To appear in
Kahmen, Benedikt und Stepanians, Markus (Ed.) (2012) *Causation and Responsibility. Critical Essays*. Berlin/New York: de Gruyter
(please do not cite without permission)

Events over Facts.
Why Metaphysics Matters for Law

Philipp Huebl

In his book *Causation and Responsibility*, Michael S. Moore gives a detailed analysis of the metaphysics of causation that can be used to make legal debates more explicit. The connection between causation and responsibility seems obvious. We change the world when we act. We can be held responsible for our actions, the effects of our actions, and for our omissions, namely when we had the duty to bring about an effect and failed.

Naturally, the legal and the philosophical theory of causation have the same starting point. The law, or its interpretation, need to presuppose a theory of causation that matches our pre-theoretic causal intuitions, otherwise it is not transparent or understandable for normal people. A philosophical theory starts with our pre-theoretic intuitions as well. It aims at making causal claims and causal explanations explicit. Explication starts at the surface of ordinary language, but does not consider it sacrosanct.[1] For one thing, words in everyday utterances can be ambiguous. Thus, the philosophical analysis focuses on what is *said* by speaker's utterance, on the conceptual deep structure so to say. Moreover, there is a difference between what is literally said and what is implied or presupposed. Thus, our everyday explanatory practice must be *disciplined*, that is, turned into unambiguous explicit statements. A theory of causation should systematise those statements from everyday talk and from the sciences.

Since I agree with large parts of Moore' line of argument, I will focus on a few controversial cases of causal explanation. Moore convincingly argues that causal relata, namely cause and effect, have to be construed as something concrete, as

[1] What Quine calls «regimentation», see Quine, Willard Van Orman (1960) *Word and Object*. Cambridge (Mass.): MIT Press, 157 f; see also Lewis, David (1973) *Counterfactuals*. Oxford: Blackwell, 88

something occupying space-time regions.[2] Causal claims are about what happened at particular locations at particular times. That is the reason why it is hard to see how abstract entities could ever be related as cause and effect, since they are not in space and time. Most theories of causation opt for events of one kind or another as causal relata, but some have considered facts as promising candidates. Under one reading «fact» refers to something abstract, namely a true proposition. However, there is a concrete reading of «facts» as «facta», as Mellor calls them, namely as those entities true propositions are about. [3] Another term would be «states of affairs» or «real situations».[4] In the legal system of the United States, theorists favour events over states of affairs, but according to Moore events are, in fact, ultimately derived from states of affairs. He furthermore claims that Lewis' counterfactual theory of causation, which seems to capture an important sine-qua-non-intuition in legal practice, is flawed for many reasons.

As a counter strategy to Moore's approach, I want to make a case for Davidsonian events.[5] I believe that they are not derived from states of affairs, or concrete facts at all. Concrete facts play a role in causal explanation, because they sometimes comprise events and the respective circumstances, but they are not literally causes. If causation is a relation between Davidsonian events, we can accommodate two intuitions about causation at the same time. First, our intuition about counterfactual dependence, and second, our intuition that the behaviour of objects in the world is constant over time, or law-like, if you will. Treating concrete facts, namely states of affairs, as causes stems from cross-fading causes with causal factors that are cited in causal explanations.

In order to make my point I proceed in five steps. First, I will make a few remarks on concepts and causal relata that will prove useful for the second step, namely making explicit the conceptual deep structure of causal explanations. In a third step, I will briefly sketch how causation and counterfactual dependence are related, drawing on arguments developed by Keil.[6] In the fourth step, I apply these

---

[2] Moore, Michael S. (2009) *Causation and Responsibility. An Essay in Law, Morals, and Metaphysics*. Oxford: Oxford University Press, 330 f

[3] Mellor, DH (1995) *The Facts of Causation*. London: Routledge

[4] For „real situations« see Menzies, Peter (1989) «A Unified Account of Causal Relata» *Australasian Journal of Philosophy* 67, 59—83, 70; for «states of affairs», see Armstrong, David (1997) *A World of States of Affairs*. Cambridge: Cambridge University Press

[5] Davidson, Donald (1969) «The Individuation of Events». Reprinted in Davidson, Donald (1980) *Essays on Actions and Events.* Oxford: Oxford University Press, 163–180; Lombard, Lawrence B. (1986) *Events. A Metaphysical Study*. London/Boston: Routledge

[6] Keil, Geert (2000) *Handeln und Verursachen*. Frankfurt am Main: Vittorio Klostermann; Keil, Geert (2006) «La cause d'un événement: Éléments d'une métaphysique descriptive de la causalité entre événements» *Philosophie* 88: 21–39

arguments to cases of overdetermination that seem to either confound types with tokens of events, or causation with causal explanation respectively. Finally, a similar problem appears with regard to omissions. Both problematic cases seem to have the same spring: intuitions about moral and legal practice typically override our basic metaphysical intuitions. If I am right, it should be reversed. Metaphysics comes first. Law has to follow.

