

Causation, Compulsion, and Involuntariness

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This article first addresses the persistent confusion between causation and excuse. It demonstrates that causation is not the equivalent of compulsion and that causation *per se* is not an excusing condition. Then the article examines the conceptual and practical difficulties presented by the excuse that is variously labeled "compulsion," "involuntariness," "volitional problems," "irresistible impulse," and the like. It concludes that this excuse, when produced by internal causes, is far less well understood and assessed than forensic clinicians usually assume and that most such excusing conditions are better understood and assessed in terms of rationality problems.

This article addresses two central, related issues concerning responsibility for action that arise at the intersection of psychiatry, psychology, and the law. The first is what I refer to as the fundamental conceptual error in forensic psychiatry and psychology—the notion that if behavior is caused or a causal account can be given, then the behavior is fully or partially excused. The second is whether the law and the behavioral sciences can make conceptual, empirical, and moral sense of the excusing condition that is referred to variously as irresistible impulse, addiction, involuntariness, compulsion, coercion, and similar terms. Seymour Halleck has recently appealed to clinicians to judge such cases on a conceptual rather than on an intuitive basis.¹ Because much forensic mental

health thinking and testimony is bedeviled by confusions about these issues, this article hopes to clarify our thinking and to strengthen our practical performance as consultants, witnesses, and contributors to the professional literature.

The Law's Concept of the Person and Theory of Action

To provide an antidote to mechanistic metaphors that too often obscure the nature of our thinking about responsibility, it is first necessary briefly to consider the law's view of the person. After all, Anglo-American law's concept of responsibility is rooted in its theories of the person and of human action.²

Human action, unlike other natural phenomena, can be explained by reasons for action as well as by "natural" causes.³ When one asks about the behavior of another, "Why did she do that?", two distinct types of answers may be given. The first explains the behavior as a product of the desires, beliefs, and

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intentions of the agent. For example, suppose we wish to explain why Mary killed her spouse. The pertinent reason-giving explanation might well be that the spouse was a vicious wife-batterer and that Mary, who has unsuccessfully sought police help and to leave the home, now believed that killing him was the only reasonable method to avoid physical torture, psychological degradation, and possibly death. The second type of explanation treats the conduct as simply one more bit of the phenomena of the universe, subject to the same natural laws as the rest of the universe (whether or not those laws are deterministic) that explain all phenomena. Naturalistic explanations employ causal variables and laws from all levels of explanation, from the subatomic to the sociological, that allow us best to predict and control the movements of the biophysical contraptions that we term human beings. For example, those who believe that mind can ultimately be "reduced" to brain also believe that in principle Mary's "action" can be explained as the natural, law-governed biophysical result of biophysical causes and that her belief and consequent intention to kill are simply epiphenomenal and not part of the causal explanation of those movements that caused the death of her victim. In this mode of explanation, human actions are indistinguishable from any other phenomena, including reflex movements, the behavior of infra-human species, or the movements of billiard balls on the billiard table or subatomic particles in the atom.

Reason-giving explanations, currently

called "folk psychology" by those who study the related philosophies of social science, action, and mind, are the most common method we all use to explain and predict the conduct of our fellow humans, and they are one of the two dominant modes of explanation in the social sciences. Naturalistic explanation is the standard tool of the physical sciences and the other dominant mode in the social sciences. Also, it is surely the type of explanation stereotypically entailed by the term "science." As clinical and experimental sciences of behavior, psychiatry and psychology, and related disciplines are caught uncomfortably between the reason-giving and naturalist accounts of human conduct. Sometimes they treat action like physical phenomena, sometimes like literary texts, and sometimes like a combination of the two. Some try to assimilate reason-giving to naturalistic explanation by suggesting that desires and beliefs causally explain rather than simply define human action. Most social science proceeds on the assumption that reasons for action are causal as well as justificatory. But the assimilationist move is controversial; it is not clear that the two types of accounts can be so easily merged. Indeed, some claim that a fully naturalistic account of human action is conceptually impossible. These controversies will not be solved until the mind-body problem is "solved"—an event unlikely to occur anytime soon—so the study of human behavior will continue to be vexed by the alternative accounts.

Law, in contrast, is premised almost entirely on reason-giving accounts. Law

is a system of rules, and all rule-following and rule-applying presupposes a being that reasons practically, using the rules as premises in the practical syllogisms that issue in action. The law's concept of a person is thus of a practical reasoning, rule-following creature whose actions must be understood in terms of beliefs and desires. To be a person is just to be a practical reasoner. As far as we know, only *Homo sapiens* reflects self-consciously on its own beliefs and desires and revises its reasons for action intentionally. This is what distinguishes persons as persons from other species and from the rest of the natural universe. All legal concepts, including those pertinent to criminal liability, will therefore be grounded in the view of persons as practical reasoners.⁴ Although other conceptions of the person and different premises for law are surely conceivable, Anglo-American and other western systems of law are so grounded.

On occasion, the law does seem concerned with a causal account of conduct. For example, cases of legal insanity are usually supported and explained by using mental disorder as a causal variable. Even in such cases, however, the search for a causal account is triggered by the untoward, "crazy" reasons that seem to have animated the defendant's behavior. And the legal rule employed, the insanity defense, primarily addresses reasoning rather than naturalistic causes. Acquittal by reason of insanity requires that the defendant was not only mentally disordered, but also, as a result, that she was unable to appreciate the wrongfulness or nature of her act.

Note, before we turn to the next section of the article, that all accounts of human action in the forensic psychiatric and psychological literature are undeniably and firmly practical reasoning accounts.

Causation and Excuse

Now, let us turn to the fundamental conceptual error—the tenacious but confused belief that moral responsibility, criminal liability, and even *mens rea* are negated if behavior is caused, especially by an "abnormal" cause such as mental disorder. To quote a text from an author who shall remain anonymous because he ought to have known better, "There are mountains of data to disprove free will." This confusion, which is common among lawyers and mental health professionals, arises from many sources including, most obviously, the alleged philosophical incompatibility between universal causation and/or determinism and "free will." No consensus exists among scientists or philosophers about the meaning of determinism or free will, and both universal causation and determinism are unverifiable hypotheses, even if they are working assumptions of natural scientists. This article is not the appropriate forum to rehearse the myriad objections to grounding a theory of moral responsibility and criminal liability in this supposed incompatibility. I will therefore limit discussion to the two dominant but erroneous arguments that support the assertion that causation excuses. These arguments, which I will discuss in order, are first, that causation is compulsion

and therefore caused behavior is excused because it is compelled; second, that causation itself is somehow an excuse.

