

5-2021

## Theories of Responsibility and Punishment in a Causally Determined World

Brett Restrick

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*Undergraduate Honors Theses*. Paper 1618.  
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**Theories of Responsibility and Punishment in a Causally Determined World**

**A thesis submitted in partial fulfillment of the requirement  
for the degree of Bachelor of Arts in Philosophy from**

**William & Mary**

**by  
Brett Anne Restrick**

Accepted for                     **Honors**                      
(Honors)

                    *Philip Swenson*                      
**Philip Swenson, Director**

                    *Laura W. Ekstrom*                      
**Laura Ekstrom**

                    **Claire McKinney**                      
**Claire McKinney**

**Williamsburg, VA  
May 11th, 2021**

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## **Introduction**

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Imagine for instance, in fact for the remainder of this paper, that a certain doctrine turns out to be true: the doctrine of causal determinism. Causal determinism is the view that all events are causally necessitated by prior events. The truth of this doctrine would fundamentally alter life as we know it. How should we react? Do we argue that humans still have free will in the face of determinism? Do we give up the concept of free will completely? Our answers to these questions lead us to the focus of this paper: If determinism turns out to be the true state of the universe, how does this affect the way we assign responsibility to and punish moral agents? I argue that in a causally determined world we can implement a quasi-retributive justice system that assigns responsibility based on guidance control and reconciles punishment based on the duties incurred by offenders. Throughout this paper I discuss the semi-compatibility of free will and determinism, the faults of traditional forms of punishment, specifically retributivism and consequentialism, and my argument for a functional system of assigning responsibility in a causally determined world.

## *What is Determinism?*

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People have often wondered whether their lives are determined by fate or by God. With advancing scientific technology and modern psychology, we often wonder how much heredity and environment play into our decisions or the types of unconscious motives and conditioning that drive our political, religious and cultural beliefs. At the heart of all these thoughts is a threat to free will, known as the doctrine of causal determinism. Broadly speaking, determinism is different from unconscious motives, conditioning, or heredity because it claims that at any given moment the universe has exactly one physically possible future (Blackwell, p. 2). While therapy and psychotherapeutics can help change how and why we decide to act, determinism and its impact on our decisions will never change. The distinction between determinism and unconscious motives can be illustrated in the following scenario. Imagine for an instance that I go to therapy for my crippling arachnophobia. After years of treatment my arachnophobia is diminished and eventually eliminated through repetitive exposure treatments. In this instance it seems that I had an unconscious revulsion to spiders that was cured through treatment. However, determinism would say that whether or not I had arachnophobia and whether or not I got rid of it through therapy was predetermined before I, my parents, or my parents were even born. In this way it is not just that I am scared of spiders that is determined, but every facet of my life and the world around me.

This is not to say that the world *is* deterministic, just to say that this is how determinism would function. When asked to picture a unicorn, the general consensus is to imagine a horse-like creature with a horn coming out of its forehead. This is not to say that unicorns exist, but just a mental exercise in what they would look like if they did exist. In the same way

determinism is only a term, if it does exist this is what it would like. In our discussion of punishment we will be imagining that determinism *is* true so we can explore the more important question: if determinism does exist, how would this affect the way we assign responsibility and punishment?

In *Four Views on Free Will*, the authors offer us three valid reasons to explore the implications of determinism even if we do not believe in its existence. First, contrary to modern science that seems to show undetermined shifts at the quantum level, future physics could disprove indeterminism in favor of a deterministic quantum realm (Kane, p. 8). This would not be the first-time advancing science corrected its past. Think of Galileo who was ridiculed for believing that the Earth revolves around the sun or the amount of backlash Darwin faced when he published *On the Origin of Species* in 1859. It could be the case that one day we may look back and find it ridiculous how we once thought the world was indeterministic. Since the future is unpredictable, it is worth our while trying to answer these questions prior to science correcting itself.

Second, even if we continue to find evidence that the world is not fully deterministic, this does not mean that determinism does not exist on a local scale. Proof of indeterminism has already been found in the behavior of elementary particles (Kane, p. 8). While at the heart of our reality indeterminism could reign supreme, this does not discount the deterministic influences of our society, upbringing and genetic makeup that impact every decision we make. Third, it allows us to analyze how our human ideal of free will fits into the science of the universe. Since it might be the case that some parts of the universe are deterministic, we need to examine whether or not this impacts our current notion of free will.

# Chapter 1

## *Compatibilism to Incompatibilism: an explanation of key concepts*

	Is commonsense thinking about free will and moral responsibility basically correct?	Is free will compatible with determinism?	Is moral responsibility compatible with determinism?	Do we have free will?
Libertarianism	Yes	No	No	Yes
Compatibilism	Yes	Yes (although semicompatibilists may say “no”)	Yes	Yes
Hard Incompatibilism	No	No	No	No
Revisionism	No	Yes, but only with revision to our self-image	Yes	Yes (or close enough)

\*Fig. 1. Fisher, John, et al. “A Brief Introduction to Some Terms and Concepts.” *Four Views on Free Will*, by Fisher, Kane, Pereboom, and Vargas, Blackwell, 2007, pp. 4.\*

In the onset of studies of free will, it seems glaringly obvious that free will is incompatible with determinism. This is because there are two things we care about when we think of free will, freedom, and responsibility. To see why so many people have believed there is a conflict between free will and determinism, we must consider what freedom and responsibility require. When we consider what we mean by freedom we envision open alternatives, deliberation, and a free choice. In other words, we feel that the decision is “up to us” and that if

we wanted to, we could have decided to do otherwise. However, what does it mean for a decision to truly be up to us? It seems that at the very least, we must have some form of meaningful freedom.

Nothing is more important than freedom. Societies have risen and fallen over who has or does not have this familiar notion. For something we value so highly, it is ironic that we cannot pin down its definition. So, what does freedom really mean? It seems easiest to begin our search with when we *feel* like we are free. A simple answer is that we feel free when we are able to satisfy our desires. For example, in a modern democratic society that we view as 'free' you can vote for whoever you desire, free from barriers, coercion or force. But is this really what we mean by freedom? Consider a thought experiment Robert Kane rises to illuminate why we call this form of freedom 'surface freedom.' In the twentieth century dystopian novel *Brave New World* the people of the World State City of London have the freedom to do what they will but only to the extent that they have been conditioned since birth to only will what they can have (Kane, p. 3). This is because the lower class are under the influence of powerful drugs that control their wills. These people are completely happy fulfilling their wills and are unaware that what it is they will is limited and controlled (Kane, p. 3). In this society if I want to play mini golf, I am free to fulfill my desire and go play mini golf. But I am not free to 'want' to do anything else.

Would we say that the people in this society have 'freedom'? Surely our gut reaction would be to say no, the people in *Brave New World* are not free. In this way the definition offered above, that freedom is when we can act on our desires, is inadequate. For example, when a drug addict acts on the desire to snort cocaine we know that she is not choosing to act on this

desire but is rather forced by her body's dependence on cocaine. Therefore, we can add to our definition by saying *we feel free when we are able to choose our desires and which of them to satisfy*. What this definition hints at is a *deeper* form of freedom where in order to be free we must be the ultimate cause of our own wills and therefore ourselves. In this sense, I play mini golf not because I am influenced by external factors but because one day I made the decision to enjoy mini golfing and I am making the decision now to play mini golf. The idea that if we trace back all of our influences, we find that it is actually ourselves that truly causes our actions is known as ultimate responsibility or UR. UR is the concept that we can be responsible for current actions, ones that are essentially determined by our character and values, as long as we formed that character ourselves by earlier free actions. While it seems we have discovered what we really mean by a free choice, this form of free will that requires ultimate responsibility is illusory and unattainable. Later in this chapter we will discuss libertarian incompatibilists who believe we have UR and see why this is so.

The principle of UR leads us to believe that by connecting free will with freedom, we require that the sources of our actions are *in us* rather than beyond our control. This “in-us-ness” leads to the second factor we attribute with free will; responsibility. Responsibility is intrinsically tied to free will because it allows for blame, accountability and praise. On the retributivist view of punishment, we view criminals as deserving punishment because they are *responsible* for their actions. The responsibility our society assigns to agents, whether the actions be praiseworthy or blameworthy, comes from the fact that we believe humans have the ability to make meaningful choices. This means that by doing A instead of B, we are responsible for our actions. This idea can be summarized as the Principle of Alternate Possibilities.

Since determinism means everything is determined and there are no alternative possibilities, by making PAP a requirement for responsibility it seems impossible for determinism to allow for free will. Imagine the following two examples where a lack of alternative possibilities leads us to question who we should blame. Scenario A: John, a homeless man, steals a loaf of bread for his starving children. In this scenario we empathize with John and the fact that he felt he had no alternative possibilities but to steal to save his family. In this way, John's lack of alternatives and his distressing situation incline us to let him off without punishment. Now imagine scenario B: Jack walks into a school with a gun and fatally wounds 3 students. It seems obvious that what Jack did was horrible and he should be punished. But what if it was the case that he did not have any more of a choice in committing his crime than John did in stealing the bread? As we learn more about Jack, we learn that he was abused by his family and his classmates throughout his life. Jack never received treatment for this abuse. One day his son comes home and tells him that three kids at school were bullying him. Jack refuses to let his son go through the same pain, has a mental break and marches down to the school to commit this horrible act. Now it seems that just like John, Jack was not solely responsible for his crime. We now shift some of our blame onto his family, his upbringing, those who bullied him in high school and so on. The more we learn about the circumstances and causes surrounding an action, the harder it is to pin down who it is to blame.