The Concept of Cause and the Nature of the Causal Relata

I follow Carroll, Davidson, and others in holding that the concept of cause is one of the most basic concepts we have in everyday life and the sciences.[7] The concept of cause not only lies at the bottom of how we explain and see the world, it is also necessary for having an indefinite number of other concepts like LOVE BITE, TRACE, or EVOLUTION, as well as most mental concepts like PERCEPTION or ANGER. For example, one can only grasp the concept of a love bite, if one assumes that a person has kissed another in a peculiar way that caused a tiny bruise. Leaving a trace, in general, is causing a change in the structure of an object like a footprint in the sand or a scratch on the table. And so on.

As with many other philosophical concepts, it seems hopeless to analyse the concept of cause in more basic concepts, if one understands «analysis» as a definition comprising necessary conceptual components that are jointly sufficient to determine the concept. Nevertheless, we can specify the nature of the causal relation itself, for example that it is asymmetric and non-reflexive, and very likely non-transitive. So I am with Moore in holding that there is no «reduction» in the sense of a complete conceptual analysis of the concept of cause.[8] Yet this does not foreclose what Strawson called a «connective analysis», namely relating one concept to other basic concepts we have, such as OBJECT, EVENT, SPACE, and TIME.[9] Such an analysis refrains from the view that concepts are structured as definitions. It employs a network of conceptual relations instead. Some concepts may be so basic that they can only be analysed in large conceptual circles comprising many other concepts.

Causal Relata

---

[7] Davidson, Donald (1995) «Laws and Cause» *Dialectica* 49: 263–279; Carroll, John (1994) *Laws of Nature*. Cambridge: Cambridge University Press

[8] Moore, Michael S. (2009) *Causation and Responsibility. An Essay in Law, Morals, and Metaphysics*. Oxford: Oxford University Press, 392

[9] Strawson, Peter F. (1992) *Analysis and Metaphysics: An Introduction to Philosophy*. Oxford: Oxford University Press, Chapter 2

If causation is a relation, what are the relata? Roughly, a causal claim is an answer to the question what happened or what was going on at a particular region in space and time. And this is the best indicator that only concrete things in the world can be causes, as Moore has shown in detail. The nature of those relata is important, because what causation is heavily depends on what they are. Or as Moore puts it, the question for the relation and the relata can only be answered together.[10] Moore opts for states of affairs understood as concrete space-time regions. However, he points out that in the legal practice in the United States, events are favoured over states of affairs. On his account, events are ultimately derived from facts.

I believe a stronger case can be made for events, if understood correctly. According to Davidson, events are particulars that are stretched over space and time. They are unrepeatable, they can be picked out by many descriptions, and as opposed to states, they are not divisible into equal parts. Quite the opposite: their parts can in turn be events.[11] However, in his later work, Davidson gave a second characterization of events, which has not been discussed in detail in Moore's book, namely that events are *changes*.[12]

Talk of «change» raises the question about what changes, when there is a change. This question paves the way of relating events as changes to objects and their properties. Events are changes of states. The notion of change appeals to something that underwent that change. Typically, these are objects. One can say that an event is a change of a state of an object. Objects are in states if they have the same properties at two consecutive points of time. And if some properties change from t_1 to t_2, the object has changed. In other words, the concept of change can only be explicated in relation to a concept of constance, or stable state-behaviour.[13] Moore acknowledges this relation in highlighting the origin of this debate can already be found in Aristotle's notion of change. However, he claims that according to «the standard version, an event is a concrete particular consisting of an object

[10] Moore, Michael S. (2009) *Causation and Responsibility. An Essay in Law, Morals, and Metaphysics*. Oxford: Oxford University Press,327

[11] For a detailed discussion, see Simons, Peter (1987) *Parts. A Study in Ontology*. Oxford: Clarendon Press