Before turning to these arguments, however, consider the following general argument that will bear repeating. If the unverifiable hypothesis of determinism or universal causation is true, then *all* behavior is determined or caused and the presence of a determining cause for behavior cannot distinguish the responsible from the nonresponsible. Similarly, if determinism or universal causation is not true and human behavior, unlike all the other physical phenomena of the universe is not caused, then the *absence* of determining causes cannot distinguish the responsible from the nonresponsible. In brief, determinism is irrelevant to ascriptions of moral and legal responsibility.⁵ With this general point in mind, now let us turn to the arguments that causation is compulsion or that causation is itself an excuse.

Causation Does not Equal Compulsion

Consider the notion that compulsion is the root of the causal theory of non-responsibility. If a person is compelled to perform an action, and the person was not responsible for placing herself in a position where compulsion was foreseeable, then the person should not be held responsible for the action. It is relatively uncontroversially agreed that people who were compelled to act could not have been expected to act otherwise, and that it would therefore be unjust to hold them responsible for their com-

elled actions. The important task then is to clarify the meaning of compulsion.

I will return to this issue in more detail when discussing the problem of involuntariness, but for now it is sufficient to note that there are two ordinary varieties of compulsion, physical compulsion and constrained choice. The former exists when a physically irresistible force moves a person's body although the person does not intend the movement and may even try to the utmost not to perform it. In these cases a person literally has no choice and has not "acted." The patellar reflex is a classic example. For another example, if you refuse to take psychotropic medication and are forcibly injected, you are physically compelled to take the medication. Although we do not hold the person responsible in cases of true physical compulsion, such cases are quite rare when responsibility is in question and they are quite obviously not what the causation-equals-compulsion theorist has in mind.

Constrained choice exists when the actor is not physically forced to act, but circumstances produce a dreadfully hard choice that leaves the actor without a reasonable alternative. Even though the person has a choice among actions—that is, no irresistible physical force is moving the person's body—there is no "real" alternative, and the person cannot be expected to act otherwise. The excuse of duress in the criminal law furnishes a classic example. For example, a person is compelled to provide information on this account if the interrogator threatens to torture a loved one if the person is silent. Some would argue that the com-

elling "circumstances" may also be primarily of intrapsychic origin, as in the case of pedophilia.

Again, however, constrained choice is not what the causal excuse theorist envisions. Although all choices are made in the context of some constraint, few behaviors are performed in response to choices of the type that have normative import for excusing. In most cases of action, as we all know from everyday experience, the actor is unconstrained by a hard choice that deprives him or her of acceptable alternatives. All of us are presumably caused by something to do what we do, but in very few instances are we compelled to act according to any coherent, morally relevant sense of compulsion. Something surely caused you to read this paper—it is not an uncaused, random event in the universe—but equally surely you are not compelled to read it.

Cases of legal insanity provide an important application of the conclusion that causation is not compulsion. Most cases of legal insanity do not involve psychological or physical compulsion. The actions of the legally insane are actions, not mere bodily movements, and neither crazy nor normal actors face hard choices often. Crazy actors may act on the basis of delusional reasons, for example, but these actions are usually no more compelled than the behaviors of normal actors who act for intelligible, rational reasons. Acting in accord with one's beliefs—beliefs that are themselves caused—is not psychological compulsion unless one delusionally believes that he or she is in a hard choice situation.

And in that case, the real problem is irrationality, not compulsion. Both a committed political terrorist, who professes her political beliefs through a terrorist act, such as planting a bomb, and a crazy person, who plants a bomb because she believes that it will magically cause peace on earth, are caused to act as they do, but neither is compelled. We would hold the terrorist responsible for her act. And we might excuse the crazy person, but not because her behavior was more caused or compelled. Thus, when we say that the person who acted in accord with his or her crazy beliefs was compelled, we are really talking very loosely. What we usually mean is simply that we believe that the actor should not be held responsible. The locution, "compulsion," is just a loose shorthand, albeit a confusing one, for that conclusion.

Not all behavior is compelled according to our normative meaning of the term "compulsion." Some behaviors, all of which are caused, are compelled and therefore the actor should not be held responsible for them. But actors are excused because their behavior is compelled, not because it is caused.

Causation Itself Does not Excuse

Now let us turn to the second argument that relates causation and excuse—the incorrect assumption that causation itself excuses. Conceptual and practical difficulties also beset this theory. In brief, all behavior is caused, but not all behavior is excused in a system in which moral concepts have meaning, and thus causation itself cannot be the predicate for nonresponsibility.

The following examples demonstrate the implausibility of the "pure" causal theory (and the implausibility of the theory that caused behavior is excused because it is compelled). Assume that a writer is working at her desk by a window as sunset approaches. When the natural light becomes insufficient to continue working, she turns on the desk lamp. According to any coherent account of causation, her act of turning on the light was caused primarily by her perception of the increasing darkness. Now take an example of an internal, physiological cause for behavior. Suppose the same writer works straight through the usual dinner hour. Later that night she notices that she is very hungry and eats something. Her eating is clearly caused. The writer is caused to turn on the lights and caused to eat, but there seems no reason to excuse her from responsibility for her acts in either case.

In both examples the writer was not physically or psychologically compelled to act as she did, and she had the ability and the opportunity to act otherwise if she had so decided. She might have remained in the dark or fasted until morning. Moreover, in both cases the action seems entirely rational. The same is true of the terrorist when she plants her bomb. Although her actions surely have causes, she was neither compelled nor irrational. According to the causal theory, the terrorist should not be held responsible nor should she be morally applauded or condemned because her act, too, was caused. The pure causal theory is simply misguided and both the writer

and the terrorist are very much responsible.

