CAUSATION, COUNTERFACTUAL DEPENDENCE AND CULPABILITY: MORAL PHILOSOPHY IN MICHAEL MOORE’S CAUSATION AND RESPONSIBILITY

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I. MOORE’S QUESTION

Michael Moore’s contributions to moral philosophy in *Causation and Responsibility* mainly concern a question about which philosophers have been strangely silent: given that we are often morally responsible, not just for what we do in some narrow sense, but also for the downstream consequences of our conduct, which of those consequences are we responsible for, and why? If I try to kill you and succeed, I am responsible not just for my attempt—which is bad enough—but also for your death. If it is my job to feed the parrot and I forget and the parrot dies, I am responsible not just for my negligent omission, but for the resulting injury. Moreover, since it is worse to harm a thing than merely to subject it to a risk of harm, I am more blameworthy when harm results from my wrongful conduct than I am when I act badly and, for whatever reason, no harm is done. Moore is surely right

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2. Terminological point: Since the present discussion focuses exclusively on the **bad** consequences of our conduct, we may identify being **morally responsible for a consequence** with being **morally blameworthy for that consequence**.

about this though I won’t litigate the issue here. The problems I want to discuss arise only for those of us who agree with Moore on this basic point.

The problems arise because we are clearly not responsible for every consequence of what we do. If I absent-mindedly scratch my nose today and initiate a series of events that culminates in a traffic accident in Beijing ten years from now, the accident is a consequence of my act, but it is not my fault. Every theorist who believes that we are sometimes responsible for downstream harms therefore needs a limiting principle: a theory that specifies which of the innumerable consequences of our conduct is properly chargeable to our account.

The first principle of any such theory is clear, and covers the last case well enough. I am morally blameworthy for an occurrence \( E \) only if \( E \) is a consequence of some culpable act or omission on my part. Since I am not at fault for scratching my nose—since this act, considered in itself, was neither negligent nor reckless nor knowingly or intentionally wrongful—it follows that I am not morally blameworthy for its downstream consequences, no matter how disastrous they may be. But of course this can’t be the whole story. Suppose I forget to feed the parrot, but it doesn’t die; it merely misses a meal. If this negligent omission triggers a cascade of events that culminates in a traffic accident ten years later, the accident is a consequence of my culpable conduct, and yet it would be a mistake to blame me for it. Hence the question to which Moore’s book is largely devoted: Which of the consequences of our culpable conduct are we responsible for, and why?

If we are to appreciate the intended force of the question, we must understand the key terms very broadly. As I use the word, our conduct includes both our positive acts and our omissions, so even if my failure to feed the parrot is not an action, it is still an aspect of my conduct broadly construed. I also use the word consequence in a broad sense. As we shall see, Moore holds that omissions are never causes, and hence that the death of the parrot is not a causal consequence of my failure to feed it. And yet it is obviously a consequence of my conduct in a broader sense. If we seek to explain why the parrot died, one correct answer begins like this: The parrot died, in part, because I failed to feed it. In what follows, then: An event or state of affairs \( E \) is a consequence of \( X \)'s act or omission \( A \) if \( E \) occurs or obtains in part because \( X \) did \( A \).

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5. In other words, there is no such thing as strict *moral* liability.
The generic relation between our conduct and its consequence is one of explanatory dependence. Our problem arises because every culpable act or omission figures (perhaps only incidentally) in the explanation of countless future events and states, some of which involve harm to others. We are morally on the hook for some of these harms but not for all; the aim is to say which and why.

II. SOME MOOREAN THESSES

Moore does not provide a systematic theory of consequential moral responsibility, but he does defend a number of strong and interesting claims that might form the core of such a theory. At the heart of Moore’s approach is the thought that if we are to be responsible for an event that is not itself an aspect of our conduct, then there must be some metaphysical relation—some metaphysical “glue”—that links our conduct to the event in question. As Moore sees it, there are two such relations: causation and counterfactual dependence. You enjoy cause-based responsibility for an occurrence when you are linked to that occurrence by the fact that your conduct caused it; you enjoy non-causal responsibility for an event when your responsibility is grounded in the fact that, but for your culpable conduct, the event in question would not have occurred.

6. Explanatory dependence is a relation among fine-grained facts. The field of this relation includes not only positive facts—Mellor’s facta and Armstrong’s sparse states of affairs—but also negative facts, disjunctive facts, general facts, etc. See D.H. MELLOR, THE FACTS OF CAUSATION (1995), D.M. ARMSTRONG, A WORLD OF STATES OF AFFAIRS (1997) (discussing positive fact); see also Gideon Rosen, Metaphysical Dependence: Grounding and Reduction, in MODALITY: METAPHYSICS, LOGIC AND EPistemology 109–38 (Bob Hale & Aviv Hoffman eds. 2010) (discussing fine-grained facts more generally). Moore argues at some length that such items are not the relata of the causal relation, in part on the ground that facts so conceived are linguistic, and in part on the ground such facts are transcendental or not in the world. Moore, supra note 1, at 342, 347. While I have no special brief for facts as causes, I reject these reasons for dismissing them. The fact that Fred is not a hamster is a real, mind-independent entity that contains Fred, the property of being a hamster and negation as constituents, and which exists at a world if and only if Fred is not a hamster at that world. Since many such worlds contain no languages or language users, there is no good sense in which this fact is a linguistic entity. Moreover, the fact in question is no more or less transcendental than the positive fact that Fred is a rodent. Neither of these facts is fundamental; each is presumably grounded in more basic facts about the disposition of particles in space-time or the quantum state of the universe. But they are both perfectly good non-fundamental facts, equally part of the world.

7. MOORE, supra note 1, at 426.
Moore’s most important normative claim in this area is that while these two grounds of responsibility are perfectly genuine, cause-based responsibility is weightier, or more serious, than non-causal responsibility. It is morally worse to cause harm than it is to merely “enable” harm by non-causal means. As a result, we are often more blameworthy for causing harm than we are for merely enabling it, and it is often easier to justify enabling harm than it is to justify causing the same harm, other things being equal.

Because the distinction between causation and other forms of explanatory dependence is morally significant, the moral philosopher has no choice but to tackle a range of notoriously thorny problems in the metaphysics of causation. When he does, he discovers roughly the following (according to Moore):

(a) Causation is a relation among particular positive events or states. Mere absences, non-occurrences and negative states of affairs (like the absence of air in a room) are never causes or effects.

(b) As a corollary, pure omissions and double preventions are never causes.

(c) Causation is not analyzable according to any of the well-known strategies. In particular, it is not analyzable in terms of counterfactual dependence or subsumption under general laws. Indeed it may not be analyzable at all.

(d) Causation is a matter of degree. The basic causal facts are of the form $C$ causes $E$ to degree $R$. The strength of the causal connection between $C$ and $E$ depends on the number of causal intermediaries, so causation tends to “peter out” over long causal chains. If we say that $C$ is a substantial cause of $E$ if $C$ is a cause of $E$ to degree $R \geq T$, where $T$ is some fixed threshold, then even if causation-to-some-degree is transitive, substantial causation is not.