[12] Davidson, Donald (1969) «The Individuation of Events». Reprinted in Davidson, Donald (1980) *Essays on Actions and Events*. Oxford: Oxford University Press, 163–180; Lombard, Lawrence B. (1986) *Events. A Metaphysical Study*. London/Boston: Routledge

[13] I take it that Hüttemann proposes a similar view by distinguishing between «inert processes» (which can be called «states») as opposed to «interferences» or «disturbances» (which can be called «changes»); the discussion has a long tradition, see for instance Hart, Herbert L. A. and Honoré, A.M. (1959) *Causation in Law*. Oxford: Oxford University Press; Mach, Ernst (1905) *Erkenntnis und Irrtum*. Leipzig

undergoing change over an interval of time».[14] This analysis needs a slight modification. Events are particulars, but they are not objects undergoing change, they *are* the changes themselves.

How can one distinguish between what is constant and what changes? Cummins has argued that there is a pragmatic aspect in picking out changes, because what is constant and what is a change is to a certain extent relative to our description or knowledge.[15] He gives an example from physics. Aristotelian physics needed a constant cause for an object to show «uniform rectilinear motion», but modern physics considers it a *state* of motion or an «inert process», that only needed a cause for its onset. Another of Cummins' examples is «constant proper acceleration» as in the case of the planetary orbits, which modern physics considers it to be a state. Again, this phenomenon was thought to require a causal explanation before.

Now, it appears to me that these two cases from the sciences are only two examples for a much more general attitude we exhibit towards causation in non-scientific contexts, namely that if a behaviour is sufficiently regular, it does not require a causal explanation. Only changes of states need a cause

The deep structure of causal explanations

Singular causal explanations aim at more than simply stating a singular causal relation. They often refer to the *circumstances* of the causes, more narrowly the objects, states, and regularities that were changed or disturbed. Ultimately, any explicit causal explanation has to specify two things. First, two changes related as cause and effect, and second, some object that has changed. The first specification answers to the question of *what* happened. The second specification is about the objects involved, in particular their properties. Only because objects have certain properties, they could be subject to this particular type of change. Here is an example, if someone asks «Why did the window break?», one can answer in at least two ways. Either with «Someone has thrown a stone». This statement explicitly mentions the event, but leaves the properties of the objects implicit. Or with «The glass of the window was fragile.» This mentions the properties of the object, but leaves the event implicit. Any explicit causal statement contains precisely two elements: *changes* of objects and something *constant* about the object, namely its causal properties. Both can be mentioned as «causal factors» in a causal explanation, but only the event is the cause.

---

[14] Moore, Michael S. (2009) *Causation and Responsibility. An Essay in Law, Morals, and Metaphysics*. Oxford: Oxford University Press, 335

[15] Cummins, Robert (1976) «States, Causes, and the Law of Inertia» *Philosophical Studies* 29: 21–36

Davidson stresses the difference between causation and causal explanation. The former is an *extensional* relation between events, which obtains no matter how we describe them. The latter is an *intensional* relation between propositions. Singular causal claims are true or false depending on how the world is, namely whether the causal relation in fact obtains. Yet in explanation, we typically give an answer to a wh-question using pronouns like «what», «why», «who», and so on.[16] Not only may we want to know what caused the sinking of the Titanic, but also why it sank so fast, why it broke in the middle, or why the outer shell of steel plating could not withstand the impact.

In calling Davidson's argument a «flight to explanations», Moore makes it sound as if Davidson made the distinction between intensional and extensional relations up in order to defend his approach.[17] But Davidson only drew our attention to a linguistic fact. Causation in itself is not explanatory, *pace* Moore's summery of Davidson's view, though mentioning a causal relation is a common element in causal explanations. Cross-fading causation with causal explanation is common in everyday explanation and the sciences. It may be the reason for treating states of affairs or properties as causes instead of causal factors cited in explanation.