Most behavior is neither irrational nor compelled and virtually all people all the time have the ability and opportunity to act otherwise. Thus, the causal theory is inconsistent with our view of ourselves as moral beings. A moral and legal analysis of action holds responsible an actor who acts for rational reasons (or, at least, has the capacity to do so), is not compelled, and has the ability and opportunity to choose alternative actions. In other words, human actions are morally and legally distinguishable from the movements of machines. The concept of responsibility applies to persons acting according to desires, beliefs, and intentions. It most assuredly does not apply to impersonal, mechanical nonhuman phenomena. It makes no sense to hold nonhuman causes such as the winds or the tides responsible for the effects they produce. The causal theory has little to do with ordinary notions of responsibility; and, indeed, as scientists are fond of saying, responsibility is irrelevant to it. If people are to be treated as responsible or not, granted autonomy and liberty or not, praised or blamed, it must be on grounds other than causation.

The criteria for criminal liability, including *mens rea*, are normative standards conventionally created to serve the needs of our society. What we require of people for full criminal liability is rationality and intentionality, not the presence or absence of partial or complete causation. The criminal law excuses people who are nonculpably incapable of ra-

tionality for any reason, and it holds liable people who are capable of rationality for any reason. For a brief example, a person with a brain tumor that has a causal effect on behavior who nonetheless behaves rationally and with a required special *mens rea* will not be excused, and a person without any identifiable lesion who acts irrationally and who we believe is incapable of behaving rationally will be excused. We tend to assume, probably correctly in most cases, that an "abnormal" cause must be operative when a person behaves abnormally. But the touchstone of legal abnormality is unavoidably irrational behavior, even in the absence of evidence of abnormal causation or in the presence of normal causation. Children are legally "abnormal" and nonresponsible because they are not fully rational, and not because their behavior is "more caused" or less "normally caused" than the behavior of adults.

The most important objection to the causal theory of (non)responsibility, even if it is coherent and relevant to the evaluation of responsibility, is that in principle it fails to hold anyone responsible for any behavior. Because all behavior, normal and abnormal alike, is caused according to the causal theory, no actor is responsible for any act. No matter which theory of causation the "universal causalist" subscribes to, he or she endorses the view that all behavior is causally determined. We are all products of our biology; we all have learning histories; a profound and deep psychodynamic formulation can be constructed for all behaviors; we are all

products of our culture or the inevitable forces of historical materialism. Or whatever. No one would be held responsible, no one should be praised or blamed, if the causal theory is correct. There is no way out: if causation negates responsibility, all must be excused for everything and no one should be praised or blamed. The causal theory is an unworkable and irrelevant moral, social, and legal theory of responsibility. It cannot support or explain our rules and practices; if no one is responsible, our deepest premises about human conduct and the social, moral, political, and legal culture based upon those premises are all meaningless.

Some try to escape the logic of these arguments by claiming that only some behavior is caused—a position aptly termed "selective determinism."⁶ Unfortunately, the aptness of the term is not matched by the aptness of the arguments used to support the position. Selective determinism is any of its various guises is wildly metaphysically implausible, and even if it is somehow an accurate account of causation, its relation to normative conceptions of criminal liability and responsibility is unpersuasive at best.⁷

The Problem of "Internal Compulsion"

Behavior is not necessarily compelled or involuntary simply because it is caused, but the almost universal acceptance of excusing claims of duress and coercion in criminal and civil law testifies to the implicit assumption that an excuse on these grounds should some-

times obtain. That is, the law often accepts that there are appropriate cases for excuse when the person claims, "I psychologically could not help myself." Most of these doctrines involve compulsion from a source external to the actor. Forensic psychiatry and psychology, however, are concerned with compulsion arising from mental abnormalities within the person. How should forensic psychiatry and the law understand claims about psychological involuntariness or compulsion resulting from mental abnormality—claims that are variously fashioned as "involuntariness," "duress," "irresistible impulse," "coercion," "compulsion," "volitional" problems, "control" problems, and the like? (Hereafter I will use these terms interchangeably; none has consensual meaning and everything turns on how they are defined, a task to which I turn below.) Although rationality is a normative concept about which there is no consensus among philosophers, psychologists, and others, there is a rough, common-sense consensus about "everyday" rationality and its place in practical reason. In contrast, no consensus about involuntariness exists among "experts" or laypeople. Although many forensic psychiatrists and psychologists (and lawyers) assume that they possess a good account of involuntariness and of so-called pathologies of the will and volition, no satisfactory and surely no uncontroversial account of any of these topics exists in the psychiatric, psychological, philosophical, or legal literatures. Indeed, most articles on such topics offer no genuine empirical or philosophical the-

ory of the will, voluntariness, or the other central variables in the argument. Moreover, I believe that many of the cases that are believed to represent volitional problems are far better conceptualized as rationality problems. The following sections attempt to demonstrate that the problem of involuntariness is far more complicated than we usually admit, to clarify some of the rectifiable confusions, and to offer, tentatively, my current approach to the problem.

My strategy is to begin with a choice among competing models of interpersonal compulsion, about which much more has been written and understood. Compulsion claims based on mental abnormality are "one-party" cases, however, so it will then be necessary to apply the chosen two-party model to such cases to determine if conceptual and practical progress is possible.

Theories of psychological compulsion or involuntariness may be classified into two types—empirical and moral. The former rely on analogies to cases of physical compulsion and suggest criteria for when a nonphysically compelled actor is deprived psychologically of the ability to behave otherwise. (Remember that determinism is irrelevant to such criteria because if determinism were true and always produced compulsion, then all action would be compelled and excused.) The claim is that psychological compulsion makes it literally impossible for the person not to perform the allegedly compelled action. Moral theorists abandon the quest for an empirical test because they believe it is metaphorical, technically infeasible, and normatively

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undesirable. They claim that the analogy to true physical compulsion is inapt and that we lack the understanding and expertise to “measure” the ability to do otherwise in the absence of physical compulsion. Therefore, most empirical conclusions about psychological compulsion are simply that, conclusions, unsupported by evidence. Moreover, there is no evidence to support the claim that psychologically compelled actors literally are unable to behave differently. Virtually all extant empirical work addressed to the problems is unpersuasive and marginally relevant at best. More important, our intuitions about psychological coercion are often inconsistent with our considered moral evaluations and thus the former furnish no adequate guidance to the latter.⁸ Finally, proponents of the moral test note that many writers confuse the two tests, claiming without valid supporting evidence that empirical involuntariness exists, when they really mean simply that they believe the actor should be excused.

