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# Negligence *is not* ignorance

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## ABSTRACT

Recent interest in the epistemic condition on moral responsibility has raised a new challenge to the view that persons are directly responsible for negligent conduct. According to an influential argument, the epistemic condition on responsibility requires genuine, clear eyed akrasia. All other kinds of wrongdoing, including negligence, constitute ignorant wrongdoing. My aim in this paper is to defend direct responsibility for negligence against this challenge by arguing that negligence *does not* constitute ignorant wrongdoing. In distinguishing negligence from ignorant wrongdoing, I do not dispute the idea that negligence involves unawareness. Rather, I argue that there is a difference between failing to bring a relevant fact to mind at the appropriate time and being genuinely ignorant of some relevant fact. Standard cases of negligence involve failing to bring a relevant fact to mind, not genuine ignorance. To support the significance of this distinction, I appeal to the notion of fairness. Fairness supports understanding the epistemic condition on responsibility as requiring not occurrent beliefs but rather reasonable internal access to the relevant beliefs and thereby enables me to defend direct responsibility for negligence.

## KEYWORDS

Fairness; ignorance; negligence; moral responsibility; non-occurrent beliefs

## I. Introduction

Imagine a surgeon gives someone whom you love the incorrect blood type in a blood transfusion. Would you be willing to accept, ‘It just didn’t occur to me to check their blood type before the procedure’ as an excuse?

The surgeon’s conduct is negligent and, typically, we would not accept their plea as an excuse. Despite such standard judgements, responsibility for negligence has long been controversial.<sup>1</sup> However, while traditional concerns have focused on the metaphysical condition on responsibility, recent interest in the epistemic condition on moral responsibility has raised a new challenge for the view that persons are responsible for negligence

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<sup>1</sup>See, for example, JWC Turner, ‘The Mental Element in Crimes at Common Law’ (1936), 6 *The Cambridge Law Journal* 31; Larry Alexander and Kimberly Ferzan, *Crime and Culpability: A Theory of Criminal Law* (Cambridge University Press 2009). The standard objection is that responsibility for negligence is unjustified because negligence, by definition, involves lack of awareness and awareness is necessary for adequate control. Criminal negligence sceptics allow that tort negligence liability is justified if the primary purpose of tort law is the efficient redistribution of economic burdens.

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conduct. It is this challenge raised on the basis on the epistemic condition that is my current focus.

According to recent arguments regarding the epistemic condition on responsibility, a person is directly responsible for their wrongdoing only if they act in full awareness of every pertinent fact.<sup>2</sup> Such arguments begin from the relatively uncontroversial idea that ignorance can excuse but lead to the troubling, revisionist conclusion that persons are rarely, if ever, responsible for their wrongdoing.<sup>3</sup> If we understand the epistemic condition in this way, then, given the inadvertent nature of negligence, negligence constitutes ignorant wrongdoing and persons are not directly responsible for their negligent conduct.

My aim in this paper is to argue that negligent conduct *does not* constitute ignorant wrongdoing. In distinguishing negligence from ignorant wrongdoing, I do not dispute the idea that negligence is inadvertent and involves unawareness.<sup>4</sup> Rather, I argue that there is a difference between failing to bring a relevant fact to mind at the appropriate time and being genuinely ignorant of some relevant fact. Standard cases of negligence involve unawareness in the sense of failing to bring to mind or be consciously aware of relevant facts but they do not involve being genuinely ignorant in the sense of lacking reasonable internal access to such facts.

I support the significance of this distinction by appealing to the notion of fairness. If a person is genuinely ignorant of some relevant fact, then it is unreasonable to expect them to avoid their wrongdoing and therefore unfair to hold them responsible, unless they are responsible for their ignorance. In contrast, it is not unreasonable to expect a person to avoid their negligence by taking account of relevant facts that they know or believe and therefore it is not unfair to hold them responsible when they fail to do so. This appeal to fairness supports understanding the epistemic condition on responsibility as requiring not occurrent beliefs or even beliefs that play a role in the reason for which one acts but rather reasonable internal access to the relevant beliefs. This in turn supports the distinction between ignorant wrongdoing and negligence and enables me to defend direct responsibility for negligence. It also provides a way to stop the regress in the revisionist argument and thereby avoid the troubling conclusion that persons are rarely responsible for wrongdoing.

My concern in this paper is to defend *moral* responsibility for negligent conduct. Moral responsibility is the kind of responsibility that only normatively competent persons, capable of appreciating and responding appropriately to reasons, bear and in virtue of which they are an appropriate target of reactive attitudes, such as blame in the case of wrongdoing and praise in the case of doing well. Moral responsibility is

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<sup>2</sup>There is debate in the literature over whether the epistemic condition requires knowledge, true belief, justified belief or certainty (See, for example, Alexander Guerrero, 'Don't Know, Don't Kill: Moral Ignorance, Culpability and Caution' (2007) 136 *Philosophical Studies* 59; Gideon Rosen, 'Kleinbart the Oblivious and Other tales of Ignorance and Responsibility' (2008) 105 *Journal of Philosophy* 591; Rik Peels, 'What Kind of Ignorance Excuses? Two Neglected Issues' (2014) 64 *The Philosophical Quarterly* 478). My concern in this paper is to defend direct responsibility for negligence against the claim that the epistemic condition requires occurrent beliefs.

<sup>3</sup>The argument was originally advanced by Michael J Zimmerman in *Living with Uncertainty: The Moral Significance of Ignorance* (Cambridge University Press 1997) and 'Moral Responsibility and Ignorance' (2008) 107 *Ethics* 410. Versions have been developed by Gideon Rosen 'Skepticism about Moral Responsibility' (2004) 18 *Philosophical Perspectives* 295 and Neil Levy, *Hard Luck: How Luck Undermines Free Will and Moral Responsibility* (Oxford University Press 2011).

<sup>4</sup>I would like to thank an anonymous referee for encouraging me to clarify this point early on to avoid confusion.

here understood in terms of accountability. To say a person is accountable for their negligent conduct is to say that they have fallen short of moral standards that they can reasonably be expected to meet and are therefore blameworthy.<sup>5</sup>

Although my primary concern is with moral responsibility, my argument has implications for legal responsibility. Legal responsibility involves being an appropriate target of punishments and sanctions imposed and enforced by the legal system. In Anglo-American law, legal responsibility for negligence is standardly understood to be fault based and in this way dependent on moral responsibility. If moral responsibility for negligence cannot be established, then, in cases of negligence that fall within the scope of the legal system, either we must revise our understanding of legal responsibility for negligence such that it aligns more closely with the problematic notion of strict liability or we must stop holding persons legally responsible for negligent conduct.

## II. Negligence as ignorant wrongdoing

Negligent conduct is conduct in which a person inadvertently fails to meet a required standard to take reasonable care to avoid harm.<sup>6</sup> Negligent conduct is distinguished from intentional wrongdoing and recklessness on the basis that it is neither intentional nor involves an awareness of the risk of harm.<sup>7</sup> Consider, for example:

*Transfusion:* A surgeon forgets to check her patient's blood type before carrying out a blood transfusion. The patient's medical record has recently been updated to include correct information regarding the patient's blood type and the record is easily accessible to the surgeon. The surgeon simply did not think to check her patient's blood type. As a result, the surgeon gives her patient the incorrect blood type.<sup>8</sup>

<sup>5</sup>Most in the debate on the epistemic condition on responsibility understand moral responsibility in terms of accountability, including Zimmerman (n 3), Rosen (n 3) and Levy (n 3). Some understand responsibility in terms of attributability, including: Nomy Arpaly, *Unprincipled Virtue: An Inquiry into Moral Agency* (Oxford University Press 2003); Matthew Talbert 'Unwitting Wrongdoers and the Role of Moral Disagreement in Blame' in David Shoemaker (ed), *Oxford Studies in Agency and Responsibility*, Volume 1 (Oxford University Press 2013) 225. Understanding responsibility in terms of attributability enables us to capture some judgements of responsibility for negligence, but not all. For this reason, and others, I do not think attributability offers the best account of responsibility but I will not defend that view here.