Here is an example for what seems to me a merging of causes and others causal factors in Moore's book, namely about the «presence of oxygen» in the Apollo capsule. In referring to a legal discussion, Moore says «when there was a fire in an Apollo test capsule years ago, the presence of oxygen was cited as the cause of the fire. This was appropriate because that presence was surprising, given the oxygen-free environment both usual and required in such settings.»[18] Here, it seems to me, that when we refer to the presence of oxygen, we refer to a state of the capsule. This state had certain dispositional properties that explain why for example changes in the capsule then could lead to a chemical reaction that caused the explosion. But this does not turn the state into a cause. We can say that the presence of oxygen was a «causal factor» or that it «causally explains» the explosion, but it is not a cause, because it is not a change of an object. In short, it is not an event. Of course, we can give «presence» an event reading, when we talk about the onset of the presence, say if a leak in the capsule caused the entering of oxygen into the chamber. Yet, this is a change of topic, since the presence itself is not a change, but a state. Of course, events as changes can cause the onsets of states. For example, after some change,

[16] Fraassen, Bas (1980) *The Scientific Image*. Oxford: Oxford University Press

[17] Moore, Michael S. (2009) *Causation and Responsibility. An Essay in Law, Morals, and Metaphysics*. Oxford: Oxford University Press, 357

[18] Moore, Michael S. (2009) *Causation and Responsibility. An Essay in Law, Morals, and Metaphysics*. Oxford: Oxford University Press, 398

objects at hand are left in a new state, say of being broken, or of being angry, or of being sweetened. However, the mere presence of oxygen in the capsule can never answer the question why the explosion took place at a certain area of space and time.

Two kinds of counterfactual dependence

Suppose events are the only causal relata, construed along the lines of Davidson and Lombard.[19] Then we still have to specify the nature of the causal relation itself. Legal practice often refers to the sine-qua-non-test, which finds is philosophical counterpart in Lewis' counterfactual theory of causation.[20]

At first sight, we have strong confidence that counterfactuals about particular events are true. If we claim «This event has caused that effect», then we are certain that this particular effect would not have taken place, had the cause not have taken place. So, in particular cases, counterfactual dependency characterises at least one aspect of causation. Note that the effect also depends counterfactually on the circumstances of the cause. Had the condition of the window been different, for example had it been made of bullet proof glass, or had the condition of the stone be different, for example had a porous stone been used, the effect would have been different. A little crack might have occurred, but not the breaking of the window.

Now, Moore raises a number of objections to the counterfactual theory. For him, the counterfactual theory does not say what causation is, but only gives a «heuristic» of causation.[21] He seems to presuppose that any theory of causation should give something like a «reduction» of the concept of cause in the sense of replacing it by something more fundamental or better understood. However, if the concept of cause lies at the bottom of our conceptual structure, we might strive for a less ambitious aim. Counterfactual dependence is wider than causation, but if we restrict counterfactual dependence to singular events, it captures an important intuition about causation, namely that it is an asymmetrical dependence. We believe that the effect depends in some sense on the cause. It is not mere coincidence that the effect occurred. And we take the effect to follow the cause.

Keil has developed a counterfactual theory that focuses on singular causal claims and differs from Lewis' approach in some respects.[22] Keil argues that a

---

[19] Davidson, Donald (1969) «The Individuation of Events». Reprinted in Davidson, Donald (1980) *Essays on Actions and Events.* Oxford: Oxford University Press, 163–180; Lombard, Lawrence B. (1986) *Events. A Metaphysical Study*. London/Boston: Routledge

[20] Lewis, David (1973) «Causation». Reprinted in Lewis, David (1986) *Philosophical Papers, Vol. II*. Oxford: Oxford University Press

[21] Moore, Michael S. (2009) *Causation and Responsibility. An Essay in Law, Morals, and Metaphysics*. Oxford: Oxford University Press, 411

[22] Keil, Geert (2000) *Handeln und Verursachen*. Frankfurt am Main: Vittorio Klostermann

singular causal claim is true, if the respective counterfactual is true. He also holds that our confidence in the truth of the counterfactual rests on knowledge about the substances or objects the causal claim was about. It does not rest on alleged laws of event succession or cross-world comparisons.

Keil suggests improving Lewis' approach by putting some restrictions on his counterfactual theory. I will mention only two. First, the revised counterfactual theory is only about Davidsonian event tokens, but not about events in the spirit of Lewis, which are cases of property exemplification as construed by Kim, and even less about types of events.[23] This is a natural suggestion, since a causal claim is made *after* both particular events have taken place. The important feature of this approach is that the event tokens are pinpointed by indexicals. All singular causal statements contain an *indexical* element. In its most obvious demonstrative form it says for example: «this shooting» caused «this death». Even giving events proper names presupposes a demonstrative act of baptizing the event, as Kripke has shown in detail.[24]

However, the indexical has a second function. By using indexicals one also refers, though often *implicitly,* to the circumstances of the event as in «this shooting of this particular gun with all its particular properties» and «the death of this man with his particular physiological attributes». Or, more generally: this change of this object with its given properties caused the change of that object with its given properties. Keil expresses this point in terms of an «implicit ceteris-paribus clause» saying «under the conditions that actually obtain» or «with the circumstances being the same». So, his revised counterfactual analysis reads, «*e* caused *c* if and only if, *e* and *c* have taken place, and if *c* had not occurred and the circumstances had been the same, *e* would not have occurred.» The indexical is a tool that allows nailing down events and circumstances in one breath.