8. The word “enable” is not ideal, but in the exposition of Moore’s view it helps enormously to have a transitive verb, syntactically akin to “cause,” to pick out the relation in which $C$ stand to $E$ when $E$ is a non-causal consequence of $C$. Faut de mieux, I have enlisted “enable” for this purpose.
9. Moore, supra note 1, at 34.
10. Id. at 444.
11. Id. at 153, 460.
12. Id. at 391.
13. Id. at 471.
14. Id. at 506.
15. Id. at 153.
16. Id. at 121.
In this Article, I take these metaphysical views more or less for granted for in order to explore their implications for ethics. I focus in particular on the following cluster of Moorean commitments: 17

(a) Because it is morally worse to cause harm than to enable the same harm by non-causal means (ceteris paribus), and because double preventions are never causes, it is normally worse to cause harm than to double-prevent a comparable harm. 18

(b) In particular, in closely matched cases, we are more blameworthy for the harm we cause than for the harm we merely double-prevent, and it is normally easier to justify the double-prevention of an injury than it is to justify causing a comparable injury. 19

(c) Because omissions and double-preventions are never causes, we are responsible for the consequences of our culpable omissions and double-preventions only when those consequences depend counterfactually on our misconduct. 20

(d) We enjoy cause-based responsibility for an occurrence only if our conduct is a substantial cause of it. 21

(e) Our cause-based responsibility for the consequences of our misconduct is roughly proportional to the degree to which our conduct is a cause of the harm in question. 22

(f) Principles (d) and (e) explain why we are often not responsible for the remote consequences of our conduct, or for consequences produced by freakish causal chains involving unpredictable intermediaries. 23 They therefore provide a promising metaphysical alternative to certain confused though influential ideas, developed mainly in the law, according to which our consequential responsibility is limited to foreseeable harms, or to those harms the risk of which rendered our conduct culpable (the Harm Within Risk idea).

17. Some of these formulations are more determinate than Moore’s own. In some cases I have extracted moral principles from Moore’s discussion of legal issues, relying on Moore’s background commitment to the view that in criminal law especially, legal liability should roughly proportional to moral blameworthiness.

18. Moore, supra note 1, at 459.

19. Id. at 465.

20. Id. at 460.

21. Id. at 276.

22. Id. at 71.

23. Id. at 274.
Let us begin with Moore’s claim that there is a significant moral difference between causing harm and merely “enabling” harm by non-causal means. An example to support this thesis will consist in a pair of closely matched cases—cases involving the same sort of harm, the same culpable mental state, etc.—where the only relevant difference is that in one case the agent’s conduct is a cause of the resulting harm, while in the other it is a mere non-causal ground. The most compelling examples will be those in which the agent is clearly blameworthy for the harm he causes, but altogether blameless for the harm that is consequent upon his act but which he does not cause. However, we should also be on the lookout for cases in which the agent is more culpable for the harm he causes than for the harm he merely enables, and where the best explanation for this fact adverts to the metaphysical distinction between causation and other forms of dependence.

The most persuasive cases for Moore’s purposes involve the contrast between active harming and omissive allowing. After all, almost everyone agrees that however bad it may be to stand idly by while a child drowns in a shallow pond, it is much worse to hold his head under water in order to see it that he drowns, and one possible explanation for this fact would cite the Moorean principle that it is worse to cause harm than to enable it. But of course this explanation is only tenable if the general principle is sound, and as we shall see, there are excellent reasons for thinking that it is not.

Suppose you’re floundering in the open sea after a shipwreck. Fortunately, a plank is drifting rapidly in your in your direction. Unfortunately, I maliciously kick it away before you can grab it and you drown. Your death is a consequence of my act in our broad sense: you drowned in part because I kicked the plank. But according to Moore, my act is not a cause of your death. Rather it prevents an occurrence—the plank’s drifting into reach—which would have prevented your death, and according to Moore, such double-preventions are never causes. 24

Moore’s theory (in this simple form) thus predicts a systematic moral difference between the causation of harm and the double-prevention of harm. More specifically, it predicts that that other things being equal, it is morally worse to cause harm than to double-prevent it, and hence that (a) someone who culpably causes harm is more blameworthy than someone who double-prevents it, and (b) it is easier to justify the double-prevention of harm than it is to justify causing that same harm. And yet as Moore himself

24. Id. at 353.
acknowledges, there are clear and compelling counterexamples to these general claims.25

When X shoots Y in the heart and Y dies, the immediate cause of death is the death of tissue in Y’s brain. The gunshot to the heart, however, does not cause this necrosis. Rather it prevents an event—the transfer of oxygen from blood to brain—which would have prevented the necrosis, and according to Moore, this sort of double-prevention is not causation.26 And yet if we compare this case with a closely matched case in which X indisputably causes Y’s death—say by shooting Y in the head—there is obviously no moral difference whatsoever.

Moore calls double-preventions of this sort “near causings,”27 and he concedes that they are morally equivalent to genuine causings in every way. His considered view, then, is that the while the key metaphysical contrast is between causation on the one hand and non-causal enabling on the other, in morality the salient contrast is between causation-or-near-causation on the one hand, and enablings-that-are-not-near-causings on the other.28

What distinguishes near-cause from other forms double-prevention? According to Moore, the crucial difference is that in cases of near-causation, the agent’s act causes an event, which, though not itself a cause of the resulting harm, is nonetheless very close to a cause of that harm. Discussing a family of examples due to Jonathan Schaffer,29 Moore writes:

If some actor A causes a bullet to go through his victim’s heart, the ultimate harm for which we hold the shooter responsible (the death of the victim) is ultimately caused by cellular death in his brain and elsewhere. Such cellular death is close to the state of affairs that the actor indisputably caused. A ruptured heart is not literally the same state of affairs as cellular death in the person whose heart it is; but it is pretty close. This is also true of Schaffer’s other examples. Where A’s willed bodily movements cause the trigger of a gun to move, which trigger movement moves a sear from the path of the

25. Id. at 465.
26. In general, Moore’s view entails that whenever X “kills” Y by asphyxiation (strangulation, suffocation) or by depriving Y’s brain of oxygen in some other way (beheading), X’s act does not literally cause Y’s death.
27. MOORE, supra note 1, at 465.
28. “[T]his moral difference does not track cleanly the metaphysical distinction between causings and double-preventings … [T]o be morally plausible we need to expand the class of causings with the additions of those double preventings that are ‘near causings.’” Id.
29. J. Schaffer, Causes need not be physically connected to their effects: The case for negative causation, in CONTEMPORARY DEBATES IN THE PHILOSOPHY OF SCIENCE (C. Hitchcock, ed., 2004).
spring behind the hammer of the pistol, what A has caused—the movement of the sear—is close to the state of affairs which caused the bullet to fire, viz., the spring behind the hammer moving.\footnote{Moore, supra note 1, at 461–62 (emphasis added).}

Put schematically: \( C \) is a near-cause of \( E \) if \( C \) is a double-preventer of \( E \) and \( C \) is a cause of some intermediate event \( E^* \), which is close to some other event \( E^{**} \), which is in turn a cause of \( E \).

If we are to make sense of this proposal, we need to hear more about what it means for one event to be “close” to another. Some of Moore’s formulations suggest that closeness is a matter of qualitative similarity or resemblance\footnote{“A ruptured heart is not literally the same state of affairs as cellular death in the person whose heart it is, but it is pretty close.” \textit{Id.}}), but this can’t be the right idea. It is an incidental feature of the example that the agent’s act causes cell death in the heart, which resembles cell death in the brain, which causes death. If I kill you by administering a drug that paralyzes your heart, the last physiological event I cause—the flooding of calcium channels in the smooth muscle of the heart, let us say—is not qualitatively similar to the events in your brain that cause your death. But this is presumably a case of near-causation in Moore’s sense.

Is closeness a matter of spatiotemporal proximity? Again, this seems to be an incidental feature of the example. If human physiology were slightly different, your brain might function without new oxygen for hours before succumbing to cell death. In that case there might be a significant temporal gap between the proximate events in your heart that I indisputably cause and the distal events in your brain that cause your death. (If you are very tall, there might also be a significant spatial gap.) But intuitively, this would still be a case of near-causation—that is, a case of double-prevention that is morally indiscernible from a closely matched case of echt causation.