In recent years I proposed an essentially empirical, pleasure/pain balance test for psychological compulsion,⁹ but have now been convinced by the arguments of the empirical skeptics and moralizers, such as Fingarette and Hasse¹⁰ and Wertheimer,¹¹ that a moralized approach is conceptually and practically preferable, despite its own problems.¹² Using a moral model, then, the working criteria for a compulsion excuse are as follows:

First, the person is subjected to an unjustifiable threat, that is, a set of circumstances that will make the person

worse off compared with some baseline, if she doesn't perform the wrongful act.

Second, doing the wrongful act is an excusable alternative under the circumstances.

Third, the person is not responsible for placing herself in the circumstances that produced the hard choice.

In other words, coercion exists when the actor is not physically forced to act, but circumstances produce a dreadfully hard choice that leaves the actor without a reasonable alternative. Even though the person has a choice among actions—that is, no superior force is physically moving her body—there is no “real” or “acceptable” alternative, and the person cannot be expected to act otherwise. This test is, I believe, consistent with the various duress and coercion criteria in criminal and civil law.¹³

Duress furnishes a handy example of the working of the test. Suppose a gunslinger threatens to kill you unless you kill someone else. The balance of evils is neutral so the justification of necessity is unavailable; the excuse of duress is your only hope for acquittal if you comply with the gunslinger's threat and kill. Consider the application of the three criteria: First, you have been unjustifiably threatened to be made worse off; Second, killing another may be excusable under the circumstances; And third, let us suppose that you were not responsible for placing yourself in the circumstances. Thus, the criteria are satisfied and the excuse of duress may obtain. Of course, whether a duress excuse for homicide should obtain is highly controversial,¹⁴ suggesting once again that the is-

sue is primarily moral and not psychological. If it were the latter, there would be no reason to limit the doctrine.

Note a few things about the example. If you kill, you do so as the result of a quite intentional choice; and, indeed, you might feel entirely cool and unafraid as you choose the obviously rational alternative for you under the circumstances. Thus, there is no rationality problem to excuse and the claim is pure psychological compulsion, but what is the meaning of compulsion here? No pathology of will exists—you may not feel any sense of pressure or “irresistibility” as you coolly choose the rational alternative. Indeed, if given time, you may deliberate about your choice in the fullest sense. Moreover, even if you do feel “pressure,” your will is able absolutely effectively to generate the behavioral repertoire that will save your life. The law and morality will excuse you, however, because you were unjustifiably placed through no fault of your own in a threatening circumstance that left no reasonable alternative. The basis for the excuse is that it is unjust to condemn and punish people whose wrong act is the only reasonable course of conduct for them under the circumstances. The law cannot fairly ask people to undergo awful harms, even if they must commit other terrible acts to avoid harm to themselves.

But, to address the obviously begged question, what is a morally and socially reasonable alternative? Once again, we are adopting a moral test that depends on normative social judgment. Thus, if our miscreant gunslinger instead threat-

ened to break your arm unless you killed, the law would not excuse you no matter how cowardly, afraid, and subjectively pressured you felt. On the moral view, it is simply not a reasonable alternative in our society to kill another rather than to suffer a fracture. The subjectivists will immediately object, however, that this argument misses the point: if you are cowardly, they will claim, you may experience the threat as irresistible and therefore you couldn't help yourself and it is unreasonable and unfair to punish people who are unable to behave differently. But not only is this an undesirable outcome that will threaten to undermine any just blaming, it also requires an empirical assessment that cannot be made accurately.¹⁵

Now, can the objective, moral model be applied to one-party, *intrapersonal*, cases? The problem of intrapersonal involuntariness may be characterized generally as follows: You want to do something that you know you shouldn't do, but your desire is so strong that you feel like you have to do it anyhow because the pain of not doing it will be unbearable. Put another way, you experience intense and unpleasant affect that can only be alleviated by wrongful action. Now, if you don't know what you are doing or that it is wrong, this is a standard rationality problem and casts little light on pure inner compulsion. Suppose, however, that you know rationally that you shouldn't perform the wrongful act because you correctly believe that it is wrong, but you feel that you can't help yourself because it will simply be too awful not to perform it. For example,

you know that you can't afford to lose any more money gambling, but feel that you must place that next bet. Or, you feel overwhelmed by intense rage that can only be alleviated by violent action. Or you desire to have sexual contact with a child, even though you know that doing so would be exploitative and harmful. Most classes of diagnoses that involve alleged pathologies of the will—the impulse disorders, drug dependence, so-called paraphilias, and compulsions—fit this characterization. With compulsions and many impulse disorders, the sufferer feels a dysphoric building of tension, anxiety, or other unpleasant affect that seemingly can be alleviated only by doing the wrong thing.

Do the generic two-party criteria apply to the analogous one-party case? First, make the simplifying assumption that you are not responsible for your desires. Aristotle would be aghast, but many would agree, especially if the desire were considered pathological, as in the case of compulsive hand-washing. And let us assume further, that you make every effort to avoid those situations that elicit the problematic desire. Despite your efforts, however, the desire arises and threatens to make you feel much worse than you now do unless you behave wrongly by acting on it. Although the threatened dysphoria from nonfulfillment of an unwanted, "abnormal" desire and from the continuation of unpleasant mental or emotional states cannot sensibly be described as a wrongful or morally unjustified "threat," the despairing desirer surely does not "deserve" to be threatened. Consequently,

it is reasonable to consider the threat "unjustified." In sum, assume that the actor faces an unjustifiable "internal" threat and is not responsible for having the pathological desire or for placing herself in environments likely to elicit it. Again, the critical question is whether performing the wrongful action to avoid the threatened or continued dysphoria is reasonable.