### *Section I: Compatibilism*

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Compatibilism about free will and determinism has become extremely popular in modern times. It includes support from such influential philosophers as Thomas Hobbes, John Locke,

David Hume and John Stewart Mill. All these thinkers see compatibilism as a way of reconciling our ordinary experience in which we feel free with advancing modern science about the deterministic nature of the universe (Blackwell, p. 4). John Martin Fisher defines compatibilism as the doctrine that both some central notion of freedom and also genuine robust moral responsibility are compatible with the doctrine of causal determinism (defined as the entailment that every bit of human behavior is causally necessitated by events in the past together with natural laws) (Blackwell, p. 44). Compatibilism is extremely attractive because it allows us to hold two seemingly adverse beliefs; 1) we really are sometimes free/morally responsible and 2) we acknowledge that causal determinism could turn out to be true.

Essentially, compatibilists agree that even if everything is determined we can still have meaningfully free actions where the determination comes from within ourselves. To illustrate this point, think about a diver jumping off a diving board versus being pushed in. The result is the same, the diver lands in the pool, but the cause is different. When the diver is pushed, the cause comes from someone physically shoving them into the pool. When the diver jumps off the diving board, the decision comes from within themselves. A compatibilist would say that in both cases the action is determined, meaning it could not have not happened, but when the action of an agent is self-determined, or determined by causes internal to themselves, the action should be considered free. In this way the responsibility for the diver hitting the water falls on the diver when they jump but, on the pusher, when they are pushed. In the scenario where the diver jumps, they can be said to have moral responsibility because the decision was self-determined.

The above argument can be included in a traditional compatibilist account of freedom known as the conditional analysis. The conditional analysis suggests that our freedom can be

understood in terms of certain “if - then” conditional statements (Blackwell, p. 49). More specifically, the conditional analysis commends to us the view that an agent S’s freedom to do X can be understood in terms of the truth of a statement such as “if S were to choose to do X, S would do X.” On the surface, this analysis seems to capture the important elements of our intuitive picture. Namely, it allows for obviously non free actions to be sorted out as cases in which agents are not morally responsible. Let's put robbing a bank into this format. “If you were to choose to rob the bank, you would rob the bank.” However, when you are forced to rob the bank it is not you who is doing the choosing. In this forced scenario the sentence would look like this; “If you were to choose to not to rob the bank, you would still rob the bank.” Even though you have chosen not to rob the bank, by virtue of other facts (i.e. a gun to your head) you still rob the bank. In this way the conditional analysis shows us that robbing the bank is not the result of a free choice.

However appealing it may be, the conditional analysis fails to include unwanted causes that are found within us. Think of this disturbing but true story. In the year 2000 a 40-year-old man, let’s call him Sam, was arrested for possessing child pornography and molesting his 8 year old step daughter. Sam had no previous history of pedophilia and said himself he was baffled and dismayed by a sudden turn in his sexual behavior. While he was awaiting his day in court Sam began to complain of terrible headaches. A brain scan revealed a large tumor in the part of his brain that is known to control sexual impulse. The tumor was removed and it turned out, so were his pedophelic impulses. The court learned that the brain tumor worked by amplifying his desires but did not inhibit she ability to choose on the basis of his desires.

Under the conditional analysis, what the agent desires and whether or not they can act on that desire is what matters most. In Sam's situation both of the following statements are true; *If Sam were to choose to possess child pornography, same would possess child pornography* and *If Sam were to choose to not possess child pornography, Sam would not possess child pornography*. For the compatibilist who subscribes to the conditional analysis the truth of both of these statements means that Sam is responsible for his actions. However, Sam was not the one who determined what his desires were. Remember that Sam's brain tumor works by amplifying his desires but not by inhibiting his ability to choose on the basis of his desires. By amplifying his desires to possess child pornography, it is the tumor that is choosing what Sam desires most. After it was revealed that Sam has no choice but to want to possess child pornography the error in the conditional analysis becomes clear: The conditional analysis assumes that if a desire is coming from within a person, that person's choice to act on that desire is a free choice. However, when Sam acts on his desire to possess child pornography he is not doing so freely. Therefore, the conditional analysis fails in this example.

Compatibilism also faces a significant challenge from a skeptical argument popularized by Peter van Inwagen. Instead of targeting an account of freedom like the conditional analysis, this criticism targets the basic commitment of the compatibilist that not all causally deterministic sequences undermine freedom and moral responsibility. Known as the consequence argument, this criticism claims that if we suppose that a deterministic agent has *ordinary abilities*, we are forced to credit her with *incredible abilities* as well. Remember that as compatibilists we assume that 1) determinism is true, given the past there is only one plausible material future, and 2) we can choose from multiple options.

The consequence argument goes as follows: Given the definition of causal determinism, it follows that my current choice to eat oatmeal instead of granola is entailed by true propositions about the past and laws of nature. Thus, if this morning I was truly free to choose between oatmeal and granola, it follows that I was free to behave in a way that would change the past and laws of nature. This is because if determinism is true then there is only one possible physical future given past events and the laws of nature. So, if I was to diverge from the one possible physical future, i.e. eat granola instead of oatmeal, I must have somehow changed the past or laws of nature. Fisher's analysis of van Inwagen's argument comes in handy here when trying to further explain his logic. Fisher explains that intuitively, we speak of the past like it is fixed and untouchable. In order to change the past then I have at least one of two incredible abilities – the ability to change the remote past or the ability to change the laws. It is absurd to suppose that humans have either of these incredible abilities. Therefore, we must reject the claim that I had the ordinary ability to eat granola instead of oatmeal. Fisher summarizes by saying, "It appears to follow that despite the natural sense that I am free to choose to do otherwise, I am never free to do otherwise," (Blackwell, p. 54).

If we accept that free will and determinism are compatible, we would not need to alter the way we assign praise and blame in a determined world. Given that we would be able to keep our current notion of free will and responsibility in their entirety, the systems through which we punish wrongdoers would remain unchanged. However, if the above arguments hold any water, which I believe they do, it strikes a huge blow to compatibilism. Given this, many philosophers, including myself, have moved on to a different form of compatibilism that is consistent with accepting the consequence argument as sound.

### *Section 1a: Semi-Compatibilism*

Semi-compatibilism is similar to normal compatibilism in that it argues that causal determinism is compatible with moral responsibility. However, it differs in that it does not care whether causal determinism rules out the sort of freedom that necessitates alternative possibilities. The Principle of Alternative Possibilities, or PAP, claims that a person is morally responsible for performing or failing to perform an action if and only if she had a genuine alternate possibility open to her at the time. In his 1969 article *Alternate Possibilities and Moral Responsibility*, Frankfurt questions the idea behind PAP; that free will requires the ability to do otherwise. Frankfurt asserts that a person may well be morally responsible for what she has done even though she could not have done otherwise (Frankfurt, p. 829-830).

Frankfurt's counterexamples to PAP take the form of an agent, Jones, who makes a free decision even though he does not have any open alternatives. Consider my version of a Frankfurt Jones case. Hannah and Monica are sisters with strict parents. Tonight, there is a party at their friend Jones's house and they both really want to go. Hannah tells Monica that she has a plan to sneak out of their house by breaking her bedroom window and climbing down the fire escape. Monica is pleased with Hannah's plan but is a rather anxious person. Monica is worried that Hannah might waiver from the plan and decides to secretly install a device into Hannah's brain which allows Monica to monitor all of Hannah's brain activity and to intervene if she desires. The device works by electronic stimulation and can be employed by Monica to ensure that Hannah decides to break her bedroom window. Should Hannah show any sign of not carrying out the original plan, Monica will use the device. If Hannah does carry out the plan, the device will

remain unused. Let us assume that Hannah can do nothing to prevent the device from being fully effective and is not aware of the device's existence.

The night of Jone's party comes and Hannah and Monica go to their rooms to get ready. Hannah methodically carries out her plan to break the window so they may sneak out. She does not waver in anyway and breaks the window as a result of her own original deliberations. Monica thus played absolutely no role in Hannah's decision and action. The electronic device that monitors Hannah's brain activity is not used and does not have any causal influence on what actually happens. Hannah acts exactly as she would have acted had no device been implanted in her brain.

