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Stephen Morse's Anomalous Monism

Michael S. Pardo & Dennis Patterson

The relationship between the mind and the brain raises perennial philosophical questions and provides numerous avenues for scientific research. The conceptual and the empirical issues that emerge from this relationship are exceedingly complex. Add to this complexity the law—with its own complex doctrinal requirements, conceptual issues, and normative and empirical standards—and you have a recipe for manifold confusions. Stephen Morse's illuminating scholarship on the many issues that emerge from the various interactions among law, the mind, mental attributes, psychology, and the brain sciences has done much to elucidate the possible ways forward and to caution against dead ends. In integrating law and science, and in dispelling confusions along the way, Morse manifests three distinct types of expertise: the scientist's attention to empirical details, the philosopher's concern for conceptual clarity, and the lawyer's appreciation of the nuances and realities of the legal world.

The heart of Morse's discussions involves presenting and defending the law's reliance on a "folk psychological" conception of human behavior.¹ According to this conception, people (sometimes) act for reasons, and their actions may be explained, justified, or critiqued on the basis of their reasons for so acting. These "folk psychological" explanations make use of

¹ We focus primarily on Morse's article "Lost in Translation?: On Essay of Law and Neuroscience," in *Law and Neuroscience*, 13 *Current Legal Issues* 529 (Michael Freeman, ed., 2010). Morse also defends this conception in other recent works, including, e.g., "Mental Disorder and Criminal Law," *J. Crim. & Criminology* (2011); "Avoiding Irrational Neurolaw Exuberance: A Plea for Modesty," *Mercer L. Rev.* (2011); "Determinism and the Death of Folk Psychology: Two Challenges to Responsibility From Neuroscience," *Minn. J.L. Sci. & Tech.* (2008).

everyday, commonsense notions such as “desires, beliefs, intentions, willings and plans.”² Relying on the “folk psychology” conception, Morse largely defends the law’s conceptual foundations for ascribing legal responsibility, and in doing so he steers the law’s doctrinal regime past two potential pitfalls. The first is the idea that the mental states that form the basis for the folk-psychological conception are either non-existent, or alternatively, exist but are epiphenomenal.³ Although he appears open to the possibility that such eliminative or reductionist projects could perhaps be carried out in the future, he rejects these ideas on the basis of current evidence and arguments, or any that are likely to be forthcoming any time soon. He concludes that neither eliminative materialism nor charges of epiphenomenalism undermine ascriptions of legal responsibility.⁴ The second potential pitfall is the idea that law’s reliance on folk psychology commits the law to implausible metaphysical theses. In other words, does law’s framework for ascribing responsibility depend necessarily on Cartesian dualism? If so, too bad for the law, so the argument goes. Morse rejects this implication (and thus this pitfall) by explaining that law’s folk-psychological conception is consistent with a rejection of substance dualism (Cartesianism) and is consistent with an acceptance of a thoroughgoing materialism. One can coherently endorse both the folk-psychological conception and the idea that any mental attributes the law considers to be relevant depend necessarily on the brain.⁵

² Morse, “Lost in Translation,” supra note 1, at 530.

³ See Churchland; Wenger; Greene & Cohen.

⁴ See Morse, “Lost in Translation,” supra note 1.

⁵ Id. at 536.

