

# NEUROEXISTENTIALISM

*Meaning, Morals, and Purpose in  
the Age of Neuroscience*

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Ch. 18: Stephen J. Morse, The Neuroscientific Non-Challenge to  
Meaning, Morals, and Purpose

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## CHAPTER 18

# The Neuroscientific Non-Challenge to Meaning, Morals, and Purpose

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### 1. INTRODUCTION

As millennia of philosophizing attest, there are challenging questions about the existence, source, and content of meaning, morals, and purpose in human life, but present and foreseeable neuroscience will neither obliterate nor resolve them. Neuroscience, for all its astonishing recent discoveries, raises no new challenges in these domains. It poses no unique threat to our life hopes or to our ability to decide how to live and how to live together. The supposed challenges were best summed up by an editorial warning in *The Economist*: “Genetics may yet threaten privacy, kill autonomy, make society homogeneous and gut the concept of human nature. But neuroscience could do all of these things first” (The Economist 2002).

The primary quarries of those who think that neuroscience poses a challenge to meaning, morals, and purpose are the related concepts of responsibility and desert, especially as they play a role in criminal law. After all, responsibility and desert are intrinsic features of present moral and criminal legal concepts, practices, and institutions, including the imposition of punishment. Most of those who challenge responsibility and desert think that these concepts are philosophically questionable and lead to primitive, prescientific practices, such as overly harsh punishments. Responsibility and desert are also intrinsic to civil law, but virtually none of these challengers considers how their views would affect desert theories in contracts, torts, and property law, for example. Although critics have a duty to embed their criticisms of criminal law in a wider understanding of the implications of the criticisms,

this chapter will nonetheless engage with the dominant critique by limiting itself to the potential effect of neuroscience on criminal law and moral responsibility more generally.

As is well known, the primary challenges neuroscience allegedly presents to responsibility, desert, and retributive justifications of punishment are the threat from determinism and the specter of the person as simply a “victim of neuronal circumstances” (VNC) (Greene and Cohen 2006) or “just a pack of neurons” (PON) (Crick 1994). Allegedly, no one is responsible for any of his behavior, and no one deserves a proportionate response to his behavior either because determinism is true and inconsistent with responsibility or because mental states are epiphenomenal and we are therefore not the sort of creatures that can be guided by reason. I have argued repeatedly that no such soul-bleaching outcome as *The Economist* dreads is remotely justified by neuroscience at present (e.g., Morse 2011a) or by any other science for that matter. This chapter reiterates some of these arguments and responds to the challenge of the new determinism, termed “hard incompatibilism” (HI) by its proponents.

The chapter begins by reviewing the law’s psychology, concept of personhood, and criteria for criminal responsibility. It then turns to the two primary challenges, determinism and VNC/PON, suggesting that neither is new to neuroscience and neither at present justifies revolutionary abandonment of moral and legal concepts and practices that have been evolving for centuries in both common law and civil law countries. I then turn to HI. First, I suggest some concerns internal to the approach. Then, because the metaphysical premises for responsibility or jettisoning it cannot be decisively resolved, I suggest that the real issue is the type of world we want to live in and that the hard incompatibilist vision is not normatively desirable, even if it is somehow achievable.

## 2. PSYCHOLOGY, PERSONHOOD, AND RESPONSIBILITY

This section offers a “goodness of fit” interpretation of current Anglo-American criminal law. It does not suggest or imply that the law is optimal “as is,” but it provides a framework for thinking about the challenges presented by neuroscience, behavioral genetics, or any other material or social science that purports to be deterministic in some broad sense.

Law presupposes the “folk psychological” view of the person and behavior. This psychological theory, which has many variants, causally explains behavior in part by mental states such as desires, beliefs, intentions, willings, and plans (Ravenscroft 2010). Biological, sociological, and other psychological variables also play a role, but folk psychology considers mental states fundamental to a full explanation of human action. Lawyers, philosophers, and

scientists argue about the definitions of mental states and theories of action, but that does not undermine the general claim that mental states are fundamental. The arguments and evidence disputants use to convince others itself presupposes the folk psychological view of the person. Brains don't convince each other; people do. The law's concept of the responsible person is simply an agent who can be responsive to reasons.

For example, the folk psychological explanation for why you are reading this chapter is, roughly, that you desire to understand the relation of the new sciences to agency and responsibility, you believe that reading the chapter will help fulfill that desire, and thus you formed the intention to read it. This is a "practical" explanation rather than a deductive syllogism.

Brief reflection should indicate that the law's psychology must be a folk psychological theory, a view of the person as the type of creature who can act for and respond to reasons. Law is primarily action-guiding and is not able to guide people directly and indirectly unless people are capable of using rules as premises in their reasoning about how they should behave. Unless people could be guided by law, it would be useless (and perhaps incoherent) as an action-guiding system of rules.<sup>1</sup> Legal rules are action-guiding primarily because these rules provide an agent with good moral or prudential reasons for forbearance or action. Human behavior can be modified by means other than influencing deliberation, and human beings do not always deliberate before they act. Nonetheless, the law presupposes folk psychology, even when we most habitually follow the legal rules. Unless people are capable of understanding and then using legal rules to guide their conduct, the law is powerless to affect human behavior. The law must treat persons generally as intentional, reason-responsive creatures and not simply as mechanistic forces of nature.

The legal view of the person does not hold that people must always reason or consistently behave rationally according to some preordained, normative notion of rationality. Rather, the law's view is that people are capable of minimal rationality according to predominantly conventional, socially constructed

1. See Sher (2006: 123), stating that although philosophers disagree about the requirements and justifications of what morality requires, there is widespread agreement that "the primary task of morality is to guide action," as well as Shapiro (2000: 131–132) and Searle (2002: 22, 25). This view assumes that law is sufficiently knowable to guide conduct, but a contrary assumption is largely incoherent. As Shapiro writes:

Legal skepticism is an absurd doctrine. It is absurd because the law cannot be the sort of thing that is unknowable. If a system of norms were unknowable, then that system would not be a legal system. One important reason why the law must be knowable is that its function is to guide conduct. (Shapiro 2000: 131)

I do not assume that legal rules are always clear and thus capable of precise action guidance. If most rules in a legal system were not sufficiently clear most of the time, however, the system could not function. Furthermore, the principle of legality dictates that criminal law rules should be especially clear.

standards. The type of rationality the law requires is the ordinary person's commonsense view of rationality, not the technical, often optimal notion that might be acceptable within the disciplines of economics, philosophy, psychology, computer science, and the like. Rationality is a congeries of abilities, including *inter alia* getting the facts straight, having a relatively coherent preference-ordering, understanding what variables are relevant to action, and the ability to understand how to achieve the goals one has (instrumental rationality). How these abilities should be interpreted and how much of them are necessary for responsibility may be debated, but the debate is about rationality, a core folk psychological concept.