<sup>6</sup>For discussions of this understanding of negligence, see HLA Hart, 'Negligence, *Mens Rea*, and Criminal Responsibility' in John Gardner (ed), *Punishment and Responsibility: Essays in the Philosophy of Law* (2nd edn, Oxford University Press 2008); Joseph Raz, *From Normativity to Responsibility* (Oxford University Press 2011).

<sup>7</sup>Precisely where to draw the line between recklessness and negligence is a matter of controversy. See, for example, Kimberley K Ferzan, 'Opaque Recklessness' (2001) 91 *Journal of Criminal Law and Criminology* 597; Douglas Husak 'Negligence, Belief, Blame and Criminal Liability: The Special case of Forgetting' (2011) 5 *Criminal Law and Philosophy* 199; Findlay Stark *Culpable Carelessness: Recklessness and Negligence in the Criminal Law* (Cambridge University Press 2016). Partly due to this controversy, and the fact that the law is primarily concerned with cases in which harm materializes, legal definitions and discussions of negligence often focus on the unawareness of the risk of harm. I do not dispute the significance of an unawareness of the risk of harm to the concept of negligence. However, as emphasized by Hart (n 6 148), the unawareness of the risk of harm is a *result* of the inadvertent violation of a duty of reasonable care. A driver who negligently fails to pay attention is unaware that they are risking harm because they are unaware of the fact that they are failing to pay attention. Therefore, establishing responsibility for negligence, including responsibility for resultant harms, requires, first and foremost, establishing responsibility for the inadvertent violation of a duty of reasonable care. For this reason, my defence of direct responsibility for negligence focuses on the idea that although such violations are inadvertent, they do not involve genuine ignorance. Not only is this focus necessary for defending direct responsibility for negligence at its base, it also aligns with the framing of the argument against which I am defending direct responsibility. Furthermore, my argument can be adapted to different understandings concerning where to draw the line between negligence and recklessness. I would like to thank an anonymous referee for encouraging me to clarify my understanding of negligence and to explain my focus on the idea that cases of negligence involve a failure to bring a relevant fact to mind at the appropriate time rather than genuine ignorance.

<sup>8</sup>This example is taken from Rosen (n 3) 303.

In forgetting to check her patient's vital medical information before the procedure, the surgeon is negligent. Standard medical practice requires surgeons to take reasonable care to ensure they are aware of vital medical information, including checking easily accessible medical records. This is not an unreasonable demand and the need to be diligent in such matters is something of which the surgeon will have been repeatedly instructed and reminded throughout their years of training and experience.

Typically, in commonsense morality, we would consider the surgeon responsible and therefore blameworthy for her negligent failure and for her ignorance concerning her patient's blood type that results.<sup>9</sup> However, according to recent arguments concerning the epistemic condition on moral responsibility, the surgeon's negligent failure involves ignorance.<sup>10</sup> When the time came for the surgeon to check her patient's blood type, it simply did not occur to her to do so. Since it did not occur to the surgeon to check her patient's blood type at the appropriate time, then, at that time, she was ignorant of the fact that she ought to do so. Therefore, it is argued, the surgeon's negligent failure is an instance of ignorant wrongdoing.

If we accept that negligent conduct constitutes ignorant wrongdoing, then, to establish responsibility for negligence, we must consider if and when persons are responsible for ignorant wrongdoing. The argument commits to the widely accepted idea that ignorance can excuse and that persons are responsible for their ignorant wrongdoing only if they are responsible for the ignorance in which they act.<sup>11</sup> Attention then focuses on establishing responsibility for ignorance. Here it is argued that a person is responsible for their ignorance only if it results from some prior culpable wrongdoing. In support of this, the argument appeals to doxastic voluntarism, according to which 'belief revision is a *passive* matter and not something over which a person has direct control'.<sup>12</sup> Given this lack of direct control, it is argued, a person is responsible for having or lacking certain beliefs only if their beliefs or ignorance result from some prior culpable wrongdoing. It follows from this that responsibility for ignorant wrongdoing is 'doubly derivative'.<sup>13</sup> A person is responsible for their ignorant wrongdoing only if they are responsible for their ignorance and a person is responsible for their ignorance only if they are responsible for an instance of prior wrongdoing that led to their ignorance.

From the claim that the surgeon's negligent failure is an instance of ignorant wrongdoing combined with the condition that responsibility for ignorant wrongdoing is doubly derivative, it follows that the surgeon is responsible for her negligent failure only if she is responsible for some prior failure to prevent it. However, it is argued that there is likely to be ignorance at this level too. Suppose, for example, that the surgeon ought to have taken

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<sup>9</sup>In common sense morality, we would also consider the surgeon responsible for giving her patient the incorrect blood type. Establishing responsibility for her negligent failure and for her ignorance that results enables us to establish responsibility for this instance of ignorant wrongdoing. I return to this point after defending responsibility for negligence.

<sup>10</sup>Zimmerman (n 3); Rosen (n 3); Levy (n 3).

<sup>11</sup>Those who deny that responsibility for ignorant wrongdoing requires responsibility for the ignorance include: Alexander Guerrero (n 2); Talbert (n 5); Randolph Clark 'Ignorance, Revision and Commonsense', in Philip Robichaud and Jan Willem Wieland (eds), *Responsibility: The Epistemic Condition* (Oxford University Press 2017). Since it is widely accepted that responsibility for ignorant wrongdoing requires responsibility for ignorance, I rely on this without direct support. However, the points I make concerning fairness support the idea that responsibility for ignorant wrongdoing requires responsibility for ignorance.

<sup>12</sup>Rosen (n 3) 302. See also Zimmerman (n 3).

<sup>13</sup>Rosen (n 3) 303.

some precautionary measure to ensure that she would not forget to check her patient's blood type, such as asking a colleague to remind her. This requirement seems particularly reasonable if the surgeon is unusually forgetful and routinely forgets to fulfil basic requirements such as checking patient's records for vital medical information. However, it is again possible that, when the time came for her to take such a precautionary measure, to ask for a reminder, it simply did not occur to her to do so. Therefore, according to the argument, there is ignorance at this level too. It seems plausible, if not probable, that in the majority of cases this regress will continue without end.<sup>14</sup>

According to the argument under consideration, establishing responsibility for ignorant wrongdoing requires establishing that a person's ignorance results, directly or indirectly, from an instance of wrongdoing that does not itself involve ignorance. To act wrongly without ignorance, it is argued, a person must act in full awareness of every relevant fact, including the fact that their conduct is wrong. It follows from this that '*the only possible locus of original responsibility is an akratic act*'.<sup>15</sup> Although the argument does not deny the possibility of responsibility for wrongdoing, it does have the implication that, in the majority of cases, a person in fact has an excuse on the grounds of ignorance because no such instance of genuine akrasia can be established.<sup>16</sup>

What is most significant for our current purposes is the claim that to act without ignorance a person must act in full awareness of every pertinent fact. It is this commitment that leads to the conclusion that negligent conduct constitutes ignorant wrongdoing and to the claim that persons are not directly responsible for their negligent conduct.