It is clear that Hannah is morally responsible for what she has done. She is blameworthy for both deciding to break the window and for breaking the window. In examples such as these Frankfurt believes that he has shown that agents can be morally responsible for their actions even though they could not have done otherwise. Hannah could not have done otherwise because of the existence of a 'counterfactual intervener,' Monica, who would have caused her to break the window had Hannah been inclined to do otherwise. As Frankfurt explains, the device implanted by Monica had no coercive effect on Hannah and, thus, the mechanism did not actually deprive Hannah of the ability to do otherwise (Frankfurt, p. 832). Examples such as these are supposed to illicit the following intuitions:

1. The agent could not have done other than preform A
2. The agent is morally responsible for performing A

If both 1 and 2 are true, then PAP must be false because we would have a case where an agent is morally responsible for committing an act that they could not have avoided. There is

great debate over whether or not Frankfurt has actually succeeded in providing a metaphysically possible scenario in which an agent is morally responsible for some action even though they could not have done otherwise than perform that action (Leon & Toganazzini, p. 552).

Opponents to Frankfurt claim that his cases do not succeed in ruling out all alternatives open to Hannah. Even in the case I presented above it seems like there are some kind of alternatives open to Hannah. For example, Hannah could have exhibited a sign that she was going to decide not to break the window (Leon & Toganazzini, p. 552). In this way it is not true that the above situation eliminates *all* alternatives because Hannah could have exhibited this relevant sign. However, I would argue that showing a sign of difference does not destroy Frankfurt's argument. What we really care about when it comes to the success of a case is whether or not it describes a metaphysically possible scenario in which both an agent, S, is morally responsible for a particular action, A, and either (1) S could not have done other than A or (2) if S could have done other than A, then this ability is irrelevant to S's morally responsibility for A (Leon & Toganazzini, p. 552). Here Leon and Toganazzini are motivating the idea that in the above scenario any alternative possibilities in and of themselves seem altogether irrelevant to our ascriptions of moral responsibility, even if they are there (Leon & Toganazzini, p. 561).

Clearly Frankfurt-type examples such as these are very unusual cases. We can generally be certain that such a case, a girl implanting a chip into her sister's head to control all her decisions, does not exist. However, unusual cases such as these can point us to something that is both ordinary and very important. They allow us to take a closer look at the requirements for moral responsibility. From this case, we can conclude that Frankfurt is successful in showing that

moral responsibility does not require the sort of control that involves the existence of genuinely open alternative possibilities (Fischer & Ravizza, p. 30).

## *Section II: Incompatibilism*

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On the other side of the fence we have incompatibilists who think that free will is incompatible with determinism. Given the obvious attraction of compatibilism, incompatibilists must do more than rely on their intuitions that it really *feels* like determinism and free will are at odds. The consequence argument we discussed earlier is the most popular argument for the incompatibility doctrine. Peter Van Inwagen summarizes the argument as follows:

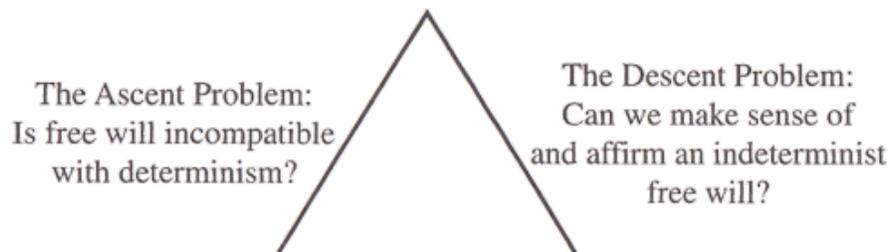
*If determinism is true, then our acts are the consequences of the laws of nature and events in the remote past. But it is not up to us what went before us before we were born: and neither is it up to us what the laws of nature are. Therefore the consequences of these things (including our own actions) are not up to us* (Inwagen, p. 16).

A successful argument for incompatibilism would show that free will and determinism cannot both be true. This is because if one is true then the other must be false. While there are some hard incompatibilists who are open to denying both, traditional incompatibilists may go in either of the two directions; they may affirm free will and deny determinism or affirm determinism and deny free will. These two groups are called Libertarians and Hard Determinists. Both types of incompatibilists argue that there is a dichotomy between determinism and free will and that we must choose one or the other. Traditionally, Libertarians affirm free will and Hard Determinists affirm determinism.

## Section 2a: Libertarianism

Libertarians are defenders of the ‘deeper’ form of free will we discussed earlier when we talked about Ultimate Responsibility. This deeper freedom is the *true* free will that most people believed we had before the compatibility question arose. Libertarians argue for a more powerful form of freedom and contend that that the type of freedom compatibilists protect is, “only a pale image of this true freedom” (Kane, p. 32).

Robert Kane describes the two main objections to Libertarianism as being 1) the Libertarian dilemma and 2) Incompatibilist Mountain. The Libertarian dilemma can be broken down as follows. If free will is not compatible with determinism, it does not seem to be compatible with *indeterminism* either. For example, if we live in an undetermined world our so called ‘free’ actions would happen by random chance. Think of uncaused, undetermined, utterly random jumps in atoms at the quantum level. If the whole world is like this, then so too are our actions. However, if having our actions be undetermined means having them happen by random chance, that does not make us any freer than if our actions were controlled by determinism. This problem comprises the “descent problem” in Kane’s incompatibilist mountain.



\*Fig. 2. Kane, Robert, “Libertarianism, Indeterminism and Chance.” *A Contemporary Introduction to Free Will*, by Kane, Robert, Oxford University Press, 2005, pp. 34.

The task for Libertarians is to ascend this mountain and get down the other side. As seen above in the Libertarian dilemma and our discussion in support of compatibilism, the ascent problem is fairly difficult. However, many critics of Libertarianism believe the descent problem, making sense of a free will that requires indeterminism, even more difficult. This is because in solving the descent problem people almost always slip into mystery or obscurity. Libertarians are bound to the idea that an agent is able to act otherwise given the same past circumstances and laws of nature. In order to do so, some Libertarians rest their cases on “extra factor strategies” (Kane, p. 34). This being the idea that in order for an agent to perform a different action given the same exact past and laws of nature, there must be an “extra factor” that allows her to do so. It is in these strategies where Libertarians must enter the mystical world of immaterial minds or souls, noumenal selves outside space and time, agent causation absent of “will” or “volitions” and so on.

Given their rejection of determinism, Libertarians are not required to change the criminal justice systems based on their view of free will. By holding onto the idea that we live in an indeterministic world where we are the sole cause of our own actions, Libertarians can place blame and praise on agents without further explanation.

### *Section 2b: Hard determinism*

Hard determinism is the idea that the universe, given its initial conditions and causal laws, has to be the way it is and all of us are determined to do what we do. This means that human behavior and actions are wholly determined by external factors, and therefore humans do not have genuine free will or ethical accountability (O'Connor & Franklin 2018). While

traditional arguments for hard determinism discuss serial killers and their abusive upbringings, I would like to introduce this topic with a fatalist approach from Greek mythology (Smilansky, 2011).

According to ancient Greek legend, before Oedipus was born an oracle foretold the prophecy that Oedipus would murder his father and marry his mother. So, in an attempt to avoid this fate, Oedipus's father took baby Oedipus and left him in the wilderness assuming he would die and the prophecy would not be fulfilled. Instead, Oedipus was discovered and raised by another family. As an adult, Oedipus learned of the prophecy that he was to kill his father and marry his mother. Not knowing he was adopted, Oedipus left his adopted family to prevent this horrible prophecy from coming true. As he was trying to flee his fate Oedipus got into an argument with a stranger and ended up killing him in a fit of rage. This man turned out to be Laius, Oedipus's biological father. He then proceeds to marry the dead man's widow who was his biological mother.

The moral of this story is that no one can escape fate, no matter how hard we try and no matter how truly horrible it might be. While I believe the story of Oedipus is a great starter example in the discussion of hard determinism, it is more of a fatalist story. Fatalist examples argue that everything that happens is preordained and therefore we do not have free will. Determinism examples, however, show that every event has a cause and therefore we do not have free will. Let us now contrast the Oedipus example with the case of Brave New World. As mentioned, all the people in Brave New World are controlled by drugs to do what they do and want what they want. To a hard determinist, we are all like the people in Brave New World. While we might not be under the control of drugs, everything we do and want is controlled by

the past and laws of nature. Hard Determinists argue that given the past, there is only one possible and unchangeable physical future. This argument means that all horrible actions and events (Bonnie and Clyde killing 13 people, Oedipus marrying his mother, JFKs assassination, famine, war etc.) were determined to occur and that those who carried them out are not at fault but merely a slave to a determined world.

A different form of the hard determinist argument comes from Galen Strawson's Basic Argument (Strawson, 1986). The Basic Argument hinges on the ancient idea that: having true free will of the libertarian kind would require that one be a *causa sui* - a cause of oneself. A very simplified version of Strawson's argument can be explained with this example: Danny hates bananas, in order for him to be responsible for this hatred he must have done something in the past that made him hate bananas. In order for Danny to be responsible for what he did in the past to make him hate bananas he would have had to have been responsible for an even earlier event that led him to the event that led him to hate bananas. This is meant to be confusing because as Strawson explains it ends in an infinite regress. However, in the case of human beings we cannot keep going back because eventually we arrive before our birth where we had no control over anything. In this way, Hard Determinists argue that we cannot possibly be a *causa sui*.

