

Agency without Action: On Responsibility for Omissions

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Abstract

In the last few years, there has been a growing philosophical interest in the problem of moral responsibility for omissions. Like actions, however, omissions are not all-of-a-kind. Recently, most of the research effort in this field has been devoted to the so-called *unwitting omissions*. However, in some cases, people make clear-eyed, or quasi-clear-eyed, decisions about not interfering with a given course of action potentially having unethical consequences (let's call these decisions *witting omissions*). In this paper, we abstract away from the epistemic concerns that typically refer to unwitting omissions to discuss the problem of moral responsibility for omissions *as omissions*, i.e., as non-events that may contribute to the occurrence of a state of affairs without necessarily being their *primary* cause. In particular, we call attention to how to define the set of omissions we are accountable for. Indeed, even narrowing the scope to witting omissions, there is an awful lot of morally undesirable events that we could contribute to preventing if we just wanted to do so. Thus, the question is: in which cases are we responsible for our witting omissions? In this perspective, we first consider the proposals of referring to derivative, role, or vicarious responsibility for arbitrating between the relevant cases. Although not mistaken, these proposals are helpful only in a limited subset of situations. Employing the example of a witness witnessing a crime by chance, we discuss a more encompassing strategy. Siding with those who see omissions as causes, we defend a counterfactual approach based on identifying when people could intervene and are normatively required to do so.

Keywords: Backward-looking responsibility, Witting omissions, Circumstantial luck, Counterfactual reasoning.

1. Introduction: Responsibility and Omissions

In the last few years, there has been a growing philosophical interest in the problem of moral responsibility for omissions. Like actions, however, omissions are not all-of-a-kind. Recently, most of the research effort in this field has been devoted to the so-called *unwitting omissions* (Clarke 2017, Fitzpatrick 2017, Murray and Vargas 2020, Wieland 2017). These are omissions that result from failures

of attentiveness and vigilance, negligence, mistaken beliefs, or poor judgment,¹ for which the agent can sometimes be held ‘culpably ignorant’ (Rosen 2003, Smith 1983, 2011) and thereby (morally and sometimes legally) accountable.² Typical examples include surgeons leaving the surgical instruments into the patient’s body or spouses forgetting to celebrate anniversaries or buy groceries on the way home (Amaya 2011, Clarke 2017).

In such cases, omissions may compromise responsibility, not *as omissions* but because they are instances of behavioural types that violate some standards for responsibility, i.e., the agent did not meet some epistemic requirements (Clarke 2017) or was not animated by the intent to harm or ill will (see Sripada, 2015, Talbert 2017). Correspondingly, one’s willingness to forgive or excuse implies coming to terms with the observation that average humans often navigate the environment in the autopilot mode, cannot be expected to constantly meet even basic epistemic standards, and are often just lucky in avoiding pitfalls (Raz 2010, Sher 2009). In this respect, the problem of responsibility for unwitting omissions is partly analogous to that of responsibility for action-based non-deliberative patterns (*unwitting wrongdoing*)—including *habitual and automatic* actions (Lumer 2017) or even *inadvertent* actions whereby the agent unknowingly, or without having a corresponding intention or plan, causes an unethical consequence (Mele and Moser 1994).

There can be little doubt that many of our culpable omissions are unwitting (i.e., had we known better, we would have behaved differently). However, in other relevant cases (*witting omissions*), people make clear-eyed, or quasi-clear-eyed, decisions about not interfering with a given course of action, potentially having negative consequences. Unlike unwitting omissions, in witting omissions, the agent is animated by a direct intent to harm (Rachels 1975) or at least has the occurrent knowledge that some negative event, which she does not try to prevent, will likely occur (Pereboom 2015). This paper focuses on this latter case and abstracts away from the epistemic concerns that typically refer to unwitting omissions. We thus discuss responsibility for omissions *as omissions*, i.e., as non-events that may contribute to the occurrence of a state of affairs without necessarily being their ‘primary cause’.³

¹ Due to failures of rational agency, unwitting omissions can be distinguished from *unintended omissions* that “never surfaced in the agent’s mind” (Raz 2010: 449), e.g., calling “the person whose name is first in the Munich telephone directory today” (*Ibid.*). For an analogous distinction, see Brand 1971.

² According to the so-called ‘control-based theories’, accountability is grounded in the recognition that the agent satisfies some epistemic and agential requirements and is therefore an appropriate target of moral considerations, notably blame and praise (Björnsson 2017, Fischer and Ravizza 1998, McKenna 2012). Control-based accounts of responsibility are typically contrasted with the so-called ‘quality of will’ or ‘deep-self’ approaches, according to which agents are responsible for the actions that reveal their practical identity, i.e., their valuational system and the attitudes they reflectively endorse (Frankfurt 1971, Sripada 2016, Talbert 2017). Here, we mostly assume a control-based approach to responsibility and focus on accountability for the negative consequences of one’s omissions.