### III. A crucial difference

The claim that persons are not directly responsible for their negligent conduct depends on the claim that negligent conduct constitutes ignorant wrongdoing which in turn depends on the claim that to act without ignorance a person must act in full awareness of every pertinent fact.

The claim that persons are responsible for their ignorant wrongdoing only if they are responsible for their ignorance is plausible and is not something I dispute. However, even if we allow that responsibility for ignorant wrongdoing depends on responsibility for ignorance, the claim that negligent conduct constitutes ignorant wrongdoing is not plausible.<sup>17</sup> Not all instances of inadvertent or unintentional wrongdoing constitute ignorant wrongdoing.

The claim that negligent conduct constitutes ignorant wrongdoing depends on accepting that if a fact does not occur to a person at the relevant time, then, at that time, they are ignorant of that fact. Recall, for example, *Transfusion*. According to the revisionist

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<sup>14</sup>Rosen, (n 3); Zimmerman (n 3).

<sup>15</sup>Rosen (n 3) 307.

<sup>16</sup>Rosen (n 3) adds the epistemological claim that it would be very difficult to determine whether the akrasia requirement has been met in any particular case.

<sup>17</sup>I do not deny that a person can be ignorant of a relevant duty to take reasonable care and therefore that cases classified as negligence might in fact be ignorant wrongdoing. However, in such cases, it seems plausible that the person's ignorance concerning their duty of care itself results from an earlier instance of negligence. Standard cases of negligence, however, do not involve genuine ignorance but rather non-occurrent beliefs and my present purpose is to argue that such cases do not count as ignorant wrongdoing.

argument, the surgeon's negligent failure to check her patient's blood type constitutes ignorant wrongdoing because, at the time at which she ought to have checked, it simply did not occur to her to do so and therefore, at that time, she was ignorant of the need to check it. To act without ignorance, according to the argument, the surgeon would need to consciously think to herself, 'I ought to check my patient's blood type', and then proceed not to check their blood type despite their full, conscious awareness of their belief that they ought to do so.<sup>18</sup>

There is, however, a difference between being ignorant of some relevant fact and that fact not occurring to a person at the relevant time. Although the surgeon's failure to check her patient's blood type was inadvertent, she was not ignorant of the fact that she ought to do so. No reasonably competent surgeon could plausibly claim to be ignorant of the general requirement to check a patient's vital medical information before carrying out a procedure or treatment, including checking a patient's blood type before performing a transfusion. Given this knowledge of the general requirement and her knowledge of the current circumstances, we can reasonably attribute to her knowledge of the fact that she ought to check her patient's blood type before proceeding with the transfusion.<sup>19</sup> Thus, rather than being ignorant of the fact that she ought to check her patient's blood type, the surgeon simply failed to bring this fact to mind at the appropriate time.

If the surgeon had in fact been ignorant of the requirement to check her patient's medical record for vital information, she would not simply have failed to bring this fact to mind at the appropriate time but rather she *could not* have brought it to mind at the appropriate time. You cannot bring to mind relevant facts of which you are genuinely ignorant.<sup>20</sup>

All cases of negligence do not involve forgetting as in the case of *Transfusion*. All cases of negligence are, however, inadvertent and involve a failure to occurrently believe, at the

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<sup>18</sup>Tim Crane argues that talk of occurrent beliefs is problematic on the basis that beliefs are states and not events and that what is occurrent is not the belief but rather the content of the belief (Tim Crane, 'Unconscious Belief and Conscious Thought' in Uriah Kriegel (ed), *Phenomenal Intentionality* (Oxford University Press 2013) 156). Although I talk of occurrent beliefs, I mean nothing more by this than that the person is consciously aware of the content of the relevant belief and the fact that they believe it. I would like to thank an anonymous refer for encouraging me to clarify my use of occurrent belief.

<sup>19</sup>Attributing to the surgeon knowledge that she ought to check her patient's blood type seems reasonable not only on the basis of the knowledge of circumstances and the general requirement but also on the basis that, in circumstances in which the belief that she ought to check her patient's medical record does not fail to occur to her, she would immediately bring to mind the belief that she ought to check her patient's blood type. If she lacked this belief, then she would not bring this to mind immediately but would instead bring to mind the belief that she ought to check her patient medical records for vital medical information before proceeding with procedures or treatments and the belief that the circumstances are such that they require checking vital medical information before forming the belief that she ought to check her patient's vital medical information. While I doubt such conscious reasoning takes place in standard cases in which surgeons remember to check their patient's vital medical information, it plausibly takes place in other, more complex or novel situations. In such cases, we can nevertheless conclude that the failure to bring the more general knowledge to mind at the appropriate time is negligent and that, had they brought this to mind, they would have formed the more specific belief concerning what they ought to do in the specific circumstances. Thus, for anyone who finds my attribution of the specific belief that the surgeon ought to check her patient's medical record problematic, they can understand the negligence as involving a failure to bring to mind the more general knowledge and thereby form the appropriate specific belief. I would like to thank an anonymous refer for prompting me to be more clear that I attribute this specific knowledge to the surgeon.

<sup>20</sup>I do not dispute that one can become aware of facts of which one is genuinely ignorant. My point is simply that if one lacks a belief concerning the relevant fact then one lacks internal access to the fact and cannot therefore bring the fact to mind. If a person is genuinely ignorant of a relevant fact of which they could and should be aware, this will often be the result of a negligent failure to take reasonable care. I would like to thank an anonymous referee for prompting me to clarify this.

time, that their negligent conduct is wrong. The driver who negligently fails to pay attention, for example, knows that he ought to pay attention but his belief that he ought to do so does not occur to him at the time at which he negligently fails to pay attention.<sup>21</sup> Similarly, the parent who negligently fails to appreciate the severity of their baby's symptoms knows that they ought to carefully consider the severity of their baby's symptoms but, at the time at which they fail to do so, their belief is non-occurrent.<sup>22</sup> Although their beliefs are non-occurrent, neither the driver nor the parent are genuinely ignorant and therefore they could bring their relevant beliefs to mind at the appropriate time.

By holding that all wrongdoing other than genuine clear-eyed akrasia is ignorant wrongdoing, the revisionist argument fails to acknowledge the complexities of human behaviour. Negligent conduct, although inadvertent, is neither akratic nor ignorant wrongdoing.

#### IV. Reasonable internal access

In articulating the difference between negligent conduct and ignorant wrongdoing, I have claimed that there is a difference between failing to bring a relevant fact to mind at the appropriate time and being genuinely ignorant of a relevant fact. In considering *Transfusion*, for example, I have claimed that the surgeon is not genuinely ignorant of the requirement to check vital medical information but instead failed to bring this relevant fact to mind at the appropriate time.

This distinction rests on the notion of internal access. In cases of genuine ignorance, a person lacks internal access to the relevant facts. In cases of negligence, in contrast, a person has internal access to the relevant facts but fails to bring them into their conscious mind at the appropriate time.

Internal access to relevant facts comes in degrees in the sense that it can range from quick and easy to unduly difficult and burdensome access. It would be implausible to hold that responsibility for negligence depends on any kind of internal access, regardless of the level of difficulty or complexity.<sup>23</sup> However, as I am to show in this section, cases of negligence do not involve overly complex or difficult levels of internal access but rather *reasonable* internal access.