If the heart of Morse's neurolaw discussions concerns law's reliance of the folk-psychological conception, the heart of *that discussion* is the notion of "mental state causation."⁶ Morse's defense of the law's conceptual framework depends on the idea that the mental states posited by the folk-psychological conception (i.e., beliefs, desires, intentions, and plans) sometimes play a genuine causal (this is the first use of this term. Do we want a note here on what we mean by "causal"? I remember Hacker has a nice discussion somewhere of 4 meanings of "causal") role in producing human actions. As he explains: "The definition of folk psychology insists only that human action is in part causally explained by mental states," and "[v]irtually all actions for which agents deserve to be praised, blamed, rewarded, or punished are the product of mental causation."⁷ Morse relies on the foundational idea of "mental causation" to steer the law's framework for ascribing responsibility past the twin pitfalls noted above. On the one hand, if mental states exist and play a genuine causal role, then eliminative or reductionist claims to the contrary are false. On the other hand, if mental states can play this causal role in the absence of dualist commitments, then charges of implicit Cartesianism are likewise neutralized. This is the course Morse takes: "I am simply accepting the folk-psychological view that mental states—which are fully produced by and realizable in the brain—play a genuinely causal role in explaining human behavior."⁸ In sum, mental states are produced by and realized in the brain (they are not a distinct substance), but they nonetheless exist and play a (non-reductive) causal role, thereby avoiding the twin pitfalls that would undermine law's framework for ascribing liability.

⁶ Id. at 530.

⁷ Id.

⁸ Id. at 532.

We agree that the twin pitfalls are to be avoided and that the law's conceptual presuppositions largely avoid them. Our critique is thus a friendly one—we endorse many of Morse's broader brush strokes. In this Essay we focus on some questions and challenges about the details. We raise two issues. First, we probe the idea of "mental causation". Although the idea plays a pivotal role in Morse's discussions, he does not (so far as we are aware) spell out a detailed conception of mental causation. Such a detailed account would posit an underlying theory of causation, explain how mental states cause physical movements, and clarify how (if mental states are fully produced by brain states) his conception avoids charges of epiphenomenalism. The idea of mental causation—and the mind more generally—implicit in Morse's discussions appears to us to most closely resemble the account presented by Donald Davidson. Our first goal is thus to trace out Morse's Davidsonian commitments. Second, we question whether such a Davidsonian account of mental causation is necessary to avoid the twin pitfalls (described above) facing law's folk-psychological framework for ascribing legal responsibility. Although we find this account to be plausible, we present an alternative, rational-teleological general (why do you use the word "general"? What does it add?) account of what it means to explain actions in terms of mental states (or reasons).⁹ This account likewise avoids the twin pitfalls. If the alternative is also plausible, then Morse's commitments about mental causation may not be *necessary* to avoid the twin pitfalls (as he claims). In short, there may be conceptual space between eliminative/ reductive views, on one hand, and dualism, on the other, for alternative accounts that undergird legal responsibility.

⁹ See P.M.S. Hacker, *Human Nature: The Categorical Framework* 199-232 (2007); Ludwig Wittgenstein, *Philosophical Investigations*; Severin Schroeder, "Wittgenstein", in *A Companion to the Philosophy of Action* (Timothy O'Connor & Constantine Sandis, eds., 2010); Eric Marcus, *Rational Causation* (2012).

Our discussion proceeds as follows. Part I explicates Morse’s views on mind and mental causation in more detail. Part II compares his views with those Donald Davidson. Part III presents an alternative account of the role of mental states in explaining human actions that also avoids the twin pitfalls. Part IV provides an example to compare the differing accounts. Our aim is not to defend one of these two accounts, but rather to raise the possibility that whichever is correct, they each provide a foundation for ascriptions of legal responsibility.

I. Morse’s Mind

According to Morse, the law presupposes “the ‘folk psychological’ view of the person and behavior.”¹⁰ Under this view, “people are capable of acting for reasons and are capable of minimal rationality according to predominantly conventional, socially constructed standards.”¹¹ Because people act for reasons, specifying their reasons allows us to explain their actions. These explanations work by identifying a person’s mental states: “a bodily movement can be in principle understood according to the person’s mental states.”¹² The folk-psychological conception presupposes “human action will at least be rationalizable by mental state explanations or that it will be responsive to reasons.”¹³ Mental states “such as desires, beliefs, intentions, willings and plans” thus explain behavior by providing the agent’s reasons for acting. Morse gives the following example of such an explanation:

the folk psychological explanation for why you are reading [his] paper is, roughly, that you desire to understand the relation of neuroscience to law to improve your work, you

¹⁰ Morse, “Lost in Translation,” supra note 1, at 530.