³ We define the notion of ‘primary cause’ as roughly referring to the most obvious cause, i.e., the event whose occurrence is more straightforwardly related to the effect—adopting a counterfactual account of causation, the event without which the effect would have, most likely at least, not occurred (Lewis 1973).

Here, we only briefly address whether people can be responsible for omissions *in general* (Clarke 2014) and set aside the issue of whether there is a morally relevant distinction between *doing* and *allowing harm* (Moore 1993, Rachels 1975, Scheffler 2004).⁴ We instead call attention to how to define the set of omissions we are morally responsible for. Indeed, even narrowing the scope to witting omissions, there is an awful lot of unethical events that we could contribute to preventing if we just wanted to do so. For example, one can contemplate the idea, be aware that she could, feel tempted to (although without necessarily forming the intention or plan to) offer emotional support to all her Facebook friends, donate more money to charities after watching the daily news, feeding her friends' cat so that they can enjoy a free weekend, writing down her wedding anniversary on a calendar to avoid forgetting, etc. As a result, it remains to be clarified on what basis we should legitimately hold the agent accountable (i.e., blameworthy) in some, but probably not all, of such cases, i.e., what plausible normative expectations can restrain the set of omissions for which one can be held morally accountable.⁵

In the paper, we articulate three complementary strategies to define the set of witting omissions we are responsible for. The first one (§ 3) begins with the suggestion that one is morally responsible for given witting omissions in virtue of some prior specific commitment one has undertaken. This is partly analogous to the *tracing* strategy, often discussed in relation to unwitting omissions. We will conclude that it can deal with a limited type of omissions and move forwards by focusing on the set of omissions that can be attributed to no prior commitment. Our paradigmatic case is that of the witness to a crime, who *by chance* finds herself in a situation—i.e., she is in an appropriate spot in the proper moment—that occasions an action or an omission. The rest of the paper examines two other strategies to solve the problem. One consists in seeing people as responsible for witting omissions whenever at least one of two features is realised: some forms of vicarious responsibility, on the one hand, or the role—e.g., that of the witness—that is assigned to them, on the other. In § 4, we discuss this idea and conclude that, again, it can help address only a limited number of situations. In § 5, we present, and argue for, a counterfactual strategy similar to the capacitarian account for unwitting omissions, according to which we are responsible if and only if we *could* and *should* have intervened. We will articulate this proposal further in terms of spelling out what it means that, in a given scenario, an agent could and should have intervened.

Before getting started, however, it is important to stress that our primary concern here is backward-looking responsibility, i.e., the kind of responsibility that implies a moral assessment of past events. Backward-looking responsibility is distinct from forward-looking responsibility, i.e., the type of responsibility that

⁴ We side, however, with those who maintain that the distinction between doing and allowing harm does not necessarily collapse into the distinction between actions and omissions (see Foot 1967).

⁵ Discussing unwitting omissions, Randolph Clarke analogously says that omissions identify instances of absent actions whereby the action would have been required by a norm, standard, or ideal (2014: 33). Others have suggested that even the standard that defines what omissions are causes must be normative (McGrath 2005). Here, we rather work out the standard that defines the causally relevant omissions for which we can be held accountable.

plays a functional role in shaping one's future behaviour (Pereboom 2015, Pereboom and Caruso 2018). Indeed, there might be many forward-looking reasons why it is appropriate to hold a person responsible for omissions. For example, we may blame a lazy witness to elicit a more collaborative spirit in the future. Less clear, though, is whether and why this practice is also acceptable in the backward-looking sense. Here, we set aside the broader question about whether it is *ever* fair to hold people responsible in a backward-looking sense—a matter that has to do with the long-lasting debate concerning free will (see, however, Bonicalzi 2019a, De Caro 2020). We will only assume, then, that there is a sense in which this is fair, and, in this light, we will discuss whether there may be responsibility for omissions in the backward-looking perspective.

2. Control and Causation by Omission

Primarily, people are held responsible for the consequences caused by their intentional actions, i.e., according to classic causal theories, actions that are caused by conscious mental states, such as intentions or plans (Bratman 2007, Davidson 1978, Mele and Sverdlik 1996). The underlying reason is that intentional actions tend to be the actions that agents can control (Shepherd 2014, but see Raz 2010).⁶ Accordingly, jointly with the knowledge of the actions' circumstances, control is indeed often indicated as a necessary condition for responsibility (Bonicalzi 2019a).⁷ So, within this framework, in generating responsibility causation comes into play twice. First, a conscious intention has to cause an action we perform, such that we are in control of this action; second, we are responsible for the outcome we have caused through that action. The question is whether this may also be true in the case, instead of an action, we wilfully perform an omission.