There are, undoubtedly, cases in which persons completely forget things such that it would be reasonable to say that, although they once knew the fact, they are now ignorant of it. For example, I cannot remember the name of the little backstreet restaurant I frequented while staying in Venice a few years ago. I can remember the location but not the name. No matter how hard I try to remember, it will not come to me. The name is so lost

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<sup>21</sup>No reasonably competent driver could plausibly claim to be genuinely ignorant of the fact that they ought to pay attention. Similarly, in the following example, no reasonably competent parent could plausibly claim to be genuinely ignorant of the fact that they ought to take reasonable care in looking after their child, including appreciating the significance of severe symptoms and seeking medical attention when necessary.

<sup>22</sup>Husak (n 7) considers a case of this kind and argues that responsibility is problematic because the parents were ignorant of the fact that their child had a severe infection and therefore ignorant of the need to seek medical attention in. While I agree that the parents were ignorant of these facts, their ignorance results from negligence because the symptoms were so severe that any reasonable parent would have appreciated the need to seek medical attention if they had taken the required care to consider their baby's symptoms. In cases in which negligence results in ignorance and leads to an instance of ignorant wrongdoing, we must be careful to distinguish the negligence from the resultant ignorant wrongdoing.

<sup>23</sup>I would like to thank an anonymous referee for encouraging me to qualify the relevant internal access more explicitly as *reasonable* internal access.

to me that, even if I were to return to the location and find a restaurant, I am not sure that seeing the restaurant name would trigger my memory. I can imagine standing outside the restaurant completely unsure of whether or not it is the same restaurant name. Even if we allow that through some process of mind therapy or hypnotism I could recall the restaurant name and therefore retain a minimal level of internal access, the level of difficulty involved makes it such that it would not be reasonable to consider me blameworthy for failing to recall the restaurant name. Such cases ought plausibly to be treated as cases of genuine ignorance. In addition to cases of irretrievable forgetting, there are undoubtedly cases in which although a person maintains internal access to a relevant belief, their internal access is such that it would be very difficult for them to bring the relevant fact to mind at a given time.

Cases of negligence, however, are not like this; they do not involve compete and irretrievable forgetting or unduly difficult internal access. Consider, again, *Transfusion*. Checking patient's vital medical information is standard practice and is not something of which a reasonably competent surgeon can claim to be ignorant. The requirement is inculcated in surgeons during their years of training and it is a requirement surgeons must satisfy in their daily professional activities. The requirement is so basic, akin to the requirement of a driver to drive on a particular side of the road, that it is wholly implausible to think an otherwise competent surgeon might completely and irretrievably forget it.<sup>24</sup>

Furthermore, the surgeon's negligent mistake is an occurrence in a continuous cycle of professional activity in which the surgeon complies with the requirement. Suppose, as is likely, that the surgeon had multiple patients and performed a number of procedures on that day. Suppose further that the surgeon did not fail to check vital medical information before carrying out those other procedures. Since the surgeon did not fail to remember to check vital medical information in these other, temporally proximate cases, it is implausible to suggest that when the surgeon did fail to check their patient's vital information, they had completely and irretrievably forgotten that they ought to do so. If they had completely and irretrievably forgotten that they ought to check vital medical information before carrying out a procedure, then they would not miraculously, and without intervention, remember the requirement later that day.

Finally, it seems reasonable to suppose that, if a colleague noticed that the surgeon had not checked their patient's vital information and turned to them and said, 'shouldn't you check their blood type first?', it is plausible that the surgeon would immediately reply, 'yes, of course!'. If the surgeon had completely and irretrievably forgotten the requirement, then surely their reply would be more hesitant and lack conviction.

There is, of course, a large spectrum between cases of irretrievable forgetting and cases in which a person would respond immediately and confidently. While there will be some variation in the level of difficulty in internal access in cases of negligence, all cases of negligence will involve *reasonable* internal access to the relevant facts.

All cases of negligence involve reasonable internal access to the relevant facts because, at bottom, the relevant fact is the fact that one ought to take reasonable care to avoid

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<sup>24</sup>A surgeon might forget such a basic requirement as a result of e.g., a brain injury or stroke. However, there would be evidence of such an occurrence and the surgeon would, as a result, lack competence. If a person lacks competence, then they would not be directly responsible. Responsibility for such failures would depend on a person being responsible for taking on an activity or task for which they lack general competence.

harm. This is such a basic requirement that no decent, reasonably competent person can claim to be genuinely ignorant of it.<sup>25</sup>

In many cases of negligence, persons will have knowledge of specific precautions required and reasonably foreseeable harms but they will fail to bring these facts to mind at the appropriate time. The surgeon, for example, knows that her duty of reasonable care includes checking her patient's blood type before carrying out a blood transfusion and that a failure to do so risks the harms that result from giving a patient the incorrect blood type. Similarly, the driver knows that he ought to pay attention and that failing to pay attention risks injury or death to himself and others. Although they are unaware of such requirements and risks, in the sense of not consciously thinking of them, it is implausible that such facts could have become unduly difficult to access for a reasonably competent surgeon or driver.

In other, more novel or complex situations, a person might not have beliefs concerning the specific, reasonably foreseeable harms that their conduct risks or the specific reasonable precautions that they could take to protect against such harms. However, on the assumption that such precautions are reasonable and that the harms are reasonably foreseeable in the circumstances, a person's failure to appreciate them results from a negligent failure to pay attention and carefully consider their situation in order to come to appreciate them.<sup>26</sup> It is implausible that a person's internal access to the basic fact that they ought to carefully consider reasonably foreseeable risks and reasonable precautions to avoid harm is unduly difficult.

The distinction I have drawn between genuine ignorance and negligence depends on the notion of internal access. Responsibility for negligence does not, however, depend on internal access simpliciter but rather on *reasonable* internal access. In the following section, I defend the distinction between negligence and ignorant wrongdoing by rejecting the claim, crucial to the revisionist argument, that responsibility depends on occurrent beliefs because only occurrent beliefs play a role in the reason for which a person acts.

## V. The significance of occurrent beliefs

I have drawn a distinction between negligence and ignorant wrongdoing by appealing to the difference between being genuinely ignorant of a relevant fact and failing to bring a relevant fact to mind at the appropriate time. To support the claim that the difference between being genuinely ignorant and failing to bring relevant facts to mind at the appropriate time suffices to demonstrate that negligent conduct is not ignorant wrongdoing, I must demonstrate that moral responsibility does not depend on occurrent beliefs.

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<sup>25</sup>A person could be ignorant of the moral requirement to take reasonable care to avoid harm because they have considered it and rejected it as a moral requirement; they believe that they are not subject to a duty of reasonable care, despite what others might think. In such a case, my distinction would entail that their failure to take reasonable care would constitute ignorant wrongdoing, not negligence. In such a case, however, we could establish responsibility for the ignorant failure to take reasonable care provided we can establish responsibility for their ignorance concerning the duty of reasonable care. It seems improbable that a person could be genuinely ignorant of the legal requirement to take reasonable care but, as in the moral case, we could establish responsibility by establishing responsibility for the ignorance.

<sup>26</sup>The qualifications of *reasonably* foreseeable harms and *reasonable* precautions *given* the circumstances are important. If a particular harm were not reasonable foreseeable or a particular precaution not reasonable given the circumstances, then a person's failure to appreciate them would not be negligent.

