

Elucidating *Actus Reus* and *Mens Rea*: A Descriptive Psychology Perspective

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Abstract

The legal concepts *actus reus* and *mens rea* are foundational in determinations of culpability and guilt for criminal acts, thereby affecting many lives in our society. This paper begins with a brief overview of the concepts of *actus reus*, and *mens rea*, followed by presentation of several resources from Descriptive Psychology to elucidate these concepts and enhance our understanding. Resources include the concepts of Persons and Deliberate Action, a parametric analysis of Behavior, and forms of behavior description related to these parameters. The concepts *actus reus* and *mens rea* are elucidated using the forms of behavior description. The analysis demonstrates that to a large extent, the question “Was the person guilty?” translates to the question “*What* deliberate action was it?”

Volumes have been written about *actus reus* and *mens rea* because of the enormous significance that these concepts have for how we treat people accused of criminal acts. A great deal hinges for individuals, families, and communities on the shared understanding of human behavior reflected in these notions. This paper elucidates the concepts from the perspective of Descriptive Psychology.

Descriptive Psychology contrasts with theories that treat behavior as if it merely consisted of the *observable* aspect or *motoric* aspects of a behavior. It also contrasts with theories that view behavior as being deterministically controlled by historical antecedents, or that view man as fundamentally irrational.

Like Law, Descriptive Psychology is anchored on broader concepts of behavior that include motivational and cognitive parameters. Both make distinctions among personal characteristics of the individual engaged in the behavior, and include the circumstances as relevant and important in understanding the particular behavior that occurred. Both highlight the expectation that persons are generally assumed to be responsible for their actions, and that society has a crucial stake in accurate assessment of persons who may be unable to control their behavior and pose a danger to others and/or to themselves.

It is not an accident that Law pragmatically has found it important to make these distinctions. Unfortunately, in the general psychological literature, Law has not had much to draw on by way of resources to provide a systematic framework for understanding the behavior of persons as persons, as opposed to, e.g., as organisms, black boxes, etc. The general psychological literature reflects a range of misconceptions about the nature of behavior and in what sense a given behavior is chosen or in what sense a person is aware of what he is doing (i.e., is cognizant of what behavior he is engaged in).

In contrast, Descriptive Psychology is designed to provide systematic access to all the facts and possible facts about behavior, persons, the real world, and the relationships among them. It provides a conceptually sound framework for making and mapping out whatever useful and important distinctions need to be made, and it can facilitate this enterprise and enable us to make distinctions more clearly. (It is important to emphasize that Descriptive Psychology is a resource for such enterprises, not a solution.)

This paper provides an example of using Descriptive Psychology as a legal resource. It begins with a brief overview of the concepts of *actus reus*, and *mens rea* (cf., McKee, pp. 2-4, 8-9). Then the

concepts of Persons and Deliberate Action, as conceptualized in the Descriptive Psychology system, are introduced. A parametric analysis of behavior is presented, and forms of behavior description are discussed. The concepts of *actus reus* and *mens rea* are elucidated using the forms of behavior description rather than using terms such as “voluntarily” and “capable of” which have long and slippery philosophical histories.

Actus Reus and Mens Rea

According to Grisso (1988), “The law has long recognized two concepts on which responsibility for criminal actions depend: *actus reus*, requiring evidence that the accused person engaged in the alleged act; and *mens rea*, requiring a determination that the accused person manifested the requisite mental state to have intended committing the act or to have foreseen its consequences” (p. 4).

What constitutes an act is a matter of some discussion. *Actus reus*, the guilty act, is not simply the performance, e.g., thrusting a knife. Rather, to be construed as a “guilty act” the circumstances and consequences of the act must also be considered. Thrusting a knife does not constitute a criminal act. Thrusting a knife at someone (circumstances) resulting in the other’s injury (consequences) may be a criminal act.