Virtually everything for which agents deserve to be praised, blamed, rewarded, or punished is the product of mental causation and, in principle, is responsive to reasons, including incentives. Machines may cause harm, but they cannot do wrong, and they cannot violate expectations about how people ought to live together. Machines do not deserve praise, blame, reward, punishment, concern, or respect because they exist or as a consequence of the results they cause. Only people, intentional agents with the potential to act, can do wrong and violate expectations of what they owe each other.

Many scientists and some philosophers of mind and action might consider folk psychology to be a primitive or prescientific view of human behavior. For the foreseeable future, however, the law will be based on the folk psychological model of the person and agency described. Until and unless scientific discoveries convince us that our view of ourselves is radically wrong, a possibility that is addressed later, the basic explanatory apparatus of folk psychology will remain central. It is vital that we not lose sight of this model lest we fall into confusion when various claims based on the new sciences are made.

Folk psychology does not presuppose the truth of contra-causal free will, it is consistent with the truth of determinism, it does not hold that we have minds that are independent of our bodies (although it, and ordinary speech, sound that way), and it presupposes no particular moral or political view. It does not claim that all mental states are conscious or that people go through a conscious decision-making process each time that they act. It allows for "thoughtless," automatic, and habitual actions and for nonconscious intentions. It does presuppose that human action will at least be rationalizable by mental state explanations or that it will be responsive to reasons under the right conditions. The definition of folk psychology being used does not depend on any particular bit of folk wisdom about how people are motivated, feel, or act. Any of these bits, such as that people intend the natural and probable consequences of their actions, may be wrong. The definition insists only that human action is *in part* causally explained by mental states.

Legal responsibility concepts involve acting agents and not social structures, underlying psychological variables, brains, or nervous systems. The latter types of variables may shed light on whether the folk psychological

responsibility criteria are met, but they must always be translated into the law's folk psychological criteria. For example, demonstrating that an addict has a genetic vulnerability or a neurotransmitter defect tells the law nothing *per se* about whether an addict is responsible. Such scientific evidence must be probative of the law's criteria, and demonstrating this requires an argument about how it is probative.

Consider criminal responsibility as exemplary of the law's folk psychology. The criminal law's criteria for responsibility are acts and mental states. Thus, the criminal law is a folk psychological institution (Sifferd 2006). If an agent meets the criteria for criminal responsibility, the law considers the ascription of blame and the imposition of negative sanctions fair. Blame and punishment, the intentional infliction of some degree of pain on an agent are harmful and therefore require justification in a fair legal system. In Anglo-American jurisprudence, the primary justifications are deontological desert and the consequential goal of achieving social safety. It is, of course, the former that is under assault from the critics.

Let us consider what the criteria are for allegedly deserved punishment. First, the agent must perform a prohibited intentional act (or omission) in a state of reasonably integrated consciousness (the so-called *act requirement*, usually confusingly termed the "voluntary act"). Second, virtually all serious crimes require that the person had a further mental state, the *mens rea*, regarding the prohibited harm. Lawyers term these definitional criteria for *prima facie* culpability the "elements" of the crime. They are the criteria that the prosecution must prove beyond a reasonable doubt. For example, one definition of murder is the intentional killing of another human being. To be *prima facie* guilty of murder, the person must have intentionally performed some act that kills, such as shooting or knifing, and it must have been his intent to kill when he shot or knifed. If the agent does not act at all because his bodily movement is not intentional—for example, a reflex or spasmodic movement—then there is no violation of the prohibition against intentional killing. There is also no violation in cases in which the further mental state required by the definition is lacking. For example, if the defendant's intentional killing action kills only because the defendant was careless, then the defendant may be guilty of some homicide crime but not of intentional homicide.

Criminal responsibility is not necessarily complete if the defendant's behavior satisfies the definition of the crime. The criminal law provides for so-called affirmative defenses that negate responsibility even if the *prima facie* case has been proved. Affirmative defenses are either justifications or excuses. The former obtain if behavior otherwise unlawful is right or at least permissible under the specific circumstances. For example, intentionally killing someone who is wrongfully trying to kill you, acting in self-defense, is certainly legally permissible and many think it is right. Excuses exist when the defendant has done wrong but is not responsible for his behavior. Using generic descriptive

language, the excusing conditions are lack of reasonable capacity for rationality and lack of reasonable capacity for self-control (although the latter is more controversial than the former [Morse 2016]). The so-called cognitive and control tests for legal insanity are examples of these excusing conditions. Both justifications and excuses consider the agent's reasons for action, which is a completely folk psychological concept. Note that these excusing conditions are expressed as capacities. If an agent possessed a legally relevant capacity but simply did not exercise it at the time of committing the crime or was responsible for undermining his capacity, no defense will be allowed. Finally, the defendant will be excused if he was acting under duress, coercion, or compulsion. The degree of incapacity or coercion required for an excuse is a normative question that can have different legal responses depending on a culture's moral conceptions and material circumstances.

In short, all law as action-guiding depends on the folk psychological view of the responsible agent as a person who can be properly responsive to the reasons the law provides. If an agent violates the *prima facie* criteria for a criminal offense, is not justified, and is, roughly speaking, capable of rationality and self-control under the circumstances, the criminal law (and ordinary morality) will consider the agent responsible and deserving of blame and punishment. The agent is also a good candidate for blame and punishment on consequential grounds, such as incapacitating a dangerous person or promoting general deterrence. This is a very familiar picture of responsibility that has been evolving for centuries in Anglo-American and continental legal systems. The question, to which this chapter now turns, is whether neuroscience provides any reason to abandon responsibility, desert, and punishment and to adopt a system of social control based solely on social safety.

### **3. THE USUAL SUSPECT CHALLENGES: DETERMINISM AND VNC/PON**

This section first provides background for the discussion to follow and then addresses the two common challenges. The chapter's next section discusses in more detail the newly emerging form of the determinist challenge, hard incompatibilism, which may seem to avoid the defects of the challenges this section considers.

#### **3.1. Background**

Challenges to doctrines, practices, and institutions (which I will refer to generically as the "system") can be internal or external. Although this distinction may not always be clear-cut, it provides a useful framework. In the

former case, the basic coherence and acceptability of the system is assumed and criticisms are meant to increase the accuracy, efficiency, and justice of the system. For example, criticisms of the criminal justice system that argue that its responsibility criteria are too narrow or too broad accept the coherence of responsibility and a system to address it that is based on desert and consequential concerns. An external challenge denies that the system is coherent *vel non*. For example, a criticism based on the claim that no one is genuinely responsible for wrongdoing is an external criticism because it assumes that a partial or wholly responsibility-based system is incoherent because it rests on a fundamental mistake. The determinist and VNC/PON challenges are external.