The above argument shows the possibility of a view that's even more anti free will. This is known as *hard incompatibilism* and is the idea that whether or not determinism is true, it is always the case that we do not have free will. Even if technically determinism is false, this still does not give us the kind of freedom that we mean when we discuss free will. This position is becoming increasingly common as modern philosophers shy away from a commitment to determinism. Derek Parfit is a notable philosopher who prefers to refer to himself as a

hard incompatibilism. Either being a hard determinist or a hard incompatibilist would require a totally upheaval of the way we assign praise and blame. This is because in a world where we lack free will and any form of responsibility, it seems that we are all innocent of our actions and cannot be punished.

## Chapter 2

### *Traditional Theories of Punishment*

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The question of what justifies the imposition of punishment on an individual by a society has fascinated moral and legal philosophers for generations. So many articles have been written in an effort to define both the purpose and justification of punishment that it has acquired the moniker as, “the Problem of Punishment” (Hasnas 2017). Hasnas challenges the importance of this question by saying the true problem of punishment is not in demonstrating why punishment is justified as a means in general, but in showing that the state as an authoritative entity is morally justified in inflicting punishment on its citizens (Hasnas 2017). In order to tackle the problem Hasnas has set up for us, we first need to know what we mean by punishment. In general, we use the word punishment to refer to a penalty that is inflicted because of the existence of a perceived wrong. However, this definition does not tell us the reason for punishment and the end it's supposed to produce. Below I have outlined two popular definitions that present competing ideas over the purpose of punishment:

- A. Punishment is the infliction or imposition of an undesirable outcome or penalty as **retribution** for a particular action or behavior that is deemed undesirable or unacceptable.
- B. Punishment is the infliction or imposition of an undesirable outcome or penalty as a **deterrent** for a particular action or behavior that is deemed undesirable or unacceptable.

From these two definitions of punishment, we can distinguish between consequentialist and desert-based approaches to punishment (Caruso 2018). These traditional forms of punishment correspond with the definitions in the following way: definition (A) is desert-based or retributivist and definition (B) is consequentialist. It is important to note that Joel Feinberg points out that neither the term retributive nor consequentialist has been used with perfect uniformity (Feinberg 2004). However, it is assumed that those who are called consequentialists insist that punishment is necessary as a means to prevent greater evils in the future and that those who are called retributivists propose punishment as deserved retribution for a past action (Feinberg 2004).

While consequentialist-based approaches are said to be forward-looking, retributivist approaches are backward-looking. For consequentialists an agent is considered a proper target of punishment for immoral actions on the grounds that such treatment will reform and disincentivize the agent, and others, from performing that type of action in the future. Desert-based responsibility, on the other hand, is considered to be backward-looking and retributive in the sense that any punishment that is deemed appropriate in response to an immoral action is warranted simply by virtue of the action itself. This treatment is warranted irrespective

of whatever good or bad results might follow from the punitive responses (Caruso, 2018) (Morris, 2009). By the end of this chapter you will see how they both fail to function in a determined world where we accept a semi-compatibility between free will and determinism.

### *Section I: Retributivism*

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The overarching theory of retributive justifications for punishment can be broken down into two smaller categories distinguished by moral and legal concerns. The view concerned with morality puts emphasis on a form of desert that is derived from whether the action is morally good or morally bad. For example, if John kills Mary he should be punished, regardless of manmade law, because murder is morally wrong. This view can be summarized as follows:

*It is an end in itself that the guilty should suffer pain....The Primary justification of punishment is always to be found in the fact that an offense has been committed which deserves the punishment* (Feinberg 2001),(Ewing, p. 13).

This is a backwards looking account of punishment that focuses on guilt and desert rather than the advantages, disadvantages, and general consequences of punishment. This theory claims that punishment is only justified because wrongdoing, in and of itself, merits punishment. This means that it is morally fitting that a person who committed wrongdoing should suffer for their actions.

The second category within retributivist schools of thought focuses on the legal implications of breaking a rule and the specified penalty outlined within the law. The written penalty is to be carried out whether or not the offender incurs any moral guilt through the action. For example, it is illegal to chew gum in Singapore, but it is legal in the United States. If Colleen chews gum in the US she is not deserving of punishment, but if she chews gum in Singapore she

is. While chewing gum is morally permissible, a legal retributivist would still be able to say that Colleen is deserving of punishment because she broke the law. One legalistic retributivist puts the argument as follows:

*Punishment is a corollary not of law but of law breaking....Laws would succeed even if no punishment occurred. The criminal makes the essential choice; he "brings it on himself" (Mabbott, p. 161).*

Moral and legal retributivism are two means to the same end; they seek to show that in and of itself, an action which breaks a law, be it natural, moral, legal etc., incurs punishment on the agent. We refer to retributivism as a backwards looking theory because it requires one to analyze the evidence that exists only up until the moment the crime is committed. This means that the effects of the punishment, be it promoting general peace and disincentivizing criminal activity, are nonessential, possibly irrelevant, to the decision to or to not punish.<sup>1</sup>

Before we delve into whether or not retributivism works in a determined world, we need to note why free will is a necessity for both Moral and Legal retributivism. As stated previously, Moral retributivism focuses on desert and whether or not the accused party is guilty of the crime itself. For example, let us assume that Kaley stole a watch from Rolex. Moral retributivism would punish her because she herself, absent of outside influence, stole the watch. In this view, it is a requirement that Kaley was exerting her own free will at the moment that she committed the

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<sup>1</sup> The current criminal justice system in the United States is arguably retributive. The criminal justice system in the U.S. is home to 22 percent of the world's prison population and promotes guidelines that emphasize punishment rather than rehabilitation. For example, even the simplest factors we associate with prisons as portrayed in television, such as an orange prison jumpsuit or designated "yard time," function to punish rather than rehabilitate. In their 2013 study, Subramanian and Shames focused on American prisoners who have to follow strict rules such as daily schedule which include when to wake up, what and when they eat, what they wear which is usually a uniform. Subramanian and Shames show how these factors lead American prisoners to not function in society after being released. The strict schedule makes simple things like daily decision making and readjustment into society extremely difficult (Subramanian & Shames, 2013).

crime. By exerting her own free will, we can argue that Kaley made the conscious decision within herself to steal the watch. If it was not Kaley who made the decision, for example if she was coerced or forced, a moral retributivist could not hold her accountable. In order to be guilty and deserve punishment, Kaley must have been acting on her own free will.

Free will is also a necessity for Legal retributivism. In order to be held to the laws that govern a nation you must be a rational agent. Otherwise, you can not fully consent to being government by those laws. Legal retributivists argue that if a crime is committed we look to the law and then look to the corresponding punishment. Let us discuss Kaley again. After she has been accused of stealing the watch, a legal retributivist is interested in two things. Did she break the law and what is the corresponding punishment. So Kaley stole the watch, stealing is illegal, therefore she either must serve, let us say, a year in prison or pay a hefty fine. However, we also need to make sure that Kaley is a moral agent that can actually understand and follow the laws of our nation. Traditionally, moral agency is assigned only to those who can be held responsible for their actions. (Talbert 2016). Therefore, if Kaley does not have free will, she can not be held as responsible for her actions. She then also is not a moral agent and is therefore not accountable to our laws. Thus, without free will we cannot punish Kaley from a legal retributivist stand point.

Putting aside whether or not we think retributivism in its current inception is a humane, smart or even sustainable way to treat those of us who commit crimes, we must ask how this kind of system would function in a world without free will. The answer is simple: it fails. Below I have provided my own proof for this argument:

- 1) Define retributivism as a system where punishment is determined based on responsibility

- 2) In a completely determined world, we do not have free will<sup>2</sup>
- 3) If we do not have free will, we are not responsible for our actions<sup>3</sup>
- 4) If we are not responsible for our actions, we cannot justify punishment based on responsibility
- 5) Retributivism fails in a deterministic world

Premise one deals with pinning down a definition of retributivism. As we saw above, retributivism can be defined in many different ways. However, all definitions have in common the theory of *desert*. Desert is the idea that a consequence bestowed on an individual is rightfully earned because of something that individual has done. For example, Malala Yousafzai *deserved, and received*, the Nobel peace prize for her educational activism. In the same way, Ted Bundy *deserved, and received* capital punishment because of the 36 known murders he had committed.

Premise two takes an incompatibilist stance on the subject of free will and accepting this premise rests upon which stance you take in the free will debate. The third premise is intuitive however it is arguably the hardest one to defend. For these reasons I have turned to a thought experiment coined by Greene and Cohen (Greene and Cohen 2004). Mr. Puppet is a man who was created and designed by a group of scientists through tight genetic and environmental control. Mr. Puppet has just been arrested for robbing a bank. When the lead scientist takes the stand here is what he says:

“I designed him. I carefully selected every gene in his body and carefully scripted every significant event in his life so that he would become precisely what he is today. I selected his mother knowing that she would let him cry for hours and hours before picking him

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<sup>2</sup> See the discussion against compatibilism and for incompatibilism/semi-compatibilism in chapter 1

<sup>3</sup> In future chapters we will have reason to reject this premise but for now I provide a strong defence of it

up. I carefully selected each of his relatives, teachers, friends, enemies, etc., and told them exactly what to say to him and how to treat him” (Greene and Cohen, 2004).