¹¹ Id. at 532.

¹² Id. at 530.

¹³ Id.

believe that reading the paper will help fulfill that desire, and thus you formed the intention to read it.¹⁴

According to the folk psychological view, mental states *explain* action. What is the nature of these explanations? What makes them true? Under Morse's conception, the key to these explanations is causation. The explanations are *causal* explanations. Folk psychological explanations provide the mental states that caused an action; an explanation is true if it identifies the mental states that actually caused an action, and it is false if the mental states it specifies did not cause the action. According to Morse, "folk psychology insists only that human action is in part causally explained by mental states."¹⁵ These causal explanations provide the foundation for legal ascriptions of responsibility: "Virtually all actions for which agents deserve to be praised, blamed, rewarded, or punished are the product of mental causation."¹⁶

Mental causation is not only important for the law's folk psychological conception, it is necessary. Morse asserts: "Human behavior cannot be adequately understood if mental state causation is completely excluded or eliminated."¹⁷ Moreover, Morse argues, mental states must play a "genuinely causal role" in order to avoid the first pitfall: eliminative materialism or epiphenomenalism. He explains that "[t]he law will be fundamentally challenged only if neuroscience or any other science can conclusively demonstrate that the law's psychology is wrong and we are not the type of creatures for whom mental states are causally effective."¹⁸

¹⁴ Id.

¹⁵ Id.

¹⁶ Id. at 532.

¹⁷ Id.

¹⁸ Id. at 534.

Fortunately for the law’s current framework for ascribing legal responsibility, “neither neuroscience nor any other science has demonstrated that mental states play no independent and partial causal role.”¹⁹

In recognizing mental causation, Morse notes that this does not entail dualism. “[I]t may seem, therefore, as if law’s emphasis on the importance of mental states as causing behavior is based on a pre-scientific, outmoded form of dualism, but this is not the case.”²⁰ Rather, he maintains that mental states are “fully produced by and realizable in the brain.”²¹ Therefore, mental causation avoids the dubious metaphysical commitments associated with Cartesianism.

In sum, Morse recognizes a fundamental role for “mental states causation” and appears to endorse the following claims:

- (1) mental states exist and thus eliminative claims to the contrary are false (or at least are not supported by current evidence);
- (2) mental states make a causal difference and thus epiphenomenalism is false (or at least is unsupported by current evidence);
- (3) materialism is true (mental states are produced and realized in the brain) and substance dualism is false;

¹⁹ Id. at 536.

²⁰ Id. at 536.

²¹ Id. at 532.

(4) mental states are produced and realized in the brain, but they are not fully *reducible* to brain states (or at least the possibility of such reductionism is not supported by current evidence).²²

Although “mental state causation” plays a fundamental role for Morse in explaining legal ascriptions of responsibility, his discussions raise a number of questions about the precise nature of such causation and exactly why it is necessary.

II. Davidson’s Mind

The philosophical views underlying Morse’s account appear to us to most closely resemble those of Donald Davidson. With the philosophical literature, Davidson has articulated the most famous causal account linking reasons with actions.²³ He then built on this causal account to develop a more full-fledged theory of mental events known as “anomalous monism.”²⁴ Davidson’s ideas and the literature surrounding them provide resources for exploring Morse’s account in more detail.

Davidson endorses the following claims:

(1) Mental events exist and causally interact with physical events and other mental events. This is the same idea that Morse endorses as necessary for law’s folk-psychological conception.

²² Consistent with these ideas, Morse outline the plausible “theory of mind” underlying folk psychological explanations as follows:

The plausible theory of mind that might support such explanations is thoroughly material, but non-reductive and non-dualist. It hypothesizes that all mental and behavioral activity is the causal product of lawful physical events in the brain, that mental states are real, that they are caused by lower level biological processes in the brain, that they are realized in the brain-- the mind-brain--but not at the level of neurons, and that mental states can be causally efficacious.