As proponents of these challenges fully recognize, they provide no basis whatsoever for internal reform of a responsibility-based criminal justice system. Determinism is not selective or partial. If it grounds a moral or legal practice, it applies to all who come within the practice, and it cannot make the distinctions concerning guilt and desert that are at the heart of criminal justice. Relatedly, determinism is not the equivalent of a folk psychological compulsion excuse. If it were, then everyone would be compelled, and all would be excused. This, too, would fail to make the distinctions our criminal justice system makes. The same is true of the VNC/PON challenge. It denies the possibility of responsibility, applies to all, and would entail abandoning the moral responsibility distinctions our system now makes.

As is apparent, the consequences of accepting these critiques would be nothing short of radical and completely unmoored from standard views of responsibility. This is no reason not to adopt such changes if they are justified, but it seems clear that the burden of proof should clearly be placed on the proponents of radical change. They seek to abandon a system that has evolved for centuries and that is in accord with commonsense and with moral, political, and legal theories that are widely endorsed and that seems to work, albeit imperfectly (see MacIntyre [2007: ch. 13] for a defense of this stance). These challenges cannot borrow internal reformist changes because they are total critiques. If no one is really morally responsible, and, consequently, no one deserves any blame or punishment, then only a radically new system of social control is justified. What reason would there be to replace the time-tested system based on an unresolvable metaphysical argument (incompatibilist) or an unproven scientific (VCN/PON) claim?

Proponents of the challenges often claim that responsibility and desert theorists should bear the burden of persuasion because they are justifying harsh treatment. But this counterclaim begs the question. It assumes that all punishment is unjustifiably harsh because no one deserves any punishment at all, but that is precisely what desert theorists deny. More important, until the brave new world the radical challenges propose is fully described, it is not clear that it is either workable or that it will not be even more inconsistent



with human flourishing than the current system based on responsibility and desert.

### 3.2. The Determinist Challenge

In one form or another, the challenge from determinism to “free will” and responsibility has been mounted for millennia. Neuroscience poses no new challenge in this respect. No science can prove the truth of determinism (although some seem to push intuitions harder in that direction), and the answers to the determinist threat are the same to neuroscience as they have been to any of its also deterministic predecessors such as psychodynamic psychology or genetics. Neuroscience poses no new assault on meaning, morals, and purpose if these aspects of life are at risk from the truth of determinism.

The primary reason people care about the issue is because it allegedly underwrites conceptions of responsibility, agency, and dignity that are crucial to our image of ourselves and to our political and legal practices and institutions. If responsibility is undermined, meaning, morals, and purpose may indeed be undermined. The alleged incompatibility of determinism and free will and responsibility is therefore a foundational metaphysical and moral issue. Determinism is not a continuum concept that applies to various individuals in various degrees. To the best of our knowledge, there is no partial or selective determinism. If the universe is deterministic or something quite like it, responsibility is possible or it is not. If human beings are fully subject to the causal laws of the universe, as a thoroughly physicalist, naturalist worldview holds, then many philosophers claim that “ultimate” responsibility is impossible (e.g., Pereboom 2001; Strawson 1989). On the other hand, plausible “compatibilist” theories suggest that, for many different reasons, responsibility is possible in a deterministic universe even if no human being has the godlike contra-causal, ultimate freedom that incompatibilists require (Moore 2016; Vihvelin 2013; Wallace 1994). Compatibilists hold that human beings possess whatever degree of freedom or control is necessary for responsibility.

Compatibilism is the dominant view among philosophers of responsibility, and it most accords with common sense. Much about who we are and what we do is not a product of our rational action, including our genetic endowment, early environment, and the opportunities that present themselves to us. Luck clearly plays an immense role in human life (Frank 2016). Nonetheless, the compatibilist claims that we retain sufficient capacity to be guided by reason and to choose otherwise when we act or omit (Moore 2016). This is our ordinary view of ourselves and our agency. When any theoretical notion contradicts common sense, the burden of persuasion to refute common sense must be very high, and no metaphysics that denies the possibility of responsibility exceeds that threshold.

There seems no resolution to the incompatibilism/compatibilism debate in sight, but our moral and legal practices do not treat everyone or no one as responsible. Determinism cannot be guiding our practices. If one wants to excuse people because they are genetically and neurally determined or determined for any other reason, one is committed to negating the possibility of responsibility for everyone.

Our criminal responsibility criteria and practices have nothing to do with determinism or with the necessity of having so-called free will (Morse 2007). The metaphysical libertarian capacity to cause one's own behavior uncaused by anything other than oneself—the strongest conception of free will—is neither a criterion for any criminal law doctrine nor foundational for criminal responsibility. Criminal responsibility involves evaluation of intentional, conscious, and potentially rational human action. And few participants in the debate about determinism and free will and responsibility argue that we are not conscious, intentional, potentially rational creatures when we act. The truth of determinism does not entail that actions and nonactions are indistinguishable and that there is no distinction between rational and nonrational actions or compelled and uncompelled actions. Our current responsibility concepts and practices use criteria consistent with and independent of the truth of determinism.

In short, the hard determinist incompatibilists (including the hard incompatibilists) are proposing a radical revision of practices and institutions that have evolved for centuries on the basis of an unresolvable metaphysical claim and in the face of common sense. The case simply is not proved. But, in my view, because this viewpoint makes no obvious internal mistakes, it must be taken seriously, at least in so far as proponents offer a different vision of social ordering rather than just a pure metaphysical argument. Section 4 of this chapter returns to that vision. Rather than attempt to resolve the unresolvable, it assumes that a compatibilist also makes no internal mistakes and turns to a comparative analysis of the world as we know it and the world that hard incompatibilist is offering us. But first let us consider the most radical claim that neuroscience arguably presents: VNC/PON.