Keil's second suggested improvement of Lewis' counterfactual theory is this: The temporal gap between the two events should be as small as possible, because the larger the temporal gap, the stronger does the causal influence rarefy or, as in

[23] Lewis, David (1979) «Counterfactual Dependence and Time's Arrow» *Noûs* 13: 455–476. Reprinted in Lewis, David (1986) *Philosophical Papers II.* Oxford: Oxford University Press, 32–66; Lewis, David (1973) «Causation». Reprinted in Lewis, David (1986) *Philosophical Papers, Vol. II*. Oxford: Oxford University Press, 159–213; Kim, Jaegwon (1976) «Events as Property Exemplifications» in Brand, Myles and Walton, Douglas (1976) *Action Theory*. Dordrecht: Reidel, 159–177

[24] Kripke, Saul (1972) «Naming and Necessity» In Davidson, Donald and Harman, Gilbert (Eds.) *Semantics of Natural Language*. Dordrecht: D. Reidel: 253–355

Moore's terms, they «peter out».[25] If one thinks of causes as changes of objects, or of disturbances of regularities, one can give «rarefying» or «petering out» a straightforward temporal interpretation. The longer the time lapse between two events, the more can happen in between. The larger the *funnel of possibilities*, the thinner is thus the basis for our intuition about counterfactual dependencies.

The tricky question is, where does our counterfactual intuition come from, the confidence with which we make such claims to be true, or respectively, the lack of confidence, if the gaps are too large?

The basis of our counterfactual confidence

There is a *nomic basis* for our counterfactual confidence, but it does not derive from cross-world comparisons or causal laws, namely laws about the succession of events, but rather indirectly from the law-like dispositions of the objects that enter the causal relations. From our knowledge about the properties of sugar and our knowledge about water, we infer that generally dropping the sugar into the water will cause it to dissolve. This causal generalisation itself is *not* exceptionless of course, because something could intervene between dropping and dissolving, for example someone catching the sugar or quick-freezing the water. However, the properties of water and sugar are exceptionless in that they define them as natural kinds. The microstructure of natural kinds is nothing but their dispositional structure like their mass, the binding properties of the elements, their crystalline patterns, or their charge.

Of course, not all objects entering causal relations are natural kinds. Artefacts may have no essence at all. However, when considering their causal role, we believe that it ultimately depends on their microstructure, such that they can be manipulated or changed in a certain way, or that they would have remained in a certain way, if they had not been changed. For example, we are not only confident that vases typically shatter, when they hit the ground, we also believe that it has to do with the material of vase and floor, and the relative distance between them, even though vases and floors can be made of different materials. Only closer examination, the dispositions are a function of the material and its form, say the crystalline structure. Aristotle seems to have had that in mind when he considered form and material as «aitia».[26] Translating «aitia» as «causal factors» instead of «causes», as it is commonly done, makes Aristotle's view congruent with the approach proposed here.

---

[25] Moore, Michael S. (2009) *Causation and Responsibility. An Essay in Law, Morals, and Metaphysics*. Oxford: Oxford University Press, 327

[26] Aristotle, *Metaphysics*

Events qualifying as cause and effect are changes in objects made of certain materials that have certain dispositions. They have these dispositions over a longer period of time. This constant dispositional structure is what is stable or regular in the world, relatively to which we pick out events as changes of those regularities.

Sometimes dispositions are distinguished into «active dispositions» or «powers» as opposed to «passive dispositions» or «liabilities».[27] An active disposition would be «being poisonous», and a passive disposition would be «being fragile». However, this does not mean that dispositions can cause anything by themselves as some theorists would have it.[28] Dispositional terms must be read as characterising the object's or the material's contribution to a cause or effect, when they interact: We know that hard things can break fragile things and we know that fragile things break, when hit by something hard. Yet, they do not break if nothing happens. They require an «initiating stimulus», for example bringing the stone into motion, and this is clearly another term for an event.[29]

To conclude this section, if we relate counterfactual claims to our knowledge about the properties or structures of the objects involved in those claims, we can do justice to the observation that the world is stable, and that events are changes of those regularities. One does *not* thereby explicate causation in terms of sufficient conditions for events, since the occurrence of one event does not necessitate another, because something could intervene. In the next section, I want to apply this approach to the case of overdetermination.