Morse, “Determinism and the Death of Folk Psychology,” *supra* note 1, at 33.

²³ Donald Davidson, “Actions, Reasons, and Causes,” in *Essays on Actions and Events* (2001).

²⁴ Donald Davidson, “Mental Events,” in *id.*

(2) Materialism is true. There is only one substance, and dualism is false. (Hence the “monism” in Davidson’s anomalous monism.) This means that every token mental event is identical with a token physical event. This is consistent with Morse’s claim that mental states are “fully produced by and realized in the brain.”

(3) Physical events are governed by strict physical laws. This is known as the principle of “nomic causation,” which holds that explanations linking causes and effects fall under exceptionless laws.²⁵ Morse also, we assume, endorses the general idea that physical events are governed physical laws. There are additional philosophical controversies about the nature of causation and these laws, but they are orthogonal to this discussion.

(4) Mental events, while playing a genuine causal role (see (1)), are not governed by physical laws, even though mental events are token-identical with physical events that are governed by such laws. For this reason, mental events are not reducible to physical events. On this point, there is an affinity between Morse and Davidson, but they may also be an important difference. For Morse, the irreducibility of the mental to the physical may just be an empirical limitation—we just haven’t figured out how to do it yet.²⁶ For Davidson, however, this appears to be conceptual limitation. In other words, it is not just that mental events haven’t been reduced; it is that the mental is, in principle, irreducible. For Davidson, the conceptual irreducibility has to do with the holistic nature of rational explanations:

It is a feature of physical reality that physical change can be explained by laws that connect it with other changes and conditions physically described. It is a feature of the

²⁵ For a recent discussion of this aspect of Davidson’s theory, see Marcus, *supra* note 9.

²⁶ See Morse, *Lost in Translation*, *supra* note 1, at 543 (“The coherence of responsibility and competence doctrines and practices are safe. At least for now.”).

mental that the attribution of mental phenomenon must be responsible to the background or reasons, beliefs, and intentions of the individual. . . [with rational explanation] we must stand prepared, as evidence accumulates, to adjust our theory in the light of considerations of overall cogency: the constitutive ideal of rationality partly controls each phase in the evolution of what must be an evolving theory.²⁷

Despite this potential theoretical difference, the similarities are more important for our discussion. Both recognize that the mental depends on (and indeed is ontologically identical with, the physical) but both also deny that the mental can be fully explained or explained away in terms of physical descriptions of brain events.²⁸

We draw these similarities because, to the extent Morse's conception depends on Davidsonian ideas, it inherits the theoretical advantages and disadvantages that inhere in the latter.

The primary theoretical advantage to the Davidson conception is that it purports to give sense to the link between reasons and action. In other words, it purports to explain what it means to act for a reason. Causation provides the link. When we say that an agent performed act X for reason Y we are saying that the agent performed X because of Y, and *because of* means *caused*

²⁷Davidson, "Mental Events," at 222-23. W.V.O. Quine, whose naturalism is often cited to support reductionist claims about the mind and mental attributes, also endorsed this irreducibility:

I acquiesce in what Davidson calls anomalous monism, also known as token physicalism: there is no mental substance, but there are irreducibly mental ways of grouping physical states and events. . . . the mental predicates, for all their vagueness, have long interacted with one another, engendering age-old strategies for predicting and explaining human action. They complement natural science in their incommensurable way, and are indispensable both to the social sciences and to our everyday dealings.

W.V.O. Quine, Pursuit of Truth (2d ed. 1992).