#### **4. THE TRULY RADICAL CHALLENGE TO MEANING, MORALS, AND PURPOSE**

This section addresses the hyperreductive claim that the new sciences, and especially neuroscience, will cause a paradigm shift in our view of ourselves as agents who can direct our own lives and can be responsible by demonstrating that we are “merely victims of neuronal circumstances” or a “pack of neurons” (or some similar claim that denies human agency). This claim holds that we are not the kinds of intentional creatures we think we are. If our mental

states play no role in our behavior and are simply epiphenomenal, then traditional notions of agency and responsibility based on mental states and on actions guided by mental states would be imperiled. More broadly, neurons, or even a big pack of them like the connectome, do not have meaning, morals, and purpose. They are just biophysical mechanism. They are not agents. Meaning, morals, and purpose are products of people, not mechanisms. But is the rich explanatory apparatus of agency and intentionality simply a post hoc rationalization that the brains of hapless *Homo sapiens* construct to explain what their brains have already done? Will the criminal justice system as we know it wither away as an outmoded relic of a prescientific and cruel age? If so, criminal law is not the only area of law in peril. What will be the fate of contracts, for example, when a biological machine that was formerly called a person claims that it should not be bound because it did not make a contract? The contract is also simply the outcome of various “neuronal circumstances.”

Before continuing, we must understand three things. The compatibilist metaphysics discussed earlier does not save agency, responsibility, morals, meaning, and purpose if the radical claim is true. If determinism is true, two states of the world concerning agency are possible: agency and all that it entails exists or it does not. Compatibilism assumes that agency is true because it holds that agents can be responsible in a determinist universe. It thus essentially begs the question against the radical claim. If the radical claim is true, then compatibilism is false because no responsibility is possible if we are not agents. It is an incoherent notion to have genuine responsibility without agency. Second, those forms of hard determinism that accept agency but not responsibility are equally false if the radical claim is true. Finally, this challenge is not new to neuroscience. This type of reductionist speculation long precedes the contemporary neuroscientific era fueled by noninvasive imaging. Neuroscience appears to at last provide the ability to prove the claim by discovering the underlying neural mechanisms that are doing all the work that mental states allegedly do, but the claim is not novel to it. The question remains, however: Is the radical claim true?

Given how little we know about the brain–mind and brain–mind–action connections—we do not know how the brain enables the mind and action (Adolphs 2015)—to claim that we should radically change our conceptions of ourselves and our legal doctrines and practices based on neuroscience is a form of “neuroarrogance.” It flies in the face of common sense and ordinary experience to claim that our mental states play no explanatory role in human behavior; and thus the burden of persuasion is firmly on the proponents of the radical view, who have an enormous hurdle to surmount. Although I predict that we will see far more numerous attempts to use the new sciences to challenge traditional legal and common sense concepts, I have elsewhere argued that, for conceptual and scientific reasons, there is no reason at present to believe that we are not agents (Morse 2008; 2011a: 543–554).

In particular, I can report based on earlier and more recent research that the “Libet industry” appears to be bankrupt. This was a series of overclaims about the alleged moral and legal implications of neuroscientist Benjamin Libet’s findings, which were the primary empirical neuroscientific support for the radical claim. This work found that there is electrical activity (a readiness potential) in the supplemental motor area of the brain prior to the subject’s awareness of the urge to move his body and before movements occurred. This research and the findings of other similar investigations (e.g., Soon et al. 2008) led to the assertion that our brain mechanistically explains behavior and that mental states play no explanatory role. Recent conceptual and empirical work has exploded these claims (Mele 2009, 2014; Moore 2012; Nachev and Hacker 2015; Schurger et al. 2012; Schurger and Uithol 2015). Moreover, even hard incompatibilists (see Section 5) agree that the conceptual and empirical criticisms of the implications of the Libetian program are decisive (Pereboom and Caruso, Chapter 11 this volume). In short, I doubt that the Libet industry will emerge from whatever chapter of the bankruptcy code applies in such cases. It is possible that we are not agents, but the current science does not remotely demonstrate that this is true. Just for completeness, I should add that similar radical views from psychology, such as “the illusion of conscious will” (Wegner 2002) and the “automaticity juggernaut” (Kihlstrom 2008), suffer from the same defects (Morse 2011*a*). The burden of persuasion is still firmly on the proponents of the radical view.

Most important, contrary to its proponents’ claims, the radical view entails no positive agenda. If the truth of pure mechanism is a premise in deciding what to do, no particular moral, legal, or political conclusions follow from it.<sup>2</sup> This includes the pure consequentialism that Greene and Cohen incorrectly think follows. The radical view provides no guide as to how one should live or how one should respond to the truth of reductive mechanism. Normativity depends on reason, and thus the radical view is normatively inert. Reasons are mental states. If reasons do not matter, then we have no reason to adopt any particular morals, politics, or legal rules or to do anything at all.

Suppose we are convinced by the mechanistic view that we are not intentional, rational agents after all. (Of course, what does it mean to be “convinced” if mental states are epiphenomenal? Convinced usually means being persuaded by evidence and argument, but a mechanism is not persuaded; it is simply physically transformed. But enough.) If it is really “true” that we do not have mental states or, slightly more plausibly, that our mental states are epiphenomenal and play no role in the causation of our actions, what should we do now? If it is true, we know that it is an illusion to think that our deliberations and intentions have any causal efficacy in the world. We also know,

2. This line of thought was first suggested by Professor Mitchell Berman in the context of a discussion of determinism and normativity (Berman 2008: 271 n. 34).

however, that we experience sensations—such as pleasure and pain—and we care about what happens to us and to the world. We cannot just sit quietly and wait for our brains to activate, for determinism to happen. We must, and will, deliberate and act. And if we do not act in accord with the “truth” that the radical view suggests, we cannot be blamed. Our brains made us do it.

Even if we still thought that the radical view was correct and standard notions of agency and all that it entails were therefore impossible, we might still believe that the law would not necessarily have to give up the concept of incentives. Indeed, Greene and Cohen concede that we would have to keep punishing people for practical purposes (Greene and Cohen 2006). The word “punishment” in their account is a solecism because, in criminal justice, it has a constitutive moral meaning associated with guilt and desert. Greene and Cohen would be better off talking about positive and negative reinforcers or the like. Such an account would be consistent with “black box” accounts of economic incentives that simply depend on the relation between inputs and outputs without considering the mind as a mediator between the two. For those who believe that a thoroughly naturalized account of human behavior entails complete consequentialism, this conclusion might be welcomed.

On the other hand, this view seems to entail the same internal contradiction just explored. What is the nature of the agent that is discovering the laws governing how incentives shape behavior? Could understanding and providing incentives via social norms and legal rules simply be epiphenomenal interpretations of what the brain has already done? How do we decide which behaviors to reinforce positively or negatively? What role does reason—a property of thoughts and agents, not a property of brains—play in this decision?

As the eminent philosopher of mind and action, Jerry Fodor, reassured us:

[W]e have . . . no decisive reason to doubt that very many commonsense belief/desire explanations are—literally—true.