It has to be noted that the responsibility literature, broadly conceived, already presents notions of control that may work well for both actions and omissions. For example, Peter van Inwagen's well-known 'Consequence argument' (1983) considers control in terms of what is up to us and lack of control in terms of what is not up to us: I am not in control of the laws of physics because it is not up to me whether they are valid or not, but I can be in control of most of my behaviours because it is generally up to me whether I behave in a certain way (action) or not (omission). Joshua Shepherd (2014: 397) discusses control in terms of deploying "behavior in service of an intention": control is achieved when the representational content of the intention—e.g., a plan (see also Mele 1992)—matches the actual behaviour. Framed in these terms, witting omissions can be appropriately caused by our relevant mental states. For example, one can say that it is up to the witness of a crime to intervene or not (following van Inwagen), or that her plan of not acting matches her behaviour (following Shepherd).⁸ Analogously, Fischer and

⁶ The possible detachment between intention and control has prompted the discussion on the so-called 'deviant causal chains' (Davidson 1973, Mele 1992). Here we are only committed to the claim that, in standard cases, the presence of guiding, conscious intentions is necessary for an agent to control her actions.

⁷ Conversely, uncontrolled bodily movements, such as hitting your partner while you are asleep, are not conducive to responsibility (Rumbold et al. 2016).

⁸ In suggesting that omissions, like actions, are sometimes under our conscious control (i.e., we can deliberate about what we will not do), we are not assuming that *ipso facto* all

Ravizza's model of 'guidance control'—exercised when the action stems from one's reasons-responsive mechanism—deals equally well with actions and omissions (1998).

While it is clear that omissions can be caused by conscious intentions (thus satisfying the first causal element of responsibility), more problematic is whether they can cause some consequences (thus perhaps failing the second causal condition of responsibility). Consider, for example, a situation in which I witness a crime and decide not to get mixed up in it. My missing intervention is appropriately caused by, and can be traced back to, my decision (i.e., a mental action (Proust 2001)) of not intervening. However, if I omit to intervene and the perpetrator's action brings about the consequence, no action of mine has caused the crime. So, people can indeed be said to be responsible for their conscious decision of not intervening; however, it is less clear whether they can be responsible for the crime occurrence (an event) through their inaction (a non-event).

The problem of whether omissions can count as causes of events is not new but remains deeply controversial. Some philosophers have denied that omissions can enter causal relations (Armstrong 1999, Beebe 2003, Moore 2009, Varzi 2006): if these accounts are correct, we are not responsible in many situations in which we ordinarily think that we are, at least to some degree. However, others have claimed that omissions can play a causal role (Lewis 1987, McGrath 2005, Montminy 2020).⁹ For example, in the context of his pragmatic defence of causal pluralism, Hilary Putnam presents a plausible view according to which omissions can be considered genuine causes to the extent that they count as *appropriate explanations* of events (Putnam 1999). There is not enough space here to discuss this issue in detail, so it will suffice to say that we stand with those who argue that omissions can be causes (De Caro 2021).

However, assuming that omissions can be causes raises another problem, i.e., how to distinguish between the omissions for which we are responsible and the ones for which we are not. *When* we can be held responsible depends on the answer to this question. In this case, the problem is that if we are taken to be responsible for the results of all our omissions, we are responsible in a much greater number of cases than we ordinarily think (Bernstein 2013, Henne et al. 2019, McGrath 2005).

3. Responsibility as Grounded in a Prior Action-Bound Commitment

At first glance, the fact that people can be held responsible for omissions looks uncontroversial. We are customarily held responsible for not taking good care of our children, not keeping our promises, etc. However, if we look closely, some puzzles emerge. How do we select the witting omissions we are responsible for in the accountability sense?

omissions are forms of negative agency or that all witting omissions result from a conscious decision to refrain (see Clarke 2014).

⁹It's worth noticing that in our everyday practices, "omissions are as likely as actions to be judged as causes" (Clarke et al. 2015: 27), although they might be perceived as less causally relevant than actions (Baron and Ritov 2004, Bonicalzi 2019b, Bonicalzi et al. 2022).

One first solution consists in suggesting that the witting omissions one is responsible for are those that derive from an action-bound prior commitment one has willingly undertaken. Consider a situation in which I am held responsible for not keeping my promise of feeding my friend's cat and, more interestingly for our discussion here, for the cat's subsequent death. I am held responsible because I willingly made this promise in the past: the promise is the action-bound (e.g., feeding the cat) responsibility-grounding prior commitment.