Actus reus may also be an omission, a failure to act. Standing alone on a dock is not a criminal act. However, a healthy, unimpaired adult, standing alone on a dock watching a two year old child drown three feet away, may, under some circumstances (e.g., where there is a “duty to act”), be charged with criminal negligence. *Actus reus* is generally defined by overt, publicly observable variables: the act, the environmental context, and the result of the act.

Mens rea, the second component of a crime, comprises what some call the internal dimensions of the actor. *Mens rea*, the “guilty mind,” is the actor’s intent, the state of mind to do the *actus reus*, which the law prohibits. *Mens rea* is not directly observable, but is

“inferred” from the person’s acts (and omissions) and speech before, during and after *actus reus*.

Intent is distinguished from motive. Motive is what prompts a person to act (or fail to act), while intent refers simply to the actor’s state of mind at the time of the crime. For example, A and B each rob an abortion clinic of \$500. A uses the \$500 to buy drugs which he then ingests. B donates the \$500 to an anti-abortion advocacy group. Despite quite different motives, A and B’s *mens rea* are equivalent: an intent to deprive the owner of his money. (But see below.)

In addition to being used in a very narrow sense as the intent to commit a specific crime, *mens rea* has also evolved into a broader use as a state of mind of general culpability or liability, an awareness of right from wrong (Miller, 2003, p. 213). To acknowledge the complexity of the construct of *mens rea* and its applicability to human interactions, the American Law Institute identifies four distinct states of culpability: purposely, knowingly, recklessly, and negligently. According to Loewy (1975), a person acts “*purposely* when he consciously desires his conduct to cause a particular result; *knowingly* when he is aware his conduct is practically certain to cause a particular result; *recklessly* when he is aware of a risk that his conduct might cause a particular result; and *negligently* when he should be aware of a risk that his conduct might cause a particular result” (p. 117).

To illustrate these states of mind, suppose the *actus reus* is a person A shooting a gun. A would act purposely if he pointed at and then shot person B at a distance of 18 inches. A would act knowingly if he shot at (and hit) B “just to scare him” at a distance of 20 feet. A would act recklessly if he shot the gun aimlessly at a party injuring B. A would have acted negligently if, while cleaning his loaded gun, the weapon discharged and A’s roommate was injured.

A person is presumed to be legally responsible for his or her behavior if, at the time of the offense, the person was capable of voluntarily performing the act, *actus reus*, and capable of forming the intent to act, *mens rea* (cf., McKee, 1994). The concept of “capable of” is discussed later in this paper. It may be noted that for

some crimes (known as “specific intent crimes,” murder being the most commonly known, but rape, arson, and any attempt crime also fall into this category), *mens rea* requires both the intent to perform the act and the intent to achieve a specific result. In order to obtain a valid conviction, the prosecution is required to prove both *actus reus* and *mens rea* beyond a reasonable doubt.

A person may be excused from conviction and punishment if the defense successfully argues that either *actus reus* or *mens rea* was sufficiently impaired by a mental illness, mental defect, or other condition beyond the control of the defendant. A related defense of this type is infancy, i.e., the defendant was too young (generally under age 7) to be capable of forming *mens rea*, a criminal intent.

Generally in criminal law, disorders such as psychosis, manic-depressive illness, and mental retardation are considered to affect *mens rea*. For example, a person suffering from schizophrenia, paranoid type, may have a delusion that a neighbor is attempting to kill him and as a result assaults the neighbor without provocation. Expert testimony showing both that the assault was initiated by a persecutory delusion and that it negated his belief that he was acting wrongfully, would likely result in a verdict of “not guilty by reason of insanity.”

Some mental disorders, however, are considered to affect *actus reus*, the voluntariness of the person’s behavior. In certain cases, the legal defense of automatism may be argued. The incapacitating conditions may include sleepwalking disorder, epilepsy, anoxia, and certain dissociative disorders such as psychogenic fugue, depersonalization, and multiple personality (also called “dissociative identity”) disorder. For example, if an epileptic patient hits another during a seizure, expert testimony that the act was not under the defendant’s voluntary, conscious control would be the basis of the defense. That is, the defense would argue: it is not an *actus reus*. (It was not purposeful, so there can be no criminal act.)