Which is just as well, because if commonsense intentional psychology really were to collapse, that would be, beyond comparison, the greatest intellectual catastrophe in the history of our species; if we’re that wrong about the mind, then that’s the wrongest we’ve ever been about anything. The collapse of the supernatural, for example, didn’t compare; theism never came close to being as intimately involved in our thought and our practice . . . as belief/desire explanation is. Nothing except, perhaps, our commonsense physics—our intuitive commitment to a world of observer-independent, middle-sized objects—comes as near our cognitive core as intentional explanation does. We’ll be in deep, deep trouble if we have to give it up.

I’m dubious . . . that we *can* give it up; that our intellects are so constituted that doing without it ( . . . *really* doing without it; not just loose philosophical talk) is a biologically viable option. But be of good cheer; everything is going to be all right. (Fodor 1987: xii)

Everything is going to be all right. Given what we know and have reason to do, the allegedly disappearing person remains fully visible and necessarily continues to act for good reasons, including the reasons currently to reject the radical view. We may be a pack of neurons, but that's not all we are. We are not Pinocchios, and our brains are not Geppettos pulling the strings. And this is a very good thing. Ultimately, I believe that the radical view's vision of the person, of interpersonal relations, and of society bleaches the soul. In the concrete and practical world we live in, we must be guided by our values and a vision of the good life. I do not want to live in the radical's world that is stripped of genuine agency, desert, autonomy, and dignity. In short, in a world that is stripped of meaning, morals, and purpose. For all its imperfections, the law's vision of the person, agency, and responsibility is more respectful and humane.

## 5. THE HARD INCOMPATIBILIST VISION AND ITS DISCONTENTS

In recent years, a group of theorists who adopt a position called "hard incompatibilism" (HI) have recognized that if scholars care about the practical implications of a philosophical position, then they have an obligation to propose the details of psychology, politics, and law that would follow (Pereboom and Caruso, Chapter 11 this volume).<sup>3</sup> HI does not deny the causal theory of action and that human beings are capable of being reasons-responsive. It accepts the possibility of meaning, morals, and purpose because we are agents, but it denies that anyone is responsible for any conduct, and that backward-looking blame and punishment is never justified. Value is preserved, including the distinction between right and wrong, on at least axiological grounds. The reactive attitudes such as anger, indignation, and resentment that P. F. Strawson (1962) famously thought were appropriate when a responsible agent violated a justified prohibition are never justified according to HI. We may feel them, but we should not. Instead, HI proposes that we should feel emotions such as sorrow and regret for harms that have been caused by the harmdoer's actions. We can try to guide such people to do right in the future by attempting to persuade them to see the good reasons not to behave in such injurious ways, but responsibility plays no appropriate role in the social ordering. The role of law and social ordering practices to address harmful behavior is entirely forward-looking. The moral goals of the HI approach are protection, moral formation, and reconciliation, goals that justify forward-looking blame but never deserved punishment.

3. Although Professors Pereboom and Caruso have many contributions to this position, I focus on their chapter in this volume because it is exemplary.

Even though HI claims that no one is responsible, it properly concedes that dangerous people who commit crimes exist and must be controlled for the good of society at large. It recognizes the common criticisms of a purely consequential social control system, such as the potential for intervening more harshly than an individual's dangerous conduct might suggest in order to further general deterrence. To avoid these problems, it adopts a public health-like system of quarantine or of lesser but still intrusive measures to control dangerous agents that are justified by societal self-defense. HI also borrows the proportionality principle from individual self-defense. That is, unnecessary intervention to achieve social safety is unjustified because it would be akin to using disproportionate force when one has a right to defend oneself. Because no one is responsible and deserves to suffer, these interventions should never be painful unless inflicting pain is ultimately unavoidable. Even then, the pain should be minimized consistent with the preventive goal of imposing it. Thus, pure quarantine would have to be under conditions of relatively comfortable confinement. Moreover, when a dangerous agent is being controlled, society has a duty to try to engage the agent's reason or otherwise to offer him a "fix" so that he no longer needs to be controlled. Finally, society has a duty to create the social conditions that decrease the probability of harmdoing generally.

One possible response in a world without responsibility is to treat people as good and bad bacteria, a story that treats potential human harmdoers no differently from any other organic (or inorganic) harmdoer (Morse 1999). It is a pure prediction/prevention scheme. Human animals must simply be managed to increase beneficent action and to decrease harmful action, and any means calculated to achieve this end would be justified because bacteria have no rights or even interests. HI attempts to avoid this dystopian vision by arguing that we are reasons-responsive and thus agents even though we are not responsible.

The HI vision has been criticized by others, but I wish to add to these cautions. HI seems benevolent and humane, but what would be the costs? My major response is that HI tries to have it both ways; that is, to preserve most of the desirable attitudes and practices associated with responsible agency, such as a right to liberty, autonomy, and dignity, but to do so without a robust conception of agency. It is agency on the cheap, much as some compatibilists, such as Dennett and Pinker, try to have compatibilism on the cheap. They suggest that there must be responsibility and punishment but without adopting a robust conception of responsibility (Moore 2012). I shall suggest that HI provides only a pale simulacrum of agency and does not fully comprehend the implications of its view. Although I am a mixed theorist about punishment who believes that we do have basic desert and that retribution is at least a necessary precondition for fair blame and punishment, the argument of this section does not claim that we have basic desert. Rather, I try to stay internal to HI and to explore its implications assuming that we lack basic desert.

Let us begin by noting that neuroscience plays no necessary role in the HI program and by exposing an error about retributivism that seems to, in part, motivate HI's criticism of retributivism. The HI proposal is perfectly defensible independently of any of the alleged truths of neuroscience (or psychology). Neuroscience does not prove the truth of either determinism or the lack of control that is a premise in the HI claim that persons also lack basic desert. HI may try to use neuroscience findings, such as for predicting future harmful behavior or for reducing the potential for future harmdoing, to suggest that its proposal is practicable. HI often overclaims (see Morse 2006, 2013*b* on "brain overclaim syndrome") for the science (e.g., see Poldrack 2013, providing a much less optimistic view of neuroprediction), but neuroscience is not necessary to the argument. Any successful prediction or behavioral change method, for example, would provide the type of practical assistance crucial to the fair workings of the HI scheme.

Pereboom and Caruso (Chapter 11 this volume), for example, tie excessive and harsh punishments to retributivism, but most of the excessive and harsh criminal justice practices they and I and many other decry have been justified on consequential grounds such as deterrence and incapacitation. It is the retributivists who have had the resources to criticize such programs. HI claims that it, too, has the resources to avoid harsh and intrusive interventions, but does it? Now let us turn to the central difficulties.