In this light, witting omissions are treated analogously to cases of derivative responsibility for unwitting actions or omissions (Rosen 2004). Let's briefly expand on this idea: a well-established view sees responsibility for behaviours we are not in control of as located in, or traced back to, some prior event that we could control (Fischer and Ravizza 1998, Smith 1983, Vargas 2005). Original or basic responsibility occurs when the agent is responsible for the event that directly led to some consequence. Derivative responsibility occurs when the agent is responsible for a prior event that eventually led to the result. The key distinction lies in whether the event that directly caused the consequence was under the agent's control or not. To give a standard example, I am non-derivatively responsible for wilfully drinking a glass of wine at a party while still sober. By contrast, I am derivatively responsible for hitting a pedestrian while drunkenly losing control of my car (and temporarily losing track of the relevant moral concerns for people's safety).

Analogously, the witting omissions I am responsible for could be conceived of as something similar to episodes of derivative responsibility. Some omissions do not happen in a vacuum but result from a prior action-bound commitment. In making a promise, I am expected to foresee that I could find myself, at some point in the future, in the position of being not so willing to keep it. Promises work as commitments for the future: their role consists in forestalling reconsideration (Cupit 1994). If I decide not to keep a promise—that is, if I omit to stand by it—I can be blamed because of my prior commitment, i.e., the promise I made.

However, 'tracing' (i.e., because of the promise I made, I am blameworthy for forgetting to feed the cat) has problems on its own as a general solution to the puzzle of unwitting omissions. In particular, it is unclear whether and how the epistemic requirement for accountability can be truly satisfied by features acquired "in circumstances that are epistemically remote from our current decisions" (Vargas 2005: 287).¹⁰ Moreover, barring exceptional cases, witting omissions do not suffer from a constitutive lack of occurrent control and awareness. Therefore, it seems more evident that responsibility must be conceived as basic rather than derivative. One could then try to defend the idea that people are responsible in a basic or non-derivative manner for omissions explicitly forbidden by a prior action-bound commitment.

However, there seem to be omissions for which we want to hold people responsible and that do not rest on an action-bound prior commitment. Consider, for example, the case of the witness who chancily observes a crime from her

¹⁰ See also Clarke 2014, Graham 2012, Rudy-Hiller 2017. The tracing strategy has also been criticised for tracing back *all* unwitting behaviours we are responsible for to acts of *clear-eyed akrasia* in which the agent decides that, despite knowing that she is going to commit wrong, she does not take any countermeasure (see Rosen 2004).

window. Let's consider a real example: the infamous murder of Kitty Genovese and the debate it sparked. In March 1963, Kitty Genovese was murdered by Winston Moseley near the apartment she shared with her girlfriend, Mary Ann, in Queens, NY. Two weeks after the murder, *The New York Times* famously reported that 38 respectable citizens, who watched the three separate attacks against Kitty that ended in her death, remained indifferent to her repeated cries for help. While the report's authenticity has been put into question, the case received the attention of social scientists and generated research on the diffusion of morally reprehensible instances of the so-called 'bystander effect' (Beyer et al. 2017, Darley and Latané 1968). However, our focus is not on the psychological and societal implications of the diffusion of responsibility but on the normative question of whether and why the witnesses of that murder should be held responsible.

In Kitty's case, there was no prior action-bound commitment involving, among its foreseeable consequences, the possibility that one must prevent a crime. Therefore, if the witnesses had to be blamed for the crime occurrence, this could not depend on something they had done previously. As a preliminary conclusion, it seems that the link with a prior action-bound commitment may only explain a limited subset of cases. Therefore, in the rest of the paper, we will focus on the more relevant issue of the moral responsibility for witting omissions that do not rest on a prior action-bound commitment.

4. Responsibility as Grounded in Role and Vicarious Responsibility

As said, there are situations in which one can be blamed for violating commitments that are not action-bound, as in the case of feeding a friend's cat during the weekend. This typically happens when people have forms of role and vicarious responsibility.

Role responsibility identifies the obligations a person has in virtue of occupying a specific societal position (Cane 2016). A parent's obligations towards her children can be framed in terms of role responsibility. Similarly, a head nurse will have specific responsibilities towards her patients. Moral reproach for faulty behaviours can be grounded in the violation of the obligations associated with one's role: a parent can be blamed for not taking care of her children and a nurse for not giving a life-saving medicine to her patients. Since roles come with obligations, violations of such obligations—whether through actions or omissions—lead to blaming attitudes.