Greene and Cohen now want us to ask ourselves whether or not Mr. Puppet is responsible for robbing the bank. The purpose of this thought experiment in the context of Green and Cohen’s paper is to show that we are all tacitly incompatibilist. The idea is that Mr. Puppet should not be held responsible for robbing the bank because his actions were clearly formed by the team of scientists. From this Green and Cohen reason that if we are not willing to hold Mr. Puppet responsible for his behavior, we should not hold anyone responsible for their behavior. Mr. Puppet clearly lacked free will because every aspect of his biology and life was determined by external factors that he had no control over. In this way, he is not responsible for his actions because he was not the cause of his actions. If determinism is true, we are all puppets who are controlled by external factors and are therefore not responsible for our actions.

The fourth premise logically follows from the third premise and the definition of retributivism. If we live in a world where we no longer have responsibility over our actions, then we cannot use responsibility as a means of proving guilt and desert of punishment. This point can also be supported by returning to Greene and Cohen. In the same article that introduces us to Mr. Puppet, the authors recommend a shift away from punishment aimed at retribution in favor of a more progressive, consequentialist approach to the criminal law (Greene and Cohen 2004). They base their argument off of advances in neuroscience pointing out how, “vivid scientific information about the causes of criminal behavior leads people to doubt certain individuals’ capacity for moral and legal responsibility” (Greene and Cohen 2004). According to criminal law, the central question in a case considering diminished responsibility is whether the accused

was sufficiently rational at the time in question. Greene and Cohen rewrite this question in a way they feel gets at what we really want to know; was it really *him*? They follow this question with multiple disjunctions; was it him...or was it his upbringing, brain, genes. However, if we accept that we live in a completely deterministic world, "there is no 'him' independent of these other things," (Greene and Cohen 2004). There is no physical, metaphysical, legal or otherwise possible way to separate *him* from his upbringing, his genes or his brain. In this way, without the type of deeper free will that allows us to separate ourselves from these internal forces, it really was not *him*. Therefore, we are not ultimately responsible for our actions and cannot be punished.

Once all of these premises are deemed true, the conclusion logically follows, and retributivism fails in a world without free will. Another way to write this conclusion would be; retributivism, a legal system where punishment is based on responsibility, fails in a world without free will, where no one is ever responsible. In a determined world, free will is an illusion and it is this illusion upon which retributivist notions of criminal responsibility depend (Greene and Cohen 2004).

## *Section II: Consequentialism*

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Consequentialist theories of punishment argue that in order to define an action as right or wrong we must weigh the possible consequences. On this line of thinking, the right action is the one that produces better consequences than all the alternatives. In this way, consequentialist theories of punishment assign praise and blame based on the outcomes of either action. The positive outcomes attributed with punishment are measured in terms of deterrence, rehabilitation

and general social welfare. While retributivists look backward to determine desert, consequentialists look into the future and choose the course of action that, on the whole, produces the most good. Consequentialism also allows us the intuition that breaking a rule is permissible when it produces the most good. For instance, most people would agree that lying is wrong, but if telling a lie would help save a person's life, consequentialism says you should tell the lie.

While the idea of utilitarianism, as a collection of normative ethical theories that define "pleasure" as the good, is distinct from consequentialist theories for punishment, utilitarianism can be used to illuminate how the consequentialist sees the purpose of punishment. Jeremy Bentham, who is regarded as the founder of modern utilitarianism, explains the point of punishment in a utilitarian society as follows:

*"The general object which all laws have, or ought to have, in common, is to augment the total happiness of the community; and therefore, in the first place, to exclude, as far as may be, everything that tends to subtract from that happiness: in other words, to exclude mischief,"* (Bentham, 1789).

Imagine Emily gets caught stealing a diamond ring from Tiffany's. If Emily were tried under a retributive system, we would be most concerned with the events leading up to the crime and whether or not Emily is responsible and deserving of punishment. Conversely, in a consequentialist system what we really care about is finding which course of action, punishing or not punishing, produces the best outcome. We might be inclined to punish her because we want the positive outcomes of general and specific deterrence. Specific deterrence comes from the fact that if Emily is in jail she can not steal anymore and when she gets out, she probably will not

steal again. General deterrence comes from the way Emily's punishment acts as a disincentive to steal for other people in society. A consequentialist also wants to keep in mind the feelings of Emily, the owners of Tiffany's and the effect the sentence will have on society. We only want Emily to be impacted negatively (ex: be imprisoned for x amount of years) to the extent that the positive impacts (her rehabilitation and the happiness of the owners who she stole from) outweigh the negative ones.

Consequentialism seems to be the perfect candidate for punishment in a world without free will. It gives us everything we 'want' from a criminal justice system: the best outcome for the victims, criminals are punished and society continues to run in a way that discourages the breaking of laws and promotes peace. However, consequentialism is inadequate in any world, determined or not, due to its impracticality and propensity to punish the innocent.

On its surface, consequentialism seems fairly easy to introduce into our criminal justice system. This is because it can be applied ubiquitously given the measurable consequences of each possible decision. If we assign a numerical value to each consequence, we can reach an ethical decision through mathematical evaluation and apply this formula universally. However, applying this strategy can be both time consuming, complicated and impossible. In the ideal case all consequences are identified and assigned a numerical value. In almost all real cases, however, it is impossible and/or extremely time consuming to explore every consequence, or a set number of consequences deemed sufficient to make the decision. Another issue with the implementation of consequentialism comes from agent limitation. While in an ideal case a completely unbiased ethical agent weighs all possible consequences with equity and neutrality towards all affected

parties, in the real world the humans who are doing this cost benefit analysis do not possess such powers.

The most erroneous problem of consequentialism, however, comes not from its bureaucratic implications but its propensity to justify punishing the innocent. By defining an action as right or wrong not by the action itself (as retributivism does) but by the foreseeable consequences of that action, consequentialist forms of punishment can result in a grossly incorrect allocation of praise and blame. Philosopher Saul Smilansky puts the dilemma this way, “in the creation and daily application of the criminal law we are constantly facing a general situation in which utilitarians would be obliged to promote the ‘punishment’ of the innocent,” (Smilansky 2011).

H. J. McCloskey writes that while consequentialist forms of punishment have an obvious appeal, they dictate unjust punishments which are unacceptable to the common moral consciousness (McCloskey 1963). Let us consider a thought experiment McCloskey offers up in defense of this point. Suppose that in order to prevent a riot in which thousands would certainly be killed a sheriff must frame an innocent man (Smart 1978). On consequentialist principles, the sacrifice of a single life in order to save thousands is justifiable. This is an issue for the consequentialist because it runs counter to the claim that killing is an intrinsic wrong. The usual utilitarian reply however is that if such a thing were to be done, it would probably be detected and the resulting destruction of faith in the law would lead to more harm than the original riot (Smart 1978). However, critics like McCloskey are quick to tweak the case so that the detection of the sheriff’s deceit is almost impossible. After this change, consequentialists either concede that the harm done by the riot is greater than the harm done by executing an innocent man or

would dismiss the case as unlikely. However one responds, this case still calls into question the consequentialists view on killing as an intrinsically wrong action and whether or not intentionally killing another should be permissible.

In his article titled “Hard determinism and Punishment: A Practical Reducto,” Saul Smilansky discusses the implications of implementing consequentialist forms of punishment through the lens of hard determinism (Smilansky 2011). He discusses how consequentialists must deal with the need to punish, when coupled with the obligation to be just. Smilansky argues that even though hard determinists might find it morally permissible to incarcerate wrongdoers apart from lawful society for consequentialist justifications, they are committed to the punishment’s taking a very different and horrendously expensive form (Smilansky 2011). Hard determinists are in fact committed to what Smilansky calls funishment. Funishment would resemble punishment in that criminals would be incarcerated apart from lawful society in secure prisons that prevent criminals from escaping (Smilansky 2011). However, Smilansky argues that these institutions of punishment would need to be as delightful as possible (Smilansky 2011). This is because in a determined world where we lack free will, wrongdoers are not actually responsible for their actions and we have no right to make their lives worse off.