²⁸ See supra note 22.

by (reason Y caused X). The “reasons” in this context are the folk-psychological mental states discussed above: i.e., combinations of beliefs, desires, intentions, etc. Consider again Morse’s example of why readers read his article: their desire to gain knowledge, belief the article will provide it, and intention to therefore read it. This combination provides the reader’s reason for acting, and, under the Davidsonian conception, it does so by *causing* the action. The prior mental event brings about the subsequent physical event: a person’s reading the article. A causal interpretation of the link between reasons and actions, Davidson argued, is correct because an agent could have several different (possibly inconsistent) reasons to act, each of which may rationalize, justify, or explain why the agent acted, but only one of those reasons may be the reason why she acted.²⁹ (She performed act X for reason Y, not reasons A and B, even if A and B would rationalize or justify action X.) According to Davidson, the causal interpretation of “she did X because of Y” provides a way of picking out the true folk-psychological explanation for the agent’s reason or acting from any other plausible reasons.

This conception also appears to avoid the twin pitfalls. Because the mental event is identical with a physical event (in Morse’s words, the mental state is “fully produced by and realized in the brain”), the dualist charge is neutralized. Because the mental event appears to be “genuine” causal work, and it not fully reducible to physical explanations of brain states, the radical eliminative/ reductionist charges are likewise neutralized (in principle for Davidson and perhaps only for the time being for Morse).

²⁹ Davidson, “Actions, Reasons, and Causes,” supra note 23, at 9 (“a person can have a reason for an action, and perform the action, and yet this reason not be the reason why he did it. Central to the relation between a reason and an action it explains is the idea that the agent performed the action *because* he had the reason.”)

Adopting this causal conception, however, raises a number of theoretical puzzles and challenges. The most serious is that it does not appear to adequately distinguish acting *for* a reason and acting *because of* a reason (but not *for* a reason). This is because reasons can cause actions without the agent acting for that reason. For example, one's desire to Z may cause one to tremble which may cause one to Z (this seems to need some explication. Perhaps substitute some action for "x". It just doesn't read clearly as it is). These types of causal chains fit the pattern of reasons causing (or bringing about) actions, but the folk-psychological explanations describing them are false (they do not accurately rationalize or explain the action in terms of the agent's reason for acting because the agent did not act for that reason). A second puzzle concerns lingering doubts about epiphenomenalism—if the mental event is identical with a physical event that is subject to the causal physical laws of the universe, how exactly is it that the mental event is contributing to that causal chain?³⁰ A fuller account is required. A third set of puzzles concerns how the causal story fits with first-person perspectives on action. If the relevant reasons cause the action, why is it not the case that if someone knows their belief-desire-intention, they can't just sit back and wait for the action to occur? Why are we not surprised by the bodily movements that ensue? Moreover, if reasons can cause bodily movements without being the reasons for the movements (e.g., desiring Z causes involuntary movements that bring about Z), then under the causal account we should be able in some cases to know the reasons that caused our movements but not know whether we moved voluntarily or not. This is because, according to the causal interpretation, even when the reasons that caused bodily movement is known, there is still an open question of whether the person acted for that reason.

³⁰ Kim

Each of the issues raised in the previous paragraph has received great of discussion in the philosophical literature.³¹ Our aim is not to catalog all the back-and-forth; rather, we simply point out that a number of these issues are subject of ongoing philosophical controversy and thus to the extent Morse ties law's account of legal responsibility to a Davidsonian-type account of mental causation,³² these issues and potential challenges are lurking in the background.

III. Rational-Teleological Explanations

After linking Morse to Davidson, our second aim in this paper is to step back from the Davidsonian picture and ask whether it is *necessary* to support the law's folk-psychological framework for ascribing legal responsibility. We discuss a second option for the role of mental states in ascriptions of legal responsibility. Under this second option, explanations of actions in terms of reasons are rational explanations with a teleological structure—rather than the Davidson structure, which more closely resembles a type of efficient causation in which one event brings about the next (think of bowling balls hitting pins or dominos falling over). We are indifferent to whether the alternative is called “non-causal”³³ or a simply a different type of causal explanation³⁴; what matters is that it differs from the Davidsonian picture and may undergird legal responsibility.