I belabor these issues because it is vital for Moore’s purposes that some account of “closeness” be forthcoming. His considered view is that there is a significant moral difference between causing harm and the double-prevention of harm, except when the double-prevention is a near causing, in which case it is morally indistinguishable from a full-fledged cause.\footnote{\textit{Id.} at 465–66.} But if Moore cannot explain the distinction between near-causation and “mere” double-prevention, he has no good way to formulate this principle.\footnote{Note that it will not do to say: \( C \) is a near cause of \( E \) if \( C \) is a double-preventer of \( E \) that is morally indistinguishable from a full-strength cause. That would reduce Moore’s thesis}
problem would disappear if Moore held that unlike some double-preventers, near-causes are genuine causes. This is of course the emphatic view of informed and reflective common sense. The man on the bus has no doubt that shooting someone in the heart is an excellent way to cause his death. But perhaps this is not probative, since the man on the bus has never given the matter any thought. The more important point is that when the man on the bus clears his head and learns about the underlying mechanisms—when he learns how the gunshot led to the death by preventing oxygen from reaching the brain, etc.—he does not say, “Oh, I guess I was wrong: the shooting didn’t cause the death after all.” Rather he says, “Oh, so that’s how the shooting caused the death.”

This raises an important methodological point. When it comes to the application of non-technical terms like “cause” and “kill,” informed and reflective common sense has great authority. We may legitimately correct common sense when the revision would serve a compelling theoretical purpose—when it would do a better job of carving nature at its joints; and that is presumably what Moore is suggesting in these cases. But as we have seen, for the purposes of moral theory, there is no joint whatsoever between the causes and the near-causes. To this we might add: No serious scientific discipline draws such a line. Paleontologists seeking the causes of the extinction of the dinosaurs, oncologists seeking the causes cancer, etc., will never find themselves distinguishing causes from near causes. So we must ask: If there is no theoretical pressure from science or from ethics to draw a line between causation and near-causation, why is Moore so keen to distinguish them?

Moore takes the non-causal character of double-preventions to be a corollary of his deeply held principle that absences and other “non-occurrences” are never causes. But as Moore himself notes, even if we grant this general principle (as I will) it does not follow immediately that the gunshot to the heart cannot cause the death, since both the gunshot and the death are perfectly good positive events. Moore’s comments on this point as follows:

to a tautology: There is an important moral difference between causation and double-prevention, except when there is not.

34. As Moore notes: “Schaffer is right about all of these examples in two respects: (1) common intuition tells us that A caused the death of his victim, A’s finger movement caused the bullet to fire . . . .” MOORE, supra note 1, at 462.

35. Moore argues at some length that to kill a thing is to cause its death. Moore’s view thus entail that in cases of near-causation, the agent does not strictly kill his victim. Id. at 5.

36. Id. at 143–44.
[O]ne might think the ontological objection to be idle here. Yet it is not. In double-prevention cases the alleged causal intermediary is an absence, and that is problematic because such causal intermediacies [sic] need to be both effects of an earlier cause, and causes of yet later effects, and absences can be neither.\(^{37}\)

The argument assumes that when \(C\) if an indirect cause of \(E\), the two events must be linked by a causal chain or process—\(C \rightarrow E^* \rightarrow E^{**} \cdots \rightarrow E\)—in which each subsequent link is caused by its predecessor. But it seems to me that there is no good reason to accept this principle, and indeed, that the cases of near-causation provide us with clear counterexamples to it. Indirect causation is a constituted relation. When \(C\) is an indirect cause of \(E\), this is so in virtue of some pattern of facts involving intermediary events and states. We may grant that indirect causation is sometimes grounded in a uniformly causal chain from \(C\) to \(E\). But the cases of near-causation may be taken to show that the very same relation—genuine (indirect) causation—is sometimes constituted by chains involving double-prevention.\(^{38}\)

It might be objected that this amounts to “action at a distance,” since the alleged causal route from \(C\) to \(E\) in such cases must involve an absence or a non-occurrence.\(^{39}\) But genuine action at a distance involves an unmediated causal connection between spatiotemporally separated events—a relation that does not obtain in virtue of any sequence of intervening states. In near-causation, by contrast, the causal relation is mediated by a real sequence of states—some of them “negative,” like the absence of blood in the brain—obtaining at intermediate times. Action at a distance may be exotic, but causation-by-near-causation does not require it.\(^{40}\)

37. Id. at 461.

38. Analogy: There are two ways for one event to be an indirect cause of another, just as there are two ways for one person to be the uncle of another. (You can be a male who has a sibling who has a child, or a male whose spouse has a sibling who has a child.) There is a single relation (the uncle of relation), constituted by two distinct patterns of kinship.


40. Moore’s resistance to the present proposal may depend on a metaphysical view according to which absences and non-occurrences are literally nothing at all. Moore, supra note 1, at 445. For if that were true, then causation by near-causation would involve action at a distance. But this extreme view about absences and non-occurrences strikes me as mistaken. The absence of oxygen in \(X\)’s blood at a certain time is a perfectly good (albeit) negative state of affairs. The state is not fundamental: it obtains in virtue of the positive state of \(X\)’s body in the relevant interval, but it is a perfectly good physiological state nonetheless. In his discussions of the causal efficacy of absences Moore is fond of citing the Parmenidean principle (by way of King Lear and The Sound of Music) that nothing comes of nothing. Id. at 446. But even if this principle were sound, it would not entail that absences are never causes,
It may be objected that this proposal merely postpones the difficulty. Even if Moore allows that near-causes count as causes, doesn’t he still owe us an account of the distinction between mere double-preventions (which are not causes, and which are supposed to be morally distinct from causes in important respects) and the causal double-preventions that we have been calling “near causes”? Oddly enough, I think the answer to this question is no. Moore’s account of the metaphysics of causation is non-reductive. He does not insist that causation is a metaphysical primitive, but he maintains that causation may be irreducible, and that nothing in his theory depends on the availability of a reduction.\textsuperscript{41} I have real sympathy for this view. But if causation is primitive and irreducible we should not expect an informative answer to the question—what distinguishes near-causes from other double-preventers? The answer is simply that the near causes are the double-preventers that are causes. A more informative answer may be possible, but a theorist who is complacent about primitive causation should not expect one.

\textit{First conclusion}: Moore should accept the commonsensical view that near-causation is causation.

This would put him in a position to defend the elegant thesis that there is an important moral difference between causation as such and other forms of explanatory dependence, as distinct from the clunkier thesis that the salient moral category is causation-or-near causation.

\textbf{IV. CAUSATION VS. (MERE) DOUBLE-PREVENTION: THE DIFFERENCE THESIS}

Moore’s most important claim in this area is that there is a significant moral difference between genuine causation and conspicuous double-prevention—between killing a man, for example, and preventing his rescue. The difference in question is subtle. Moore concedes that in circumstances in which it is wrong and blameworthy to cause an injury, it is almost always also wrong and blameworthy to prevent the prevention of that injury. His

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\item Distinguish a \textit{strong} absence from a \textit{weak} absence as follows. A strong absence is a negative state of affairs that might obtain in an altogether empty universe. A weak absence, by contrast, is a negative state of affairs that entails the existence of real things, and which obtains at time only if those things are in some determinate positive state at that time. Weak absences are not “nothing at all;” they are real facts grounded in determinate positive facts. That is why the “quasi-causal” chains in which they figure as intermediaries do not involve action at a distance.

\item \textit{Id.} at 505.
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thesis is that in closely matched cases of this sort, the double-prevention of injury is normally a less-grievous wrong, as is shown by the fact that the bar for consequentialist justification of the act is lower than it would be for acts that cause a corresponding harm. Call this the Difference Thesis. 42

My own view is that the Difference Thesis may be true, but that Moore’s cases do not support it. Even if there is sometimes a moral difference between a harm-causing act and a rather similar act that involves the mere double-prevention of harm, the best explanation of this difference does not advert to the metaphysical difference between causation and double-prevention, but rather to other features of the cases that are independent of this distinction. To see what I have in mind, let’s review some of the main exhibits in Moore’s case for the Difference Thesis.

