conditions of proximity and foreseeability (*Donoghue v Stevenson* [1932] AC 562; *Caparo v Dickman* [1990] 2 AC 605; *Bourhill v Young* [1943] AC 92) but there is vagueness on what these terms mean. A questionable third criteria in terms of fairness and reasonableness is also introduced (*Caparo*, see also *Hill v Chief Constable of West Yorkshire* [1989] 2 All ER 238).

have known or being aware that it was a school zone and consequently that there was a reduced speed limit and that it was likely children would be around. On the other hand, from the first-person perspective, you were engaged in the action of enjoying your favourite radio station which just happened to be playing your most beloved piece of music, you were carried away by the beauty of the music and pressed the pedal without realising what was happening. We could add that the reasons for your actions, i.e. pressing the pedal, were your emotions and thoughts about pleasure and beauty, i.e. imaginary thoughts aroused by the beauty of the music, etc.

The observer or third-person point of view in the case of inadvertent actions does not explain the action, but merely establishes the mental state that I ought to have in order to avoid responsibility.¹¹ This being so, *how does the absence of this mental state, i.e. the failure to be in the mental state of foreseeing, forming the believe or having the true and justified belief provide an intrinsic and intelligible connection to the outcome of the action?* In cases of inadvertent actions, the symmetry between the third-person and first-person perspectives seems to break down. In other words the way the agent sees her own action while acting and the way she looks back and sees the action as an outcome or result are different. This difference is not grasped by the symmetrical view. Notice the contrast with our ordinary language, in which this difference is usually well grasped and clearly conveyed by our daily expressions. Thus, in the context of our previous example, the speeding driver will say, “At the moment of the accident, I did not mean to hurt the child, I was just listening to my favourite music.” By contrast, in an imaginary world where our ordinary language reflects the symmetrical view, the speeding driver would instead say: “At the moment of the accident, I was listening to my favourite music

¹¹ The ‘tracing’ strategy does not rescue the symmetrical view. The problem of the correct mental state is moved to past actions in terms of the mental state the agent had and determines culpability for the negligent act. For criticism of the tracing strategy see Vargas, M., ‘On the Importance of History for Responsible Agency’, *Philosophical Studies* (2006), pp. 351-382 and King, M., ‘The Problem with Negligence’, *Social Theory and Practice* (2009), pp. 577-595. Cf. Fisher and Tognazzi, ‘The Truth about Tracing’, *Nous* (2009), pp. 531-566.

and at the same time, unfortunately, there was an absence of the appropriate mental state that would have enabled me to prevent the accident.” In the context of our current linguistic practices, how should we understand this? Did the driver know, at the point of acting, that she lacked the required mental state? The latter statement makes sense only *after* the accident, but it is not part of the structure of practical reasoning of the agent when she is performing the action. It seems to us unintelligible that while she is performing the action, she *knows* that the appropriate mental state is absent. How can she be aware of the absence of certain mental states? And how does this absence explain the action? Not surprisingly, we need to resort to theoretical mechanisms, e.g. pre-conscious/conscious states, which fail to explain how the *agent* and not an internal mechanism generated the action. If the symmetrical view is the correct account of action and we need to rely on it to explain responsibility in negligence, then it seems that skeptical positions have the upper hand in the discussion.¹²

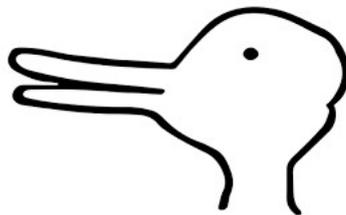
I will advance the view that we can think about backward-looking inadvertent actions and our practices of responsibility if we change the methodological focus of our inquiry. When we scrutinise inadvertent backward-looking actions, we do not look at facts-like mental states and facts in the world-as the consequences of our actions as this way of thinking obscures the phenomenology of agency and responsibility. By contrast, I will use an important analogy between ‘seeing an aspect’ and ‘seeing an inadvertent act’ and will argue that both depend on our trained capacities and dispositions and the way they are immersed in our daily activities. In §2 of the paper I explain the phenomenon of ‘seeing an aspect’ as advanced by Ludwig

¹² Hurd and Moore’s scepticism is different from that of Rosen. The former reject the notion that there can be a unified theory of negligence in the context of criminal law because ‘*negligence is not a single continent with a unified nature. It is more like an archipelago of islands, each with its own distinct nature*’ (Hurd and Moore, ‘Punishing the Awkward, the Stupid, the Weak and the Selfish: The Culpability of Negligence’, p.192). Like Moore and Hurd, Fitzpatrick also defends the view that negligence is not a unitary notion, but argues that it should be based on ‘reasonable expectations’(Fitzpatrick, W., ‘Varieties of Negligence and their significance for moral blameworthiness’ in this volume). Rosen argues that negligence could be explained if we could trace the agent’s fault back to the point where the agent had knowledge or awareness of the action and then disregarded this knowledge. This is a case of akrasia but unfortunately, Rosen tells us, we do not sufficiently understand what it entails and, furthermore, whether akrasia is even possible (Rosen, G., ‘Skepticism about moral responsibility’).