Vicarious responsibility (or liability) characterises situations in which a person is held responsible for the faulty behaviour of others (May 1983). The justification often depends on the fact that the person is expected to prevent the defective behaviour of another person. Role and vicarious responsibility often, but not always, go together.¹¹ In fact, the expectation that a person exerts some con-

¹¹ Vicarious liability is usually invoked in the context of employer-employee relationships, e.g., in the English tort law (Mulheron 2016). We can extend the notion to other contexts, however. For an example of vicarious responsibility that does not collapse into role responsibility, consider the following. Suppose that an adult finds herself in a dangerous situation involving some minors, as happens to Léon, the character played by Jean Reno in the movie *Léon: The Professional*. Léon is a hitman who, more or less will-

trol may quickly arise because she has a specific role. For example, a parent can be held vicariously responsible for the faulty behaviour of her children or the head nurse for the crimes of a subordinate. Role and vicarious responsibility do not necessarily lead to moral reproach: a parent can be role responsible for their children and always fulfil the obligations associated with this so that she never actually deserves moral reproach. And moral reproach for the misdemeanours of a subordinate might not even be appropriate for the vicariously responsible head nurse. This suggests that role and vicarious responsibility are not necessarily connected to an ongoing moral appraisal.

In omission cases where there is no prior action-bound commitment on which responsibility depends, we may deploy the tools of role and vicarious responsibility. Consider role responsibility as applied to the case of the witness. Being a ‘witness’ can be framed as a role assigned to a bystander. Like many other societal roles, being a witness implies specific obligations, e.g., trying to prevent a crime when it is possible to do it safely. There are, however, some problems with this strategy. First of all, people usually are not automatically assigned roles. *Prima facie*, it seems that people must voluntarily consent to it to be given a specific role (see Murray and Vargas 2020). Consent can be explicit, as in the case of the head nurse signing a contract, or implicit, as in the case of the parent deciding to have children. In both cases, responsibility is grounded in this prior consent.

Ideally, the person who gives her consent is also expected to be aware of the foreseeable consequences of assuming the role. By contrast, before witnessing a crime, there is no time when a witness knowingly accepts to take up the role of witness. If consent is necessary for a role to be binding, a witness cannot be obligation-bound to do something. Consent plays a role in vicarious responsibility as well. Usually, to be vicariously responsible for the crimes of her subordinates, the head nurse must consent to assume a role that implies bearing responsibility for their behaviour. Moseley’s boss—supposing, for the sake of argument, that he had one—is not vicariously responsible for his crime insofar as she never consented to supervise him during her spare time.

However, one may object that there are situations in which role and vicarious responsibility come without consent. If this is the case, it might be fair to hold the witness responsible after all: think, for example, of being a soldier in cases of enforced conscription. If a soldier has an obligation-bound role despite her lack of consent, this counts as an exception to the norm. A reply might be that the soldier forced to take up the role finds herself in a situation whose exceptionality legitimises forcing people to assume roles they would not be willing to take up otherwise. There might be situations in which the rule of consent is overridden by other considerations whereby people are forcefully assigned official roles without consent. However, this answer does not readily apply to the case of the witness (which is an unofficial role, if any), even though she may also find herself in exceptional situations that impose an extra burden on her. At the same time, there are more familiar, unexceptional roles that seemingly come

ingly, gets to become friend with his 12-year-old neighbour Mathilda and teaches her to use weapons. Mathilda wants to avenge the death of her brother, murdered by an agent of the Drug Enforcement Administration. In this case, it seems that, while Léon has no role responsibility towards Mathilda (e.g., he is not Mathilda’s father), he might be vicariously responsible for her misdemeanours.

without consent: we all share the role of being a son or a daughter without us consenting to that. Whereas parents have a role responsibility towards their offspring (because, and perhaps only when, they decided to have children or engage in sexual intercourses that might lead to pregnancy), it may seem that the offspring also have role responsibility towards their parents. However, if we look closely at the case, it becomes doubtful whether the offspring's responsibility is genuinely grounded in a role. Offspring may assume explicit role responsibilities towards their parents at some point in their life, e.g., when they are old or sick. Setting this aside, it is unclear that offspring have role responsibilities by default, e.g., an unbounded obligation to care for their parents.

There are indeed asymmetries between the respective obligations of parents and offspring: parents are expected to take care of their offspring independently of the offspring's behaviour and attitude. By contrast, offspring are not expected to take care of their parents in *all* possible situations. Blaming the offspring for not taking care of their parents might be more easily justified by something with little in common with a specific role, such as the obligation to honour special or agent-relative obligations to subsets of people, including family members or friends (Parfit 1984). Thus, a thorough examination of the two alleged exceptions to the rule of consent—e.g., the soldier and the offspring—shows that they are not central to our discussion (the former because it is rooted in exceptional conditions, the latter because offspring's obligations do not seem to depend very much on their role). Given this, we suggest that the rule of consent applies to most relevant cases of role responsibility.