A. Torture vs. Torture “Lite”

In genuine torture, I cause intense fear and pain in a helpless victim—say, by shoving bamboo splints under his fingernails. In “torture lite,” part of what is euphemistically called “enhanced interrogation,” I deprive my victim of sleep—say, by dousing him repeatedly with cold water—or of sensory stimulation—say, by locking him in a dark room for many days—with the foreseeable result that he will suffer terribly. Both forms of brutality are obviously wrong in many cases; but, Moore suggests that torture is significantly worse than “torture lite,” and that torture “lite” is therefore somewhat easier to justify by the exigencies of warfare. 43 The challenge is to explain this difference, and on Moore’s view the answer lies, at least in part, in the causal structures of the two techniques. In torture “lite,” my conduct does not literally cause my victim’s misery; rather it prevents certain physiological processes—sleep, sensory stimulation—which would have prevented that misery. Since it is normally easier to justify the double-prevention of harm than the causation of harm (the Difference Thesis), this explains the subtle but genuine moral difference between these two forms of brutality. 44

I say: The example lends no support the Difference Thesis, since the cases differ in ways that have nothing to do with the metaphysical contrast

42. Id. at 459.
43. Id. at 65, 465.
44. “The reason this [torture lite] is easier to justify than is true torture seems to lie in the double-preventionist nature of such interrogative techniques, a nature not shared by the caused-based techniques of torture ‘heavy.’” Id. at 465.
between causation and double-prevention. Most obviously, they involve qualitatively and quantitatively different harms. Intense, searing physical pain and fear of imminent death are one thing; the misery and disorientation that come from sleeplessness or sensory deprivation are something else. Both are bad, and any comparisons are largely guesswork. But insofar as the intuition of moral difference is well-founded, this is surely due in large part to the fact that, however awful it may be, the state we cause in “torture lite” is somewhat less bad than the state we cause in torture “heavy.”

To control for this difference, suppose we could bring about the same sort of sudden, agonizing physical pain either by genuinely causal means or by double-preventionist means. Suppose that thanks to some physiological quirk, our victim’s normal physiology will cause him to suffer sharp, blinding pain if he is deprived of sensory stimulation for an hour. Would that sort of torture “lite” be easier to justify than bamboo under the fingernails? I don’t think so. But even if you disagree, it is hard to believe that any remaining moral difference between the cases is best explained by difference in causal structure that Moore identifies. We recoil at torture in part because it involves violent interference with the subject’s body. In paradigmatic cases of torture, we must strap our struggling victim to the rack, or force the splints under his nails, or how hold him down while we pour water down his throat. Torture “lite” is less overtly violent. So if we are to test Moore’s hypothesis, we must equalize this difference as well. Suppose we could bring about intense bodily pain by a non-violent causal process, say by flipping a switch that will release an odorless gas into the victim’s cell. Would this less violent form of torture be harder to justify than an equally non-violent double-prevention that led to the same pain and misery? Of course not. When these other features of the cases are equalized, the moral difference goes to zero. So these examples do not support the Difference Thesis. In fact, they count against it.  

45. The simplest version of the Difference Thesis says: The fact that A causes pain always counts more strongly against A than the fact that A* double-prevents pain counts against A*. Any pair of cases in which causation and double-prevention are morally equivalent (and which do not differ in other morally relevant respects) refutes this simple version of the Difference Thesis. It is open to Moore to defend a more nuanced version, according to which the causation of harm counts more heavily only when certain further conditions are satisfied. Of course the Difference Thesis can always be immunized against counterexamples by an ad hoc formulation of this sort. So the challenge for Moore is to produce an explicit, non-ad hoc principle that identifies the conditions under which this metaphysical difference makes a moral difference.
B. Active vs. Passive Euthanasia

When a doctor removes a life-support system and the patient dies, the doctor’s act does not cause the patient’s death on Moore’s account. The death is caused by the underlying disease. The doctor merely prevents the machine from preventing death. Some people think that there is a moral difference between this sort of passive euthanasia and active mercy killing, in the sense that the bar for consequentialist justification of passive euthanasia is sometimes lower. Moore agrees and holds that this difference is grounded in the metaphysical difference between causation and double prevention.

Some of Moore’s rhetoric in support of this proposition is misleading. Thus, having described a case of justifiable passive euthanasia, Moore asks: “Can we actively cause death (by knife in the heart, lethal injection) in order to obtain the same good consequence?” The answer to this question may well be “no,” but the obvious explanation has nothing to do with the metaphysical contrast between causation and double prevention. A knife in the heart involves conspicuous bloody violence, and the bar for justifying that kind of killing is obviously higher than the bar for justifying an act that would bring about a dignified and peaceful death.

We come closer to a matched pair of cases if we contrast the removal of life-support with the injection with a fatal dose of morphine. In such cases, the intuition of difference is clearly weaker (In my own case, it is non-existent.). But, even if we suppose that some difference remains, it is unclear whether it is best explained in Moore’s way. As Francis Kamm has noted, there appears to be an intuitive moral difference between causing harm by diverting an existing threat and causing harm by initiating a new threat that would not have existed but for one’s activity. It is one thing to divert a trolley from a track on which five workers are trapped onto a siding on which only one is trapped; it is another to send a trolley down the track on which one (hitherto unthreatened) worker is trapped, foreseeing that its motion will alert five workers on an adjacent track to the looming presence of another trolley that will kill them unless they move. If there is a moral

46. “When the doctor does something like pull the plug on the respirator, the moral philosophers call this ‘removing of a defense’. The metaphysicians call this ‘double-prevention.’” Moore, supra note 1, at 62.
47. Id. at 460, 464–65.
48. Id. at 464.
difference in cases of this sort, it has nothing to do with the distinction between causation and double-prevention: it is a distinction within the domain causal.

Returning to the contrast between removing life-support and active euthanasia by lethal injection, we find a similar underlying contrast. The doctor who administers the lethal dose of morphine initiates a threat that was not previously present; the doctor who removes life-support from a dying patient merely redirects an existing threat. This difference may suffice to explain our sense that active killing is somewhat harder to justify. And if that is the right explanation, the case does not support Moore’s hypothesis.

We come still closer to a matched pair of cases—one in which the only salient underlying difference is the difference between causation and double-prevention—when we consider the following scenario. Suppose Jones suffers from an incurable and intensely painful but non-fatal condition, and that he is being fed intravenously. Suppose he earnestly wishes to die, and that this wish is reasonable. Doctors can hasten his death either by flipping a switch that will cut off his food supply, or by flipping another switch that will administer a lethal dose of morphine. The deaths will be equally painless and dignified. Is there a moral reason to flip one switch rather than the other? Is the passive (double-preventionist) option easier to justify? I don’t think so. Again, when we are careful to minimize the confounding differences between the cases, the intuition of moral difference tends to evaporate.

On reflection, it is unsurprising that the differences Moore seeks to highlight are hard to spot in cases of this sort. The mechanisms of torture “lite” and of passive euthanasia may involve double-prevention and not causation in Moore’s austere sense. But only a metaphysician would suggest that a torturer who induces abject misery depriving his victim of sleep for days on end has not caused the resulting harm. Only a metaphysician would suggest that someone who negligently or maliciously removes a feeding tube has not killed his victim or caused his death. These may or may not be cases of near-causation in the sense of the last section; but they are clearly cases of causation both by the standards of informed and reflective common sense and by the standards of any relevant science. (Asked to enumerate the causes of death, the forensic pathologist might well cite the removal of the feeding tube.) In our discussion of near-causation above, I suggested that these commonsensical and scientific judgments about causation should be given great authority and overridden only if there is sound theoretical reason for doing so. If I am right that moral theory does not care about the difference between “Moorean” causation and double-prevention of the sort exemplified by torture “lite” and passive euthanasia, then we have good reason for insisting that as with near-causation, these more conspicuous forms of
double-prevention are also cases of causation. If we do not say this, then the cases we have been discussing amount to counterexamples to the Difference Thesis.

