# Michael S. Moore: Mechanical Choices. The responsibility of the human machine.

## New York: Oxford University Press, 2020. E-book (ISBN 9780190864019). 589 pages.[1] Hardback (ISBN: 9780190863999) 64 £. 616 pages.

In *Mechanical Choices,* Michael Moore sets out to defend retributivist criminal justice from neuroscience-based attacks.

In parts one and two of the book, Moore describes what it is that contemporary neuroscience challenges: "the criminal law, the moral responsibility on which that criminal law is built, and the folk psychology of rational agency presupposed by both that morality and that law" (ibid: 12). In parts three to seven, he proceeds to discuss one challenge per part, different ways this challenge can be interpreted, and why it ultimately poses no devastating problems for either the law, responsibility, or agency.

Moore is a retributivist through and through, but he rightly points out that if no one can deserve anything, this poses a problem also for the negative retributivist thesis that one must not be punished if one does not deserve it (Moore 2020: 19). He does not hide how annoyed he is with smug neuroscientists who think they got nothing to learn from philosophy (ibid: 3-4). I sympathize. It *is* annoying – when you work in a field in which the idea that human choices are mechanically determined has been widely discussed for centuries – to hear neuroscientists smugly declare "Guess what? We have found out that human choices have previous causes! Mind blown philosophers, eh?"

Moore further points out that neuroscientific arguments in this debate tend to be rather loose and messy. He quotes Greene and Cohen, who declares that there is "something *fishy*" about our ordinary conceptions of agency and responsibility. When describing the target of their critique, they freely mix folk-psychological ideas about free will with dualism, the image of a little homunculi controlling the brain, our supposed infallible knowledge of ourselves, and yet more assumptions about us being causes rather than passive observers of our actions. Each of these quite different agency worries is treated as being but an aspect of a univocal "fishiness" (Moore 2020: 7).

Moore shoulders the burden of untangling the separate challenges that neuroscience might pose for retributivism, moral responsibility and folk-psychological ideas about rational agency,

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[1] Pagination refers to the e-book version, in case the hardback slightly departs from it.

which underpin both moral responsibility theories (and thereby retributivism) and other parts of the law, like contract and tort law (although the latter laws are not his focus).

The four challenges identified are determinism, epiphenomenalism, reductive physicalism and fallibilism. All of this untangling is important and well worth reading, especially for those who mistakenly believe that there is an easy and obvious argumentative route from neuroscientific findings to the conclusion that retributivist criminal justice systems (as well as ordinary moral responsibility practices, perhaps) ought to be abolished.

However, in his discussion of determinism, Moore seems to use the term in a looser way (perhaps more in line with how it is used in other fields) than philosophers do. In the philosophical sense, the world is deterministic iff, given the way things are at t, the way things are at any later time is fixed by way of natural laws. If the world, for instance, contains some brute probabilities, it is not deterministic (see Hoefer 2020 for a comprehensive overview). Since present-day science is *not* deterministic in this narrow sense, both sceptics and compatibilists about free will and moral responsibility tend to be (more or less explicitly) agnostic about whether the world ultimately is deterministic. Free will sceptic Derk Pereboom famously prefers "hard incompatibilism" to "hard determinism" for this reason (Pereboom 2001; 2014).

Related to the above, Moore's attack on libertarianism is problematic (Moore 2020: 265-270). He thinks that all libertarians see *causation* as a threat to free will and moral responsibility, because he equates deterministic causation with causation overall. He further assumes that libertarians see *only* causation as responsibility-undermining, which leads to strange descriptions of how libertarians distinguish morally responsible from non-responsible choices. This is not a correct picture of libertarianism. Most libertarians agree with compatibilists that qualities like being reasons-responsive are important for moral responsibility, even though they argue that more is needed. Furthermore, the non-causal version is only embraced by a minority of libertarians – agent-causal and event-causal versions are more popular (O'Connor and Franklin 2020).

The section where Moore discusses dualism is problematic as well (Moore 2020: 460-461). He notes that there are philosophers who argue that reductive physicalism cannot account for the privileged first-person access we have to our own mental states, for qualia, intentionality, etc, but he believes that neuroscience should trump philosophical musings like these. However, it is unclear why or how science could trump philosophy if the arguments in question do not lead to conclusions that *contradict* empirical science. Moore seems to assume that the only alternative to reductive physicalism are strange versions of substance dualism which looks,

well, *fishy* from a scientific standpoint, but there are many more options in the philosophy of mind. To mention but one famous example: Donald Davidson's (2001) *anomalous monism* about body and mind. According to this theory, every mental event is identical to some physical event. We can nevertheless not reduce psychology or phenomenology to neurology, because it is not the case that, e.g., every instance of intending to rob a bank out of financial desperation and a wilful suppression of doubt that this is a good idea, has the exact same neurological features. Anomalous monism has been heavily criticized, but it is still debated, and new versions developed (e.g., Taylor 2018).

Furthermore, Moore's own favoured metaethical view, the moral realism that he reminds us of several times in both this and previous books about criminal justice (e.g., Moore 1997), could be criticized with arguments analogous to those he uses against dualism. J. L. Mackie (1977) famously argued that moral facts of the kind that Moore believes in are strange and fishy, and has no place in a reasonable and naturalistic worldview. Gilbert Harman (1986) equally famously argued that moral concepts like "right", "wrong", or Moore's often discussed "culpable" has no role to play in our best scientific explanations. The section on dualism therefore left me very curious about how Moore would explain, if pressed, why we should reject dualism on the grounds that it is unscientific but yet believe in moral realism.

The book would have been better if Moore had simply declared that he would assume the falsity of libertarianism and the truth of reductive physicalism for the sake of argument and proceeded from there.

Despite the weak libertarianism and dualism sections, the book is well worth a read. Moore truly does an admirable job of teasing apart different arguments and "challenges" one finds in neuroscience-based attacks on moral responsibility and retributivism and shows how each can be met. He does prove the negative thesis that neither folk-psychological ideas about agency and responsibility nor retributivist criminal justice depend on *disproven* claims.

Nevertheless, it is worth nothing that he does *not* prove the positive thesis that a retributionist criminal justice system is morally justified. Moore's arguments rest on the twin pillars of his intuitions – which may be shared by many but are neither universal nor obviously truth-tracking – and the implicit assumption that anyone defending our present-day retributivist criminal justice systems has a much lower burden of proof than anyone arguing for radical reforms. Proponents of the so-called epistemic argument against retributivism argue, on the contrary, that the burden of proof is high for anyone defending a system that deliberately sets out to harm people, and that this burden has not been met by retributivism's defenders (Vilhauer 2009; Shaw 2014; Caruso 2020; Jeppsson 2021).

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