In regard to defenses based on insanity, the statutes defining insanity vary widely from state to state and a thorough discussion of the defense is beyond the scope of this paper. Many insanity rules

exist: the M’Naghten test, the irresistible impulse test, the Durham rule, the ALI rule, and the *mens rea* test. The rules share three elements: (a) there must be a mental disease or disorder; (b) there must be legally-relevant impairments in functioning; and (c) there must be a clear and direct causal relationship between (a) and (b).

Persons and Deliberate Action

What do we mean by “persons”? In Descriptive Psychology, what we mean is given by the following definition: “A person is an individual whose history is, paradigmatically, a history of deliberate action.”

What is “Deliberate Action”?

Ossorio (1985) writes:

In deliberate action a person engages in a given behavior, B; further, he knows that he is doing B rather than other behaviors which he distinguishes and he has chosen B *as* B from among a set of distinguished behavioral alternatives as being the thing to do. In the vernacular, we might say, “He knows what he’s doing and is doing it on purpose.” Deliberate action does *not* imply deliberation or prior thought about what to do, and, in fact, almost all deliberate action is spontaneous, unrehearsed, and unreflective.

Deliberate action is archetypal for persons. If persons did not normally have the ability to distinguish what they were doing and to do it on purpose, we would not have the concept of person that we in fact do. The capability for deliberate action is not merely an expectation; it is a social and legal requirement. Few people would argue with the principle that a person

who either doesn't know what he is doing or can't control what he does is a danger to himself and others and needs some form of custody. (p. 154)

Several clarifications are useful. Ossorio (1985) points out that the definition of a Person, i.e., an individual whose history is, paradigmatically, a history of deliberate action, reflects several facts.

The first is that engaging in deliberate action is *conceptually* the essential characteristic of a person. The second is that persons do not literally spend their entire lives engaging in deliberate action. The third is that, since it is conceptually essential, some form of explanation is called for and is available for those cases and those times when a person is not enacting a deliberate action. (Most commonly, the explanation refers to a particular state such as being asleep, being unconscious, being delirious, and so on.) (p. 155)

Ossorio (1981) has also commented that:

The paradigm case of human behavior is not merely a deliberate action in which the distinction between Intentional Action B and some other intentional action M is involved. Rather, that case is found where the individual, A, *engages* in B *because* it is B, rather than M. It is in this sense that we regard human beings as having freedom, choice, and the correlative responsibility in regard to their behavior. (p. 18)

It is important to reiterate that Deliberate Action does not imply deliberation. Moreover, Deliberate Action is a special case of Intentional Action, which will be presented next.

A Parametric Analysis of Behavior

The parametric analysis of Behavior as Intentional Action and its articulation as a calculational system provides the systematic framework for the range of behavior descriptions available to us. This is a major resource and contribution of Descriptive Psychology to our

task. It helps us articulate distinctions and systematize patterns and connections which would otherwise be difficult to make or organize.

The concept of intentional action is articulated not by means of a definition, but rather by means of a parametric analysis:

$$\langle B \rangle = \langle IA \rangle = \langle I, W, K, KH, P, A, PC, S \rangle$$

The parameters of intentional action are the ways in which one particular behavior can be the same as or different from another behavior as such. In this formula,

- B Behavior (Instances of behavior are identified directly by locutions in ordinary language.)
- IA Intentional Action (The technical designation for Behavior under the present parametric analysis)
- I Identity (Refers to the identity of the individual whose behavior it is; values of this parameter are given by names or individuating description.)
- W Want = The “motivational” parameter (Values of this parameter are given by specifying states of affairs as being wanted.)

Ossorio (1972, p. 16) has noted that the motivational parameter is what conceptually defines the unit of behavior. When the state of affairs that is wanted becomes the state of affairs that is achieved, that behavior is ended. Notice that in situations with unintended consequences, the unit of behavior that the individual is engaged in as established by what he wanted, is probably different from that identified by a different Observer-Describer who is concerned with the (unintended) consequences.