C. Ross, Tally and the Skelton brothers

Let us turn now to cases in which we are less inclined to describe the double-prevention of a harm as cause of that harm. The Skelton brothers are out to murder Ross, who has seduced their sister. A warning telegram has been sent, which will prevent the murder if it is delivered. Judge Tally intervenes to prevent the delivery, and the Skelton’s catch up with Ross. 50

Tally’s act is a double-preventer of Ross’s death, and if there is ever a case in which a double-preventer is not a cause, this is it. Tally did not literally kill Ross; we might say, he made it possible for others to do so. Tally is obviously morally blameworthy for the death, and yet intuitively, he is somewhat less blameworthy than the actual killers. Moore’s explanation invokes the Difference Thesis. The double-prevention of death is a less grievous wrong, as is shown by the fact that it is somewhat easier to justify an act like Tally’s than it is to justify causing death directly. Moore writes:

Suppose good consequences would follow Ross’s death, e.g., Ross was the one person who knew of the British capture of the German Ultra coding machine in the Second World War and unless killed Ross was about to tell the Germans. Could not Judge Tally (or MI-6) make sure Tally is not warned and so that he goes to the grave with the secret? Is it not easier to justify letting others kill Ross than killing Ross yourself? 51

Again, the rhetorical question is somewhat misleading, since it suggests that the alternative to active killing is mere omissive allowing (“letting”). The question ought to be: “Is it not easier to justify taking active double-preventionist steps to ensure Ross’s death than it is to justify killing Ross yourself?” However, let’s suppose that the answer to this question is “yes.” The question is whether this difference is traceable to the metaphysical difference between causation and double-prevention.

How else might it be explained? Moore himself provides the relevant tools. Begin by noting that insofar as we are inclined to think of Tally as playing a role in bringing about Ross’s death, his role is relatively minor

50. State v. Tally, 15 So. 722 (Ala. 1894).
51. MOORE, supra note 1, at 465.
compared to that of the actual assassins, who are clearly full-strength causes. Tally’s work was done well before the shooting, and it was done off stage. He was not involved initiating the plot or in the endgame, and as a result the detailed course and character of the killing were all determined by the independent acts of others. Now as we have noted, one of Moore’s great themes in his discussion of causation and responsibility is that causation is a matter of degree, and that an agent’s responsibility for an outcome often depends on the strength of his causal contribution to it. The chauffeur who drives the Skelton’s to the scene several hours before the hit comes down plays an indisputably causal role in the assassination; but he is “less of a cause” than the assassins themselves, and according to Moore this entails that he is somewhat less blameworthy, and that his actions are somewhat easier to justify by reference to the good consequences that may result.

Tally’s contribution is arguably analogous: he is a “contributor” to the outcome, but a minor one. The alternative hypothesis, then, is that it is easier to justify Tally-style double-prevention than it is to justify active killing, not because the former is non-causal (though it may be), but rather because its contribution to the morally objectionable outcome is relatively small.

We can test this hypothesis by contrasting a case in which Tally (or MI-6) can “enable” an assassination from which good consequences will flow, either by double-prevention, as in the actual case, or by playing a relatively minor causal role—say, by calling the taxi that will drive the assassins to the scene of the crime. Intuition may be wobbly in such cases, but for what it’s worth, my own sense is that the bar for consequentialist justification is about the same in the two cases. We may have a superstitious preference for “keeping our hands clean,” which militates against direct interaction with either the killer of the victim, and this may seem to favor double-prevention over genuine causal involvement. But when the causal involvement is that of a minor accomplice, I see no good moral reason to favor one of these ways of ensuring the death of an innocent person over the other. Other things held equal, assistance of either sort is equally wrong, and therefore equally blameworthy and equally hard to justify by reference to good consequences.

At this point we are entitled to a modest conclusion: We have yet to see a pair of closely matched cases in which a moral difference between causing

52. *Id.* at 118–23.
53. Discussing *Director of Public Prosecutions for Northern Ireland v. Lynch*, [1975] AC 653, in which Lynch was a chauffeur for a crew of IRA killers, and a modified version of *Tally*, in which Tally plays a minor causal role in the assassination of Ross, Moore writes: “Compared to the causal contributions of the Skeltons or the IRA, Tally and Lynch were small potatoes.” *Id.* at 70.
harm and the double-prevention of harm is best explained by the metaphysical difference between causation and double-prevention. It is hard to get perfectly matched cases of this sort. But when we take pains to minimize other possible sources of moral difference, the sense that there is a moral reason to favor Tally-style double-prevention over Moorean causation tends to evaporate.

Second conclusion: Moore’s examples do not support the Difference Thesis. For all we have seen, the moral principles governing our responsibility for the consequences our conduct do not distinguish between causation and double-prevention.

V. DOUBLE-PREVENTION AND COUNTERFACTUAL DEPENDENCE

We turn now to a discussion of Moore’s positive account of our responsibility for the non-causal consequences of our conduct. As we have noted, Moore’s guiding thought in the theory of consequential responsibility is that if I am to be responsible for some bad state of affairs that is not itself an aspect of my conduct, there must be some metaphysical nexus—some sort of “glue”—that attaches me to the state in question. When my culpable act causes a bad state, this causal connection supplies the glue. But when my act double-prevents the harm, or when my act is no act at all, but a mere omission, there is no causal connection on Moore’s view, and so we need another nexus. 54

Moore’s positive proposal on this point is straightforward: the glue that binds us to those non-causal consequences of our conduct is counterfactual dependence.

(CD) Because omissions and double-preventions are never causes, we are responsible for the consequences of our culpable omissions and double-preventions only when those consequences depend counterfactually on our misconduct.55

In particular, in cases of Tally-style double-prevention, “counterfactual dependence is the relevant desert determiner.”56 According to Moore, “this should be uncontroversial. Surely what makes Tally responsible for the death of Ross is that Tally’s act . . . made it possible for the Skelton’s to kill Ross.”57

54. Id. at 451–52, 459–60.
55. Id. at 452, 460.
56. Id. at 460.
57. Id.
To see why this cannot be right, begin by noting one of the most striking differences between causation and counterfactual dependence, namely, that causation is consistent with both over-determination and pre-emption, whereas counterfactual dependence is not. If X and Y shoot Z in the head simultaneously, their acts are both full-strength causes of the death. Similarly, if X shoots Z in the head thereby pre-empting Y from shooting Z in the head—X’s bullet arrives a moment sooner, knocking Z out of the path of Y’s bullet—X’s act is a full-strength cause of death. In neither case, however, does the death depend counterfactually on X’s act.

If responsibility always required counterfactual dependence, X would not be responsible for the outcome in such a case, as he clearly is. But since causation is an independent metaphysical “basis” for responsibility on Moore’s view, cases of this sort are fully consistent both with Moore’s theory and with the moral facts. The problem arises when we consider cases of over-determined or preemptive double-preventions. Suppose a plank is drifting rapidly towards shipwrecked Jones and that it will certainly reach him if no one interferes, but that X and Y simultaneously and independently shove the plank away with the malign purpose of ensuring Jones’s death. Alternatively, suppose that X is a bit quicker and shoves the plank just before Y can do so. Moore’s view entails that since the death does not depend counterfactually on X’s act in either case, X is not morally blameworthy for Jones’s death. (Indeed, no one is.) X is blameworthy only for the inchoate offense of “trying” to kill a person—which is to say that X merits only the sort of blame that would have been appropriate if Jones had somehow survived unscathed, despite the fact that Jones is now dead as a result of just the sort of “quasi-causal” process that X, in all his malignity, explicitly envisaged. Moore’s view also entails that in the case in which X’s act pre-empts Y’s involvement, X and Y are equally blameworthy, since each is blameworthy only for his attempt.