The case against overdetermination

Moore argues that cases of overdetermination show that counterfactual dependence is not necessary for causation. The argument focuses on the so-called «symmetrically overdetermined concurrent cases»: if, for example, two fires are sufficient to burn down the house each on its own, the effect does not counterfactually depend on any of them, and thus the theory that identifies causation with counterfactual dependence is false.

According to Moore, one popular move to counter this objection is to combine both fires into a single event of a huge fire. In some cases, this manoeuvre may be appropriate, in others, however, it seems problematic. To my mind, there is another way out of the objection from overdetermination, if one distinguishes

[27] Harré, Rom and Madden, Edward H. (1975) *Causal Powers*. Oxford: Blackwell

[28] Mumford, Stephen (1998) *Dispositions*, Oxford: Clarendon Press, chapter 6

[29] Mumford admits this, but seems to propose a wider notion of cause comprising dispositions next to events, see ibid, 126--127

between token events and types of token events. If we take the starting point of any causal theory to be singular cases, as the law typically has in mind, namely cases where two events that have taken place, then we say «The first event caused the second, and had the first not occurred, the second would not have occurred».

Again, the argument from overdetermination says: In the symmetrically overdetermined concurrent case, two fires burn down a house, but one fire would have sufficed for burning down the house. However, as Davidson and others have pointed out, if only the first or only the second fire had burned down the house, it would have been a *different* burning.[30] All cases, the actual case and either one of the counterfactual cases, fall under the type reading «burning», but they are different tokens of burning. To reconsider another of Moore's examples: a soldier who dies of two wounds dies a different death than dying of one wound. Both are of the type «death by deadly wound», but we do not talk about the same death.[31]

According to Moore, one possible countermove against the charge from overdetermination is a strategy of fine-grained individuation that makes more and more details necessary for the event to occur. I am with Moore that this is dubious for metaphysical reasons, because the details are endless. However spelling out all details is not needed if we use *indexicals*. We can say «This particular fire at this particular place and time has caused this destruction of the house». The indexical refers to the event and objects involved in the event – in all their detail. In other words, if we use indexicals, there is no finer graininess available, since we refer to everything there is, not to some aspects of it.

Moore argues that such a view on events faces a problem about numerical identity. He compares the persistence of persons or objects through time with the cross-world identity of events.[32] Of course, everything depends on what events exactly are, but if they are changes of objects at space-time positions, then all their properties at this space-time position are essential. Persons or objects can change their space-time positions, they are not fixed to them. Now I sit on my desk in my apartment, but tomorrow I will walk down the street. Yet events, like the event of the fire of the house, are fixed to a given space-time-position. They cannot change their position, because events have their space-time positions essentially. Objects and

[30] Davidson, Donald (1967) «Causal Relations». Reprinted in Davidson, Donald (1980) *Essays on Actions and Events*. Oxford: Oxford University Press, 149–162

[31] Moore, Michael S. (2009) *Causation and Responsibility. An Essay in Law, Morals, and Metaphysics*. Oxford: Oxford University Press, 417

[32] Moore, Michael S. (2009) *Causation and Responsibility. An Essay in Law, Morals, and Metaphysics*. Oxford: Oxford University Press, 414

persons can undergo some change and remain the same, as Moore points out. But events cannot undergo changes and remain the same, because they *are* changes.

Moore's third argument against the type-token distinction says that «surely it is possible that in every detail, save causal genesis, the ‹three› house-burnings [the defendant's fire, the natural fire, and both together] are qualitatively identical».[33] But quite frankly, I cannot imagine such a case. The burning patterns would surely be different, depending on where and when the flames reach the house. This objection may sound slightly scholastic, so let us consider an event comprising a smaller space-time region, say, a case of two bullets being fired at someone. A death with two bullets in the heart is surely different from one with one bullet. The bullets could not have been on the same trajectory at the same time, for there is trivially only space for one.

