Appendix B

Hart and Honore

There are three counts on which I shall express my disagreement with the position developed by Hart and Honore in the opening chapters of *Causation in the Law*. First, I find that the way in which they have set up a contrast between an interest in the particular and an interest in the general is seriously misleading with respect to both historical knowledge and scientific explanation. Second, their views with respect to common-sense causal explanations are also misleading. Third, they are mistaken in assuming that the notion of causation they attribute to lawyers is also applicable to the explanations given by historians. My argument with respect to each of these points will raise a number of separate issues with respect to which I find the views of Hart and Honore unsatisfactory. I trust that in attempting to compress my discussion of their views into this brief appendix I shall not be guilty of misinterpreting them.
(1) As I made clear at the outset, I accept the well-known distinction between the nomothetic interests of scientists and the idiographic interests of historians, but this is not to say that I accept (a) the contrast Hart and Honoré draw between the historian's interest in the particular and the scientist's interest in the general, or (b) their assumptions concerning the type of explanation that is characteristic of the sciences.

(a) Hart and Honoré open their discussion of the particular and the general in saying: "The lawyer and the historian are both primarily concerned to make causal statements about particulars, to establish that on some particular occasion some particular occurrence was the effect or consequence of some other particular occurrence. The causal statements characteristic of these disciplines are of the form 'This man's death on this date was caused by this blow.'"\(^2\)

This, however, is an impoverished view of the historian's interest in the particular: His aim is not merely to connect two events in linear, causal sequence, but to discover and to depict, in concrete detail, a whole set of events concerning a given subject matter, and to trace a variety of connections among them. Thus, in the example used by Hart and Honoré, the historian would be interested in how it was that these men came to meet when they did, what their previous relations had been, and what, in this particular situation, had led one to strike the other. An idiographic interest is not merely an interest in some particular event, but in understanding and depicting that particular event in its context.

Nor are Hart and Honoré more fortunate in characterizing the interests of scientists. In the first place, they fail to point out that if scientists were not originally interested in explaining particular events they would not be led to formulate generalizations in order to explain events of that type. In the second place, it is only through analyzing the specific conditions under which particular events of a given type occur that they can confirm their generalizations.

For these reasons, the contrast drawn by Hart and Honoré is misleading: It is not that scientists fail to be interested in particular events that sets them apart from historians; rather, it is a question of how historians are concerned with the particular, and in what ways particular events are of interest to scientists. This difference is brought out by the contrast between idiographic and nomothetic interests; it is not, however, made clear by the simple dichotomy of an interest in the particular versus an interest in the general.

(b) An even more fundamental difficulty arises in connection with
the view of Hart and Honöré concerning the nature of scientific explanation. It is their view that in the sciences a causal explanation takes the form of exemplifying “some generalization asserting that kinds or classes of events are invariably connected.” In short, insofar as the sciences are concerned, Hart and Honöré are content to accept some form of the Humean regularity view. Yet, if we take any advanced science as a model, we find that the laws that are most characteristic of scientific explanations are formulated in terms of specific factors, such as pressure and volume, or mass and distance, which serve as variables in a wide variety of cases of very different types; they are not statements to the effect that the occurrence of some specific type of event is invariably connected with the occurrence of some other specific type of event, as Hart and Honöré, following Hume, would have us believe. To be sure, some generalizations or laws illustrate Hume’s view of causation in that they explicitly refer to instances of a given type, and to the conditions under which such instances occur. For example, “litmus paper turns red when immersed in acid,” or “at sea level, water will boil at 212° Fahrenheit.” Nevertheless, the generalizations or laws that have this form are usually regarded as calling for further explanation, and such explanations are usually couched in terms of the specific factors into which these occurrences can be analyzed. The factors that are taken as providing the more adequate explanations are not confined to objects or events of a particular type, but are present in a variety of instances that differ markedly in their other characteristics. In fact, generalizations such as those about litmus paper turning red or water boiling when heated to a certain degree are not at all typical of the advanced sciences; they are in some respects more similar to common-sense explanations, such as “ice will melt at ordinary room temperature,” or “porcelain cups break if they are dropped.” They do, however, differ from these common-sense generalizations in one important respect: They are assumed not to admit of exceptions, whereas many common-sense explanations are regarded as adequate even though they do not hold in absolutely all cases, but only state what usually, or normally, occurs.

Hart and Honöré place great emphasis on this particular difference between common-sense explanations and scientific generalizations, and that is as it should be. They fail, however, to challenge Hume’s view on other points, except insofar as they are concerned (as they are) with cases of interpersonal transactions. In short, they are willing to accept Hume’s view of scientific explanation as being con-
cerned with the relations between specific types of events; it is this
that led them to hold that the sciences are interested only in the
general, and not in the particular. Furthermore, since they do not
challenge Hume’s claim that one cannot in any case perceive a con­
nection between cause and effect, they have to hold that causal at­
tributions in all cases presuppose some background of observed
regularities as to what follows what. Therefore, on their view, the
main difference between common-sense explanations and scientific
explanations resides in the fact that in our common-sense explana­
tions we focus on what was odd about a particular case that did not
behave as one would have expected it to behave; we then settle on
whatever abnormal feature was present in this situation, designating it
as the cause of what occurred. While many causal attributions in
everyday life do conform to this model, not all do so. This leads me
to my second line of criticism of the views of Hart and Honoré.