Both verdicts strike me as clearly wrong. If Jones’s friends and relations blame X intensely for Jones’s death, they are not mistaken. In his discussion of causal overdetermination Moore remarks:

One might of course swallow hard here and deny liability in... concurrent overdetermination case[s]. But in torts that would leave the plaintiff uncompensated despite the loss of his house because of two culpably set fires and two blameworthy dependents who could pay for the harm they caused; in criminal law, that would result in a merely inchoate liability for the two culpable fire starters, despite the destruction of a house because of their
actions. No jurisdiction has been able to stomach these results in torts or criminal law, and rightly so.\textsuperscript{58}

It seems to me that when it comes to over-determining double-preventers—and even more vividly, pre-empting double-preventers—the moral principle that underlies these legal verdicts applies with equal force. It would be a grotesque injustice if no one were legally responsible for Jones’s death in the cases just described, and that is because the unpreempted double preventer (X and Y in the first case, X in the second) is morally blameworthy for the harm he culpably intends and which materializes in accordance with his intention.\textsuperscript{59}

Third Conclusion: The glue that attaches a culpable agent to the consequences of his double-preventions may not be causation, but it is not counterfactual dependence either.

\textbf{VI. OMISSIONS, OVER-DETERMINATION AND PRE-EMPTION}

Let us now turn briefly to the cases that are most likely to support the Moorean Weltanschauung, those involving the harmful consequences of our culpable omissions. I have quibbled about whether double-preventions are always non-causal, but the idea that pure omissions are never causes is not threatened by the examples we have considered, and it is significantly more plausible. Let us suppose that it is right. The Moorean principle called (CD) above entails that we are responsible for the consequences of our omissions only when the consequence would not have materialized if we had done what we should have done.\textsuperscript{60} But cases analogous to those considered in the last section show that this cannot be right.

\textsuperscript{58} \textit{Id.} at 430.

\textsuperscript{59} Note also that on Moore’s view, if \(X\) and \(Y\) both push \textit{hard}, so that death is counterfactually independent of either act taken individually, neither is responsible for the death, whereas if both push somewhat less hard, the death may be counterfactually dependent \textit{on both} acts, and so each may be responsible for it. This is a peculiar result—clearly wrong in my view, but certainly peculiar in any case.

\textsuperscript{60} According to Moore:

If omissions give rise to a moral responsibility for some harm that is not based on there being a causal relationship between the omission and the harm, it is pretty clear that counterfactual dependence is the relation between the omission and the harm that is doing the moral work here. If the defendant had no ability to prevent the harm in question—if, in other words, the harm’s occurrence did not counterfactually depend on the defendant omitting some act he had a duty to do—it is everywhere uncontroversial that he has no responsibility for that harm.
Suppose our patient needs two pills or he’ll be blind by morning. It’s your job to give him one pill, mine to give him the other, and as it happens, either (a) we both forget, or (b) we independently and maliciously withhold the medication. The resulting blindness is not caused by either omission, since omissions are never causes. Moreover, it does not depend counterfactually on either omission, since the patient would have been blinded even if you (for example) had done exactly what you should have done. Moore’s principles therefore entail that no one is morally responsible for the injury. But this is surely wrong, especially in the second version of the case in which each of us intends to blind the patient by withholding medication and the patient is in fact blinded in part because that medication was withheld. Of course each of us can say in his defense, “Don’t blame me! I could not have prevented the injury if I had wanted to.” But of course an active wrongdoer can say the same in cases of concurrent causal over-determination, and the speech will do him no good at all. This is a familiar and general point. One can be morally responsible for a harm even if it was not in one’s power to prevent it.61 This is indisputably true when one’s culpable actions cause the harm. But as the present case shows, it is also true when the harm is a consequence of one’s culpable omission.

We can make the same point in a more vivid way. Suppose the patient needs one pill or he’ll be blind by morning and that it’s your job to give it to him. Unbeknownst to you, Black wants the patient blind, but he is reluctant to dirty his hands unnecessarily, so he has resolved to monitor the situation and to administer an “antidote” to the medication if, but only if, you deliver the pill. As it happens, you either forget to do your job or maliciously withhold the medication, and Black never lifts a finger. It seems perfectly obvious that you are morally responsible for the patient’s injury in this case, especially in the version in which you intentionally withhold the medicine so as to harm your victim. You would clearly be responsible in the simple version of the case in which Black is absent and the injury depends counterfactually on your culpable omission. But since Black’s inert presence cannot possibly make a difference to your responsibility, you must be responsible in this version of the case as well.

Cases of this sort—cases involving pre-empted Frankfurt-style interveners62—can be marshaled to establish the following general claim.

Moore, supra note 1, at 452.
62. Cf. id.
Fourth conclusion: Counterfactual dependence is never the ‘glue’ that binds a culpable act or omission to a downstream consequence.

Take any case in which you are tempted to say that X is responsible for E because E would not have occurred if X had not acted badly. Now add an inert, pre-empted intervener who would have caused E had X acted properly, but who in fact does nothing. This spoils the counterfactual dependence of the harm on X’s culpable conduct, but it does not relieve X of responsibility. More importantly, it does not alter the explanation or ground of X’s responsibility. It is simply never true to say that X is responsible for H because H depends counterfactually on X’s conduct.63

VII. LIMITING RESPONSIBILITY: THE SUBSTANTIAL CAUSE REQUIREMENT

So far we have been discussing the Moore’s main reason for thinking that the metaphysics of causation matters to the theory of moral responsibility: his claim that the principles governing our responsibility for the harms we cause differ in important ways from the principles governing our responsibility for the harms we enable by non-causal means. I would now like to switch my focus to a second Moorean reason for thinking that moral philosophers must take an interest in the subtle metaphysics of the causal relation: his suggestion that a proper understanding of causation permits a relatively clean solution to the urgent problem of limiting responsibility for downstream harms.64

When I negligently leave my roller skates on the sidewalk and you trip over the skates and break your leg, I am obviously responsible for the injury. But suppose you notice the skates, step into the street to avoid them, and you are struck by lightning. Maybe you are struck by lightning right away; maybe you are struck by lightning ten years later. In either case we may stipulate that but for my culpable act, you would not have been harmed as you were. And yet it is clear that I am not seriously blameworthy for your injuries in

63. It is worth stressing that nothing in our discussion amounts to a positive theory of our responsibility for the consequences of our omissions and double preventions. Consider a (far-fetched) case in which I fail to feed the fish and the fish dies of starvation in the normal way, but in which, if I had fed the fish, it would have developed an incapacity to digest its food, and so would have died of starvation anyway. It is somewhat unclear whether I am responsible for the death in this case, and that suggests that it may matter whether the “pre-empted intervener” is a human agent who consciously adjusts his conduct to mine, or a natural force operating blindly. Nothing we have said allows us to make sense of this fact, if it is a fact.

64. MOORE, supra note 1, at 275–76, 508.
either case. This is clearest in the case in which the harm lies in the distant future. The challenge is to say why this is so.

The law gives the problem a handy name: We are responsible only for those harms of which our act is a proximate cause. The challenge is to say what this means, and here the law provides a hodgepodge of suggestive slogans. Sometimes it is said that we are only responsible for the foreseeable consequences of our acts and omissions, or for the consequences of which a reasonably prudent person in our circumstances would have cognizant. Sometimes it is said that we are only responsible for a consequence when it is the sort of consequence the likelihood of which renders our conduct culpable, and so on. Moore rejects all of these familiar approaches as confused or worse.  

Substantial Cause Requirement. If X’s culpable act A initiates a causal sequence that culminates in E, then (leaving other, non-causal bases for liability to one side) X is morally responsible for E only if E is a substantial cause of E.  

The notion of substantial causation depends on Moore’s positive metaphysical view of the causal relation, the main tenets of which are as follows (these formulations are slightly more determinate than Moore’s own).