Now, in order to make the events even smaller, consider a science fiction device of two laser light beams in space fired at the same time in close parallels hitting a light-sensitive button of a perfectly shielded vacuum chamber that activates an electromagnetic field within the chamber causing an electron to move. We may say that had the first light beam not activated the button, the second would have activated it at exactly the same time and the effect would have been qualitatively exactly the same at the same space-time region. All the same, the effects in the counterfactual scenario may be qualitatively identical to the one in the actual world, but this is not *numerical identity*, because we make singular causal claims about events that have already happened. The singular counterfactual is not touched by what could have happened instead.

Types and Tokens in Moral Contexts

It appears to me that in moral causal judgments, we often switch from considering token events to considering token events in virtue of falling under a given type. It is not only bad or blameworthy to cause «this particular death», but to case «a death» in general, namely a particular effect that falls under the type «death». The reason, why many moral and especially legal cases are about the type, any particular token falls, seems to be that it is important to know whether a given deed falls under the law or not, for example if it is a murder or not. Singular causal claims and counterfactuals are about *particular* fires, but responsibilities are about fire in general, or how to handle inflammable materials in general. Any instance of arson requires legal consequences, not only this particular case.

[33] Moore, Michael S. (2009) *Causation and Responsibility. An Essay in Law, Morals, and Metaphysics*. Oxford: Oxford University Press, 414

Moore gives an interesting example about differences in American tort and criminal law.[34] Apparently in some cases, when a defendant's fire caused a house to burn down, and thereby pre-empted another fire that would have burned down the house, the defendant is only held responsible for the interim loss between the two fires. However, in criminal law, this is not always the case. There seem to be no real overdetermined cases. This is clearly a difference in the type-token reading. Arguably, this difference has to do with the nature of the receiver of the harm or damage. Human beings are treated differently from houses.

I think the inconsistency in treating these cases in legal practices shows that moral or even legal consideration often cloud metaphysical distinctions, especially when it comes to actions and causes. For example, some *experimental philosophers* have shown that we apply terms like «intentionally» differently in morally relevant contexts than in morally irrelevant contexts. Here is an example that could easily be a case in tort law. Knobe asked subjects questions in order to elicit their intuitions about applying the term «intentionally» by using vignettes that differed in the moral status of the consequences of action.[35] Compare the following two stories

(1) The Harm Story
«The vice-president of a company went to the chairman of the board and said, ‹We are thinking of starting a new program. It will help us increase profits, but it will also harm the environment.› The chairman of the board answered, ‹I don't care at all about harming the environment. I just want to make as much profit as I can. Let's start the new program.› They started the new program. Sure enough, the environment was harmed.»

If one replaces «harm» by «help», one gets the Help Story.

(2) The Help Story
«The vice-president of a company went to the chairman of the board and said, ‹We are thinking of starting a new program. It will help us increase profits, and it will also help the environment.› The chairman of the board answered, ‹I don't care at all about helping the environment. I just want to make as much profit as I can. Let's start the

[34] Moore, Michael S. (2009) *Causation and Responsibility. An Essay in Law, Morals, and Metaphysics*. Oxford: Oxford University Press, 429

[35] Knobe, Joshua (2006) «The Concept of Intentional Action: A Case Study in the Uses of Folk Psychology» *Philosophical Studies* 130: 203–231; Knobe, Joshua (2003) «Intentional Action and Side Effects in Ordinary Language» *Analysis* 63: 190–193

new program.› They started the new program. Sure enough, the environment was helped.»

In an experiment, Knobe asked subjects in the first case «Did the chairman of the board *intentionally* harm the environment?» and in the second «Did the chairman of the board *intentionally* help the environment?»[36] Surprisingly, 82 % of the subjects receiving the Harm Story said that the chairman harmed the environment intentionally. Only 23 % said this about helping the environment intentionally.

Suppose the attribution of «intentionally» is morally relevant. Then it appears to be that the same causal story, or more precisely, the same story about side-effects or omissions, has different interpretation depending on the moral or legal relevance. The findings pose many general problems about concepts and philosophical method. However, they also have an important methodological flaw. The forced-choice paradigm is known to distort judgements. Subjects may choose the best alternative between two or more fairly bad choices. In this sense, it is like voting for a political party. Once the options are «intentionally» versus «knowingly», the effect disappears almost entirely.[37]

At any event, the tests reveal that moral intuitions, in particular our tendency to ascribe blame or responsibility to a person, sometimes clouds our general causal judgement. I suppose that the same happens in cases of omissions. We want to blame the plaintiff for what happened, even though she did not cause the change. Nevertheless, the blame rests on a causal intuition. Had she caused a change, the event would not have taken place. The only failure is to treat the omission as cause in order to assure that the person omitting is responsible, as some interpretations of the law do. Yet, omissions cannot be causes, because they are not events, located in space and time. Every second, we omit an infinite number of actions. For some omissions, we are responsible, yet since the application of responsibility differs from the application of action and causation, we need not treat omissions as causes, even though counterfactuals are needed in order to spell out why some omissions are in fact blameworthy.