The next question is whether we can have vicarious responsibility without consent. It is arguably hard to find any case of the sort. Unless this is made explicit, offspring are not vicariously responsible for their parents' faulty behaviours. Forcefully enlisted soldiers are not usually vicariously responsible for their comrades. Vicarious responsibility without consent, i.e., voluntary membership or agreement, is very rare and controversial.¹² It might sometimes be brought into play but usually, we believe, in metaphorical terms. Consider, for example, the debate about whether the adult male German population in the 1930s/1940s was vicariously responsible for the Nazi crimes (Darcy 2007). Proper vicarious responsibility might come from party membership or vote in the election. Still, it would be a stretch to hold all Germans vicariously responsible just for being German and independently of their individual behaviour.

To sum up, we have suggested that both role and vicarious responsibility are usually grounded in consent. Still, we are not committed to claiming that consent is necessary for them to arise. Although this notion remains unsatisfactorily vague, there might be exceptional circumstances in which the need for consent is overridden by other considerations, especially in the case of role responsibility (as in the case of the forcefully enlisted soldier). However, most everyday omissions for which we bear responsibility concern ordinary things like not supervising one's employees or handling one's children. At least in situations of these kinds, the rule of consent easily applies. From a practical point of view, renouncing consent would lead to the untameable proliferation of responsibilities, with as many roles

¹² It might be debatable whether, in a case such as that of Léon, there might be vicarious responsibility without consent or whether Léon's attitudes towards Mathilda imply at least a form of implicit consent.

and obligations as possible interpersonal conditions. If every situation in which we find ourselves (e.g., being a bystander) were recast as a role (e.g., being a witness), we would end up having no clear definition of roles anymore. Thus, in § 5, we will discuss the challenges and the prospects of a complementary, more encompassing treatment of responsibility for omissions in the absence of a prior action-bound commitment (§ 3) or consent (§ 4).

5. Responsibility in Chancy Circumstances

In this section, we will consider whether a witness can be held responsible for the occurrence of a crime she is present at, assuming that she has unluckily found herself in the situation we described and that she could do something to prevent the crime with no serious harm for herself. Before doing that, however, we should briefly reflect upon the role of luck in assigning responsibility. As we said, we hold people responsible, first and foremost, for situations in which they willingly put themselves (see § 3) or to which they consented (see § 4). Let's assume that the witness found herself in a situation where she did not willingly put herself or did not consent. Here, the notion of *circumstantial luck*, e.g., luck in the circumstances one finds oneself in, comes at hand (Nagel 1979). Might the presence of circumstantial luck per se suffice to make it inappropriate to hold the witness responsible? We doubt that this is the case.

The first thing to notice is that this problem of luck looks orthogonal to the distinction between actions and omissions. Most of our behaviours are driven by chancy circumstances while being willingly chosen. Usually, this simple fact does not prevent us from holding the relevant agent responsible.¹³ Consider the following as an example of a faulty action driven by chancy circumstances. Butch Cassidy, one of the most successful thieves in history, was famous for robbing banks and trains. Should we blame him any less if he had robbed a bank after happening to find the vault open? Obviously, in some cases, finding oneself by chance in a situation where one can prevent harm, as often happens with omissions, coincides with lacking a direct intent to harm. While Moseley intended to harm Kitty through his action, the witnesses plausibly did not intend to harm Kitty but merely intended not to get mixed up in the crime. This may lead to diminished blame compared to that attributed to Moseley, without luck playing any specific role in modifying one's responsibility.¹⁴

Let's recap the problem. First of all, if we accept that omissions can be causes, we might blame the witness for the crime, but other events could be indicated as causally relevant such that the witness would not have to be blamed. For example, had Kitty not gone to work on the 12th of March 1963, she would not have been killed. This is known as the 'causal selection problem' (Bernstein 2013), which consists in the difficulty of individuating the causes of an event against the background of the causal conditions that have made that event possible. Per se, this problem is not restricted to omissions (Menzies 2004). At any

¹³ Although in some cases agents might be additionally blamed for actively creating the circumstances from which specific actions and omissions will likely derive.

¹⁴ Evidence from cognitive science has shown that we have a widespread tendency to attribute less responsibility for omissions than actions, often assuming that the former are less intended than the latter (Bonicalzi et al. 2022, Spranca et al. 1991). However, this is not necessarily the case (see Rachels 1975).

rate, Henne and colleagues (2019) discuss the ‘profligate causes problem’ as a version of it by targeting omissions. This indicates that it is hard to identify the causal status of an omission, given that other omissions could have caused the same result. For example, had Mary Ann walked Kitty’s home (knowing that they lived in a dodgy area), this might have helped prevent the assault. Since there are many more omissions than actions, holding that omissions can be causes produces an overflow of potential causes.¹⁵ How do we decide which omissions count as causes and are thus relevant for responsibility?