Support for the claim that responsibility for wrongdoing requires an instance of genuine akrasia comes from the idea that if a belief does not occur to a person at the relevant time, then that belief did not influence their conduct. For example, in *Transfusion*, although the surgeon knows that she ought to check vital medical information, her belief that she ought to do so did not occur to her at the appropriate time. Since her belief was non-occurrent, it played no role in her failure to check. As Michael Zimmerman puts it:

[I]f a belief is not occurrent, then one cannot act either with the intention to heed the belief or with the intention not to heed it; if one has no such intention, then one cannot act either deliberately on or deliberately despite the belief; if this is so, then the belief plays no role in the reason for which one performs one's action; and, I am inclined to think, one incurs culpability for one's action only if one's belief concerning wrongdoing plays a role in the reason for which one performs the action.<sup>27</sup>

One way to resist Zimmerman's view is to argue that non-occurrent beliefs can play a role in the reason for which one acts.<sup>28</sup> Suppose, for example, that I am thinking about how to spend my free time on Saturday afternoon. I decide to go to the beach because I occurrently believe that the weather will be good and that I could do with some light exercise and fresh air. It seems plausible that, in addition to these occurrent beliefs, my dispositional belief that the beach is a particularly pleasant place to go for a walk also plays a role in my decision, despite the fact that it is non-occurrent. My decision to go to for a walk *at the beach*, rather than somewhere else, such as the park, makes sense in virtue of this dispositional belief. My occurrent beliefs alone do not explain why I chose to go for a walk *at the beach* and not somewhere else. If I had a dispositional belief that the park, rather than the beach, is a particularly pleasant place to go for a walk, I would have chosen the park instead. Similarly, if I had a dispositional belief that the beach is *not* a pleasant place to go for a walk, I would not have chosen to go to the beach.

My decision to go to the beach is a decision to do something. Non-occurrent beliefs can also plausibly play a role in the reason for which a person omits to do something. Suppose, for example, that an employer holds sexist views, including that females are less reliable and more difficult employees. The employer decides to offer a job to a male candidate, despite the fact that a female candidate surpassed the male candidate in terms of qualifications and experience. At the time at which the employer made the decision, his sexist beliefs were non-occurrent but it is nevertheless plausible that they played a role in his decision not to employ the female candidate. Given that the female was the better candidate, the employer's decision not to offer her the job is

<sup>27</sup>Zimmerman, *Living with Uncertainty* (n 3) 191. In a later version of his argument, Zimmerman avoids the need for this specific argument concerning occurrent beliefs by stipulating from the beginning that he is concerned with 'ignorance qua the failure to have an occurrent belief' (85) ('Ignorance as a Moral Excuse' in Rik Peels (ed), *Perspectives on Ignorance from Moral and Social Philosophy* (Routledge 2017) 77). My argument can therefore be adapted to this later version and understood as objecting to this understanding of ignorance.

<sup>28</sup>In 'Tracing Culpable Ignorance' (2011) *Logos & Episteme* 575, Rik Peels argues that 'one is *not* ignorant that *p* if one dispositionally believes that *p*' and that a person can be blameworthy for not activating relevant dispositional beliefs on the basis that such beliefs play a role in the reason for which one acts (580–82). Peels understands non-occurrent beliefs as dispositional beliefs. I agree with Peels that cases involving non-occurrent beliefs ought not to be counted as cases of genuine ignorance. However, as I argue later in this section, I do not think the appeal to the idea that non-occurrent beliefs play a role in the reason for which a person acts suffices to justify direct responsibility in cases of negligence. I therefore depart from Peels in terms of the justification I provide in defending the idea that negligence does not involve ignorance and in defending direct responsibility for negligence. I would like to thank an anonymous referee for encouraging me to clarify how my argument departs from that given by Peels.

plausibly explained by his sexist beliefs and, if he had lacked those beliefs, then he would likely have offered the job to the female candidate.

Although it is plausible that non-occurrent beliefs can play a role in both actions and omissions, it is not plausible that non-occurrent beliefs play a role in cases of negligence. Consider, again, *Transfusion*. Given that the surgeon knows that she ought to check her patient's vital medical information, there is a sense in which the surgeon fails to do so *despite* her belief that she ought to do so. It is a stretch, however, to make the stronger claim that her belief *played a role* in the reason for which she omitted to check.

In cases in which non-occurrent beliefs plausibly do play a role, we can see that the person might have acted otherwise if they lacked the belief. My non-occurrent belief that the beach is a pleasant place to go for a walk plausibly played a role in my decision because, if I lacked this belief, then I would likely have chosen somewhere else to go for a walk or at least spent more time contemplating where to go. Similarly, the employer's non-occurrent sexist beliefs plausibly played a role in his decision not to employ the female candidate because, if he had lacked those beliefs, then he would have likely employed the female candidate. Such counterfactuals establish a non-arbitrary connection between non-occurrent beliefs and actions or omissions.

In the case of *Transfusion*, however, we cannot establish a non-arbitrary connection between the surgeon's belief that she ought to check her patient's vital medical information and her failure to do so. If the surgeon had lacked the belief that she ought to check her patient's vital medical information, then the surgeon would likely fail to check vital medical information routinely. This would support the claim that the belief plays a role in cases in which the surgeon does check vital medical information even when the belief is non-occurrent, but it does not support the claim that the belief played a role in the case in which she fails to check.

As a result of the inability to establish a non-arbitrary connection between the surgeon's non-occurrent belief and her negligent failure, it is implausible to claim that the belief *played a role* in the surgeon's negligent failure. I cannot, therefore, appeal to the idea that non-occurrent beliefs can play a role to support my view that there is a significant difference between ignorant wrongdoing and negligence.

An alternative way to resist Zimmerman's view is to reject the idea that responsibility depends on beliefs that play a role in the reason for which a person acts. This is the approach that I take in the following section. As we shall see, an appeal to fairness as an explanation of why ignorance excuses can justify the claim that beliefs need not play a role in the reason for which a person acts and thereby defend the idea that there is a significant difference between negligence and ignorant wrongdoing.

## VI. Appealing to fairness

A plausible explanation of why ignorance excuses is fairness.<sup>29</sup> In cases of ignorant wrongdoing, a person mistakenly believes that their conduct is permissible and that there is no compelling reason to refrain. It is not reasonable to expect a person to

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<sup>29</sup>See Rosen (n 3 and n 2) and Neil Levy, 'Culpable Ignorance and Moral Responsibility: A Reply to FitzPatrick' (2009) 119 *Ethics* 729. An alternative explanation of why blameless ignorance excuses, employed by those who understand responsibility in terms of attributability, appeals to quality of will. Since I understand responsibility in terms of accountability, I think the fairness explanation is more plausible. Since advocates of the revisionist argument appeal to the

refrain from wrongdoing they believe they have no compelling reason to avoid, unless they are responsible for the ignorance from which they act. If it is unreasonable to expect a person to refrain from their wrongdoing, then it is unfair to hold them responsible for their wrongdoing. Therefore, it is unfair to hold a person responsible for ignorant wrongdoing unless they are responsible for the ignorance from which they act. As Gideon Rosen says, '[i]t is unfair to blame someone for something if he blamelessly believes that there is no compelling reason not to do it'.<sup>30</sup>

To see this, consider:

*Inaccurate Records:* The surgeon checks her patient's blood type on their medical record before carrying out a blood transfusion. However, the patient's blood type has been incorrectly recorded. As a result, the surgeon gives her patient the incorrect blood type.<sup>31</sup>

The fact that the blood is the incorrect type for her patient is compelling reason for the surgeon not to give her patient the blood and, in this sense, the surgeon does something wrong when she gives her patient the incorrect blood type. However, the surgeon is ignorant of the fact that it is the incorrect blood type and therefore mistakenly believes that she has no compelling reason not to give her patient the blood.