It is crucial to understand that nothing is "up to" the person, according to HI, because no one has sufficient "control" to justify what HI terms "basic desert." Whether a person acts well or poorly is not up to them. Whether they feel joy or sorrow in response to their beneficence or harmdoing is not up to them. They cannot be morally praised or blamed for what they have already done or felt (although the action or emotional response may be judged good or bad itself), and they deserve nothing thereby. Whether they respond to moral address and concern is not up to them. Whether they are moved by the right sorts of moral and personal reasons is not up to them. Whether an intervention that addresses or bypasses their reasons is effective is not up to them. They may be reasons-responsive in theory, but reasons in HI's vision are simply mechanisms for changing behavior and are no different in principle from any other mechanism for doing so. Those who believe in responsibility, in contrast, believe that the capacity for reasons-responsiveness or something like it occupies a privileged position because such a capacity indicates that much of our behavior is up to us and we deserve appropriate responses to our action. To treat reasons as simply a mechanism, as HI implicitly does, suggests that we are simply creatures to be manipulated in the right ways to do the right thing rather than being genuinely autonomous agents. We are suspiciously close to the good bacteria/bad bacteria story, although bacteria do not have access to reasons as a mechanism (or so we think).



Although whether we respond to reasons and what reasons we respond to is not up to us, according to HI, we nonetheless have a right to liberty, autonomy, and dignity. But why? Let us compare the current legal regime concerning responsibility and preventive state action, remembering that prevention of danger is the crux of the radical HI proposal. Anglo-American law in this respect is governed by what I have termed desert-disease jurisprudence (Morse 1999, 2002). The state may clutch an individual to promote social safety only if the agent deserves to be clutched because he has committed a crime (including attempts, of course) or if the agent is dangerous but is not responsible for his dangerous conduct. Agents who are dangerous but responsible must be left alone until they commit a crime, no matter how dangerous they are and no matter how certain they are to offend if they are not controlled. The best explanation for this jurisprudence that limits infringements of liberty as described is the respect the law grants responsible agents because they are responsible agents. We can act preventively in the absence of harmful action in the case of younger children, some people with mental disorder or intellectual disability, and some people with dementia precisely because they are not capable of rationality and thus are not responsible for themselves. But we cannot intervene with responsible agents unless they commit crimes because we respect their capacity to act well even if we are quite sure they will not. It is responsibility that underpins the full panoply of rights that protect liberty, autonomy, and dignity.

If nothing is up to us, what is the source of our liberty, dignity, and autonomy? It is understandable that we would have a sense of good (not harmful; beneficent) and bad (harmful; not beneficent) in the HI society, but why, for example, do we have a right to be at liberty in the absence of actual harmdoing? What is the meaning of autonomy when nothing is up to us? Why does the fact that reasons are sometimes successful mechanisms confer dignity on us if those reasons themselves are not up to us in any important way? In assessing reason-bypassing interventions, especially of a more radical type such as deep brain stimulation (DBS, which a completely experimental, unproved intervention for behavioral abnormalities), Pereboom and Caruso (Chapter 11 this volume) suggest that to respect autonomy, decisions should be left up to the subject as far as possible? But why respect a decision that is not really up to the subject? In short, the agency HI concedes is a simulacrum of what we usually mean by agency.

Consider a response of the agent who has acted harmfully and feels no sorrow or regret. He claims that doing it was not up to him and neither was lack of what would be the appropriate emotions. He is now addressed by the agents of social control with moral concern and guidance, with the goal of future protection, reconciliation, and moral formation. HI tells the agent that he is not being blamed for what he did, but he should be altered so as properly to be guided in the future to do what he ought to do. Is the HI proposal internally

consistent in this regard? Mitchell Berman doubts it in the context of determinist concerns. Here is his formulation:

[D]eterminism presents a challenge not only for any retributivist response to Jn(P) [the demand for the need to justify punishment] but—more fundamentally—even to Jn(P) itself. That is because, in my view, determinism threatens not only judgments of responsibility, blameworthiness, or desert but all normative judgments on the ground that the forward-looking judgment “ought to” implies the cogency of the corresponding backward-looking judgment “ought to have.” If so, then to the extent that determinism threatens the latter, it threatens the former too. (2008: 271, n. 34)

I believe that the same critique applies to HI. If the agent is not responsible for what he has done in the past, he is also certainly not responsible for what he will do in the future. What does it mean to say that he ought to do better? Whether he continues to behave badly or is manipulated into behaving well by reasons or by any other mechanism, it is not up to him, and he deserves neither praise nor blame for his future conduct. We can say that it would be a good thing if he behaved well and a bad thing if he behaved badly, but whether he acts that way or not is not up to him. The “ought” in HI, like the concepts of agency, dignity, and autonomy, is pallid. If, in response, it is claimed that the agent can be guided by reason, then we might ask whether he is guided because he directs himself to be or simply because he is. If the answer is the former, then this sounds like compatibilist agency, and why is this not sufficient for desert? If it is the latter, the guidance is ephemeral and certainly not up to the person.

Before turning to the systemic and practical implications of HI, let us consider how our reactions to wrongdoing would be affected by the genuine, intellectually internalized adoption of HI. We know that we have the psychological capacity to behave consistently with the truth of desert and the justifiability of blame and punishment. That is the world we live in now. Over time, HI hopes that HI-appropriate emotions and responses will replace those fueled by unjustified acceptance of desert. I will assume that we could remake our psychology consistent with the prescription of HI, although I do think it is an open question whether this is possible. The question is whether one would want to remake ourselves psychologically in the way HI desires. Recall that I am assuming that HI makes no mistakes and that the underlying metaphysical dispute between it and a desert regime is unresolvable. The question, then, is to which regime we lend our support.

Let us start with an everyday case: an act of interpersonal disloyalty and betrayal, such as the infidelity of one’s allegedly committed partner. Assume for the sake of simplicity that, according to traditional, pre-HI standards, there is no mitigating or excusing condition present. According to HI, anger,

resentment, and indignation would be unwarranted, and no blame would be deserved for the betrayer's behavior. HI concedes that understandable but unwarranted emotional reactions such as anger will occur, but the betrayed partner cannot be blamed for them, even if they have fully embraced the truth of HI. This would be so even if they apparently tried but failed to suppress the unjustified emotions and their equally unjustified expression, such as blaming the betrayer. If the betrayed partner morally addresses the betrayer, and the latter seems to have seen the error of his ways, what should the betrayed partner do if the betrayer lapses again? Anger and blame are not warranted. Just more sorrow and regret? Is this possible? Even if it is, is it really a preferable way to live?