The selection and the profligate causes problems have been extensively discussed (Hesslow 1988). Here, we will just say a few words concerning how they relate to responsibility. As said, we consider the notion of ‘primary cause’ as referring to the event whose occurrence is more straightforwardly associated with the effect—adopting a counterfactual account of causation, the event without which the effect would have, most likely at least, not occurred (Lewis 1973). The primary cause of Kitty’s death is that Moseley assaulted her, not that the witnesses did not intervene. Nonetheless, we may also blame the witnesses for Kitty’s death. This suggests that, for someone to be held responsible for an event, their behaviour need not be the primary cause of that event. Indeed, the witnesses of Kitty’s homicide are thought to be blameworthy even though their omitted intervention is not the primary cause of her death.

For the agent to be held responsible, their omissions must thus count as causes without necessarily being the primary causes of an event. Whereas this helps explain how relevant omissions lead to responsibility attributions (e.g., had the witnesses intervened, Kitty might have been saved), it can also make the selection and the profligate causes problems intractable (since even omissions that are seemingly minor can be causally relevant). To avoid a causal explosion, in the absence of a prior action-bound commitment (§ 3) or consent (§ 4), we must then identify some criteria that explain when an agent is morally responsible for her omissions.

A plausible suggestion is that an agent is responsible only when she could and should have intervened. But how do we know what an agent could and should have done? Counterfactual reasoning can indeed be muddy. To address this point, it is helpful to consider an adjusted version of the ‘capacitarian’ approach to responsibility, which so far has been mainly discussed in relation to unwitting omissions where people fail to meet given epistemic standards (rather than the control condition) for responsibility (Clarke 2014, Murray and Vargas 2020, Rudy-Hiller 2017, Sher, 2009). Capacitarian accounts emend the basic epistemic condition by suggesting that, at least in some cases of unwitting (but culpable) omissions, the agent could and should have known better—a condition that is potentially sufficient for responsibility. For instance, one might plausibly think that the forgetful spouse could and should have written the date of the anniversary on her calendar to avoid forgetting. Deciding whether the agent could or should have known better must avoid arbitrariness and be grounded in plausible considerations about their standard capacities, available information,

¹⁵ Another potential issue one might consider is that, if we consider omissions as causes of an event X, the notion of ‘sufficient cause’ becomes intrinsically problematic insofar as all the innumerable omissions that did not prevent the event X could be listed as part of the sufficient cause of the occurrence of X.

or professional training. This decision cannot depend only on statistical regularities about the reasonable or average person's prototypical performances; by contrast, one must also consider the agent's specific capacities, e.g., cognitive functioning and ability to retrieve information (Sher 2009).¹⁶

In the case of witting omissions, the problem does not necessarily involve epistemic considerations concerning factual awareness. In our toy example, the witness is aware that a crime is happening and decides not to get involved, and we can stipulate that she makes up her mind before it is too late to intervene. However, (fallible) *agential* and *normative* counterfactual considerations can be helpful to select the omissions we are accountable for. Such concerns must be grounded in the witness's capacities, information, and training, on the one hand, and in the existing social and moral norms, on the other hand.

First, agential considerations are necessary to determine whether the witness could have had a reasonable opportunity for successfully intervening without endangering herself. This judgment must be partially relativised to the specific agent's capacities rather than solely determined by statistical regularities about what an ideal or average person is expected to do. Furthermore, the judgment must be relativised to the specific social context in which one is operating, granted that different contexts may allow for other actions to be done safely, e.g., the same agent might safely or non-safely intervene depending on whether she lives in a residential or dodgy part of town. In our example, a necessary but not sufficient condition for the witness to be blameworthy—in a basic, non-derivative way—is that she had a reasonable expectation that she could have safely prevented the crime through her intervention (e.g., shouting to Moseley or calling the police).¹⁷ Agents have such reasonable expectations when their mental states match mind-independent states of affairs in the world. In this sense, the witnesses could be blamed for not rescuing Kitty, given their reasonable expectations of being safely able to do so. By contrast, as an equally endangered young woman walking Kitty home, Mary Ann could have been spared the blame for the analogous omission of not rescuing Kitty.¹⁸

¹⁶ Obviously, the capacitarian view does not deal equally well with all scenarios. Many cases remain problematic due to difficulties in determining whether the individual could have known better. Even relativising the judgement to the agent's cognitive capacities, occasional lapses, which deviate from the specific agent's standards, remain problematic and concrete possibility (Amaya 2011). Whereas it is trivial to say that the person should have known better in general, it remains dubious whether she could have known better in these specific circumstances.