Since the surgeon mistakenly believes that it is the correct blood type for her patient and that she has no compelling reason not to give her patient the blood, she could avoid her ignorant wrongdoing only by luck or akrasia. For example, if the blood that the surgeon gives her patient has been incorrectly labelled and, luckily, contains the blood that is in fact the correct type for her patient, she would avoid giving her patient the incorrect blood. Alternatively, if the surgeon decides to poison her patient by giving her the incorrect blood type, then, given her ignorance of her patient's correct blood type, her akratic action could result in her giving her patient the correct blood type. Aside from such instances of luck and akrasia, however, the surgeon could not, given her beliefs, avoid giving her patient the incorrect blood.

Given that the surgeon believes she has no compelling reason not to give her patient the blood and could avoid her ignorant wrongdoing only through luck or akrasia, it is not reasonable to expect the surgeon to refrain from giving her patient the blood. It is therefore unfair to hold her responsible for her ignorant wrongdoing, unless she is responsible for the ignorance from which she acts.

If the surgeon is responsible for her ignorance, perhaps because she has reason to suspect that the medical record is inaccurate or because the record is inaccurate due to a fault on the surgeon's part, then it is reasonable to say that she *should have known*. In such a case, because the surgeon could avoid her ignorant wrongdoing by avoiding her ignorance, it is not unreasonable to expect her to refrain from giving her patient the incorrect blood and therefore not unfair to hold her responsible for her

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fairness explanation, focusing on the fairness explanation enables me to show that the distinction between negligence and ignorant wrongdoing can be upheld on their own underlying terms.

<sup>30</sup>Gideon Rosen, 'Culpability and Ignorance' (2003) 103 *Proceedings of the Aristotelian Society* 61, 74.

<sup>31</sup>Assume that the surgeon has no reason to suspect that the patient's record is unreliable and therefore it is reasonable for her to rely on the information contained within. If there were reason for the surgeon to suspect that the record is unreliable, such as multiple recent cases of inaccuracy, then it might not be reasonable for the surgeon to rely on the record as an information source. In normal circumstances, however, it is reasonable for medical professional to rely on medical records.

ignorant wrongdoing. Her responsibility for her ignorant wrongdoing would be derivative and depend on her responsibility for her ignorance.

We have seen that fairness is a plausible explanation of why ignorance excuses. The explanation of fairness, however, does not support the idea that beliefs must play a role in the reason for which a person acts and therefore does not support the idea that negligence constitutes ignorant wrongdoing. On the contrary, an appeal to fairness supports the view that negligence *is not* ignorant wrongdoing.

According to revisionists, the surgeon's failure to check her patient's medical record for vital medical information in *Transfusion* is analogous to when the surgeon gives her patient the incorrect blood type in *Inaccurate Record*. The cases, however, are not analogous.

In *Inaccurate Record*, at the time at which the surgeon gives her patient the incorrect blood type, the surgeon mistakenly believes that there is no compelling reason not to give her patient the blood. Her ignorance, as we have seen, does not necessarily provide an excuse. It is unreasonable to expect her to refrain from giving her patient the incorrect blood only if her ignorance is blameless. If her ignorance were due to a fault on her part, then we would hold that she *should have known* and therefore that she could avoid her ignorant wrongdoing by avoiding her ignorance. It is important to note, however, that even if her ignorance were blameworthy, at the time at which she gives her patient the incorrect blood, she would still mistakenly believe that there is no compelling reason not to give her patient the blood and, at that point in time, given her beliefs, she could avoid her wrongdoing only by luck or akrasia.

In contrast, in *Transfusion*, although the surgeon's belief that she ought to check her patient's blood type did not occur to her at the appropriate time, she did nevertheless believe that she had compelling reason to do so. Furthermore, given that she has this belief, there is a clear sense in which she could avoid her wrongdoing other than by luck or akrasia; she could avoid her wrongdoing by bringing the relevant fact to mind at the appropriate time and this would not, I contend, be a matter of luck.

Through her years of training and experience, the surgeon has developed a general competence in various skills and abilities, including the ability to bring to mind relevant, crucial facts at the appropriate time.<sup>32</sup> In virtue of this general competence, we do not consider it a matter of luck when the surgeon does remember to carry out basic tasks. If whether or not the surgeon remembers to carry out basic duties were a matter of luck, then she would likely fail to fulfil basic duties regularly. Even if by sheer chance she regularly complied with basic duties, we would not have confidence in her ability to do so. The fact that it seems unreasonable to say that the surgeon ought to have done something to ensure that she would not forget, such as asking a colleague to remind her, supports the claim that she possesses the general competence to remember.

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<sup>32</sup>The appeal to general competence draws on Hart (n 6) and Raz (n 6). Hart appeals to background evidence, including previous performance, to support the claim that a person possesses the requisite capacity. Raz applies the notion of a 'domain of secure competence' to actions that are intentionally initiated but not adequately controlled, such as when a driver's foot slips off the brake pedal. In the case of unintentional omissions, he argues we are responsible for those that involve a failing in our rational agency, despite our capacities for rational agency being available (244–47). Raz and Hart appeal to general competence to defend responsibility for negligence against the traditional concern that negligence fails to satisfy the metaphysical condition on responsibility. I turn to the metaphysical condition in the following section.

If she lacked such competence, then a requirement to put in place precautionary measures would not be unreasonable.

Since the surgeon could avoid her negligent failure by bringing her belief that she ought to check her patient's medical record to mind at the appropriate time, and bringing the relevant belief to mind would not be a matter of luck, it is not unreasonable to expect the surgeon to do so. Since it is not unreasonable to expect the surgeon to remember, it is not unfair to hold her responsible and blameworthy for failing to do so.<sup>33</sup>

I have appealed to the notion of fairness to support the idea that a belief need not play a role in the reason for which a person acts. Provided a person has internal access to the relevant belief, they can avoid their wrongdoing by bringing the relevant fact to mind at the appropriate time and, since this would not be a matter of luck, it is not unreasonable to expect them to do so. This supports the claim that negligence is not ignorant wrongdoing and defends direct responsibility for negligence against the revisionist challenge based on the epistemic condition on responsibility. In the following section, I further support the claim that persons could avoid their negligent failures other than by luck by briefly considering the metaphysical condition on responsibility.

## VII. Control and fair opportunity

My argument that negligent conduct is not ignorant wrongdoing depends on the idea that persons can be directly responsible for failing to bring relevant facts to mind. An obvious objection to this is that persons cannot be directly responsible for such things because they are not under our direct voluntary control. This turns our attention from the epistemic condition to the metaphysical condition on responsibility.

A key commitment of the revisionist argument is that persons are directly responsible only for things that are under their direct control, and only intentional actions or omissions are under a person's direct control. While we can take active measures to try to ensure that we remember, pay attention, notice relevant features and appreciate the significance of relevant facts, such things are not themselves under our intentional control. We can, for example, ask a colleague to remind us or ask ourselves if there is anything else that we need to do in an attempt to avoid forgetting something important. Similarly, we can eliminate distractions from our environment or consciously tell ourselves that we need to pay attention in an attempt to ensure that we do pay attention. But remembering, noticing, appreciating and paying attention are not themselves intentional actions and therefore, according to the revisionist, persons are not directly responsible for them.