(2) There are two reasons why their analysis of our common-sense
view of causation is not in all cases adequate. First, as I attempted to
show in chapter 3, there are many cases in which we do directly
experience a causal relationship that is not to be accounted for in
terms of past experience, yet Hart and Honoré’s use of the distinction
between what is normal and what is abnormal presupposes that all
causal attributions rest on our knowledge of what has occurred in
other cases. In the second place, their analysis does not take into
account those cases in which we do say that one event caused another
when there is complete regularity of succession between these events,
without any deviation from what we take as normal and what we
expected. In the third place, throughout their discussion of causation,
Hart and Honoré presuppose that it is in all cases valid to distinguish
between the cause of an event and whatever other conditions were
necessary for that cause to have had the effect that it did. While we
sometimes do draw a distinction between “cause” and “conditions,”
and while such a distinction may perhaps be of the utmost impor­
tance for affixing responsibility in the law, one should not lightly
assume that the same distinction can be drawn in all other contexts.
As I repeatedly try to show in chapter 4, it is actually false to hold
that we draw this distinction in all cases of causal explanation that
arise either in science or in everyday life. This is especially true in
history.

(3) I do not believe it unfair to say that although Hart and Honoré
repeatedly link the historian’s conception of causation with causation
in the law, any careful examination of what interests historians, and
of what they actually do, is singularly lacking. In the only passage in
which this topic is explicitly discussed (pp. 58–59) one is led to
believe that when historians use causal notions in an explanatory way
their purpose is confined to giving an explanation of "some puzzling
or unusual occurrence." Yet, historical explanation is surely not thus
confined. What is of greater interest to Hart and Honoré than causal
explanation in history or the law is the attributive use of causal
notions, that is, the fixing of responsibility for what occurred. It is
with this use of the causal concept that the passage in question is
primarily concerned. Now, it is assuredly true that historians, like
practitioners in the law, do make these attributive causal judgments,
assigning responsibility to individuals, or to particular circumstances,
for having brought about (that is, "caused") certain events. For
example, in Americans Interpret Their Civil War, 4 Thomas J. Pressly
surveyed one particular set of judgments, namely those that showed
changing opinions as to what factor, or type of factor, was most basic
in leading to the Civil War. However, several points should be noted
with respect to this example, for they are of wider applicability. 5 In
the first place, Pressly's account is not an account of the Civil War
itself, nor is it a detailed study of the differing accounts of the back-
ground and the outbreak of the war that each of the authors whom he
studied actually gave. Rather, it discusses these accounts from a sin-
gle point of view, abstracting from each what its author took to be the
most basic factor leading to the war. Thus, quite legitimately, Pressly
was concerned only with the most general attributive causal judg-
ments to be found in a number of representative writers; it was not
his aim to assess the detailed treatments these writers had given of all
of the other factors that might have been involved in the outbreak of
the war. However, if a historian is to be in a position to make general
attributive judgments concerning what was "most basic" with respect
to the Civil War, he must first know—or believe that he knows—the
nature of a great many facts concerning slavery, the abolition move-
ment, the aims and actions of various political figures, the state of
feeling in different parts of the country at different times, and the like.
If he is to be considered a reputable historian, it will be on the basis
of his reading of all such facts that he will have put forward his
attributive causal judgment. In gathering these facts and in tracing
their concatenations, the historian is not engaged in a further series of
attributive causal judgments, nor is he engaged in explanatory causal
judgments if by this is meant that what he is seeking to account for
are puzzling or unusual occurrences: He is engaged in attempting to
discover *what happened*. Similarly, before a case goes to trial, inquiry into matters of fact must be made by the lawyers; and it is only after such inquiries have been made that one can argue in court where responsibility lies. On this analogy, it may be said that although it is not uncommon for historians to be concerned with attributive causal judgments similar to those Hart and Honoré discuss with reference to the law, this cannot be the first or primary task of the historian. Furthermore, it is a task that can be avoided by historians, even though it is unavoidable for judges. Historians need not sit as judges. It is therefore my contention that, contrary to the view of Hart and Honoré, there is no close analogy between what historians do, and what is done by lawyers arguing in court or by judges when they decide a case. Nonetheless I admit that it is unfortunately true that laymen, being neither historians nor lawyers, often think it within their powers to make attributive causal judgments concerning what has occurred in history when they have not first investigated the facts.

For all these reasons I find it necessary to disagree with the enormously influential analysis of causation we owe to Hart and Honoré.