Taking McCloskey's Sheriff Case and Smilansky’s funishment together, the consequentialist is left with a dilemma in a causally determinist world. This conclusion comes from the acceptance of two intuitive principles: 1) Define the innocent as someone who is not responsible for a crime or offense, 2) It is morally wrong to punish the innocent. Adding the situational circumstances of a world without free will, we can extrapolate that in a world without free will it is morally wrong to punish anybody. This is because if we do not have free will, we

are not ultimately responsible for our actions. Since being innocent means lacking responsibility, and we lack responsibility for *any* of our actions, everyone is by nature, innocent. If the consequentialist upholds that it is morally wrong to punish the innocent, the consequentialist must find a way around the McCloskey Sheriff dilemma. However, we saw above that the sheriff dilemma is impossible to get around without rejecting murder as an intrinsic wrong. If the consequentialist rejects murder as an intrinsic wrong, they are still left with the problems that come with funishment. If those convicted are not responsible, a consequentialist must make them as comfortable as possible.

### **Chapter 3**

#### *Moral Responsibility and Causal Determinism*

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In previous chapters we have asked the question, How do we go about punishing those who commit crimes in a causally deterministic world, i.e. a world where we do not possess free will? My belief is that in a world without free will we must have a system that establishes responsibility through guidance control. We saw through incompatibilism arguments earlier that in a world without free will we do not have a forking path with genuinely open alternative possibilities. However, I will argue that moral responsibility does not require this sort of control of choice, instead, it requires guidance control. Though establishing a basis of responsibility off guidance control is sufficient for a retributivist, we might still want a justification for how the state has the right to punish. Above we saw that punishment cannot be justified through desert nor through its consequences. In this chapter I will present a justification for general deterrence through the duty that offenders incur through the wrongs they have perpetrated.

## *Section I: Guidance Control*

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Philosophers Fischer and Ravizza argue that moral responsibility is based on 'guidance control' and that guidance control is not undermined by determinism. While moral responsibility does not require the sort of control that involves the existence of genuinely open alternative possibilities, it does require guidance control. Guidance control of an action involves an agent freely performing that action (Fischer and Ravizza, p. 31). Fischer and Ravizza offer a thought experiment as an introduction to guidance control. Here is the summary:

Let us suppose that Sally is driving her car. It is functioning well, and Sally wishes to make a right turn. As a result of her intention to turn right, she guides the car to the right. Further, we assume that Sally was able to form the intention *not* to turn the car to the right. Also, we assume that, had she formed such an intention, she would have turned the steering wheel to the left and the car would have gone to the left. Insofar as Sally actually guides the car in a certain way we shall say that she has "guidance control," (Fischer and Ravizza, p. 31).

Fischer and Ravizza argue that there are two types of control: regulative and guidance. Sally has guidance control when she freely acts so as to cause the car to go to the right. Regulative control involves a dual power. For example, it requires the power to freely do act A, and the power to do something else instead, let us say act B. In other words, regulative control requires guidance control over doing act A, and the power to exercise guidance control of something else, B. This can also be worded as the ability to do otherwise. In the instance of Sally, guiding the car to the right was act A and doing otherwise was act B. Note that regulative control requires that the agent exercises guidance control in both the actual sequence and the

alternative sequence. Sally going to the right is the actual sequence, and Sally going to the left is the alternative sequence. Now imagine Sally in a Frankfurt style sequence:

Sally again guides her car to the right. But in this instance Sally is in a driver instruction car. This means she is in the driver seat but there is a proctor in the passenger seat who also has controls over the car. The proctor wants Sally to go to the right and allows her to freely steer the car to the right. But if Sally had shown any inclination to cause the car to go in some other direction, the proctor would have intervened and caused the car to go to the right.

Here, as in the first case, we can say that Sally has control over the movement of the car. She has control of the car in a sense of guiding it to the right and therefore has guidance control.

However, Sally cannot cause it to go anywhere other than where it actually goes (namely, to the right). In this way, she lacks regulative control.

Now that we know the basics of what guidance control means we must discuss the two components of guidance control. These are 1) the mechanism that issues in the relevant behavior must be the agent's own mechanism, and 2) it must be appropriately responsive to reasons.

### *Section 1a: Mechanism*

The authors argue that we must switch from a focus on relevant agents and their properties, to a focus on the processes of "mechanisms" that actually lead to the action (Fischer and Ravizza, p. 38). They infer from the Frankfurt type cases that it is better to take a mechanism-based approach than an agent-based approach. Think back to the first Frankfurt style case we discussed in chapter one. In it, Monica implants a micro chip into Hannah's brain to

ensure Hannah breaks her window. In reality, Hannah's action issues from the normal faculty of practical reasoning, which we can take to be reasons-responsive. But in the alternative scenario a different kind of mechanism would be operated. Namely, a mechanism involving direct electronic stimulation of Hannah's brain. (Recall that had Hannah been inclined to waver and not break her window, Monica's device would have been triggered and it would have stimulated Hannah's brain to ensure she would break the window). In this way the responsiveness of agents can be differentiated from the actual mechanism that takes place.

When an agent is morally responsible for an action, the authors propose that it must be the case that the action flows from the agent's own, moderately reason-responsive mechanism. In order to establish whether the mechanism from which an agent acts is his own, we must attend to aspects of the history of the action. The past must contain a process of "taking responsibility." Taking responsibility is a necessary feature of moral responsibility. It is part of the process by which a mechanism that leads to an agent becomes "one's own" (Fischer and Ravizza, p. 207).

The history of an action is important in part because it helps to specify what it means for a mechanism to be the agent's *own* (Fischer and Ravizza, p. 170). Fischer and Ravizza want to further the notion that moral responsibility is genuinely historical. They believe that two sorts of cases make this content reasonable (Fischer and Ravizza, p. 195). For the first example let us imagine that a drunk driver careens out of control and hits a toddler on the sidewalk. Even if at the time of impact the driver was so intoxicated that he could not, in any relevant scene, be in control of his actions, we nevertheless intuitively hold him responsible for crushing the toddler (Fischer and Ravizza, p. 195). In this example we see an agent who freely acts and exercises guidance control at one time, namely at T1 he chooses to drink, and thus brings it about that he is

incapable of acting freely and with guidance control at a later time, at T2 he is too intoxicated to be capable of acting freely. This account of moral responsibility allows us to trace back into the past to look for earlier times where agents exhibited guidance control. Likewise, we would find it morally relevant to know if the agent was forced to drink to the point of intoxication and then placed behind the wheel of a running car. In this instance surely we would not hold him morally responsible.

### *Section 1b: Responsivity to Reason*

There are two kinds of reason responsiveness: strong and weak. Let us begin with strong reason responsiveness. Suppose that a certain K mechanism actually leads to an action. Strong reason responsiveness obtains under the following conditions: If K were to operate and there were sufficient reasons to do otherwise, the agent would *recognize* that sufficient reason to do otherwise and thus *choose* to do otherwise and *do* otherwise.

Let's consider Bao-Tran's morning decision to eat oatmeal or eggs. Bao-Tran has been told that she has high cholesterol. She is also aware that eggs contain high amounts of cholesterol while oatmeal is known to lower cholesterol. Under circumstances in which the actual kind of mechanism operates and there are sufficient reasons for the agent to do otherwise, three conditions must be satisfied: 1) Bao-Tran *takes* the fact oatmeal that lowers her cholesterol as a good enough reason to choose oatmeal over eggs, 2) she *chooses* to eat the oatmeal in accordance with the fact that oatmeal is a better choice than eggs, and 3) she *acts* in accordance with the choice to eat oatmeal.

Thus, there can be three different types of “alternative sequence” failures. The first failure is a connection between what reasons there are and what reasons the agent recognizes. This is a failure to be receptive to reasons. The agent is given sufficient reasons to perform some action but the agent does not recognize these reasons. When this type of failure is due to an inability it is typically associated with delusional psychosis. The second kind of failure is a failure of reactivity. This is a failure to be appropriately affected by beliefs. In this instance an agent recognizes certain reasons as sufficient but does not choose in accordance with this reception. For example, Bao-Tran knows that the fact oatmeal lowers cholesterol is a sufficient reason to eat oatmeal, but she still chooses to eat eggs. This decision may result from weakness of willpower. The third failure is the failure to successfully translate one’s choices into actions. This sort of failure can reflect physical incapacity or again, weakness of will.

Fischer and Ravizza make it clear that they do not believe that strong reason responsiveness is a necessary condition for guidance control and moral responsibility. This is because failures of strong reason responsiveness almost always stem from an agent's disposition to being weak willed (Fischer and Ravizza, p. 42). It is also the case that we often commend people for acts that exhibit a failure of reason-responsiveness. Suppose that Willa devotes her entire afternoon to working for her local soup kitchen (keep in mind her decision and action proceed via the responsibility conferring mechanism we have been discussing). Let us also imagine that Willa has a significant reason to refrain from helping out at the soup kitchen. In fact, she has a paper deadline tomorrow that if she missed would result in her failing the class. The choice to still go to the soup kitchen even after recognizing the significant reason to work on her paper is an example of the second kind of failure discussed above. In this instance Willa

knows that her time is better spent working on her paper but she fails to act on this sufficient reason. For her decision to go to the soup kitchen Willa is morally responsible and praiseworthy, yet the actual mechanism is not strongly reasons-responsive. In this way, strong reason responsiveness is not a requirement for moral responsibility.