Wittgenstein in *Philosophical Investigations*. In §3 I show the analogies between ‘seeing an aspect’ and ‘seeing an inadvertent action’ and focus on explaining how ‘seeing an inadvertent act’ is immersed in our daily activities and practices of attributing responsibility, and how we can create a backward-looking perspective that grasps the first-person perspective or deliberative stance. Finally, I will explore the implications of this new methodology for thinking about legal and moral responsibility in negligence.

§2 ‘Seeing an Aspect’

Wittgenstein introduces the idea of ‘seeing an aspect’ in the second part of *Philosophical Investigations* (Fragment XI) with the puzzle of how we see two different figures from the same drawing, where the physical properties of the picture remain intact, i.e. the lines, colours, shape and organisation. The drawing is the following:



When we look initially at the drawing we see a duck, we then think about ducks in a pond and the feathers and different colours of ducks. When we look again and more closely we see a rabbit and then thoughts of rabbits and rabbit activities might come to our minds, e.g. rabbits jumping in a meadow, rabbits eating carrots. It seems that we relate to the two pictures *not* in terms of their physical reality as the physical characteristics in the drawing have not changed, i.e. the lines of the drawing are the *same*. Neither do we relate to the pictures in terms of their organisation because the organisation has not changed.

What is it that has changed and that enables us to see a rabbit at some specific time and then, all of a sudden, a duck? What changes *is our perspective*, in other words, how we relate to the lines in the drawing. This is what Wittgenstein calls ‘aspect dawning’. The perspective is not completely chosen by you as it is imposed on you. The aspect of the picture is imposed on us, we cannot help but see a rabbit and then all of a sudden, change happens and we now see a duck. The description is reached spontaneously and we immediately discard other possibilities, e.g. it is not a donkey, it is not a smiley face, etc. We also think about the figure as we have learned to respond to what it represents and how it relates to other objects, for example rabbits and meadows. We have learned that rabbits jump in meadows and that ducks swim in lakes and we are reason-responsive through our reason-concepts to these objects in the world. In other words, we identify the figure by the thing that it represents. The visual experience is not only physical, but thoughts seem to be part of the visual experience. So it is not the case that I only see with my eyes, but I also somehow ‘see’ with my thoughts. But thoughts are not merely mental states and should not be seen as mysterious entities, they are learned in our interactions with the world and we learn to respond to the world with reasons and emotions. The experience of seeing is learned through expressions of our language and there is no other way of learning the experience. The expressions are learned in language-games and this involves us being reasons-responsive. In other words, our concepts, reason-concepts and language-games carve the world and our experiences.

It seems that Wittgenstein is inviting us to take seriously the idea that when we see, seeing and thinking are presented together and there is no theoretical or inferential process in which we first see the physical features of an image, then create a hypothesis or conjecture or interpretation¹³ of what the image might be, and subsequently infer what the image represents.

¹³ For the position that ‘seeing aspects’ does not involve interpretation see Mulhall, S. *Inheritance and Originality* (Oxford: OUP, 2007), pp. 153-7.

We see at once the rabbit and think about it. Then a change of perspective occurs and we see the duck and think about it.

Why is the exercise of seeing this gestalt figure so puzzling? Because we are engaging *at the same time* with two thoughts and two sights, but one single organisation and physical sign. We are engaging with an animal we are certain is called a ‘rabbit’ which jumps in meadows and, at the same time, with an animal we are certain is called a ‘duck’ which swims in lakes. In our thoughts and experiences of the world, these are two different animals and we know that there is not a single animal called the ‘duck-rabbit’. But the drawing tells us something different.

Arguably, this view on pictures is applicable to actions. When we see others acting, we do not observe their movements as merely physical; in the majority of cases we immediately grasp what they are doing. This means that, in opposition to what is advocated by the symmetrical view, we do not rationalize or interpret the action from the third-person perspective by attributing beliefs/desires to the action in order to make it intelligible. What actually happens is that the intelligibility of the action strikes us as ‘seeing as’ and therefore no attribution of beliefs/desires is necessary. For example, in the context of the classroom, we see that students are taking notes and learning; at the bus stop, when people are standing, we see that they are waiting for the bus; at the store, we see people picking up fruit and we know that they are about to buy them. Bodily movements in action are seen as meaningful. Like the ‘duck-rabbit’, however, we not *only* see the organisation and physical properties of other agents’ bodies (for example, the taking of notes, buying of fruit and so on).