The next example is Bernard Madoff, whose extraordinary fraud wreaked havoc in the lives of countless innocent people and ruined many. The fraud was fully intentional and knowing. To the best of our knowledge, Madoff is not a psychopath and suffers from no major mental disorder, and he had no other potential traditional mitigating or excusing condition. US Federal District Court Judge Denny Chin imposed a sentence of 150 years on Madoff, whose crime he described as extraordinarily evil (*United States v. Madoff* 2009). As Judge Chin recognized, the ferocious length of the sentence was symbolic and unnecessary because Madoff's life expectancy at that time was thirteen years, and he presented no future danger to the community. Nevertheless, Judge Chin emphasized that retribution, deterrence, and justice for the victims demanded a harsh sentence. Now, how would HI respond? As usual, sorrow and regret would be justified, but not anger and blame. Madoff was not responsible. But what should society do with Madoff? He fully understood that he had done grievous wrongs, he seemed genuinely regretful, and he presents no further danger to society. On the public health quarantine model for social self-defense, nothing needs to be done. And general deterrence is barred in this model. If one tries to assimilate general deterrence to social self-defense, then all the familiar problems with consequentialism arise. Which world do you prefer to live in? Judge Chin's—that is, ours—or the world HI proposes.

Consider a more extreme, exceptional final example, Timothy McVeigh. McVeigh, a decorated and honorably discharged veteran who had seen combat service, was an extreme critic of the US government who believed that it was systematically destroying our precious liberties. He was particularly enraged by the siege at Waco. After years of embracing and espousing such attitudes, he decided to act. On April 19, 1995, McVeigh methodically planned and executed the bombing of the Alfred P. Murrah Federal Building in Oklahoma City. The blast killed 168 people, including 19 children in a day care center in the building, and injured 684 others. Although on a few occasions McVeigh said he regretted the loss of life, he also said that it was necessary. There was apparently no genuine moral regret; it was just the cost of doing business. And

his last words about the attack were that he wished he had leveled the entire building, which would, of course, have caused far more loss of life. To the best of our knowledge, McVeigh was not a psychopath and had no major mental disorder.

HI would claim that the only appropriate emotions and responses to the carnage would be sorrow and regret and moral address with a view to altering McVeigh's reasons, but not anger, blame, and punishment. Suppose McVeigh had a "conversion" not long after being apprehended. Even without any intervention, he came to understand the enormous monstrosity of his deeds. Of course, guilt, remorse, and asking for forgiveness would be unwarranted because he was not responsible for his mass murder, but assume that his expressions of regret were genuine and we believed that he would not do it again. I assume that HI would demand that he be released, perhaps with some minimal supervision to ensure that his conversion was genuine and permanent. If no such conversion occurs, then he will presumably be confined in a most comfortable place that allows him to pursue his projects while he is subject to moral address and attempts to change his reasons. If he cannot be changed or remains predictively dangerous for any reason, his comfortable confinement will continue. Even if such a set of reactions to McVeigh's outrage is possible, which I consider an open question, do you want to adopt such attitudes and all that they entail?

It is worth pausing to note that the shift in emotions and attitudes HI prescribes would be radical. Experimental work indicates that people are intrinsically retributivist (e.g., Fehr and Gächter 2002). This does not mean that retributive attitudes and practices either should be fostered or cannot be altered. Assuming it is possible to change ourselves as HI desires, however, we would be new people. The history of attempts to remake human beings to achieve a radical new vision of society is one of failure and, indeed, horror. Furthermore, not only criminal justice would be affected. Deontological theories abound in many central legal doctrines, including torts, contracts, and property (Moore 2007). Much of the legal system would have to be redesigned. HI cannot cherry pick criminal justice. Caution is warranted.

Now let us consider the systemic and practical implications of HI, some of which have been alluded to. There are many criticisms that could be leveled, some of which HI has tried to address, but space constraints compel me to focus on perhaps the most important: How much preventive intervention of what type will HI permit? How intrusive will this regime be? HI tries to avoid the potentially intrusive and objectionable interventions that purely consequential justifications would permit by using the societal analog to individual self-defense. It thereby hopes to avoid the familiar problems consequentialism generates, but I fear that these hopes will not be realized. The self-defense theory HI deploys will not prevent massive preemptive intervention, with all the problems this will entail.

Self-defense (and defense of others) has an individual and collective (international law) body of doctrine that has developed for centuries in Western legal tradition. Would either limit intervention only to those cases in which harmdoing has actually occurred or is imminent? Countless trees have been felled, rivers of ink have been spilled, and innumerable pixels have been illuminated about the justification for self-defense and its criteria. HI is a radical proposal whose practical program heavily relies on self-defense, so we are entitled to a fully developed account of self-defense that defends a position on the important questions, but none has been provided. Whatever account is finally provided will almost certainly be theoretically and practically controversial, which is again a reason for caution. In what follows, however, I shall begin to sketch some of the problems that will have to be addressed.

In both individual and self-defense, the potential victim must be wrongfully threatened, the threat must be immediate or imminent, the belief that the wrongful threat is imminent must be reasonable, and the response of the defender must be proportionate to the wrongful harm threatened. In international law, the justification of an anticipatory strike when attack is not temporally imminent is controversial, but many think it is entirely defensible (e.g., Van de hole 2003) because waiting for imminent harm may unjustifiably increase the risk to the victim. Think of the Israeli strike on Iraq's Osiris nuclear plant as an example. Thus, preemptive action based on predicted danger is arguably justified, and there is no indisputable counterargument. In individual self-defense, the imminence of the harm or a reasonable belief that it is imminent is required. It is easy to imagine cases in which the threatened harm is predictively quite certain but not technically imminent (e.g., *State v. Norman* 1986; *State v. Schroeder* 1978) and the influential Model Penal Code has tried to soften this requirement a bit (American Law Institute 1985, Sec. 3.04(1)). Nonetheless, no genuinely preemptive strikes are permitted.

If the potential victim forms a reasonable but mistaken belief that he is in danger and harms the perceived attacker, no liability attaches. There is a rich theoretical debate about whether the reasonably mistaken potential victim is justified or excused, but it is uncontroversial that there is no criminal liability. Reasonableness is, of course, a normative standard, not a bright-line rule, and it is capable of adapting to shifting notions of what interests should be protected. The question to be addressed here is what will be considered a reasonable belief in the need to take preemptive action in the HI scheme.

The more interesting question is why imminence is required. One important reason is that there is typically no opportunity to involve law enforcement rather than to use self-help, and, therefore, "private justice" is permitted. This is a fine rationale, but it does not always apply. Even if attack is certain and no resort to law enforcement is practicable, individual self-defense is not justified unless harm is imminent. Imminence is also justified on epistemic grounds. Until harm is imminent, the individual, fallible potential victim might find it

difficult to be sure self-defense was required. This, too, is a good rationale, but it, too, does not always apply.

