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“My Brain Made Me Do It”

The rising abuse of neuroscience

Matt Crawford

BEGINNING IN THE 1990s, defense lawyers started showing juries images of their clients' brains and invoking clinical research to make the claim that, because of brain abnormalities revealed by scans, a defendant could not be held accountable for his or her actions. By now the use of some sort of "brain defense" has become common in capital cases, a fact that was recently brought to the attention of the broader public by Jeffrey Rosen, writing in the *New York Times Magazine*. If doing wrong is "hard wired," this would seem to call into question our usual understanding of moral responsibility, and punishing the wrong-doer for his actions would then make as much sense as punishing a defective car for overheating. As currently practiced, "neurolaw" tends in only one direction, toward exculpation.

Exculpation is a generous tendency, with good liberal associations, and indeed it is usually law-and-order conservatives who get alarmed by this sort of development. But there is cause for concern among civil libertarians as well because defense lawyers are not the only ones who are excited about potential uses of brain imaging. As reported by Rosen, professors of public policy dream of being able to use brain scans to predict a propensity for illegal behavior—not only for violence but also for tendencies like racial bias. This would open a vista of social control previously only imagined and expand the dominion of criminologists: if human behavior is electro-chemically preordained, there remains no discernible ground on which to object to pre-emptive interventions directed against those identified as hard-wired malfeasants. Such interventions might take the form of surveillance, incarceration, or medication. And in fact, such a program of prevention is already being offered by today's neurocriminologists as a prospective good.

But neurolawyers and neurocriminologists are not exactly neuroscientists. The irony is that "we have no evidence whatsoever that activity in the brain is more predictive of things we care about in the courtroom than the behaviors themselves that we correlate with brain function," according to Elizabeth Phelps, a cognitive neuroscientist at New York University, quoted by Rosen. In other words, if you want to predict whether someone is going to break the law in the future, a picture of his brain is no better than a record of his past behavior. Indeed, it is quite a bit worse. The significance of a brain abnormality revealed in a scan consists of the fact that that particular abnormality has been

correlated (imperfectly) with the behavior of large numbers of other people, which is the provenance of social science. So the scan itself is an intermediate thing, gratuitously interjected between social science of the sort that has long played a role in the courtroom and the judgment that must be made in the particular case. The story of neurological causation of behavior told by lawyers and criminologists merely adds a layer of metaphysics.

While such uses of brain scans are gratuitous, they are not without consequence. Margaret Talbot, writing in *The New Yorker*, reports on a forthcoming study in the *Journal of Cognitive Neuroscience*, of all places. It shines a light on the magical, totemic effect of brain scans on those viewing them. For the experiment, the authors tested three groups: neuroscientists, neuroscience students, and lay adults. The subjects in each group were offered explanations for psychological phenomena familiar to everyday experience (for example, our tendency to assume other people know the same things we do). Some of these explanations were contrived to be pointedly bad explanations. The authors found, in Talbot's words, "that all three groups were adept at identifying the bad explanations, except when [the authors] inserted the words, 'Brain scans indicate.'" Then the students and lay adults tended to accept the bad explanation.

These findings suggest that we are culturally predisposed to surrender our own judgment in the face of "science." This tendency presents an opportunity for all manner of cultural entrepreneurs who seek authority over others, whether in law, policy, psychiatry, or management. There is no arguing with a picture of a brain. Among those charged with the administration of human beings (to say nothing of marketing), there is a great hunger for scientific-looking accounts that can justify their interventions, as the aura of neutral science imparts

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legitimacy to their efforts. Thus does power get laundered into something more august: authority. Is this cynical manipulation? Perhaps not; the hankering after reductive explanations can be a sincere reflection of professional and institutional interests. The need for public reason-giving predisposes lawyers, judges, shrinks, and policy wonks to explanations that are objective, hence universally affirmable. This is to their credit, but unfortunately it also disposes them to be easily enthralled with half-baked scientific claims about human beings, and to lend their voices to publicizing them. Such publicity exploits our cultural tendency to conceive ourselves in mechanistic terms, and furthers it.

INDIVIDUALISM AND SUBJECTIVITY

Invoking a mental mechanism seems to do important cultural work at the nexus of science, law, and liberal political culture.

Science and law both place a high value on detached objectivity. In their pursuit of law-like generalizations, scientists try to conduct experiments that are fully replicable, free of their own idiosyncratic subjectivity. Similarly, a defense lawyer who points to a brain scan appeals to something visible to all, rather than making unverifiable claims about the private reality of his or her client. More generally, in a courtroom as in the public square, an individual is supposed to make no claims against his fellow citizens that are not universally affirmable; he must make his case in the language of formal rights rather than demand his due as an individual with a proper name. The ideal liberal subject would seem to be an averaged subject, free of idiosyncrasy (this may help to explain our love of public opinion polls and the attractions of the normal). Subjectivity, then, seems to be an irritant both for science and for one of our central liberal ideals, namely, the rule of law. If individual consciousness can be reduced to an objectively observable mechanism, this would solve both problems with one stroke.

But there is a paradox here, because another principle of both science and liberalism is epistemic “individualism.” That is, we are commanded to judge things for ourselves, rather than rely on authority. Yet this presents precisely the problem of idiosyncrasy that science and liberalism must overcome. Alexis de Tocqueville shows how this paradox gets worked out in the mental life of a citizen. Thrown back on himself and told to rely on his own judgment, an individual finds that he is in fact not competent to judge everything for himself. Understandably, this makes him anxious, so he casts about for help. He cannot look to tradition—that would be perverse, given his belief in progress. So he looks to the mass of his contemporaries, and finds reassurance in the numerical weight of their opinions. The individualist, it turns out, is a conformist. Today’s deterministic view of individual consciousness may be attractive for the same reason: it lightens the burden of responsibility. Modern thought posits a radical self-sufficiency of the individual, hence radical responsibility, and when this view founders on the rocks of psychic reality, we reach for an opposite doctrine of radical irresponsibility. ■