Fischer and Ravizza argue that moral responsibility requires only weak reason responsiveness which is a looser kind of fit between reasons and action. Under weak reason responsiveness the actual kind of mechanism is fixed and there exists some possible scenario in which there is a sufficient reason to do otherwise, the agent recognizes this reason, and the agent does otherwise (Fischer and Ravizza, p. 44). Here is the example Fischer and Ravizza offer: Jennifer decides to go to a basketball game even though there are sufficient reasons to do otherwise, namely she has an application deadline. Under such circumstances Jennifer is weak willed and goes to the game. But certainly we can come up with some scenario in which the actual mechanism operates. In other words, even though Jennifer is weak willed in this scenario it does not mean she will always be weak willed. Imagine a new scenario. Suppose that Jennifer is told she has to pay one thousand dollars for a ticket to the game. In this scenario Jennifer has sufficient reason not to go to the game and she follows through and does not go to the game. In this example the reasons to not go to the game are considerably stronger than in the original scenario.

It is reasonable to think that the agent's actual-sequence mechanism must be weakly reasoned if the agent is to have the sort of control required for moral responsibility. If given the actual mechanism Jennifer still insists on going to a game that is ridiculously expensive and might result in her losing her job, then the actual mechanism would seem to be inconsistent with

holding her morally responsible for her action. Fischer and Ravizza say that this is because the agent here would not be exhibiting genuine control of her actions. In this way, they suggest that weak reason responsiveness is all the responsiveness that is required for the sort of control involved in moral responsibility.

To fully understand how guidance control works as a justification for punishment, let us imagine the following scenario. In this scenario we live in an alternate universe on a planet known as Tatooine. On Tatooine it is a well known and agreed upon fact of the universe that determinism is true. This means that at any given moment there is only one possible future and the inhabitants do not have any genuine open alternatives. One day Abbie is walking down a dark street. A car pulls up and Brook jumps out. Brook robs Abbie. Luckily, there was a CCTV camera nearby that captured the whole thing. There was no one else in the car or on the street besides Abbie and Brook. Through further investigation the police discover that Brook was not forced, threatened or coerced into robbing Abbie. She simply wanted some extra money and saw Abbie as an easy target.

Many philosophers, I argue, place too strong an emphasis on the wrong kind of history of agents like Brook. For example, some might find it important to note whether or not Brook was abused or mistreated as a child. I would call this kind of history personal history. Personal history is irrelevant because in a determined world this kind of upbringing does not factor into our analysis of guidance control. There are, however, two kinds of history that should be considered. I will call these mental health histories and interactive histories. Mental health history refers to the medical history of an agent. Mental health issues that obscure rationality are of course influential on behavior and thus relevant to assessing the requirements for guidance control and

duty based punishment. The only other kind of history that matters would be what I call interactive history. This refers to the events leading up to the incident and the agent's interactions with other people. This type of history will be especially relevant in our discussion of guidance control.

The first question we are concerned with is whether or not Brook is morally responsible for her actions. Remember that from a guidance control perspective it must be the case that the action flows from the agent's own moderately reason-responsive mechanism. We can break this down into two requirements: 1) the mechanism that issues in the relevant behavior must be the agent's own mechanism, and 2) this mechanism must be appropriately responsive to reasons. In order to establish whether the mechanism from which an agent acts is his own, we must attend to aspects of the history of the action. This history is the same idea I referred to earlier as interactive history. The point of this history is to trace back into the past to look for the steps leading up to an action and times where agents previously exhibited guidance control. In this situation, Brook has no relevant interactive history of coercion, force or manipulation. Her actions resulted from her own mechanism.

The second aspect of guidance control determines whether or not the mechanism is appropriately responsive to reasons. Fischer and Ravizza showed us above that moral responsibility only requires weak reason responsiveness. Under weak reason responsiveness there exists some possible scenario in which if there was a sufficient reason to do otherwise, the agent would recognize this reason and do otherwise. In this situation Brooks' main reason to rob Abbie is that she simply wants money. There are a ton of other reasons possibly leading Brook to commit this act but this is the main reason we are concerned about. The main reason to do

otherwise, i.e. not rob Abbie, would be the prospect of getting caught and arrested. Brook knows that she might be caught, but she robs Abbie anyway because she is weak willed. In this way, Brook demonstrates weak reason responsiveness which is sufficient for guidance control.

Given this argument for guidance control alone, the job is done for a retributivist who seeks only responsibility as a basis for punishment. However, if responsibility is not enough to justify the punishment of wrongdoers I propose a duty based system of punishment described below.

### *Section II: Duty Based*

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In the section above we learned that in a world without free will we can still punish people under a retributivist system where we redefine responsibility through the requirements of guidance control. While guidance control focuses more on the mechanism behind decision making, our next justification focuses on duties an agent owes to their victim for the purpose of general and specific deterrence. Where agents fail in their primary duty, namely to not harm their victims, they acquire secondary duties to do the next best thing. This strategy of assigning responsibility through duty is most clearly pursued in Victor Tadros' influential 'Duty View' of punishment.

This idea of deterrence is reminiscent of our discussion about consequentialist forms of punishment. While we saw pure consequentialism fail in the way it used innocent people as a means for deterrence, the requirements for incurring a duty-based punishment protects itself from this problem. While many philosophers believe that using others as a means is ordinarily wrong, duty based views of punishment say that we can permissibly use people's suffering to

promote a good when the suffering we cause through punishment is suffering that the person has an enforceable duty to experience (Tomlin 2017). In this way, duty-based punishment would never punish an innocent man for a riot because he has no enforceable duty to undergo that suffering.

Tadros believes that this view shares with consequentialist theories the idea that we punish people in order to deter others from offending, and it shares with retributivism the idea that it is respect for persons (rather than practicalities) that requires us not to punish the innocent and not to punish the guilty disproportionately (Brownlee, p. 1). Duty-based punishment obliges an offender to respond to their wrongdoings by providing their victims with protection against wrongdoings by others (Tadros, p. 266).

Tadros introduces this concept by exploring the differences and similarities between punishing offenders and self-defense (Tadros, p. 266). Self-defense is a unique case that is seen as an exception to the general principle that it is wrong to intentionally cause harm. Taking this comparative approach is attractive for two reasons. First, self-defense is like punishment in that it involves intentionally inflicting harm on others. Second, self-defense is not justified based on desert (Tadros, p. 266). Imagine I am being mugged. The act of fighting against the attacker is justified not because the attacker deserves punishment, but because I wish to stop them from stealing my money. What is recognized is not that this person, by virtue of attacking me, deserves harm done onto them, but that my act of self defense, whether it causes them harm or not, is permissible to prevent them from completing their attack.

However similar the link between self-defence and duty based punishment, Tadros explains that defensive theories of punishment that stake themselves on this link face unresolved

issues. In this way, we will argue that punishment is not quite like self-defense, but can still draw part of its moral force from consideration of self-defense cases. Although punishment has defensive aims, its true justification comes from the secondary duties offenders owe to their victims and society. Conversely, self-defense is concerned with the primary duty that people have not to harm others.

Tadros argues that it is sometimes permissible to harm a person to avert a threat that the person is not responsible for in virtue of the person's duty to respond to her wrongdoing. This can be shown first by arguing that the justification for punishment can be derived from the duty to compensate, and then showing that it can be derived from more extensive duties that offenders incur through their wrongdoing. These duties include both the duty to recognize that what he did was wrong and the duty to provide a remedy to the victim for the harm suffered. (Brownlee, 1). This remedial duty is often construed as an offenders duty to protect their victim from future harms by other people. To prove this point, Tadros must argue for the connection between threats and punishment and then against the restriction argument.

### *Section 2a: Punishment and Threats*

Making a threat involves expressing a conditional intention to harm. A standard threat goes as follows; If you do x, I will do y. The criminal law similarly functions as a threat. For example, if you violate the law (x), you will be imprisoned (y). The law is justified in carrying out these threats in order to secure the value of their threats in the future. If you break the law and are not held accountable, what is to stop future agents from seeing our threats as insincere?

Therefore when I harm you for breaking my car, you would be harmed as a means to avert threats that you have wrongfully created.

Tadros presents the following argument for why we may manipulatively harm wrongdoers (i.e. punish them), in order to avert threats that they are responsible for creating. Imagine that I threaten you by saying “if you destroy my car, I will break your leg.” Now imagine that you go ahead with it and destroy my car. Now that the damage is already done it seems that the only point in me breaking your leg would be retribution. However, Danial Farrell argues that through their wrongdoings wrongdoers might encourage other people to think that we are vulnerable, leading them to attack us (Farrell, p. 233). In this way, if I refrain from breaking your leg other people will see that my threats are insincere which would put me in danger. Thus I am justified in breaking your leg as a means to avert future threats from other people.

### *Section 2b: The Restrictions Argument*

Simply put, the restriction argument claims that it is wrong to harm even a culpable attacker to avert a threat that she is not responsible for creating (Tadros, p. 268). For example, it is wrong to justify punishing a criminal by means of proving a point to others in society. Tadros sees the responsibility restriction as a very strict way of understanding the relationship between responsibility and liability and seeks to argue against it with the following case he calls *Double Hit Man 2* (Tadros, p. 274).