The *aspect* of the action dawns upon us.

§3 Implications for Legal and Moral Responsibility of Inadvertent Acts

We have said that we learn words like ‘rabbit’ and ‘duck’ through what they do and in the contexts in which we refer to them, e.g. when as children we visit parks and meadows and our parents explain us what rabbits and ducks do. We also learned to be reasons-responsive to these animals, e.g. we feed ducks with seeds and hop about in meadows in the hope of catching rabbits. If we have a domestic rabbit, we look after it and feed it with carrot tops.

All this seems obvious and simple as we are referring to ducks and rabbits. However, how might all of this apply to inadvertent actions? Let us recall that our puzzle is about how past actions for inadvertent acts, which are results or outcomes of our actions and strike us as events. They constitute the subject-matter of our assessments of responsibility in negligence, and are correctly grasped when action is really produced within the forward-looking perspective. It is usually asserted that we are responsible for inadvertent actions because we ought to have done this or that, or rather we ought to have known this or that and we failed to do so. However, on the other hand, the way we engage with action is forward-looking and when we occupy this perspective we act according to reasons. It seems that it is impossible to integrate the forward-looking perspective of action with the backward-looking view of past events when we are dealing with inadvertent actions. When someone acted inadvertently because she overlooked something or ought to have known something that she did not know when she acted, then we are not considering the reasons that *are in her acting* and we are disregarding her first-person perspective. On the contrary, when we assess her action, we are considering her action as *she ought to have acted*. It seems that it is conceptually impossible to integrate both perspectives.

Let us think again about the duck-rabbit picture and the way we engage with the picture. We see rabbits and ducks and think and identify with the picture in terms of what it represents. We can see rabbits and ducks because we have learned what rabbits and ducks do and how

they relate to other animals and objects in the world. We can see the duck and think about ducks. If we are not aspect blind, we can see the rabbit and have thoughts about rabbits and this aspect dawns on us.

But actions are different and much more complex. What would we need to say to a child if we wanted to teach them about inadvertent actions? We do not intend inadvertent actions, but they are understood if we understand what it is to act neither intentionally, nor involuntarily. The question then can be reformulated as ‘What would we need to say to a child to teach them about intentional actions?’ You can think about some paradigmatic examples that contain deliberation and practical knowledge and therefore intentional action. For instance, in teaching a child how to bake a cake we teach them that we first need to mix the sugar and the butter, then add milk, eggs and vanilla and finally flour. Put the mixture into a cake tin and put the tin into a heated oven. If by mistake we forget to add the eggs, we can then say to the child that this is what it is to act inadvertently, i.e. you knew you ought to do X, but you forgot to do it or disregarded it because you were distracted by doing or imagining something else. You intended to produce a state of affairs, i.e. a cake and by mistake you have produced something else, i.e. an undigestible mix of sugar, butter, flour and vanilla.

The child has now learned a primitive concept of inadvertent actions. As competent adults, we develop a mastery in understanding what inadvertent actions are. We engage with the world from the deliberative or first-person point of view. We act intentionally as we pursue ends with good-making characteristics and values, but also learn that on occasion we fail because we produce by mistake the wrong state of affairs and fail to know what we ought to know.

Let us now try to understand how Wittgenstein’s idea of ‘seeing aspects’ might shed light on the puzzle of the backward-looking perspective for responsibility for inadvertent actions. We will only focus on the interpersonal understanding of our past actions and

attributions of responsibility, but this also has ramifications for attributions of responsibility at the intrapersonal level. However, this will not be the subject of this paper.

Let us look closely at a variation of an example provided by Sher in his book *Who Knew?*¹⁴ The example is called Hot Dog. In Hot Dog, Alessandra is collecting her children from a hockey game. It is a hot day and she has her dog in the car. She goes quickly to collect the children and leaves the dog in the vehicle. When Alessandra arrives at the pitch, a dispute between the children arises and she tries to calm them down. Consequently, due to the heated dispute, she forgets about her dog and when they return to the vehicle, they discover the dead body of their beloved dog.