Let's start with the similarities. As with the Morse-Davidson picture, the rational-teleological framework also attempts to rationalize and understand actions by explaining the agent's action in terms of her reason for acting. It is first important to note that not all

³¹ Cites

³² For an overview of the philosophical issues and how they relate to law, see Michael Moore, *Act and Crime*.

³³ See Hacker, *supra* note 9.

³⁴ See Marcus, *supra* note 9.

explanations of behavior are *causal* explanations. If we want to explain to someone why a baseball player engaged in certain movements (e.g., attempted to bunt), the explanation will make reference to the rules of baseball and strategies for scoring runs; it will not be a causal explanation of how events in the player's brain caused his physical bodily movements (although such an explanation may be called, and may be given, in a different setting). More generally, many explanations of actions in terms of reasons are *normative* explanations, citing a rule, standard, or norm as the reason for an action. The reasons that rationalize or explain the action may also refer to what caused the person to act, but not necessarily (as the previous section discussed).

Turning now to a key difference, in giving a rational explanation of an action in terms of reasons we may explain the action by giving the purpose for which it was carried out. Suppose we want to know why a baseball player moved the bat the way he did. We might explain that he did so (i.e., he bunted) *in order to* move the runner on first base to second base. We have given a reason that explains his action. This explanation may be true or false. He may have done so for this reason, making the explanation true. Or he may have done so for a different reason (making the explanation for a reason???????) We can further breakdown our explanation into the practical-reasoning pattern described earlier—he desired to move the runner on first base to second base, he believed bunting would be a way to do so, and thus he formed an intention to do so. In exercising this practical, rational ability, the baseball player's action has a *teleological* structure. We might describe this as a kind of causation—in which one state of affairs (moving the runner) caused another state of affairs (the player to bunt)—but it is not the kind of causation at work in the Davidsonian picture. It is not as if the future state of affairs (moving the runner to second base) is pulling the prior event (bunting) forward like a train engine pulling a car. It is

more like the event-as-a-whole provides an explanation of its parts. We can say the same thing about the previous example of someone reading Morse’s article to learn about neurolaw. We can explain why someone read the article by explaining that she did so *in order to* learn about neurolaw. This explanation likewise may be true or false. Learning about neurolaw may be a teleological “cause” of why someone read the article, but it would be causal in the sense of the event-as-whole explaining why its parts unfolded as they did, not in the sense of one event bringing about another event (i.e., one domino hitting another or pulling another along).

When we have true explanations in this sense, we can rationalize and better understand the person and her actions. We are thus in a better position to evaluate the person’s conduct: whether she was acting voluntarily or not; whether the person was justified or not; and so on. As Peter Hacker explains, explanations of actions in terms of reasons are hermeneutic—they allow us to interpret the person’s behavior and better understand it “ideographically rather than nomothetically.”³⁵ In rejecting a causal account, Hacker, in words that could have been written by Stephen Morse, continues:

Knowing his reasons for doing what he did, we may come to know what kinds of things weigh with him in his deliberations, and what kinds of considerations move him to act. We can see the extent of his rationality and the degree of his reasonableness, as well as the values for the sake of which he is prone to take action. Such explanations enable us not only to judge the agent and evaluate what he did, but also to judge his character. It enables us to understand our fellow human beings *as persons*.³⁶

³⁵ Hacker, *supra* note 32, at 232.

³⁶ *Id.*

Explanations of actions along these lines strike us as good a foundation as any for ascriptions of legal responsibility. What is added by postulating an additional (efficient foot note needed to explain “efficient” cause) causal role for mental states, thereby opening up the various challenges and puzzles discussed in the previous section?

Before turning to this question, we first point out two advantages to this account. First, it too avoids the twin pitfalls. It is consistent with a materialist conception of mind and does not imply substance dualism. Second, it accounts for the distinction between acting *because of* a reason and acting *for* a reason that creates problems for the Davidsonian account. The problematic situation—in which an agent engages in bodily movements *because of* certain reasons (beliefs and desires) but has not acted *for* those reasons—does not display the rational-teleological structure.³⁷ The person has not acted *in order to* bring about that end.