- K Know = The cognitive parameter (Values of this parameter are given by specifying states of affairs as being distinguished or conceptualized.) (This includes distinguishing what is relevant to the behavior in the circumstances.)

Anything that is wanted (cf., the W parameter) will also show up under K, since for something to be wanted, it is also distinguished.

KH Know How = The competence parameter (Values of this parameter are given by specifying prior states of affairs as a relevant learning history.)

Ossorio (1972, p. 16) points out that “The function of the Know How parameter is precisely to exclude accidental happenings from the range of instances of intentional action.” Notice that, for any given behavior, if we could not specify that the behavior engaged in was one which the person knew how to do or had the relevant learning history to enable him to do, it would be incorrect to say that the person engaged in that deliberate action (i.e., in that behavior under a deliberate action description). Cf., “The two year old’s arm bumped the rook moving it over one square” versus “The two year old just put me in checkmate.” The latter could not be correct as a deliberate action, since the two year old does not have the requisite Know How, but could be correct under an achievement description.

P Performance = The process, or procedural parameter (Values are given by specifying a process, e.g., he pulled the trigger, or, he shot the arrow.)

A Achievement = The result, or outcome, parameter (Values are given by specifying events and states of affairs.)

When this is the only parameter specified (i.e., the values of all the other parameters are deleted), this form of behavior description is called an Achievement Description. The unspecified parameters are represented by Θ ’s in the formula below.

$$\langle B \rangle = \langle \Theta, \Theta, \Theta, \Theta, \Theta, A, \Theta, \Theta \rangle$$

Achievement Description

One of the functions of Achievement Descriptions (specifying this parameter exclusively) is to enable an observer to specify a given result as unintended.

PC Person Characteristics (Values are given by specifying personal characteristics of which the behavior is an expression.)

S Significance (Values are given by specifying behaviors or behavioral patterns engaged in by means of the behavior in question, i.e., “doing X by doing Y.”)

One of the standard heuristics used in Descriptive Psychology for explaining Significance (cf., Ossorio, 1986) is the guy standing by the farmhouse in the rolling English countryside who is saving the nation (S) by moving his arm up and down (P). Actually, he’s got his hand around a pump handle, so he’s pumping the pump. (Why is he doing that/what is he doing by doing that?) There’s water in the pump so he’s pumping water, and the pump is connected to the house, so he’s pumping water into the house. There are people in the house drinking the water, so he’s pumping the water to the people in the house. There is poison in the water, so he’s poisoning the people in the house. And the people in the house are conspiring to overthrow the government, so he’s really saving the nation.

Taking it from “top-down,” he’s saving the nation by poisoning the people in the farmhouse (who are plotting to overthrow the government), and he’s doing that by pumping (poisoned) water to them, and he’s doing that by pumping the pump, and he’s doing that by moving his arm up and down. Going from the top down, the more specific, concrete behaviors are ways of saving the country. They are ways of implementing what is wanted. From the bottom up, you get the significance of why he was doing what he was doing. All are correct descriptions of what it is he is doing in this example, and it reminds us that people are usually doing more than one thing at the same time (Ossorio, 1986).

Forms of Behavior Description

The use of the concept of Intentional Action as a calculational system (via deletion, substitution, and reduction operations) enables us to provide various forms of behavior description, including descriptions of behavior where we do not know/cannot specify/do not choose to specify the value of one or more parameters. The Achievement Description mentioned above is one example

of how this schema offers us a means of clarifying our discussion of behavior when many locutions in our ordinary language do not distinguish clearly what the speaker meant.