¹⁷ Some philosophers maintain that one can omit to do X only if one is able or has the objective opportunity to do X. For example, the witness cannot omit to call the police if her phone is broken unbeknownst to her. In this case, she can only omit to *try* to call the police (Clarke 2014). However, although the missing actions for which the witness is blameworthy can be different (failing to call or failing to try to call), the witness can be equally blameworthy in both cases, assuming that she was unaware of whether the phone was broken (see Frankfurt 1988, van Inwagen 1983). Additionally, we suggest that a witting omission could count as culpable only when the witness had a reasonable expectation that she would not have endangered herself by intervening.

¹⁸ Obviously, agents might be wrong in their evaluations of what reasonable expectations are in place or in their assessment of how much time they can spend deliberating. For example, the witnesses might have wrongly assumed that it would have been dangerous to intervene or could have spent too much time deliberating. In this case, however, the

Second, even when there are reasonable expectations that they could have made the difference, agents remain nonetheless blameless in the absence of a normative standard of some sort suggesting that they should have intervened, e.g., the moral obligation to rescue that a witness may have. This requirement may not depend on prior commitments or roles but on the existence of basic interpersonal obligations to act. Walking Kitty home would be a nice gesture, but, although Mary Ann might be aware that they live in a dodgy part of town, there is no moral obligation for her to do so insofar as deciding not to is not associated with the violation of any foreseeable moral requirement. Some courses of action (e.g., feeding the cat or walking someone's home) are made obligatory, so that the corresponding omission can be blameworthy, only when there is a specific action-bound prior commitment we must uphold or when we consented to take up some roles or vicarious responsibilities. Others (e.g., the obligation to rescue someone in immediate distress) apply independently of prior commitment or consent. Even in such cases, however, what one can normatively be expected to do may vary as a function of the social environment and its structures (see Hurley 2011, Rudy-Hiller 2019). For instance, witnesses have an obligation to intervene, i.e., by calling the police, whenever they happen to be in a social context where they have a reasonable expectation that involving the police is the best course of action to get help without running into significant risk.

Of course, holding a witness responsible for the occurrence of a crime does not imply that she is as blameworthy as the perpetrator. One's degree of blameworthiness depends on the balance between various causal, normative, and agential considerations. Furthermore, no default cut-off point allows us to establish whether the witness is morally required to intervene,¹⁹ or whether the risk is too high. Indeed, the counterfactual *could* and the moral *should* are meant to specify necessary, but not sufficient, conditions for responsibility, establishing a morally relevant connection between a non-event and some state of affairs. Whereas it is unfair to blame an intellectually disabled or a defenceless witness for not fighting an armed aggressor, there might be borderline cases where responsibilities remain to be decided.²⁰ Nonetheless, whenever they are jointly satisfied, these necessary conditions allow us to address the profligate causes and the causal selection problem by adequately restricting the range of omissions for which we could be plausibly held accountable.

more classic capacitarian approach could help explain when ignorance for mistaken beliefs or unwitting wrongs more generally counts as culpable.

¹⁹ It might be difficult even to decide when acting is morally required or supererogatory. If we had the obligation to act morally whenever possible, this would imply that we have the responsibility to engage in all sorts of helping behaviours constantly. For example, do we have the obligation to be part of the Global Kidney Exchange program (Minerva et al. 2019) in virtue of the fact that we could do so?

²⁰ Especially in situations in which the agent seemingly fulfils basic epistemic considerations but still fails to act. Consider an example inspired by Berofsky (2002): if an agent suffers from arachnophobia, she might be unable to remove a spider from the wall even though she would do so if she wanted to. Unfortunately, given her condition, she cannot be wanting to remove the spider. Similar considerations might apply when a witness decides not to intervene because she is paralysed by some irrational fear preventing her from acting.

6. Conclusions

We are usually keen on drawing a thick line between what we are responsible for and not. In this paper, we have focused on responsibility for witting omissions, first considering whether derivative, role, or vicarious responsibility can help arbitrate between relevant cases. Although not mistaken, we found that these solutions are helpful only in a limited subset of situations. Employing the example of the bystander witnessing a crime by chance, we thus discussed a more general strategy. Siding with those who see omissions as causes, we defended a counterfactual approach based on identifying when people could intervene and are normatively required to do so. Of course, to adjudicate individual cases, further work has to be done to refine this necessary condition, particularly to explain how the different agential and normative requisites come together.

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