The primary motivation for the Davidsonian picture is the need to account for the fact that multiple reasons may rationalize an action but not be *the* reason for the action.³⁸ But note that there is no reason to think that just because a reason *rationalizes* an action this makes an explanation in terms of that reason true.³⁹ In other words, there may still be a fact of the matter as to why, or for what purpose, a person acted. The practical rationality that underlies law’s ascriptions of responsibility (under the both the Davidsonian and teleological accounts) is a type of ability. To engage in action is to exercise this ability. The teleological pattern that purports to explain the action may refer to pattern of inferences the agent actually expressed or would

³⁷ For example, if Jones desires to X, and recognizing this desire causes Jones to tremble thereby causing X, Jones did not voluntarily tremble in order to X.

³⁸ See supra note 29

³⁹ Marcus, supra note 9, at 152 (“I am not aware that anyone ever held the view that to say what reason someone had to perform an action is *by itself* to explain her performance of it.)

otherwise endorse after the fact. This makes some patterns true explanations and some false. This facticity is consistent with uncertainty (epistemic or metaphysical) in individual cases as to the actual reasons for an action, and it is consistent with the fact that the explanation a person gives or otherwise endorses for his action may be defeasible.⁴⁰

To illustrate how these two accounts each conceptualize the role of mental states in ascriptions of responsibility, we contrast them with a detailed example.

IV. An Example

In a well-known article purporting to challenge the law's "folk psychological" framework for ascribing responsibility, Joshua Greene and Jonathan Cohen present an example that, they claim, reveals why ascriptions of responsibility will come to be seen as unjustified.⁴¹ The example is the hypothetical case of "Mr. Puppet." In prior work, both we and Morse have pointed out the several problems with the arguments of Greene and Cohen and with the inferences they draw for the example of Mr. Puppet.⁴² Our aim is not to rehash those arguments; rather, we present the example in order to contrast the two different ways that one might conceptualize mental-state explanations in a way that resists the conclusions of Greene and Cohen.

Here is the example. Imagine a group of scientists who create an individual ("Mr. Puppet") who engages in criminal activity. At Mr. Puppet's trial, the lead scientist explains his relationship to Mr. Puppet as follows:

⁴⁰ Hacker, *supra* note 9, at 225.

⁴¹ Joshua Greene & Jonathan Cohen, "For Law, Neuroscience Changes Nothing and Everything," in *Law & the Brain* (Zeki & Goodenough eds., 2006).

⁴² Cites

I designed him. I carefully selected every gene in his body and carefully scripted every significant event in his life so that he would become precisely what he is today. I selected his mother knowing that she would let him cry for hours and hours before picking him up. I carefully selected each of his relatives, teachers, friends, enemies, etc. and told them exactly what to say to him and how to treat him.⁴³

According to Greene and Cohen, Mr. Puppet is guilty under the law's "folk psychological" framework if he was rational at the time of his actions. They assume that he was "as rational as other criminals and, yes, it was his desires and beliefs that produced his actions." Even though his Mr. Puppet's mental states produced his actions, they conclude that "intuitively, this is not fair."⁴⁴ They contend it is not fair because "his beliefs and desires were rigged by external forces, and that is why, intuitively he deserves our pity more than our moral condemnation."⁴⁵ Moreover, all criminal defendants (and indeed all humans) are like Mr. Puppet in the relevant respects. Although not designed by scientists, our beliefs, desires, and "rational" actions are all "rigged by external forces" beyond our control. If Mr. Puppet is not responsible, then no one else is either.