Returning to the case of Deliberate Action descriptions, these are used to represent behavior in which a person not merely distinguishes among behaviors but also chooses among them. That is, he acts on grounds (reasons) for doing one thing rather than another. The special case of Deliberate Action is represented via the Substitution operation as:

$$\langle B \rangle = \langle I, \langle B \rangle, \langle B \rangle, KH, P, A, PC, S \rangle$$

Deliberate Action Description

where the Behavior engaged in is also the behavior that was distinguished (K) and chosen (W) (hence the B also appears in the K and W parameters). The choice of behavior also reflects one's Person Characteristics (PCs).

Deliberate Action is the paradigm case of human behavior; however, for purposes of the Law, it appears that persons are viewed at a minimum under an Agency Description. In an Agency Description, the parameters of behavior specified are W, K, KH, P, and A.

$$\langle B \rangle = \langle \Theta, W, K, KH, P, A, \Theta, \Theta \rangle$$

Agency Description

An Agency Description of Behavior does not imply that these are the only parameters there are, but that these are the ones, at a minimum, that I'm talking about. An Agency Description enables us to talk about someone engaging purposely in instrumental behavior, i.e., wanting, distinguishing, having the competence, and engaging in a process to bring about some (desired) outcome. An Agency Description portrays the sense in which behavior is instrumental and the person is the agent of what he does. If we consider $\langle B \rangle$ as the criminal act, e.g., robbing the abortion clinic of \$500, what needs to be shown according to the law, is that $\langle B \rangle$ (as stated in

the indictment) *is* the person’s behavior, at least under an Agency Description.

This may approximate what is meant by a person’s behavior being “presumed to be voluntary and deliberate,” but without making other problematic assumptions of the nature of behavior in general. It appears that the way in which the Law means that our behavior is voluntary is that it is not involuntary, and persons choose to do X, making certain distinctions, and choosing behavior X from among a range of other possible behaviors.

Using the parametric analysis of behavior, we can see that what is left out of an Agency Description is the Identity, Person Characteristics, and Significance parameters; that is, who did it, what person characteristics the behavior is an expression of, and what the person’s motive was, i.e., what he or she was doing by doing that. Thus, the Agency Description is well-suited for giving descriptions that still make sense as being deliberate/purposeful, but without having to include certain aspects of the individual’s historical particulars of engaging in that behavior.

Actus Reus

As noted above, *actus reus*, the “guilty act,” does not consist of the specific performance alone, e.g., thrusting a knife. That is, *actus reus* is not merely the procedural aspect of behavior (the P alone) nor the act under a Performance description.

$$\langle B \rangle = \langle \Theta, \Theta, \Theta, \Theta, P, A, \Theta, \Theta \rangle$$

Performance Description

(The A is always included along with P in a Performance Description because the occurrence of any performance is also an accomplishment, just as whatever is included under the W parameter also shows up under K.)

To be construed as a “guilty act,” the circumstances and consequences of the act must also be considered. Thus, *actus reus* involves the parameters K, P, and A.

$$\begin{array}{l} \langle B \rangle = \langle I, W, K, KH, P, A, PC, S \rangle \\ \text{Actus reus:} \quad \quad K, \quad \quad P, A \end{array}$$

Environmental factors are represented here by K, since, for them to be operative, they would have to be distinguished by the actor.) This is very close to an Activity Description of the behavior if the behavior is considered to be non-accidental.

$$\begin{array}{l} \langle B \rangle = \langle \Theta, \Theta, K, KH, P, A, \Theta, \Theta \rangle \\ \text{Activity Description} \end{array}$$

Actus reus appears to be noncommittal both with regard to whether the act was an expression of skill/ability (KH), and with regard to what is wanted or why (W). It merely addresses the activity engaged in (P), the outcome of P (A), and the presence of additional circumstances (K), which presumably the perpetrator also distinguishes. (It is interesting that specifying these same parameters, K, P, and A, also corresponds to a Stimulus-Response Description.)

