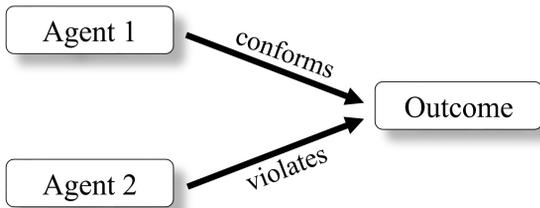




CENTRAL QUESTIONS

What is the ordinary meaning of the lemma “cause”? What are the mechanisms of our causal cognition? Why does it matter?

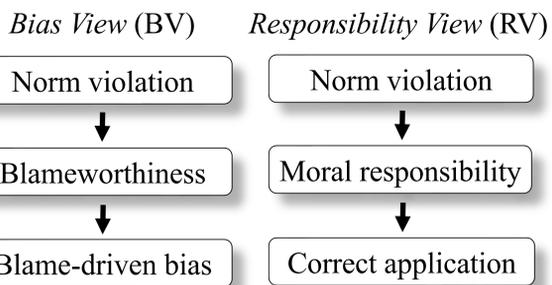
THE NORM EFFECT



The norm-violating agent is deemed the cause of the outcome.

But: Philosophers take causation to be a descriptive notion. How come injunctive (i.e., prescriptive or evaluative) norms play a role for the folk?

TWO EXPLANATIONS



Do the folk misapply a descriptive concept or do they correctly apply an alternate, normative one?

THE IDEA

To distinguish the BV from the RV, we must elicit blame sans moral responsibility.

Thus: We test violations of nonpertinent and silly norms.

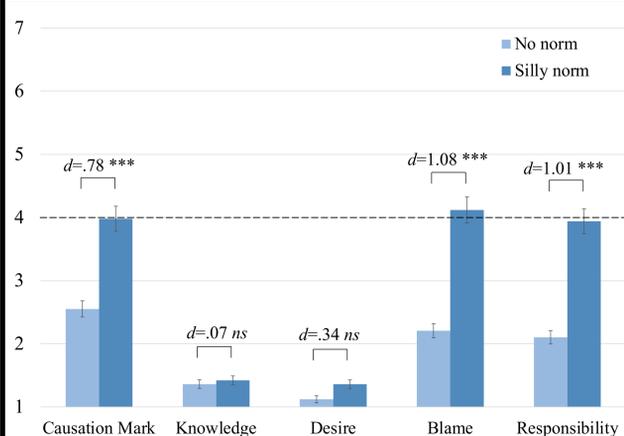
STUDY 1

Mark is rollerblading on a path, Lauren walks ahead. Suddenly, a cat appears. Lauren jumps into Mark’s lane, colliding and sustaining injuries.

Nonpertinent: Rollerbladers must wear a helmet. Mark is not wearing one.

Silly: Rollerbladers must wear a grey shirt. Mark is wearing a blue one.

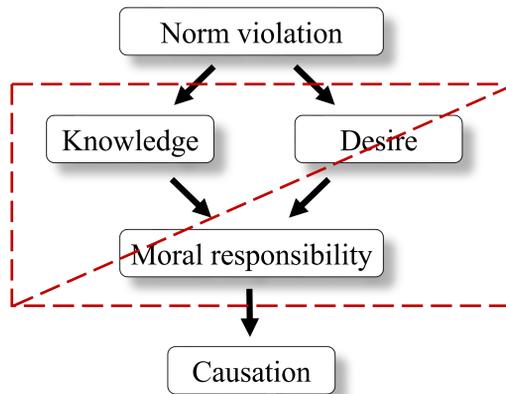
RESULTS



DISCUSSION

Violating a silly norm is entirely peripheral to one’s moral responsibility, and yet the Norm Effect arises.

