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BOOK REVIEW

Consciousness and Moral Responsibility. By Neil Levy (Oxford University Press, 2014). 157 p. + xi, \$45)

When and under what circumstances are we responsible for our actions? What role does conscious awareness of one's actions play in the assessment and ascription of responsibility? To answer these questions, Neil Levy has written a provocative and interesting account of the necessary role of consciousness in the assessment of responsibility for action. In an economical 150 pages, Levy makes the case for 'the consciousness thesis', the idea 'that consciousness of some of the facts that give our actions their moral significance is a necessary condition for moral responsibility' (p. 1).

Neil Levy is well known among the increasing number of philosophers writing in the burgeoning field of ethics and neuroscience. He has deep knowledge of brain science and its role in arguments about mind, brain, and morality, and he is keen to bring the science to the forefront of his argument in favor of the consciousness thesis. His view is one he describes as 'very significantly empirical' (p. vi). The nerve of the theory is the idea that consciousness functions principally in the integration of information. It is with respect to the top-down (i.e., prefrontal executive functions) utilization of integrated information to generate behavior that we make decisions, thereby reflecting our agency and, ultimately, locating the basis of moral responsibility.

After describing the key features of Levy's position, I will take up what might be seen as a challenge to Levy's thesis: the law. Although he makes much of the importance of science, specifically our knowledge of the science of consciousness in assessing responsibility, it turns out the really important questions are not scientific at all. Rather, they are normative. Levy clearly wants to show that the more you know about the science of the brain the better able you are to motivate claims about agency and responsibility. In this, he is mistaken.

Levy sets out to defend the consciousness thesis (CT), that is, the idea that 'consciousness of at least some of the facts that give our actions or omissions their moral significance is a necessary condition of moral responsibility' (p. vii). His argumentative strategy is to get as clear as possible about what consciousness is and what is involved in conscious (and unconscious) awareness. Levy believes that the more we know about

consciousness the better able we will be to answer the question of moral responsibility for action.

In the first of six chapters, Levy describes two arguments that have been made against the CT. The first argument stems from unconscious motivations: we are often unconscious of the reasons why we act but are nonetheless held responsible. The second argument is motivated by the expressivist position in ethics, but one need not be an expressivist to see the force of the argument. In cases of simple negligence, we criticize people who forget to do things like remember a friend's birthday. Obviously, we hold the person responsible for their error even though they are unaware (because they have forgotten) of the facts.

In Chapter 2, Levy takes up two possible arguments for the unconsciousness thesis. The first is based on Libet's famous experiments about the readiness potential. Levy does not think that Libet has the strongest argument against CT. Rather, Levy thinks that the stronger argument against CT lies in the deliberations that precede action, for it is these that are 'causally efficacious' (p. 24). We can be conscious of mental content in one of two ways: phenomenally or informationally. It is the informational sense of awareness that Levy thinks is at stake in arguments against CT.

Chapter 3 is where Levy fully develops his view. Here he argues for the 'global neuronal workspace theory' (GNWS). The theory concerns mental content and its dissemination. With respect to consciousness, the GNWS theory 'claims that conscious information is broadcast (or accessible) to a broad range of consuming systems (which are distinct and dissociable components of the mind)' (p. 47). The brain, Levy argues, is 'modular', meaning it is well designed for functionally discrete information processing. It is up to consciousness, then, to provide coordination and control across discrete areas of the brain. By being consciously aware of the states affecting her behavior, an agent becomes reasons responsive and, thus, responsible. By contrast, behavior that is the product of subconscious action remains domain specific. Take sleepwalking. While asleep, executive functions are largely dormant. Mental events we normally experience while awake, such as reflection, making choices, and executing plans are relegated to our deep selves while asleep.

Levy devotes much of Chapter 4 to a discussion of the case of Kenneth Parks. In 1996, Parks—who had suffered from sleep disorders—got out of his bed in the middle of the night, and drove to the home of his in laws, where he stabbed them both. His mother-in-law subsequently died from her wounds. After the bludgeoning, Parks drove himself to a police station and turned himself in. Levy maintains that Parks bears no responsibility for his actions because he was acting from subconscious action 'scripts'.

Levy does a fine job of explaining the many things consciousness does and how the brain contributes to the work of consciousness. But his argument is ultimately a normative one. For the argument to be successful, Levy must join together the empirical claims he makes for consciousness with an account of their moral significance.