The committing of a crime through failure to act may also be an instance of *actus reus*. The parameters help make this less mysterious. Rather than saying that non-action is an action, specifying the K parameter makes clear what distinctions the Actor is making in doing P, when societal standards obligate him to do Z under those circumstances, or not to have otherwise made the gross error of judgment/behavior that he did. To address crimes of omission, we return to an Agency Description of what behavior the person was engaged in, and the Law requires that there be a specified standard that his behavior was in violation of, which then caused injury to one or more members of the community. The failure to act cannot be attributable to some extenuating circumstance. (Note that the example above specifies a “healthy, unimpaired adult standing alone on a dock...” etc.)

Both the committing of an act and omitting to act insofar as these result in a crime have in common their parallel to the analysis of a successful degradation ceremony presented by Ossorio

(1971/1975/1978/2005, pp. 121-122, citing Garfinkel, 1956). A successful degradation ceremony involves six necessary conditions:

1. There is a community of individuals who share certain basic values such that adherence to those values is a condition for retaining good standing in the community, i.e., for being fully and simply “one of us.”
2. In principle, three members of the community are involved, i.e., a Perpetrator, a Denouncer, and (some number of) Witnesses [to the degradation ceremony in the sense of point 3, below] (e.g., the Defendant, the Prosecutor, and the Judge/Jury).
3. The Denouncer and the Witness act as members of the community and as representatives of the community. That is, their behavior reflects their good standing in the community, and they act in the interest of the community rather than out of merely personal interest.
4. The Denouncer describes the Perpetrator as having committed a certain Act.
5. The Denouncer redescribes the Act (if necessary) in such a way that its incompatibility with the community’s values follows logically.
6. The Denouncer presents (implicitly or explicitly) a successful case for judging that the Perpetrator’s engaging in the Act as redescribed is a genuine expression of his character and *is not to be explained away by reference to chance, accident, coincidence, atypical states, etc.* [italics, bracketed clarification, and example in 2 added].

In both cases, the community has a crucial stake in its members behaving according to some basic standards, and it requires that its members be able to make minimally competent judgments or risk sanctions and/or legal consequences. Under an Agency Description, the individual’s culpability can be established, provided there is a clear community standard which is grossly violated, whether by

commission or omission of an act, if such behavior directly causes harm to a community member.

Mens Rea

As noted previously, the commission of a crime is considered to have two components. How might Descriptive Psychology elucidate the second aspect, the concept of *mens rea*, the “guilty mind”?

Mens rea is the actor’s intent. Intent is given by the W parameter, and hence also appears in the K parameter, since one cannot want or try to do/get something if he or she cannot distinguish it.

$$\begin{aligned} \langle B \rangle &= \langle I, W, K, KH, P, A, PC, S \rangle \\ \text{Mens rea:} & \quad W, K \end{aligned}$$

Any underlying motive is given by the S parameter.

$$\begin{aligned} \langle B \rangle &= \langle I, W, K, KH, P, A, PC, S \rangle \\ \text{Motive:} & \quad S \end{aligned}$$

Recall that Significance, the motive, does not appear under an Agency Description of Behavior. Indeed, in the example of two people having quite different motives for taking the money from the abortion clinic, both A’s and B’s *mens rea* are equivalent. By virtue of the fact that the criminal act of robbing the abortion clinic is considered under an Agency Description, the “motive,” S, i.e., why they did what they did, can indeed be considered as something separate from the “criminal behavior.”

$$\begin{aligned} \langle B \rangle &= \langle \Theta, W, K, KH, P, A, \Theta, \Theta \rangle \\ \text{Mens rea I:} & \quad W, K \\ \text{Motive:} & \quad S \end{aligned}$$

(KH is taken for granted in that the action is considered to be non-accidental, albeit we do not have any good or systematic way of specifying the value of KH for any given behavior.)