On the moral view, if the wrong thing desired is small beans, then it may be reasonable to do it rather than to suffer substantial dysphoria. Suppose, for example, that the compulsive hand-washer's desire to wash builds to a crescendo just as his spouse is telling him something terribly important to her and he rudely and insensitively leaves to go wash. The spouse wouldn't like it, of course, but if she has any charity in her, she would excuse him. Or, suppose that the pedophile unlawfully purchases child pornography. An excuse might not be unthinkable. Or, suppose that an enraged, unnecessarily cruelly jilted lover spews despicable epithets at the rejecting other, but commits no physical assault. We might well forgive the vile words.

Suppose, in contrast, however, that the hand-washer's crescendo of desire to wash peaks just as his spouse chokes on some food and will die without immediate assistance. Or, suppose that the frustrated pedophile has intercourse with a passive, perplexed child. Or, suppose that a drug-dependent person can obtain the money for the next fix only by committing armed robbery or burglary. In the latter cases—the choking spouse, the molesting pedophile, and the

withdrawing drug-dependent robber—the moral test would hold that the person must bear the dysphoria rather than cause dreadful harm-doing by omission or action.

In contrast, note that the subjective view would simply inquire whether the person was psychologically capable of acting differently, whatever that means. It would then be obliged to excuse the actor if she somehow was able to persuade that the potential dysphoria allegedly made her feel helpless in the face of her desire, no matter how dreadful the wrongdoing. Much as some people might terribly fear even slight physical harms, others might have similar difficulty bearing mildly unpleasant emotions. “Pressure” is “pressure,” whether its source is objectively justifiable or not. So, the empirical model is hard put not to excuse the physical or emotional coward who really is afraid. One may object, however, that if the dysphoria was weak and the deed to avoid it so terrible, then the problem must be characterological lack of self-control. But this is simply another way of saying the person is a coward. In either case, the actor felt like she could not help herself. And is the empiricist willing to hold people responsible for their characters? How, at the age of self-reflection and maturity, can an intense coward justly be expected on threat of punishment to develop the courage to fight and conquer the cowardice? If this expectation is unreasonable, the internal coherence of the empirical model requires that this person must be excused. But excusing in such cases would be a morally perverse result based

on an assessment technology that we lack.

Analyzing Internal Involuntariness

Although the moral analysis of two-party compulsion cases appears profitably applicable to one-party cases of “internal” coercion, the analysis is complicated. This section will explore the conceptual complications.

First, note again that one-party involuntariness cases are not instances of physical compulsion, in which an external or internal physically irresistible cause, such as a much stronger person or a neuromuscular reflex, moves a person’s body although the person does not intend the movement and may even try valiantly not to perform it. In these cases a person literally has no choice and has not “acted.” In contrast, the coerced actor has a desire/belief set that rationalizes her bodily movement when she washes to avoid dysphoria, strikes out in rage, sexually molests a child, reaches once again for the bottle, or lays down yet another bet at the roulette wheel. Because many wish to excuse at least some people who yield to strong, allegedly pathological desires, they analogize goal-directed, intentional actions driven by such desires to truly involuntary movements. By this analogy they hope to strengthen the case for excuse, but remember that the use of the words “coercion,” “compulsion,” “involuntary,” and “irresistible” in these cases is moral and metaphorical—it does not have the literal, material definition that obtains in cases of physical compulsion. It is simply a loose characterization of

those circumstances in which we excuse those who behave wrongfully in response to pathological desires. The rational victim of the threatening gunman who kills to avoid her own death is surely not acting involuntarily, except in the moral sense that we might excuse her.

Second, the actor's conduct in response to so-called irresistible impulses, including impulses produced by intense emotions like rage, is decidedly intentional and, in important ways, rational—the actor acts wrongfully “on purpose” for the perfectly rational reason that she wishes to avoid seemingly unbearable dysphoria. In the case of some impulse disorders and compulsions, the desire itself may seem irrational, but satisfying the need to avoid pain is surely not irrational. Moreover, for many people affected by the so-called paraphilias, some impulse disorders, and drug dependence, satisfying the desire produces positive pleasure as well as the avoidance of pain, and seeking pleasure is surely a rational reason to form an intention. Of course, if a person is irrational because her ultimate goal is irrational, intense craving collapses into a rationality problem. That is, we are deciding that it is irrational to want anything “that badly.” Observe, finally, that in cases where the actor satisfies the desire by wrongful conduct both to avoid dysphoria and to seek pleasure, the test of reasonableness for yielding to the desire is complicated on either the moral or empirical view. If the motive for satisfying the desire is purely pleasure, then there is no threat and no com-

pulsion, no matter how strong the desire is.

Third, even if a person has intense, irrational desires that cause great dysphoria, this does not mean that there is some defect with the will or volitional capacity. Some modern theories of action posit the will or volition as an operative variable, especially as a functional state that translates desire/belief sets into action.¹⁶ Other theorists think of volitions as actions (of the will);¹⁷ others think that the concept can be dispensed with;¹⁸ and others, most notably Gilbert Ryle,¹⁹ believe the concept of the will is conceptually preposterous. Such disputes should certainly give almost paralyzing pause to those who facilely discuss problems of the will and volition, assuming that they have firm understanding of these concepts and can opine confidently about their bearing on responsibility. But even accepting that the will or volitions are usefully thought of as functional states, problems of “compulsion” or “control” are quite distinct from what might be termed “pathologies” of the will, conceived as a functional state. The functional mental state that produces action successfully satisfying an intense, irrational desire is as intact as the functional mental state that produces action satisfying an intense, rational desire. The “problem,” if there is one, is irrationality, not volitional defect.²⁰

Fourth, the actor suffering from strong, allegedly pathological desires exercises choice when she intentionally acts to satisfy her desire. To hold that no choice is exercised is confusing, loose

talk that begs the important questions. There is no doubt that choice can be constrained, limiting the person's reasonable alternatives in the circumstances, but the decision to act or not to act is nevertheless a choice, even under the most constraining circumstances. Thus, deciding which constraints should excuse will require a moral theory about excusing. Consider the following case: Suppose you decide to add a room with bath to your house and entertain bids on the same plans from two contractors, A and B, who are equally skilled, equally reputable, equally likable, and equally efficient. A bids \$60,000; B bids \$45,000. Remember that all things are equal. Do you exercise a choice when you choose B, as any rational person would? Of course you do, although you would rightly claim, when you turned A down, that you really had no meaningful choice. Note in this case that the absence of meaningful choice would not allow you to claim coercion and avoid paying B. This situation involves an offer rather than a threat, of course, and thus fails to meet the moralized coercion criteria; but it does demonstrate first, that choice is involved, even when there is "pressure" and no reasonable alternative and, second, that the absence of meaningful choice does not *per se* excuse. The compulsion problem is not lack of choice—it is yielding to an unjustifiable choice in the absence of reasonable alternatives.