One way to 'test' Levy's theory is to apply it to our current practices of blaming. We blame people and hold them responsible for their actions in a wide variety of contexts (principally in moral, civil, and criminal contexts). I want to suggest that if Levy's theory diverges materially from these contexts, then the burden is on him to explain why we should be persuaded by his theory.

Consider an instance of simple negligent conduct. You own an aggressive dog whom you keep in your backyard behind a locked gate. One day you come through the gate and forget to close it. The dog walks through the opened gate, proceeds across your lawn, and bites the kid next door. The law of negligence in every state would find you liable for the injury your dog visited upon the neighbor's child. In a word, you are responsible for the bad acts of your dog. Why are you responsible? Because you failed to close the gate, thereby allowing (i.e., creating a non-reciprocal risk) your aggressive dog to roam and do damage.

The heart of negligence is the violation of a standard of care. In the case of the dog, your duty is to keep the dog locked up. If you act in a manner that allows the dog to escape and bite the kid next door, you are morally and legally responsible. What does Levy have to say about negligence and other matters?

As mentioned above, Levy leans heavily on the scientific aspects of consciousness. In his concluding remarks to the book, he chides critics of the CT for failing to properly engage the scientific literature. Singling out ethical expressivists, he writes:

[E]xpressivists take their challenge to the consciousness thesis to be bolstered significantly by scientific evidence of the pervasiveness of nonconscious processes. They accuse rivals of being out of step with developments in cognitive science; of being mired in a Cartesian view of the mind that has long been consigned to the scientific scrapheap. But they offer little in the way of concrete engagement with cognitive science themselves. In fact, despite their admonitions, they offer thought experiments and literary examples to motivate their views, not scientific psychology. But the mind is stranger than we tend to think. If we are to settle questions like the one that is the focus of this book, we need to turn to the data: the best neuroscience and social and cognitive psychology. I hope to have shown that this data shows that consciousness plays a particular, and important, role in human behavior; on that basis, I have argued that it is required for (direct) moral responsibility. (p. 134)

The reason we hold people liable in tort for their negligent acts is because through their actions, persons create non-reciprocal risks which eventuate in harm to others. That harm is caused by a risk the tortfeasor created. The question we might ask of one who wants to say that such persons are not responsible for their acts is 'why?' And if not them, then who?

Levy does not address these issues. It is an odd feature of this book that Levy seems oblivious to the fact that his position would render simple common law negligence immoral because that body of law holds persons responsible for their acts even where (in fact, often) they are unaware of the act that ultimately does harm (e.g., failing to latch the gate that encloses an aggressive dog).

Contrary to Levy's premise—that there is a direct connection between consciousness and moral responsibility—tort law (i.e., common law negligence) teaches us that consciousness is not a singularly important aspect of responsibility. The reason we hold the tortfeasor (e.g., the owner of the aggressive dog) responsible is that it is the tortfeasor who is in the best position to prevent the harm. By failing to act properly—to exercise precaution—the tortfeasor causes harm to another. The moral ground of responsibility is not a function of what the tortfeasor knew. Rather, it is directly a

matter of what the tortfeasor could and should have done by way of risk avoidance. Consciousness simply has little to do with this.

In addition to common law negligence, Levy's thesis would also rule out criminally negligent conduct. A classic case is a person who leaves a child in a locked car and then forgets about the child, who dies from heat exhaustion (Levy mentions negligent abandonment at p. 12). Levy would excuse such a lapse because the parent was not consciously aware of the predicament of his child. An additional lapse example are child abandonment cases, that is, cases where a responsible parent fails to provide care for minor children because he or she forgot it was their weekend for child care. Many states treat such cases of malfeasance in a manner akin to strict criminal liability (i.e., no mens rea need be shown). In all of these cases, we are entitled to ask, 'why would lack of awareness be excusing?' This is the sort of question Levy needs to address and he simply fails to do so.

Neil Levy is a sophisticated philosopher. But his claim that the science matters most is simply wrong-headed. Or, if it is not wrong-headed, then he needs to say a great deal more about why we should abandon much of tort and criminal law because we now know more about the nature of consciousness. Levy has written a provocative book. One wishes the argument were more fully developed.

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