Greene and Cohen think that this example poses a challenge to the "folk psychological" framework because that framework depends on a notion of "magical mental causation."⁴⁶ The "folk psychological system deals with unseen features of minds: beliefs, desires, intentions,

⁴³ Id. at 216.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id. at 217.

etc.,”⁴⁷ and a “crucial, if not the defining feature” of mental states is that they are the product of “an uncaused causer.”⁴⁸ Moreover, “[s]eeing something as an uncaused causer is a necessary but not sufficient condition” for ascriptions of moral and legal responsibility.⁴⁹ Neuroscience, they predict, will help us to appreciate that this type of “uncaused” mental causation is an illusion and to appreciate the “mechanical processes that cause behavior”⁵⁰—the mechanical processes that make us all like Mr. Puppet.

There are a number of ways to resist their conclusions. One way is to concede their points about “magical mental causation” and “uncaused causation” and endorse these notions. Someone adopting substance dualism might, for example, posit that the mind is a distinct substance, outside the causal matrix of the physical world, but that nevertheless exerts a causal influence on behavior—it is the uncaused causer. We, like Morse, reject this option.

The other avenues reject the assumption that legal responsibility requires “uncaused causation.” This dubious assumption is based on the controversial presuppositions that (1) free will is incompatible with physical determinism, and (2) legal and moral responsibility require the existence of this type of free will. Both of these presuppositions are problematic, and Greene and Cohen offer no new arguments to defend either. In recognizing that ascriptions of responsibility are compatible with physical determinism, however, this still leaves open the question of how best to characterize explanations of actions in terms of mental states.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id. at 221.

⁵⁰ Id. at 217.

Let's return to Mr. Puppet. Suppose again that he has the requisite rationality to be held legally responsible for his conduct—he is able to engage in practical reasoning in light of his beliefs and desires, he is responsive to reasons, and so on. Now, suppose that Mr. Puppet robs someone at gunpoint on the street. Why did he do so? He wanted money. Prior to engaging in the crime, Mr. Puppet went through the following bit of practical reasoning: he desires money, he believes that the person walking toward him has money, and so he forms the intention to point a gun at the person and say, “give me your wallet.” He was not sleepwalking, he was not suffering from psychosis, he was not under duress, and no other legally recognized excusing conditions obtained. We think that even in a causally determined physical universe, Mr. Puppet ought to be held legally responsible for his conduct, and we think Morse would agree.⁵¹

The key issue we are pressing is: why? Is it because, as the Davidsonian would have it, Mr. Puppet's mental states formed a link in a causal chain that caused Mr. Puppet's actions in the causally-determined physical world, although the mental states are not reducible to features in the physical world? Or is it simply that we understand, given what we know, that he was acting voluntarily and why he did it (in order to get money)? We assume that, under either conception, Mr. Puppet's brain states would be the same, and that in the counterfactual world in which his mental states were different his brain states would be different as well. What is gained and what is lost in adopting the Davidsonian or the rational-teleological explanatory framework, if each is capable of giving a true explanation of Mr. Puppet's reason for acting and each provides a basis for responsibility? We pose these questions as a challenge for Morse to the extent that he endorses the Davidsonian picture as the only way to save the law's folk-psychological

⁵¹ Morse, “Lost in Translation, supra note 1, at 535 (“all human behavior is caused by its necessary and sufficient causes, including brain causation.”).

framework. One downside to this route is that it reintroduces a mysterious notion of mental cause that is akin to efficient, mechanical causation but that is somehow distinct and anomalous, along with the other issues we discussed in Part II.

V. Conclusion

Mental causation may be one way to account for the link between reasons and action, and it may be the most philosophically popular way to do so, but there may be other ways to account for true explanations of actions in terms of reasons. If so, then the Davidsonian account may not be necessary to avoid the twin pitfalls of eliminative materialism/ reductionism, on one hand, and substance dualism, on the other. We agree the twin pitfalls are to be avoided and the law, to its credit, largely avoids them. We can recognize these conclusions while remaining agnostic regarding the internecine debates between those inspired by Davidson and those inspired by Wittgenstein on what it means to act for a reason. At least we think so.⁵²

⁵² See Michael S. Pardo & Dennis Patterson, *Minds, Brains, and Law: The Conceptual Foundations of Law and Neuroscience* (forthcoming 2013).