One further comment on this first of two uses of the concept of *mens rea*. Since something that is wanted (W) is also distinguished (K), this connection alleviates the need to necessarily determine

whether someone was “conscious” of breaking the law at the moment the event was occurring. Wanting X, seeing an opportunity to get it, and acting on this, is different from talking of consciousness or awareness of, or desiring to break the law to obtain X, etc. Seeing the opportunity to obtain something I want (K) gives me a reason to try to get it (Maxim 2). If I steal rather than purchase a chocolate bar, insofar as intent is concerned, it is sufficient to know that, at the time I took it, I wanted the chocolate, not that I desired at that moment to break the law, or to deprive the store owner of his merchandise. K includes my knowing that it’s against the law to steal and conceal a chocolate bar, but breaking the law doesn’t have to be either my intent or what I’m “conscious of.”

The contrast here is between “knowing” and “being conscious of.” For example, I “know” that Beijing is the capital of China, but I am seldom “conscious” of the fact. That I know it means that it is available for my behavior and that I can act on it. If there is behavior that requires that I know that Beijing is the capital of China, I can make use of that at any time. It is different from what I am conscious of; I couldn’t possibly be conscious of all the different things that I know. Nonetheless, what someone knows is still available to them, whether or not they are conscious of it. So long as I know that it is against the law to take a chocolate bar from the store without paying for it, I didn’t have to be conscious of/aware of breaking the law at that time. The normal test for whether someone knows that doing this is against the law is to ask them. One can also use a range of other clinical assessment skills to evaluate if the person charged is able to tell right from wrong, etc.

The second, broader notion of *mens rea* includes not merely the person’s intent (the W and K parameters), but also “a state of mind of general culpability or liability, an awareness of right from wrong.” This seems to incorporate the parameter of the actor’s Person Characteristics (PC), and corresponds to his behavior under a broader, Deliberate Action description. To establish the presence of a “guilty mind,” one needs to know what behavior the actor was engaging in. From the Actor’s perspective, what was he really doing?

 = <I, W, K, KH, P, A, PC, S>
Mens rea 2: I, W, K, KH, P, A, PC, S

Mens rea in the broader sense, corresponds to , according to the Observer’s description of the Actor’s behavior. It is more in this broader sense of *mens rea* that what is going on in my mind at the time of the crime may be relevant.

Concerning culpability, the Law has delineated four seemingly distinct states as being useful distinctions: acting purposely, knowingly, recklessly, and negligently. I would paraphrase this endeavor as, “In what sense am I responsible/liable for the consequences of my behavior, i.e., for having acted as I did?”

In the case of behaving purposely, what is purposeful is acting in a way to get something I want which happens to involve committing a crime, and that knowledge doesn’t deter me from doing it. It’s not that my object (“purpose”) is to commit a crime, but rather if I succeed in achieving A which is what I want, I will also be committing a crime, and that doesn’t make enough difference to me to alter my behavior.

In the cases of knowingly and recklessly, there are diminishing likelihoods that the doing of P causes an outcome A which is a crime. In the case of knowingly, doing P “almost certainly” causes A, and in the case of recklessly, there is a “substantial and unjustifiable risk” that P brings about A.

In all three of these cases: Purposely, Knowingly, and Recklessly, the perpetrator had the requisite knowledge (PC), but he didn’t act appropriately on it. There is knowledge, K, that doing P is against the law (in the case of “purposely”) and/or that there is substantial risk of harming someone, but the person does not value that sufficiently (PC) and engages in P anyway. Even though outcome A (breaking the law) may be unintended or incidental to my getting what I want, my values, attitude, etc. are such that these reasons don’t count enough, and that is a violation of a shared community standard which says that I should care, and act accordingly.

In the case of Negligence, it may be a matter of something I knew and should have cared enough to act on; or it may be something I

didn't know and should have (PC). In order to be fully and simply "one of us," you have to know these things, e.g., cleaning a gun is dangerous, and not be willing to place others at risk. This kind of knowledge and action is a societal requirement reflecting a shared community standard.

A Double Negative Formulation

Previously, it was noted that a person is presumed to be legally responsible for his or her behavior if, at the time of the offense, the person was capable of voluntarily performing the act, *actus reus*, and capable of forming the intent to act, *mens rea*. To obtain a valid conviction, the prosecution must prove both *actus reus* and *mens rea* beyond a reasonable doubt. What does it mean to say that, at the time of the offense, someone was capable of voluntarily performing the act and capable of forming the intent to act?