Fifth, in one-party (and two-party) cases, if threatening circumstances prevent one from thinking rationally, then a rationality problem exists that can be dealt with as such. Many of the cases we

term "volitional" or involuntary fall under this description. Indeed, some would claim that all cases are like this, even in the absence of obvious irrationality. Suppose, for example, that the person is not rendered overtly distraught by threatening circumstances. Imagine that a person is petrified but seemingly rational: she has her wits about her but feels that she must kill because she is morbidly afraid of bodily injury. Many commentators would treat this case, too, as a rationality problem—the morbidity of the fear is itself irrational and the intensity of it makes one unable in any meaningful sense to weigh the competing alternatives. Note, finally, that if this case is treated (incorrectly) as a coercion case, the empirical model would excuse and the moral model would not.

The sixth, related observation about one-party cases is that they rarely involve pure impulse problems in the absence of substantial irrationality and there is persistent confusion in the literature between rationality problems and so-called volitional defects. For example, in a recent article, Dr. Richard Rogers²¹ cites the case of a woman suffering from major affective disorder who, in the depths of her hopeless dysphoria, attempts suicide and the homicide of her children to "end their suffering." Although Rogers treats this case as one of defective volition, note that the depressed mother's assumption that the children's suffering is somehow indistinguishable from hers is a psychotic, gross misperception of reality, as is her belief that her situation is genuinely hopeless. Although there are clearly rational hom-

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icides and arguably rational suicides, this case presents neither, and terming it a volitional problem, especially the slaughter of the children, achieves no gain in comprehension.

But we can recharacterize the case, of course. Focusing solely on the suicide, we could treat the threat of unbearable, unending dysphoria as meeting the first compulsion criterion, and then treat the suicide as the only reasonable alternative under the circumstances. But most of us do not believe that suicide is the only reasonable alternative—we know that even the most severe depressions are self-limiting, that most respond to various treatment modalities, and that virtually all severe depressions compromise the sufferer's ability to think rationally about her situation. Few would claim that this person is rational about herself, her disorder, and her future. If her situation really was hopeless, then the case may represent an entirely rational suicide that poses no volitional problems. Rogers also raises the case of a person with major mania, but once again the problem that ultimately causes legal trouble is the person's beliefs and perceptions about herself and the world. The manic person does not knowingly do wrong because elevated mood somehow impels her to do so. Rather the mood disorder distorts her perception of reality and the consequent rationality of her practical reasoning.

Except, possibly, for the impulse disorders and related diagnoses, it is difficult to envision a case in which the defendant was suffering from a severe mental disorder with marked coercive

features, but was substantially rational. Virtually all cases that would justify acquittal by reason of insanity or various forms of partial responsibility²² demonstrate that marked irrationality infected the practical reasoning that motivated the criminal conduct. Crazy beliefs and perceptions are the touchstone. Nevertheless, the confusion of irrationality and volitional problems persists.

Seventh, another enduring mistake in analyzing one-party cases is the belief that abnormal cognitions are somehow more coercive or compelling than normal cognitions. An actor motivated by crazy beliefs is classically irrational, however, and there is no need to resort to coercion analysis. But in any case, it is a logical error to believe that mistaken perceptions and beliefs, whether normally or abnormally generated, are more compelling in practical reasoning than accurate perceptions and beliefs.²³ Once again in support of "volitional" claims, Dr. Rogers cites the case of a person suffering from paranoid schizophrenia with chronic persecutory delusions. This example is bewildering, however, because I should have thought that criminal conduct motivated by delusional beliefs is classically irrational. Moreover, the delusionally mistaken belief of the persecuted paranoid that she is about to be attacked and must use self-defensive force is no more "compelling" than the accurate belief of a police officer that she must use deadly force in justifiable self-defense. Both have the same survival desires, and there is no reason to doubt that both experience these desires with equal intensity. The

unfortunate paranoid is of course irrational and in appropriate cases will be excused on that basis. The paranoid might not have attacked but for the delusional belief, but the problem is not lack of self-control, it is the irrational belief. If a person simply felt, without substantive mental content, that she had to attack an innocent victim or suffer some dreadful dysphoria, the case would be far more purely volitional, but also clinically unlikely.

Eighth and last, if there are cases of purely impulsive, thoughtless conduct, where the actor is incapable of any form of reflective awareness about her desires—cases that might be termed impetuous among the normal or explosive disorder among the abnormal²⁴—these are clearly cases of irrationality by any reasonable criteria of rationality.

In sum, although preliminary analysis of one-party cases suggests that pure cases may exist and fit the paradigm for excuse, cases of pure internal coercion, compulsion, or “volitional” problems are extremely rare. Moreover, many would treat as rationality problems those cases of arguably “irrational” ends that might otherwise be characterized as purely volitional, like the pedophile, the pathological gambler, or the cool coward who will commit any harm to avoid injury to self, no matter how slight. Nevertheless, infrequency alone is insufficient reason to deny an involuntariness excuse if it is justified in principle.²⁵ Let us therefore consider such cases in more detail. In particular, how should morality and the law respond to a case of a pure internal coercion—that is, a person

who uses rational but wrongful means to avoid dysphoria threatened by arguably rational desires. Can these cases be treated as based on mental abnormality and on that ground as justifying a moral or legal excuse? Can these cases ultimately be distinguished from rationality problems?

“Pure” Internal Involuntariness?