The most profound reason for the imminence requirement is respect for responsible agency. Self-defense doctrine is always balancing the rights of potential victims and perceived attackers. If the latter are responsible agents, we believe that they may desist simply because good reason convinces them not to act wrongly. Thus, they cannot be defended against unless it seems clear that desistance will not occur. Respect for responsibility also explains why imminence is not required for various forms of preventive involuntary commitment. Such forms of preemptive action are part of disease jurisprudence in which the usual grounds to maximize liberty are abridged because the agent is not responsible for his or her dangerousness. In short, even though the perceived attacker can always desist, and we can never be certain until the “last act” is performed, the last act is not necessary for justifiable self-defense. If the perceived attacker comes sufficiently close to the last act, his interest in liberty yields to the safety of the individual defender or society. Some preemption is thus allowed, but not much, as a result of respect for agency.

HI does not treat all cases of dangerous propensity as examples of a behavioral disorder (or any other kind of disorder), but neither the disordered dangerous agent nor the nondisordered dangerous agent is responsible and neither can be blamed. The only justification for differential treatment of those with and without disorder—and generally for the treatment of any potentially dangerous agent—would have to be purely consequential. Do the authorized decision-makers reasonably believe that the agent will be dangerous in the future, and what needs to be and can be reasonably done to prevent the danger? Having already committed a dangerous action should simply be data to support the decision. Some people who have done great harm, such as Madoff, are unlikely to do it again, and some people who have not yet done a dangerous action might be highly predictively likely to do so without intervention. Any prediction will likely have false positives, especially if predicting low base-rate behavior, even if our predictive tools become increasingly sensitive.

The questions for HI are what belief about the likelihood of an impending danger should be considered reasonable, and whether harm should have to be imminent? Why not adopt a “screen and intervene” system that systematically screens all members of society and takes whatever interventions are necessary to prevent predicted danger? HI cannot, of course, borrow responsible agency from traditional self-defense doctrine as a limit on anticipatory intervention. Nor can it use responsible agency as a foundation for the right to liberty. It can use only consequential justifications to decide when anticipatory intervention is justifiable. Compare, for example, the HI criticisms of Saul Smilansky’s (2011) well-known, clever “funishment” argument, which says that those incarcerated for public safety reasons in a world without

desert should be compensated for their undeserved deprivation of liberty. The response is entirely consequential (Pereboom and Caruso, Chapter 11 this volume). In effect, the use of self-defense to avoid the problems with consequentialism will not succeed because self-defense will inevitably collapse into consequentialism in the absence of responsible agency.

On consequential grounds, whether and to what degree anticipatory intervention is justifiable will be theoretically controversial. How many unnecessary anticipatory interventions would be justified to prevent one horrific crime? One cannot simply say that unacceptable false-positive rates will limit anticipatory intervention because it begs the questions of how many false positives will be acceptable for what goals. In the involuntary civil commitment system, for example, we know the false-positive rate is very high for low base-rate, serious harmful behavior because severely mentally disordered people do not commit serious crimes as a result of mental disorder alone (Monahan et al. 2001). The practice continues nonetheless because lack of responsible agency abridges traditional liberty interests. Notice, too, that as our prediction and prevention tools became more sensitive, the balance would shift toward ever more anticipatory intervention and thus more liberty intrusion. Even if there was social consensus on the precise interests to be weighed, doing that weighing is well-nigh impossible. HI offers no real limiting principle for the application of anticipatory intervention and thus for massive intrusions on liberty.

Finally, consider how the HI system will be administered. If all members of a society believe that no one is ever responsible for anything they do or will do in the future, what will be the effect on the balance of liberty versus safety? Will we value liberty as much? Will there be a shift toward a stronger preference for safety as the system proceeds? In the Anglo-American legal system, there are constant attempts to “fill the gaps” in desert-disease jurisprudence either by responding harshly to responsible agents or by increasing the category of those considered not responsible (Morse 2011*b*, 2013*a*). Recidivist sentencing enhancement is an example of the former; involuntary civil commitment of so-called mentally abnormal predators is an example of the latter. All of these “gap-fillers” are justified consequentially on public safety grounds, and virtually all have been condemned by informed commentators of every theoretical stripe as abusive of basic rights. Yet the political process produced them because the public demands them, and the state agents that apply them are complicit. Desert-disease jurisprudence, which entirely depends on the distinction between responsible and nonresponsible agency, at least sets imperfect limits on state overreach. What similar constraints will be available in HI? It will be a massive system if it is done properly, even if most interventions might be reasonably minimal. Will there be sufficient tools and experts? Unless those charged with administering the

system have objective tools and no discretion, what will be done to prevent excesses and abuses, especially if the administrators do not think they are responsible for what they do? Even if there are sufficient experts and tools, there will be no limits on state intervention except a controversial, manipulable, and ultimately unknowable social welfare calculus. It will be a brave new world, indeed.

A few last points deserve mention. If our society were to increase equality and mental health services, a move compatible with both desert and HI regimes, there would still be a crime problem and differential rates of criminality among various demographic groups for many different reasons. The HI system would thus have disparate impact on some members of society who are already less advantaged, much as our current criminal justice system now does. Furthermore, a desert-based regime has all the resources necessary to soften what seem to be disproportionately harsh and inutile criminal justice doctrines, procedures, and practices and to adopt what HI considers more enlightened social welfare policies. I have recommended desert-based softening myself (e.g., Morse 2003). Recall that virtually all the worst excesses in criminal justice were the product of consequential justifications and that desert had the resources to criticize them. We can have a fairer, kinder criminal justice system without abandoning desert.

Whether to adopt HI or to retain our regime of desert and responsibility is a political question. We are now ready to vote. Before you do, however, please recognize—as we saw previously—that the new neuroscience plays no proper justificatory role in your decision because it raises no new issues in the debate between HI and desert. And be careful what you wish for.

## 6. CONCLUSION

The existence, source, and content of meaning, morals, and purpose in human existence are controversial, but neuroscience poses no new threat to these desirable human goods, and it surely does not resolve the controversies. In particular, neuroscience raises no new determinist worries, nor does it threaten our familiar sense of ourselves as agents who can act for and be guided by reasons. A new form of incompatibilism, “hard incompatibilism,” that denies the possibility of responsibility, is benignly motivated, but its argument, too, does not depend at all on neuroscience. Despite its admirable motivations and attempts to avoid the pitfalls of consequentialism, it nonetheless offers a pallid conception of agency and a radical proposal for reengineering social ordering that is more frightening than our current, imperfect regime. As C. L. Lewis recognized long ago (1953), a system that treats people as responsible agents is ultimately more humane and respectful.



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