Contrary to the revisionist, I do not think the metaphysical condition on responsibility requires intentional control. Instead, I think the metaphysical condition ought to be understood as requiring the possession of cognitive and volitional capacities necessary

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<sup>33</sup>The same reasoning can be applied to other cases of negligence. For example, if a driver were genuinely ignorant of the fact that they ought to pay attention, then their paying attention would be a matter of luck, not good judgement. However, since no reasonably competent driver can plausibly claim to be ignorant of the need to pay attention, they can avoid their negligent failure to do so by bringing to mind the fact that they ought to pay attention and then pay attention. Similarly, if a parent were genuinely ignorant of the fact that their duty of care to their child includes seeking medical attention for severe symptoms, then it would be a matter of luck, not good judgement, if they do seek medical attention when their child displays severe symptoms. However, since no reasonably competent parent can claim to be ignorant of the need to seek medical attention when their child presents with severe symptoms, they could avoid their failure to do so by bringing to mind the fact that they ought to carefully consider the severity of their baby's symptoms and thereby appreciate their severity and seek medical attention.

to appreciate and respond appropriately to reasons and fair opportunity to exercise those capacities. Significant for the current discussion, the cognitive capacities include capacities to remember, to pay attention and to notice relevant features and appreciate their normative significance. Provided a person possesses the relevant capacities and there is nothing in their circumstances preventing or obstructing their exercise, a person is directly responsible if they nevertheless fail to exercise their capacities. It is not unfair to hold a person responsible for something that they ought to have done and that they had the capacity and opportunity to do.<sup>34</sup>

To determine whether or not a person possesses the relevant capacities in circumstances in which they are not exercised we can appeal to evidence from their past performance.<sup>35</sup> For example, in the case of *Transfusion*, the fact that the surgeon routinely remembers important information, including to check patient's medical records for vital medical information, supports the claim that she possesses the requisite capacity to remember in the case in which she forgets.

In addition to past performance, we can also appeal to a lack of undermining evidence. If we have evidence that a person's relevant capacities are impaired in the particular case, then this would undermine the claim that they possessed the requisite capacities. If, for example, we had evidence that the surgeon's capacity to bring to mind relevant facts is impaired due to recent neurological damage, this would undermine the claim that she possessed the requisite capacity, irrespective of previous performance.

In some cases, situational factors might undermine either the claim that a person possessed the requisite capacities or the claim that they had fair opportunity to exercise their capacities. If, for example, the surgeon was working under unusual and extreme pressure due to staff shortages and high patient numbers and was exhausted at the end of a long, double shift, then we might judge either that the surgeon lacked the capacity to remember in such extreme circumstances or that the circumstances provide an excuse on the basis that any reasonable person, working under such pressure, would forget to fulfil basic duties. Whether or not situational factors undermine ascriptions of responsibility will depend, in part, on the significance of failing to appropriately exercise one's capacities and the availability of additional precautionary measures. For example, given the significant and foreseeable harm that results from the surgeon forgetting to check vital medical information, and the fact that the surgeon could, in such extreme circumstances, put in place additional measures to ensure that she does fulfil basic duties, the unusually difficult circumstances do not obviously undermine the claim that she *could* and *should* have remembered.

A full development and defence of this account of the metaphysical condition on responsibility is beyond the limited scope of the paper. However, the basic commitments

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<sup>34</sup>This account is in the spirit of those offered by Hart (n 6); David Brink and Dana Nelkin 'Fairness and the Architecture of Responsibility' in David Shoemaker (ed), *Oxford Studies in Agency and Answerability*, Volume 1 (Oxford University Press 2013); Randolph Clark (n 11) and 'Blameworthiness and Unwitting Omissions' in Dana Nelkin and Samuel Rickless (eds), *The Ethics and Law of Omissions* (Oxford University Press 2017); Fernando Rudy-Hiller 'A Capacitarian Account of Culpable Ignorance' (2017) 98 *Pacific Philosophical Quarterly* 398. Hart and Rudy-Hiller frame it in terms of a capacity for control but, like Brink and Nelkin, I prefer to frame it in terms of fairness. Rudy-Hiller explicitly articulates the broader implication of such a view that we can have obligations to be in certain mental states.

<sup>35</sup>Rudy-Hiller (n 34) argues that we can make a default judgement of possession of capacity and revise this default judgement if we have evidence of a lack of capacity or fair opportunity to exercise capacities. I think it is good to appeal to background evidence to support the positive claim of possession and fair opportunity to exercise capacities.

are, I hope, reasonably clear and I will offer some brief points in support of this understanding over the condition of intentional control. Firstly, the proposed account better captures our standard judgements of responsibility. Typically, we do consider persons responsible for conduct that is not under their intentional control, including negligent conduct. Of course, our standard judgements of responsibility might be mistaken, but an account that is able to capture and justify fundamental judgements of responsibility is more plausible than one that denies the truth of such judgments. Secondly, responsibility for things that are not under our direct intentional control is central to our identity as persons.<sup>36</sup> Our understanding of ourselves is intricately tied not only to our beliefs, attitudes and emotions but also to our understanding of our abilities and competences. The surgeon, for example, likely understands herself as someone who reliably remembers crucial information and is able to discern and appreciate the significance of relevant facts and focus her attention under pressure. To refuse to take responsibility for such things simply because they are not under our intentional control is to alienate ourselves from a significant part of our own identity.

The claims that I have defended in this section regarding possession of and fair opportunity to exercise relevant capacities apply to the metaphysical condition on responsibility. Satisfying the metaphysical condition is necessary but not sufficient for direct responsibility; the epistemic condition must also be satisfied. If we understand the metaphysical condition in terms of possession and fair opportunity to exercise relevant capacities but understand the epistemic condition as requiring occurrent beliefs, then persons would fail to be directly responsible for their negligent conduct because they fail to satisfy the epistemic condition, even if they possess and had fair opportunity to exercise their relevant capacities and thereby satisfied the metaphysical condition.<sup>37</sup> However, if, as I have argued, we understand the epistemic condition as requiring reasonable internal access, then we can establish direct responsibility for negligence.<sup>38</sup> The

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<sup>36</sup>Robert Adams argues that to refuse to take responsibility for our psychological states is to be inappropriately alienated from ourselves in 'Involuntary Sins' (1985) 94 Philosophical Review 3. Raz (n 6) similarly argues that we are directly responsible for aspects of our agency that are reasons responsive, including beliefs and emotions. Raz further argues that one's domain of secure competence is central to one's personal identity and that to deny responsibility for conduct for which we possess competence is to be false to who we are.

<sup>37</sup>Rudy-Hiller (n 34) understands the metaphysical and epistemic conditions in this way and therefore accepts that negligent conduct is ignorant wrongdoing. Responsibility for ignorance that results from negligence is established on his account because it results from a failure to exercise an awareness related ability despite having fair opportunity to do so. For example, according to Rudy-Hiller, the surgeon in *Transfusion* is ignorant of the fact that she ought to check her patient's vital medical information because her belief that she ought to do so is non-occurrent. However, Rudy-Hiller argues that the surgeon is responsible for this ignorance because she had capacitarian control over remembering. According to Rudy-Hiller, this does not bring the culpability regress to an 'abortive end', but I am not convinced. If, as Rudy-Hiller holds, a belief must be occurrent to act without ignorance, the surgeon's failure to remember itself constitutes ignorant wrongdoing. Therefore, although I do not dispute the idea that the surgeon possessed capacitarian control over bringing the relevant fact to mind, her failure to do so nevertheless fails to satisfy his understanding of the epistemic condition and direct responsibility is therefore not justified.