Most laypeople and many clinicians would probably treat pure psychological compulsion cases as instances of clear-headed akrasia—that is, normal weakness of the will—and would hold the actor fully responsible because the actor does not seem sufficiently mentally abnormal. Suppose that a generally law-abiding person is nonetheless exceptionally avaricious and greedy—a moneyphile, if you will. If this person is faced with a tempting situation in which the theft of a large sum of money is easily accomplished with little chance of detection, she may steal. How do we explain this case? One possibility is that she was so overcome by her desires that she failed to think straight about the moral and legal consequences of what she was doing. If so, the excuse, if any there be, is once again irrationality. If an actor “loses control,” that is, does something that she would not otherwise do, as a result of a cognitive glitch, this is a rationality problem. The alternative possibility is that the actor recognizes the reality of the situation in all its moral relevance but is somehow *unable* to refrain from acting wrongly because she fears mounting dysphoria or the like.

This is the classic case of “irresistible impulse.”

Do we excuse the moneyphile? The usual answer is negative because moneyphilia is a character trait rather than a disorder, and therefore the person is responsible for her character and is able to maintain both cognitive rationality and self-control in the face of the strong desires her character produces, even when tempted directly. How is this case, distinguishable, however, from pedophilia or gambling? Simply referring to the latter as mental disorders rather than character traits begs the crucial question. Are our “normal desires” up to us more than our “abnormal desires”? We are all in large measure the product of biological endowments and environments over which we had no control, and many of our central desires are firmly established well before we reach the age of genuine, independent moral reflection on those desires. Moreover, assuming, not uncontroversially, that one can adequately distinguish abnormal from immoral desires,²⁶ what reason is there to believe that it is more difficult to learn to control the former than the latter? And if we try to distinguish the cases on the ground that pedophilia and pathological gambling desires are irrational and moneyphilia is not—as is implied by the locution, “abnormal desires”—then we have redefined the problem once again as a rationality problem.

Another approach is to suggest that the desires of the pedophile or pathological gambler are necessarily stronger than the moneyphile’s desires and that nonfulfillment will produce correspond-

ingly greater dysphoria than in the case of the moneyphile. But this won’t work either. There is simply no scientific or clinical evidence that “abnormal” desires are necessarily stronger than “normal” desires and thus that abnormal desires are uniquely able to threaten one with unbearable dysphoria. The moneyphile faced with an unattended pile of “the ready” may feel as much “pressure” as the pedophile unwittingly left alone with an attractive child. An extraordinarily strong desire for power, fame, or wealth motivates people to diverse unseemly conduct; and for some people, pedophilic and other allegedly abnormal urges are mild and avoidable even under the most devastatingly tempting circumstances. What is the relevance of the source of the desire except that some are “abnormal,” that is, irrational, thus collapsing the analysis into a rationality problem once more. If desires or ends conceptually cannot be irrational *per se*, providing a principled way to distinguish these cases is difficult.

Perhaps the soundest approach is simply to define extreme desires of any sort, no matter how rational they might be in milder forms, as abnormal and to limit one-party coercion excuses to those people who suffer from any type of extreme desire that can threaten the person with unbearable dysphoria.²⁷ Indeed, most of us think there is something more than a little wacky about wanting anything “too much.” How should we respond to this case? First, are desires that extreme appropriately characterized as rational? And when people are motivated to act wrongfully as a result of such extreme

desires, do we believe that they are capable of rationally weighing the situation? I don't have answers to these questions, but my hunch is that most people would conclude that neither extreme desire nor practical reasoning that includes such desire is rational.

Finally, on the moral view, how can threatened undesirable subjective states ever justify a rational actor's wrongdoing? The moral, objective test does not ask an empirical, phenomenological question that requires an answer about an unknown level of ability to refrain. The expectation of reasonableness is not a psychological variable but a moral standard, and we assume that all can refrain from wrongful conduct, albeit some with greater difficulty than others. Thus, if it would be unfair to require a person to refrain from causing harm—as in the case of person who acts in response to the threatening gunslinger—the law will excuse her even if she is capable of refraining. Conversely, as a moral matter, we simply expect people to bear significant harms before they will be excused for harming others. Indeed, most American jurisdictions provide a duress defense only if the defendant had been threatened with death or grievous bodily harm, and most provide no duress defense to criminal homicide. The reasoning in two-party cases is that only the most seriously harmful threats can excuse and in many jurisdictions no threat excuses taking a life. Understanding why the one-party case should be different is obscure. Consequently, to justify even partial excuse for all but the most petty crimes, an actor would have

to demonstrate that extraordinary fear of dysphoria drove her to unlawful conduct. In virtually all cases, however, fear that strong or feelings that intense would surely result from irrational beliefs or perceptions or would compromise rationality to a substantial degree.

In the end, do pure coercion cases exist that require excuse? Although I am very sympathetic to claims that the rationality of desires or ends cannot be assessed, I am finally convinced, by malignantly circular reasoning perhaps, that it must be irrational to want to produce unjustified harm so intensely that failure to satisfy that desire will create sufficient dysphoria to warrant an excuse. The justification for the excuse is then irrationality, not coercion. Even if clinicians routinely consider what they (confusedly) conceive to be volitional problems in their clinical practice, it does not follow that their perception is conceptually sound or that the law must adopt a conceptually misguided excuse. As Joseph Livermore and Paul Meehl²⁸ argued in their justly celebrated article on the virtues of *M'Naghten*, a morally justifiable insanity defense based on purely cognitive considerations is feasible. Even if pure coercion cases provide theoretically independent grounds for legal insanity and partial responsibility, the profound conceptual difficulties addressed in the last two sections and consequent assessment problems, to be discussed presently, suggest great caution before adopting volitional excuses and before offering confident, clinical, or scientific opinions about alleged volitional defects.

Assessing Internal Involuntariness

How successfully may internal involuntariness be assessed? Because criminal and civil law excuses are concerned with whether the actor was irrational or internally compelled, the fundamental inquiry in all cases concerns the actor's psychological phenomenology—what were the actor's thoughts and feelings. Needless to say, we cannot directly "read" each others' minds or measure the strength of feelings. Nevertheless, most people are quite expert at identifying and assessing other peoples' reasons for action. Relatively orderly and predictable human interaction is possible only because we are all able within reasonable limits to make inferences about our fellow humans' mental states from behavior, including speech acts. Moreover, assessing the rationality of another person's reasons for action requires only that we identify those reasons and then evaluate them according to our operative, normative theory of rationality. Of course, how much irrationality is required to justify excusing is a moral and legal matter.