(a) Basic causal facts are of the form: C causes E to degree \( R \), \( 0 \leq R \leq 1 \).  
(b) C is a substantial cause of E if C causes E to degree \( R > T \), where T is some vague threshold.  
(c) The degree to which C causes E depends on the number of causal intermediaries; the longer the causal chain, the weaker the causal connection.

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65. *Id.* at 178.  
66. “[T]he amount of causal contribution needed for an actor to be morally responsible for some harm is non-de minimis (or ‘substantial’).” *Id.* at 276.  
67. *Id.* at 275.  
68. *Id.* at 276.  
69. Cf. *id.* 153, 276. This is Moore’s official position, but in fact the view is not promising. Each causal chain, no matter how short, may well involve infinitely many intermediaries, in which case numerical comparisons are beside the point. Moreover even if we restrict our attention to salient ‘discrete’ intermediaries, the number of such intermediaries can only be a rough guide to strength of connection. Contrast two light switches, one of which works by simply closing a circuit in the ordinary way, the other of which exploits some complex mechanism involving integrated circuits and thousands of (quick) intervening steps. I flip both switches and the lights come on. Surely my act is an equally strong cause of the illumination in both cases.
(d) Therefore, substantial causation is not transitive. Causation “peters out” over long causal chains.

(e) Even when the causal route from $C$ to $E$ is short, if $C$ is one of many concurring causes, or if other concurring causes are much more potent, $C$’s contribution to $E$ may be insubstantial or de minimis—even if $E$ counterfactually depends on $C$. 70

When the railroad porter negligently shoves a passenger onto a train as it is pulling out of Penn Station, which causes the passenger to drop a package of fireworks on to the tracks, which causes an explosion, which causes a stampede, which ultimately causes a massive luggage scale hundreds of yards away to fall on Mrs. Palsgraf,71 the porter’s act is a causal antecedent of the injury, in the sense that there is a causal chain running from the one to the other. It is certainly a cause of the injury as philosophers and scientists would use the word. But if the causal chain is long enough, it may not be a substantial cause. According to Moore, it is this fact—and not the fact that the injury was unforeseeable, or that the porter owed no duty of care to Mrs. Palsgraf—which explains the fact that he (and his employer) are not morally or legally responsible for the injury. Similarly, when I negligently leave my skates on the sidewalk and you step off the curb to avoid them and are struck by lightning, I am not responsible for your injuries, not because the freak event was unpredictable or because the risk of this sort of injury plays no role in explaining why my act counts as negligent, but rather because the causal contribution of the lightning to your injury dwarfs the causal contribution of my act, rendering it de minimis.

Moore’s bold strategy, then, is to jettison the wooly epistemic principles by means of which the law seeks to limit responsibility and to replace them with the non-epistemic ‘metaphysical’ requirement that the culpable act and the resulting harm stand in a suitably strong causal relation. The idea is intriguing, but it raises a number of questions.

Moore has another idea that is more promising. At one point he suggests that when $C$ causes $E$ to degree $R$, and $E$ causes $E^*$ to degree $R^*$, then (provided there is no other causal route from $C$ to $E^*$) $C$ causes $E^*$ to degree $R \times R^*$. “If we could quantify degrees of causal contribution, supposing the dog bite was a 30% contributor to the button pushing, and the button pushing an 80% contributor to the explosion, then seemingly the dog bite must be a 24% contributor to the explosion.” Id. at 358. This handles the light switch case well enough if we assume that in linear causal chains in a more or less deterministic set-up, adjacent links in the causal chain cause one another to degree $\approx 1$.

70. Id. at 358.
VIII. LIMITING RESPONSIBILITY FOR THE CONSEQUENCES OF INTENTIONAL ACTS

Suppose a prescient agent—a diabolical super-scientist—sets out to harm his victim by means of a long Palsgraf-style causal sequence (or a short sequence involving an “act of God” like a lightning strike), which he explicitly foresees and deliberately exploits. If Moore’s metaphysical views are sound, the agent’s causal contribution to the resulting harm should be de minimis.72 But if things proceed exactly as he knew they would, he is clearly seriously blameworthy for the result.

Moore notes this fact, and responds as follows. There is indeed (as his theory predicts) no cause-based liability in such cases. The agent is nonetheless responsible for the harm because it depends counterfactually on his act. As we have seen, Moore holds that when there is no causal nexus of any sort between our conduct and some bad consequence, our responsibility for the consequences is grounded in counterfactual dependence. Moore’s response to the problem of the prescient manipulator is to suggest that even when there is a causal chain running from act to harm, counterfactual dependence remains a sufficient and independent basis for liability. So even though his theory entails that there is no cause-based liability in such cases, it is consistent with there being liability grounded in counterfactual dependence.73

72. Take any case in which a negligent act is a de minimis cause of some downstream harm according to Moore’s principles, and consider a variant in which the agent intends or foresees the harm and the process that produces it. Since the agent’s state of mind cannot significantly affect the strength of his causal contribution, the intentional act must be a de minimis cause of the harm in this case as well.

73. According to Moore:
Precarious boulders being given a slight nudge, powerful rockets being given slight course corrections, suggestions that place victims in the path of falling pianos, etc., are the common pattern of small (and sometime de minimis) causal contribution. Then add counterfactual dependence: stipulate that none of these things would have occurred without the butterfly doing its thing, etc. And finish with an evil manipulator: the defendant in each of these scenarios knows how necessary it is to get the butterfly to flap its wings, etc. and he causes just that to happen with the intent that such flapping produce the harm it does indeed produce. The sting of these examples is supposed to lie in the juxtaposition of serious blameworthiness with tiny causal contribution. The existence of counterfactual based responsibility removes the sting of such examples.

Moore, supra note 1, at 469.
This response is problematic for a number of reasons. Recall Moore’s contention that while counterfactual dependence of harm on act is a genuine basis for liability, it is normally less wrong to bring about a harm by non-causal means—as in double-prevention—than by causal means. This was supposed to be shown by cases in which it is easier to justify an act that merely enables harm than it is to justify a corresponding act that causes the same harm. Moore’s view thus predicts that it should be easier to justify killing an innocent human being by deliberately initiating a long and complex causal chain (or by initiating a short causal chain that exploits an overwhelming natural force) than it is to justify killing in more prosaic ways. But that is obviously wrong. Holding the probabilities of success and every other relevant feature fixed, homicide by Rube Goldberg device, or lightning strike, is no easier to justify (and no less blameworthy) than a gunshot to the head.

This is clearest when the act is fully intentional, in the sense that the agent intends precisely the causal sequence that in fact materializes. But it seems to me that it is also true when the killings are merely knowing or reckless, provided the agent adverts to the causal sequence that in fact ensues and ignores a substantial and unjustifiable risk that someone will be harmed in roughly that way. If there is no genuinely causal nexus between act and harm in these cases, as Moore believes, we have another class of cases in which genuine causation is morally indiscernible from a non-causal simulacrum thereof.

Things get worse when we add causal over-determination or pre-emption to the mix, so as to destroy the counterfactual dependence of harm on act. Suppose that two prescient manipulators independently initiate long causal sequences each of which would have been sufficient for the victim’s death in the absence of the other. In the over-determination variant, both causal sequences go to completion; in the pre-emption variant, one pre-empts the other. It is clear that just as in cases of ordinary causal over-determination and pre-emption, the un-preempted killer may be fully responsible for the death of which his act is a causal antecedent (though not a cause). These cases thus furnish another illustration of the point that emerged in our discussion of double-prevention and omissions, namely, that whatever it is that links the agent to the outcome in these cases, it is not counterfactual dependence.