<sup>38</sup>One could understand the epistemic condition as requiring the capacity and fair opportunity to believe the relevant facts. See, for example, Clark (n 11). However, this requires rejecting the claim that responsibility for ignorant wrongdoing is derivative and depends on responsibility for ignorance. As I explained at the beginning, my aim is not to dispute this relatively uncontroversial idea but rather to show that, even if we accept it, we can nevertheless defend direct responsibility for negligence. The claims in the previous section concerning luck support the idea that direct responsibility for ignorant wrongdoing is unfair and therefore support upholding the idea that responsibility for ignorant wrongdoing is derivative. This does not, of course, preclude appealing to the possession of and fair opportunity to exercise relevant capacities to establish responsibility for ignorance and thereby establish derivative responsibility for ignorant wrongdoing.

distinction between genuine ignorance and negligence that I have drawn is therefore crucial to defending direct responsibility for negligence.<sup>39</sup>

## VIII. Stopping the regress

I have argued that negligent conduct is not ignorant wrongdoing and thereby defended direct responsibility for negligent conduct against recent revisionist arguments concerning the epistemic condition on responsibility. The defence of direct responsibility for negligence is not only significant in itself, but it also offers a way of stopping the revisionist's regress and thereby enables responsibility for ignorant wrongdoing to be established in cases in which a person's ignorance results from negligence.

To see this, let's return to the example of *Transfusion*. When the surgeon gives her patient the incorrect blood type, she is genuinely ignorant of the fact that it is the wrong blood type for her patient. This act does constitute genuine ignorant wrongdoing.<sup>40</sup> Her ignorance of the fact that it is the incorrect blood type for her patient results from her negligent failure to check her patient's medical record for vital medical information. I have argued, contrary to the revisionist, that negligent conduct does not constitute ignorant wrongdoing and thereby defended direct responsibility for negligence. Not only is the surgeon responsible for her negligent failure, she is also responsible for her ignorance of her patient's blood type that results. It would be plausible to claim that the surgeon is directly responsible for her negligence and derivatively responsible for her ignorance that results. I am inclined, however, to claim that the surgeon is directly responsible *both* for her negligence *and* for her ignorance that results.<sup>41</sup> The surgeon's ignorance is a direct result of her negligent failure to check her patient's medical record and avoiding such ignorance is the reason why the surgeon had a duty to check her patient's medical record. I think this is sufficient to establish direct responsibility for her ignorance.<sup>42</sup> Because the surgeon is responsible for her ignorance, she is derivatively responsible for her ignorant wrongdoing that results.<sup>43</sup> Establishing direct responsibility for negligence therefore enables us to stop

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<sup>39</sup>I would like to thank anonymous referees for encouraging me to clarify why an appeal to possession and fair opportunity to exercise relevant capacities will not suffice to defend direct responsibility for negligence and therefore why my distinction between negligence and ignorance is necessary.

<sup>40</sup>Typically, we would refer to the whole event of forgetting to check her patient's medical record *and* giving her patient the incorrect blood as negligent. Since the surgeon's ignorance of her patient's blood type and her ignorant wrongdoing of giving her patient the incorrect blood result from her earlier failure to check her patient's blood type, referring to it all as negligent is not, in itself, problematic. However, for the purposes of establishing direct responsibility, it is important that we clearly distinguish the different aspects. I have defended direct responsibility for the failure to check her patient's chart and it is this failure that, ultimately, constitutes her negligence. I would like to thank an anonymous referee for prompting me to clarify this point.

<sup>41</sup>Revisionists will not agree that a person can be directly responsible for their ignorance because belief formation is not something over which we have intentional control. As I have already explained, however, I do not agree that intentional control is necessary for responsibility.

<sup>42</sup>Raz (n 6) similarly argues that persons are directly responsible for direct results of negligent conduct. Raz supports derivative responsibility for indirect outcomes by arguing that responsibility for conduct extends to indirect outcomes if and only if avoiding the consequence was the reason why one ought not to have performed the action. I think such reasoning is equally applicable to direct outcomes.

<sup>43</sup>Matt King argues that direct responsibility for negligence extends not only to the resultant ignorance but also the ignorant wrongdoing in 'Tracing the Epistemic Condition', in Philip Rodichaud and Jan Willem Wieland (eds), *Responsibility: The Epistemic Condition* (Oxford University Press 2017) 266. Although the ignorant wrongdoing is a foreseeable consequence of the surgeon's negligence, I do not think it is plausible to extend direct responsibility to her ignorant wrongdoing. At the time at which the surgeon gives her patient the incorrect blood type, she is ignorant of the fact that it is the incorrect blood type and therefore, at the time of acting, she fails to satisfy a necessary condition of responsibility. Furthermore, I think good grounds can be given to consider her ignorant wrongdoing as a separate, albeit connected,

the revisionist's regress and establish responsibility in cases of ignorant wrongdoing when a person's ignorance is due to negligence.<sup>44</sup> Although ignorance will not always result from negligence, many cases in which we intuitively judge that a person should have known will result from negligence. Therefore, being able to stop the regress in cases in which a person's ignorance results from negligence enables us to capture a significant number of cases in which we judge a person responsible and blameworthy for their ignorant wrongdoing.

## IX. Conclusion

My aim in this paper has been to argue that negligent conduct does not constitute ignorant wrongdoing. In support of this claim, I have drawn a distinction between being genuinely ignorant of some relevant fact and failing to bring a relevant fact to mind at the appropriate time. Standard cases of negligence involve not genuine ignorance but rather a failure to bring to mind a relevant fact at the appropriate time.

I have supported the significance of this distinction to moral responsibility by appealing to the notion of fairness. If a person is genuinely ignorant of some relevant fact and thereby ignorant of the fact that their conduct is wrong, then it is unreasonable to expect them to avoid their wrongdoing because they could do so only by luck or akrasia. However, if a person knows or believes the relevant fact, then they could avoid their wrongdoing by bringing the relevant fact to mind at the appropriate time and this, I have argued, would not be a matter of luck. Since they could avoid their wrongdoing other than by luck or akrasia, it is not unreasonable to expect them to do so and therefore not unfair to hold them responsible and blameworthy for failing to do so.

This appeal to fairness supports the claim that the epistemic condition on responsibility does not require occurrent beliefs or beliefs that play a role in the reason for which a person acts but rather internal access to the relevant belief. This, in turn, supports the claim that negligence is not ignorant wrongdoing and defends direct responsibility for negligence in terms of the epistemic condition on responsibility. Understanding the epistemic condition in this way enables us to capture fundamental judgements of responsibility, including for negligence and for ignorant wrongdoing that results from negligence. It also appropriately reflects the complexity of human conduct. Negligence, although inadvertent, is *not* ignorant wrongdoing.

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action from her negligence and thereby support the claim that it is an indirect consequence, but that would distract from my current focus. Jan Willem Wieland and Philip Robichaud offer some points in support of maintaining tracing in 'Blame Transfer' Robichaud and Wieland (eds), *Responsibility: The Epistemic Condition* (Oxford University Press 2017) 281.

<sup>44</sup>I think the regress can also be stopped in cases in which ignorance does not result from negligence, but offering a full account of responsibility for ignorant wrongdoing is beyond the scope of this paper.