And: It cannot be explained by a heightening in Mark’s foreknowledge or desire, rendering the following schema false:

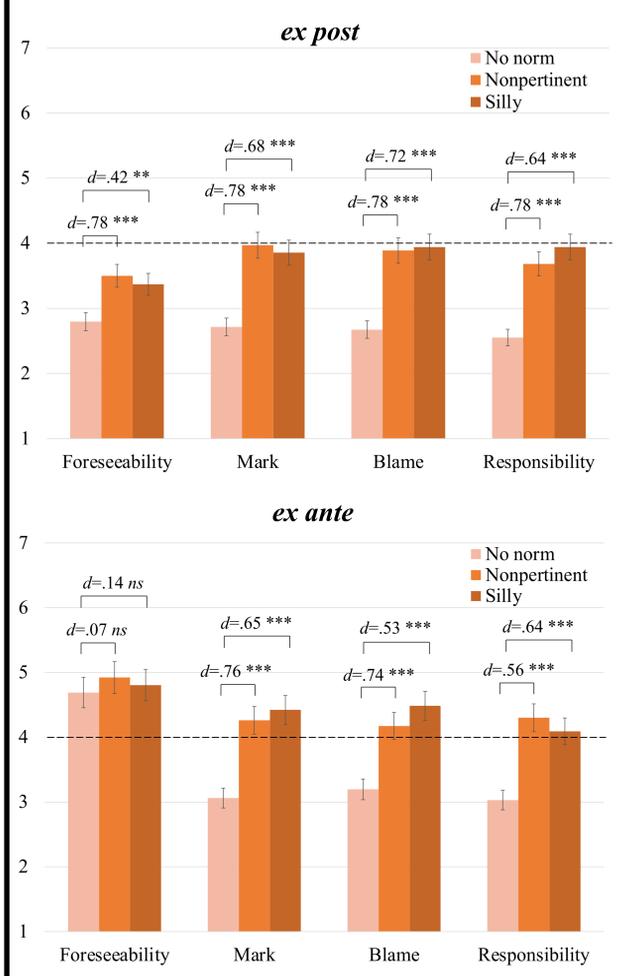


But: What about foreseeability?

STUDY 2

Same Rollerblading vignette as before, but asking about the foreseeability of an accident both ex ante and ex post.

RESULTS



DISCUSSION

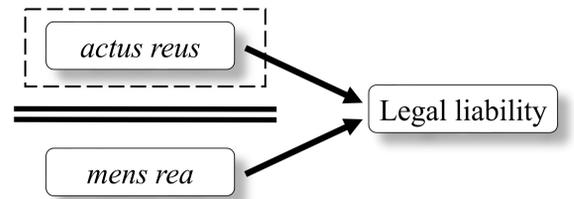
The ex post results may suggest that it is foreseeability driving the effect, yet the ex ante data reveals that the effect persists even where no difference in foreseeability can be found.

Further: The difference in foreseeability ex post but not ex ante suggests a hindsight bias.

Practical implications?

CAUSATION IN THE LAW

Causation lies at the heart of both criminal and tortious liability.



It is assessed in two steps:

Factual causation

- Counterfactual test
- Descriptive

Legal causation

- Direct v. foreseeable
- Descriptive v. normative

Scholars disagree both as to how legal causation is assessed (practice) and how it ought to be assessed (nature).

Practice

	Descriptive	Normative
Nature	Formalism	Weak realism
Practice	–	Strong realism

THE CORRESPONDENCE ASSUMPTION

The law assumes the meaning of certain legal expressions E to be equivalent to the folk usage of E, passing the buck to the folk.

Legal causation = Folk causation

Supreme Court

Burrage v. United States (2014)

Courts should rely on “the common understanding of causation” and what it “is natural to say.”

House of Lords

Alphacell Ltd v Woodward (1972)

“What or who caused an event to occur is essentially a practical question of fact which can best be answered by ordinary common sense than abstract metaphysical theory.”

CONCLUSION

Peripheral factors play a considerable role in the processes that underlie the Norm Effect and cannot be explained away by means of foreknowledge, desire, or foreseeability, thus strengthening the BV.

This bias has serious downstream consequences for the law, irrespective of which doctrinal position one takes.



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