*Evelyn hires a hit man to kill Wayne. Fred has also hired a hit man to kill Wayne. Both hit men arrive at the same time. Given everyone's physical positions in the room, Wayne can*

*only use Fred as a shield against Evelyn's hit man and Evelyn as a shield against Fred's hit man. He manages to do so, resulting in the deaths of Evelyn and Fred.*

Tadros argues that it is obviously wrong that Wayne would be required to sacrifice his own life in the case rather than using Evelyn and Fred as shields. The justification is as follows: If Evelyn could give up her life in order to avert the threat that she has faced she ought to do that, and the same goes for Fred. Each of them ought to allow Fred to use them as shields. However, given everyone's physical positioning, Fred would not be able to block the shot from his hit man and Evelyn hers. If Fred cannot fulfill his duty, namely to block the shot from his hit man, he has a duty to get someone else to help him. In this way, Fred and Evelyn ought to form and execute an agreement to protect Wayne by fulfilling each other's duties. Namely, Evelyn takes the bullet from Fred's hitman and Fred takes the bullet from Evelyn's hit man. If they, however, refuse to make such an agreement, Wayne can permissibly use them as a shield to avert the threats he faces. In this way, Wayne forces them to fulfill their duty.

From the *double hit man* case we can extrapolate that duty will be enforceable if doing the duty is necessary to avert great harm and compensation will be inadequate, or will be unlikely to be forthcoming, if the duty is breached. In this way, we must relax the idea that a person may be harmed only to avert a threat that she is responsible for creating. Through this argument Tadros grounds his justification of general deterrence in the duty that offenders have to rectify the wrongs they have perpetrated (Tadros, p. 283).

Let us think back to Tatooine and the robbing of Abbie by Brook. In this scenario we would justify her punishment based on her enforceable duty to rectify the harms she has caused

to Abbie. Specifically, Brooks' punishment will act as a form of compensation for the threat she caused to Abbie's life and for violating Abbie's right to not be harmed. Brooks' punishment acts as compensation in the way it deters future wrongdoings and wrongdoers. By failing in her primary duty not to harm Abbie, Brook has acquired a secondary duty to do the next best thing. In this case the next best thing is to be punished through the legal system. While this scenario goes rather smoothly, there are other more difficult considerations for the duty-based view. I discuss two of them below.

I. Rejoinder 1: Brook murders Abbie.

This presents a puzzle for the duty-based view as now there is no victim who can be compensated through Brooks punishment. While it might be argued that the duties we incur through serious wrongdoings are owed only to victims of the crime, Tadros suggests that the purpose of punishing offenders is also to protect people in a society more generally. Below I argue that duties incurred through wrongdoings are not limited to duties owed to victims, dead or alive.

It is common to think that compensation and punishment differ in whom they aim to protect. While compensation is owed only to the victim of wrongdoing, punishment can be carried out not only for the sake of the victim but also for the sake of the citizenry as a whole (Tadros, p. 243). In this way we may extend the Duty View of punishment to justify protection of others. In his paper titled *Punishment and the Appropriate Response to Wrongdoing*, Tadros argues that an offender can be harmed in order to protect people other than the victim of their crimes.

The following idea aims to provide punishment as a means of protecting the victim and those who she wishes to protect and who are intimately related to her (Tadros, p. 244). Tadros writes the following case which I have altered to serve our purpose of a deceased victim.

Child Protection: D has killed V. X threatens V's child, Little V, with a broken arm. If D is harmed, X will be deterred from harming Little V.

I would suggest that the harming of D is permitted. One of the reasons this might be true is that if D has a duty to compensate V at some cost to themselves, V also has the ability to choose how D repays her. As long as the repayment does not exceed the maximum harm threshold, or imposes more cost on D than D is liable to bear, D may be harmed for any purpose that V would want (Tadros, p. 243). Even though V is dead, the posthumous protection of her child would advance a very important interest of V's. In this way it will often be permissible to harm the offender to deter crimes that the victim had a strong interest in preventing.

However, Tadros notes that there are cases in which the victim might not have an aim of protecting others at all. Tadros writes the following case which I have also altered to serve the purpose of a deceased victim.

Transfer: D has murdered V. X threatens to seriously assault Y. If someone harms D, X will be deterred from seriously assaulting Y. There is no other benefit that D can provide to V.

Suppose were she alive, V would have no interest in saving Y. On the duty-view we would argue that D can be permissibly harmed by a third party in order to deter X from assaulting Y even if V does not care about Y. This is because duty based punishment does not rely, as many retributivist views do, on the idea that it is impersonally valuable to make wrongdoers suffer in virtue of the

fact that they deserve suffering, but rather that the value of punishment is purely instrumental (Tadros, p.248).

We can justify this idea by pointing to a chain of obligation connecting D to V and V to Y. If there is something that V can do, that doesn't cause any harm or distress to herself, to prevent Y from being harmed, she is morally obligated to do it. However, since V can not do anything, because she is dead, it falls on D to protect Y. This is justified because V has an obligation to Y and D has an obligation to V. In this way D can be said to have an obligation to Y. Here we can see how the extension of obligations of protection are not restricted by the desires of victims, dead or alive.

Circling back to Abbie and Brook, we can now apply this logic. By murdering Abbie, Brook has incurred a debt which she has an enforceable duty to pay. Through being punished, Brook can pay her debt even if Abbie is no longer alive. This is because the extension of obligations of protection are not restricted to the victim of the crime but are extendable to both those the victim cares about as well as others.

#### I. Rejoinder 2: Brook attempts to murder Abbie but does not succeed

While attempted murder is reprehensible, no physical harm has been inflicted on the intended victim and therefore there is no clear harm to be compensated for. In fact, Abbie might not even know or care that her life was in danger. Leaving this question unanswered suggests that a duty-based view would only punish successful criminals. This means that would-be bank robbers, murderers and rapists would not be imprisoned. Intuition tells us that this is wrong and that these would-be criminals must have some form of enforceable duties.

It is important to ask whether the distinction between attempted murder and murder is actually relevant. All else equal, the only difference between an attempted murder and an ordinary murder is that the perpetrator of an attempted murder failed at his task. Nobody intentionally commits attempted murder. It is only for reasons outside of the perpetrator's control, be it luck, coincidence, or interference, does the victim not die. Why should a person who intends to kill but fails be considered less immoral than a person who intends to kill and succeeds? In this way we need to find a way around the seeming *lack of harm* present in attempted crimes.

As we discussed above, it is also permissible for the state to carry out threats in order to secure the value of their threats in the future. Seeing as murder is the worst crime you can commit it seems attempted murder should be almost if not equally as reprehensible. If the state was to let would-be-murderers go free, they put themselves at risk for seeming weak and deceptive in their threats against murderers.

While I find this argument about preserving the merit of the states threat to be convincing, I think an attempted murderer also has an enforceable duty to repair the harms they have caused by violating the human rights of their victim. To further this point I think it is important to look at cases of stalking. Stalking is a controversial crime that is relevant to our attempted murder case because a conviction does not require any physical harm. The US department of justice defines “stalking” as a means of engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress (*US DOJ, 2020*). Similarly, the Virginia law on stalking says that, “such actions are a prima facie evidence that the person intended to place that

other person in reasonable fear of death, criminal sexual assault, or bodily injury,” (Va. Code § 18.2-60.3). In this way, Intruding upon another's solitude or private affairs is subject to liability if the intrusion is considered highly offensive to a reasonable person and might present a clear and present danger (Va. Code § 18.2-60.3).

Like in cases of stalking, if the victim knows that there was an attempt on their life they can suffer from substantial emotional distress. This emotional harm is subject to repayment by the perpetrator. In cases where the victim does not know or care that there was an attempt on their life, a harm has still been committed through the violation of their right to safety.

## Conclusion

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The realization that we live in a world where everything we do can be traced back to causes outside our control would require a complete rethinking of the way we go about assigning responsibility and punishment. Given the skeptical argument against compatibilism that requires human beings to have the ability to change the past and laws of nature, and that libertarian incompatibilist “free” actions would happen by random chance, I have argued that we should embrace a form of semi-compatibilism that recognizes that our desires are determined but allows us the freedom to act on those desires.

Given this new understanding, we must move on from traditional systems of assigning responsibility. The two I tackle here, consequentialism and retributivism, are inadequate for assigning responsibility in a determined world. I have suggested a new concept of assigning responsibility called guidance control that is based on the following requirements: 1) the action flows from the agent’s own mechanism and 2) the mechanism is appropriately responsive to reasons. While the job is done for the retributivist, someone who is more inclined to punish based on general deterrence would need to go one step further. I contend that this step includes Victor Tadros' idea of duty-based punishment. By punishing offenders through the duties they incur through their wrongdoings, we can punish with the purpose of deterrence without falling into the issues of consequentialism.

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