This can be treated as a double negative formulation, i.e., the person was *not incapable* of voluntarily performing the act (e.g., by virtue of being hypnotized), and the point is not to establish that the act was voluntary so much as that it was not involuntary. Per Ossorio (personal communication, August 29, 1994), the "... evidence that I was capable of voluntarily performing the act is the absence of evidence that I was incapable of doing it..." He added, "...if it looks like a straightforward Deliberate Action, the burden of proof should be on the claim that it isn't." This is consistent with the law, in that a person's "capability" to form intent is a question for the defense team to address in their affirmative defense of insanity.

Insofar as *actus reus* only involves parameters K and P, with result, A, the clause "capable of voluntarily performing the act" looks like an effort to incorporate the KH parameter in the law in order to identify K, P, and A as a non-accidental act of behavior, and to present the actor as an organism able to make choices (as opposed to the act representing the occurrence of a bodily movement with an associated outcome, or perhaps a mere stimulus-response sort of event produced by a decorticate organism).

Likewise, “capable of forming the intent to act” appears to be a way of *ruling out* that a person was *impaired/incapable* of making distinctions required under parameters W and K including the connection between P and A (cf., infancy defense, delusions, etc.). One must be able to understand that doing P brings about A.

Conclusion

In elucidating the concepts of *actus reus* and *mens rea*, we have used a variety of resources from Descriptive Psychology. Some of the ideas presented above can be summarized in the following schematic:

<B1> = <IA> =	< I, W, K, KH, P, A, PC, S >
Agency Description:	< Θ, W, K, KH, P, A, Θ, Θ >
<i>Actus reus</i> :	K, P, A
Motive:	S
<i>Mens rea</i> 1 (Intent):	W, K
<i>Mens rea</i> 2:	I, W, K, KH, P, A, PC, S

In other words, to a large extent, the question of “Was the person guilty?” translates to the question of “What deliberate action was it?”

The implications of this formulation for a defense are straightforward. The goal of the defense (team) is to establish parametric values which are *incompatible* with B1, e.g., the criminal act of robbing the abortion clinic. This includes any/all of the Agency Description parameters, including KH. (The flailing about of an epileptic, sleep walking, or acting on a hypnotic suggestion, are not the exercise of a skill.) Most importantly for psychologists, it *also* includes the values of PC, the Person Characteristic(s) of which the supposed criminal behavior is an expression. This of course includes “mental defects” or states of mind (cf., a fugue state, psychosis) that would support an insanity or diminished responsibility defense.

In other words, to undo the ascription of criminality, presented by the prosecution under an Agency Description, the defense is seeking exculpability via establishing values of any of the Deliberate Action parameters that would be incompatible with the defendant's having committed this act under a Deliberate Action description. (For example, "Yes, he took the money, but he believes he owns the clinic, the hospital, and the city, and that the money belongs to him.")

Note in conclusion that paradigmatic cases of defenses, including insanity, provide examples of impairment in the W, K, and KH parameters:

Defense based on *actus reus*:

automatism (KH)

(the act was not purposeful)

Insanity based on *mens rea*:

cognitive prong: M'Naghten (K)

Insanity based on *mens rea*:

volitional prong: Irresistible Impulse (W)

Finally, it may be noted that there are many other resources that Descriptive Psychology offers to our understanding of behavior, including criminal behavior. These include its elaboration of the Person Characteristics parameter of behavior; the PC-C model representing the relationship of Person Characteristics, Circumstances, and Behavior; and the Judgment Diagram, representing the connection of relevant circumstances to Reasons (including the hedonic, prudential, ethical, and esthetic perspectives) and the relative weightings reflected in a decision/judgment made by a given person, reflecting his PCs. These, however, are beyond the scope of this paper.

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Author's Note

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