In contrast, judging the strength of another's desires and dysphoria or fear of it is a herculean endeavor. Unlike rationality cases, there is no relatively clear phenomenon to match against a roughly consensual normative standard. Indeed, this is a major difficulty with the empirical model of intrapersonal coercion: famously, we cannot distinguish between irresistible impulses and those impulses simply not resisted. No established metric exists to determine the magnitude of impulses, desires, or feel-

ings. That two independent observers trained in the same system of assessment would agree that a subject exhibits desires of a certain strength or is unable to refrain from acting does not entail that the system is valid, and I know of no such measurement system with established validity.²⁹ Furthermore, it is difficult to disentangle the strength of desires, the strength of temptations, and the capacity for self-control. There have been numerous studies of impulsiveness and self-control in the psychological and psychiatric literature³⁰, and people do commonsensically note individual differences in these traits. Moreover, we talk about the will and self-control as if these are independent psychological entities that are well understood and reliably identifiable. But the studies often contradict each other, measures of supposedly the same variable correlate poorly, and, most importantly, the studies do not address and folk psychology does not know whether and to what degree people are *unable* to refrain from acting. Neither in psychology, philosophy, nor folk psychology is there a reasonably uncontroversial understanding of these matters. Finally, we do not know how mental disorder affects self-control in general, apart from its more clear role in affecting perception and belief, which are variables central to rationality.

The strongest contrary claims in the literature fail both conceptually and empirically. For example, in a tendentious article that purports to demonstrate that so-called volitional problems can be reliably identified, Dr. Richard Rogers³¹

provides "representative criteria for assessing volitional capacity." But inspection of the criteria Rogers proposes discloses that they are firmly in the camp of folk psychology and most describe failures not of volition or the will, but of rationality in the face of strong desires, emotions, impulses, and the like. For instance, Rogers' criteria ask: What did the defendant perceive as his or her alternatives to the criminal behavior? or Did the criminal behavior include planning or preparation? One criterion begs the question by asking, "Was the *loss of control* (emphasis added) caused by a strong emotional state (e.g., rage reaction) or intoxication, or both?" None of these criteria individually nor all of them taken together can demonstrate with any degree of scientific precision whether and to what degree a defendant lacked the capacity to behave lawfully under the circumstances. Moreover, virtually all are designed to uncover rationality defects rather than defects of volition. And, in a later, related article using *four* forensic psychiatrists as subjects, Rogers and colleagues³² again claim that they empirically establish that volitional criteria are practically important and logically distinct from cognitive criteria. But the article shows only that the tiny number of subjects involved "believe" they can distinguish and use volitional criteria. There is not a hint of evidence that the subjects in fact used volitional criteria that are independent of rationality, and nothing in the study, contrary to its blithe assurance, supports the conceptual validity of independent volitional problems.

Proponents of an independent coercion or volitional excuse often try to justify its adoption in the face of conceptual and assessment problems by *correctly* arguing that our understanding of the causes of cognitive or rationality defects is as primitive as the understanding of the etiology of inner coercion. Although true, this argument is irrelevant to the differential difficulty of *assessing existing* irrationality and inner coercion. The law's concern is *not* why glitches occur. Rather, to evaluate responsibility the law needs to know only whether and to what degree glitches occur. Understanding the causal background may in some cases be probative about whether an excusing condition exists, but no particular cause is required to justify the excusing condition.

For example, if we are convinced that a person was in the throes of nonculpable irrationality, we excuse the actor, even if we do not know what produced the abnormality. One may object that we must identify causes such as mental disorder, but the same evidence that proves the presence of mental disorder also proves the substantive part of an irrationality test. Moreover, there is no need to identify the cause of the mental disorder. In sum, the causes of cognitive and volitional defects are equally obscure, but for the reasons suggested above, we can empirically identify and assess each others' reasons for action far better than we can empirically identify and assess each others' strength of desire or intensity of feeling. Although there are no conclusive studies that prove this point, I believe that the opposite claim

is so counterintuitive that it is fair to place the burden of persuasion on those who disagree.

Ultimately, coercion assessment may collapse into rationality assessment. Virtually all cases of so-called irresistible impulse will prove on close analysis to be instances of irrationality, especially if the law continues to require that an abnormality is required. Even the commonsense basis for judging volitional problems is often a disguised rationality criterion. For example, the "policeman at the elbow" test, which is usually understood as a volitional standard, is, I think, better interpreted as a rationality test. Those who offend in the face of certain capture have either rationally decided for political or other reasons that the offense is worth the punishment, as in cases of civil disobedience, or they are irrational. We generally tend to conclude that intense internal coercion was operative if conduct was so irrational that we can't make any sense of it; otherwise, why would the person do it? Again, however, rationality is the real issue.

Still assuming, however, that cases of pure internal coercion exist, the best we can do is to ask the actor to tell us how she felt and to observe psychophysical signs, such as trembling or perspiring, that may also provide a clue. The moral test asks only for phenomenological description and then weighs it in the moral balance. By comparing the intensity of the threatened dysphoria to the conduct chosen to avoid it, we can make the moral and legal decision whether partial or complete excuse is warranted. This

we can try do without kidding ourselves by treating the pseudo-scientific enterprise of assessing volitional problems as if it were an empirically valid inquiry. Even when performed rationally, however, assessments of internal coercion are a dicey proposition at best. On both theoretical and practical grounds, the law should treat internal involuntariness claims with great caution.

Conclusion

This article has argued that causation, even by abnormal variables such as mental disorder, does not itself furnish grounds for an excuse and that the problem of involuntariness is far more vexed than most lawyers and forensic mental health professionals appreciate. Too often we speak authoritatively or offer "expert" opinions about matters poorly understood both conceptually and empirically and we do so in contexts, such as criminal trials or legislative hearings, when our words potentially make a great moral and social difference. We should be more cautious and humble. I hope that this article contributes to better understanding of our concepts and to consequent better practice.

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