The moral I would draw from this fact is to do the metaphysics of non-moral singular cases first and then look at the moral and legal contexts.

---

[36] Knobe, Joshua (2003) «Intentional Action in Folk Psychology: An Experimental Investigation» *Philosophical Psychology* 16: 309–324

[37] I gather that from own experiments conducted in German using Knobe's vignettes. The results are not published yet.

Bibliography

Aristotle, *Metaphysics*

Armstrong, David (1997) *A World of States of Affairs*. Cambridge: Cambridge University Press

Carroll, John (1994) *Laws of Nature*. Cambridge: Cambridge University Press

Cummins, Robert (1976) «States, Causes, and the Law of Inertia» *Philosophical Studies* 29: 21–36

Davidson, Donald (1967) «Causal Relations». Reprinted in Davidson, Donald (1980) *Essays on Actions and Events*. Oxford: Oxford University Press, 149–162

—— (1969) «The Individuation of Events». Reprinted in Davidson, Donald (1980) *Essays on Actions and Events.* Oxford: Oxford University Press, 163–180

—— (1995) «Laws and Cause» *Dialectica* 49: 263–279

Fraassen, Bas (1980) *The Scientific Image*. Oxford: Oxford University Press

Harré, Rom and Madden, Edward H. (1975) *Causal Powers*. Oxford: Blackwell

Hart, Herbert L. A. and Honoré, A.M. (1959) *Causation in Law*. Oxford: Oxford University Press

Keil, Geert (2000) *Handeln und Verursachen*. Frankfurt am Main: Vittorio Klostermann

—— (2006) «La cause d'un événement: Éléments d'une métaphysique descriptive de la causalité entre événements» *Philosophie* 88: 21–39

Kim, Jaegwon (1976) «Events as Property Exemplifications» in Brand, Myles and Walton, Douglas (1976) *Action Theory*. Dordrecht: Reidel, 159–177

Knobe, Joshua (2003) «Intentional Action in Folk Psychology: An Experimental Investigation» *Philosophical Psychology* 16: 309–324

—— (2006) «The Concept of Intentional Action: A Case Study in the Uses of Folk Psychology» *Philosophical Studies* 130: 203–231; Knobe, Joshua (2003) «Intentional Action and Side Effects in Ordinary Language» *Analysis* 63: 190–193

Kripke, Saul (1972) «Naming and Necessity» In Davidson, Donald and Harman, Gilbert (Eds.) *Semantics of Natural Language*. Dordrecht: D. Reidel: 253–355

Lewis, David (1973) *Counterfactuals*. Oxford: Blackwell

—— (1973) «Causation». Reprinted in Lewis, David (1986) *Philosophical Papers, Vol. II*. Oxford: Oxford University Press

—— (1979) «Counterfactual Dependence and Time's Arrow» *Noûs* 13: 455–476. Reprinted in Lewis, David (1986) *Philosophical Papers II*. Oxford: Oxford University Press, 32–66

Lombard, Lawrence B. (1986) *Events. A Metaphysical Study*. London/Boston: Routledge

Mach, Ernst (1905) *Erkenntnis und Irrtum*. Leipzig

Mellor, DH (1995) *The Facts of Causation*. London: Routledge

Menzies, Peter (1989) «A Unified Account of Causal Relata» *Australasian Journal of Philosophy* 67, 59—83

Moore, Michael S. (2009) *Causation and Responsibility. An Essay in Law, Morals, and Metaphysics*. Oxford: Oxford University Press

Mumford, Stephen (1998) *Dispositions*, Oxford: Clarendon Press

Quine, Willard Van Orman (1960) *Word and Object*. Cambridge (Mass.): MIT Press

Simons, Peter (1987) *Parts. A Study in Ontology*. Oxford: Clarendon Press

Strawson, Peter F. (1992) *Analysis and Metaphysics: An Introduction to Philosophy*. Oxford: Oxford University Press