_Fifth conclusion:_ Whenever we have a culpable, non-negligent act that initiates a causal sequence that results in harm, it is enough that the actual causal sequence “match” the causal sequence that the agent’s culpable mental state envisaged. Neither substantial causation nor counterfactual dependence is required.
IX. LIMITING RESPONSIBILITY FOR THE CONSEQUENCES OF NEGLIGENCE ACTS

Moore’s case for the moral significance of substantial causation is more plausible when restricted to cases of negligence, where there is no positive mental state that might match the relevant causal sequence or the resulting harm (there is no such thing as a prescient but negligent manipulator of long or improbable causal chains). Even here, however, there are grounds for doubt.

The first echoes arguments we have already considered. Suppose that any competent doctor would have known that administering DES to a pregnant woman will lead, through a long and complex causal chain, to ovarian cancer in her adult daughters. When Dr. X negligently prescribes the drug and Y is harmed 30 years later, X is seriously blameworthy for the harm. Moore’s theory is consistent with this result, so long as Moore adds that X is responsible, not because his act substantially causes the harm (which it doesn’t, because the causal chain is too long), but rather because the harm depends counterfactually on the act. But now suppose that if X had not administered the drug, someone else would have. This destroys the counterfactual dependence, but it does not mitigate X’s responsibility for the bad outcome.

The second difficulty has a similar moral, though it introduces some novel issues. Compare the last case in which X’s negligent act has a foreseeable medical consequence in the distant future with a matched case in which X performs the same negligent act, which leads by an equally long and complex causal chain to an altogether different and unforeseeable harm—say, a traffic accident in Beijing—30 years later. X is obviously not responsible for the traffic accident. But why not? His “metaphysical” connection to the harm is the same in both cases: his act is a de minimis cause of the harm; the harm counterfactually depends on the act, etc.

Like the last case, this one shows conclusively that there can be no purely metaphysical account of the conditions under which we are responsible for the consequences of our negligent acts—an account which relies exclusively on materials drawn from the pre-moral, non-epistemic theory of causation. Take any case in which X is responsible for a remote downstream consequence of his negligence, and consider a matched case in which X performs the same negligent act, which leads by an equally long causal chain, to a “freak” or unforeseeable harm. X is responsible for the harm in the first case but not the second, and yet the metaphysical connection between act and harm is exactly the same.
Sixth conclusion: The substantial cause requirement cannot replace the standard tests for proximate causation. No metaphysical condition can play this role.

Moore needs something analogous to the foreseeability test or the Harm Within Risk test if his account is to be adequate to the moral facts.

X. LIMITING RESPONSIBILITY FOR THE CONSEQUENCES OF NEGLIGENT OMISSIONS, DOUBLE-PREVENTERS, ETC.

Moore’s substantial cause requirement is designed to limit our responsibility for the causal consequences of our actions. But it can play no role in limiting our responsibility for the consequences of omissions and double-preventions, since these forms of misconduct are not causes of any sort on Moore’s account.

With this in mind, consider one last pair of cases. Suppose that Dr. Z negligently fails to administer a drug to a patient with the foreseeable bad consequence that her adult daughters develop ovarian cancer thirty years later. Since any responsible doctor would have administered the drug in order to prevent the harm in question, Z is seriously blameworthy for the harm, despite the length of the “quasi-causal” chain leading from his culpable omission to the downstream harm. Contrast this with a case in which Z’s negligent failure to administer the drug leads, by an equally long but altogether unforeseeable sequence of events, to an “unrelated harm”—for example, a traffic accident in Beijing—thirty years later. Z is not blameworthy for the accident. And yet the metaphysical relations between the negligent omission and the downstream harm are identical in both cases: There is no causal chain connecting the one to the other, since omissions are never causes; the harm depends counterfactually on the omission; the two are connected by equally Byzantine quasi-causal chains, etc. Thus, Moore needs some principle for distinguishing them, and it is clear that no metaphysical principle can do the job. Again, Moore needs something analogous to the foreseeability test or the harm within risk test to serve as an additional filter in such cases.

This raises a large worry. Suppose we had a suitable version of this filter—some normatively compelling principle for distinguishing the “foreseeable” consequences of our negligent omissions for which we are responsible from the “unforeseeable” consequences for which we are not responsible. This filter will presumably be applicable, not just in cases of negligent omissions and double preventions, but also in cases of the sort discussed in the previous section: cases in which our overt culpable acts lead, by a genuinely causal chain, to distant harms, or to harms mediated by an
intervening natural force (vis major). Moore’s substantial cause requirement is designed precisely to limit responsibility in such cases. We have already seen that this requirement is imperfect. We can be responsible for the distant downstream harm when it is intended or foreseen or readily foreseeable. The worry now is that it may be unnecessary. Take a case in which the substantial cause requirement is meant to do some explanatory work—for example, a case in which a negligent act causes a traffic accident halfway round the world in the far future. Now ask: What is the best explanation for the fact that the agent is not responsible for the act? Is it that his act was not a substantial cause of the harm? Or is it rather that the harm was not a foreseeable consequence of the act? Of course we don’t have a suitable version of the foreseeability test in hand, so we cannot evaluate the alternative explanation in any serious way. But we have excellent reason for suspecting that if there is such a principle—as there must be, if our responsibility for the consequences of our negligent omissions is to be limited—an explanation that invokes it will be superior to Moore’s preferred explanation. After all, it seems immensely plausible that whatever limits our responsibility for the distant consequences of our negligent omissions also limits our responsibility for the distant consequences of our negligent acts. But given Moore’s metaphysical view, the substantial cause requirement gets no grip whatsoever in the former case.

Seventh conclusion: For all we have seen, the substantial cause requirement is otiose.

There must be some broadly epistemic principle that limits our responsibility for the consequences of our negligent omissions, and for all we have seen, this principle can do the work for which Moore invokes the substantial cause requirement.

XI. Conclusions

Moore’s large thesis is that moral and legal theorists must get their hands dirty by mucking around in the metaphysics of causation, and that if they do they will be rewarded with a clarified understanding of the principles governing our responsibility for the consequences of our conduct. The metaphysical inquiry reveals that causation is gradable relation among positive events. With this notion in hand, we can explain the basic (and also some of the more esoteric) facts in the area. We can explain why we are more blameworthy for the harms we cause than for the harms we merely “enable,” and why it is harder to justify causing harm than it is to justify
allowing harms to occur.\textsuperscript{74} We can explain why we are not responsible for the causal consequences of our culpable acts when those consequences are mediated by very long causal chains, or by intervening causes of certain kinds.\textsuperscript{75} And so on.

I have objected to almost every element of this package. I have argued that in many cases there is no moral difference at all between causing harm and double-preventing it, and that where there is some discernible difference, the explanation has nothing to do with the distinction between causing and non-causal enabling, but rather with distinctions at right angles to this one, that is, the distinction between minor and major explanatory factors. I have argued that Moore’s account of the conditions under which we are responsible for the non-causal consequences of our conduct is untenable: Moore says that in such cases we are responsible only for those consequences that depend counterfactually on our conduct; but as causes of over-determination and (especially) pre-emption show quite clearly, for any case in which we are responsible for a harm that depends counterfactually on our act, we can construct another in which there is no such counterfactual dependence, but in which we are still fully responsible.

Finally, I have argued that Moore’s substantial cause requirement cannot replace the appeal to “foreseeability” or to the “harm within risk” test altogether, since we still need some version of the latter test to distinguish those consequences of our negligent omissions for which we are responsible from those for which we are not responsible. This may seem like a small lacuna in Moore’s view, but it may well be the thin end of a destructive wedge. The principles that circumscribe the limits of our responsibility in such cases may well be applicable more broadly. Indeed it is possible that they will suffice to explain every fact for which Moore invokes the substantial cause requirement, in which case this requirement will be left with no work to do in moral theory.

\textsuperscript{74} Here we cite the general rule that it is worse to cause harm than to enable harm by non-causal means.

\textsuperscript{75} Here we cite the general principle that cause-based responsibility requires a substantial causal connection between act and harm.