The question that arises is how Alessandra is able to attribute responsibility to herself when from the first-person perspective she only engaged in the action of collecting her children and was trying to solve the dispute that had arisen between them. She knew why she was doing what she was doing at the moment of doing it. She knew why she parked her vehicle, left the dog in the car, started to walk to the hockey pitch and tried to solve the dispute among the children. She knew why she returned to the car. She produced what she aimed to produce. However, she did not aim to produce the death of her beloved dog. In ‘seeing’ her past actions, she observed the state of affairs, i.e. a dead dog, and the lack of precaution or practical knowledge that she ought to have had. But how can she infer what she ought to have thought, ought to have done or ought to have known, which produced the state of affairs, e.g. the dead dog. I will argue that Alessandra is able to ‘see’ both the forward-looking perspective of her action, i.e. the deliberative and intentional action and backward-looking perspective of her action, i.e. her lack of precaution and practical knowledge that produced the death of her dog, *in the same way that we can see both animals in the image*. Like ‘seeing’ the duck-rabbit aspect, Alessandra can ‘see’ the *aspects* of her own past action, i.e. her lack of precaution and practical

¹⁴ Sher, G., *Who Knew?: Responsibility Without Awareness* (Oxford: Oxford University Press, 2009).

knowledge and what she produced, i.e. the dead dog, and at the same time she can 'see' her forward-looking action as another aspect of her actions. The backward-looking action is imposed on her and the aspect dawns upon her. She neither sees her past action as a piece of materiality, nor as a fact or something physical. Neither does she infer from the facts, i.e. a dead dog, a conjecture or an hypothesis, i.e. this is my dog that I left in the car and consequently my wrong mental state, i.e. the failure of precaution and practical knowledge, caused the death of my beloved dog. The primary understanding of her action as applying the adverb inadvertently is that something has been missed in her practical knowledge and the carrying out of her action. Like in the example of the mother making a cake with her child where we missed an ingredient, the steps that led to Alessandra's action were faulty and produced the wrong state of affairs, i.e the death of her beloved dog. In normal circumstances and due to the normal capacities of human beings, she recognises herself and her actions in both perspectives and can grasp both the backward-looking and the forward-looking perspectives of the action as *aspects* of her own performance. She does not identify with her mental states nor with her bodily movements, she transcends the materiality and theoretical stance of her own mind and grasps directly all the aspects of her actions. Her actions dawn on her and this is the primary meaning of her actions.

All further interpretations and re-enactments of her actions, e.g. in a court room, of whether she is responsible or not will need to rely on this primary meaning of her action.

§4 Conclusion

I have tried to show that a desideratum for an adequate explanation of negligent acts and the respective grounding of responsibility for negligence is that it mirrors our linguistic practices and the phenomenology of our acting *while* we are acting. This means that we need

to explain inadvertent action *from* the deliberative point of view. The current paper began by reflecting on inadvertent acts from the first-person perspective, which is forward-looking, as opposed to seeing the result or outcome of our actions, which is essentially backward-looking. There is, however, a puzzle that arises when we try to grasp the action in the past and *at the same time* from the first-person perspective. *Philosophically speaking, we need something that seems conceptually impossible: we need a sound backward-looking perspective for the purposes of legal and moral responsibility in negligence, which at the same time grasps the forward-looking perspective.* The puzzle is overlooked¹⁵ by most authors who write on responsibility in negligence because they assume the symmetrical thesis of both intentional and inadvertent actions. Legal theorists and philosophers conflate both a) the first and third-person perspective and b) the forward and backward-looking perspectives of action. I have argued that i) the symmetrical thesis causes tension and, furthermore, can even commit violence to the way we think and express our mistakes and the disastrous outcomes that result from inadvertent actions, ii) consequently, we need to rethink the methodology of grasping inadvertent action while we are acting, i.e. the first-person perspective of engaging in action and, finally, iii) I suggest that the methodology offered by Wittgenstein in *Philosophical Investigations* concerning ‘seeing an aspect’ of an image illuminates the way the two perspectives of inadvertent action could be made intelligible.

This method of inquiry shows that there is no conceptual impossibility in grasping an action from the first-person and forward-looking perspective and from the back-forward perspective as a past event, which is the subject matter of responsibility. In my view this is fertile soil for rethinking our notions of learned capacity, values, practical reason and character

¹⁵ For an exception, see Sher, R., *Who Knew?*. He points out ‘The perspective of the agent and that of the person who encounters his actions *from the outside* are incompatible in the sense that no one simultaneously occupy them both’ (the emphasis is mine, p. 10). He thinks that the focus on ‘knowledge’ in action, what he calls the ‘searchlight view’, conflates the agent’s perspective and our own, i.e. observers of the action from the third-person perspective. However, he is too quick in dismissing the puzzle and offers an unsatisfactory solution, which due to space it cannot be discussed in this paper.

in the context of inadvertent action. But this is a mammoth enterprise that I will enlarge upon on future occasions.

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