

Responsibility and the Kinds of Freedom

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Abstract In this paper I seek to identify different sorts of freedom putatively linked to moral responsibility; I then explore the relationship between such notions of freedom and the Consequence Argument, on the one hand, and the Frankfurt-examples, on the other. I focus (in part) on a dilemma: if a compatibilist adopts a broadly speaking “conditional” understanding of freedom in reply to the Consequence Argument, such a theorist becomes vulnerable in a salient way to the Frankfurt-examples.

Keywords Compatibilism · Conditional analysis of freedom · Consequence Argument · Harry G. Frankfurt · Frankfurt-examples · Freedom · Free will · Guidance control · Incompatibilism · Moral responsibility · Regulative control · T. M. Scanlon · R. Jay Wallace · Gary Watson

1 Introduction

Many (although certainly not all) philosophers have thought that moral responsibility requires freedom (or control).¹ But even those philosophers who accept this association of responsibility and control have differed with respect to what sort of freedom is required for moral responsibility. These disagreements are not just between compatibilists and incompatibilists; as a matter of fact, the disagreements cut across the compatibilism/incompatibilism divide. Additionally, the disagreements pertain to a number of different specific issues. One disagreement is about whether the sort of freedom required for moral responsibility is an “alternative-

¹ See, for example, van Inwagen (1983); Kane (1996); Fischer (1994); and Fischer and Ravizza (1998). For examples of philosophers who deny the association of responsibility and freedom, see: Adams (1994) and Smith (2005).

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possibilities” or “actual-sequence” sort of freedom (or control). Within each of these camps, there are disagreements about how precisely to analyze the relevant notion of freedom. Finally, there is some sort of disagreement—at least at some level—about whether the relevant notion of freedom is (in some sense) fundamentally “metaphysical” or “normative.” The latter debate appears to have some relationship to the former disagreements, but it is frankly somewhat unclear precisely what the debate consists in and what the relationship is. In this paper I shall explore some aspects of this interrelated web of issues.

2 The Consequence Argument and Different Notions of Freedom

Let us start with the basic assumption that moral responsibility requires freedom in the sense of genuine metaphysical access to alternative possibilities. Typically, such freedom or control is picked out by such expressions as “freedom to choose otherwise” and “freedom to do otherwise;” I have dubbed this sort of control, “regulative control.”² So, for the sake of the discussion here, I am assuming the truth of something like what Harry Frankfurt called the “Principle of Alternative Possibilities” (PAP): moral responsibility requires freedom to do otherwise (at some suitable time).³

But how is such freedom—the freedom to do otherwise—to be understood? And how does it fit with the doctrine of causal determinism? The “Consequence Argument” purports to show that causal determinism is incompatible with the freedom to do otherwise, quite apart from the details of particular analyses of such freedom.⁴ The argument was dubbed the “Consequence Argument” by Peter van Inwagen, because it exploits the fact that, under causal determinism, all our choices and behavior are the *consequences* of the past plus the laws of nature. The argument proceeds from this fact and the assumptions that the past is fixed and the laws of nature are fixed to the conclusion that, if causal determinism is true, we lack freedom to do otherwise. The argument can be developed as rigorously as you would like, and I believe that it can be given in different valid forms.⁵ Here I shall simply assume that the Consequence Argument—in some formulation—is valid.

But is it sound? It is sound only if all of its premises are true. A crucial premise is some version of the intuitive idea that the past is “fixed” and out of our control now—presumably it is now fixed because it is, in Nelson Pike’s phrase, “over and done with.”⁶ More specifically, the proponent of the Consequence Argument embraces a particular interpretation of the fixity of the past—an interpretation that is, charitably put, congenial to incompatibilism. On this interpretation, all (temporally nonrelational) features of the past must be held fixed. This interpretation, together with the associated view about the fixity of the natural laws, *straightforwardly forces* the incompatibilist conclusion.

² Fischer (1994) and Fischer and Ravizza (1998).

³ Frankfurt (1969).

⁴ van Inwagen (1983) and Ginet (1990).

⁵ See, for example, van Inwagen (1983); Ginet (1990); and Sobel (1998).

⁶ Pike (1965).

To see this, consider the following version of the Principle of the Fixity of the Past and Laws of Nature:

An agent *S* can at *t* do *X* at *t* only if there exists a possible world with the same past relative to *t* and the same natural laws as in the actual world and otherwise ‘suitably related’ to the actual world in which *S* does *X* at *t*.⁷

Now let us be a bit more explicit about the doctrine of causal determinism. No matter how we define it, causal determinism will entail that, for any given time, a complete statement of the (temporally nonrelational) facts about that time, together with a complete statement of the laws of nature, entails every truth as to what happens after that time. So if causal determinism obtains in possible world *p*, then any possible world with the same past and laws as *p* will have exactly the same present and future as *p*. The Consequence Argument essentially employs the Principle of the Fixity of the Past and Natural Laws, in conjunction with the definition of causal determinism, to get to the incompatibilist conclusion. Intuitively, the argument is very straightforward; in fact, one wonders why it should require a great deal of technical machinery or sophisticated argumentation at all!

This is precisely what Gary Watson has said, and it motivates him to point out that it is just *obvious* that freedom to do otherwise, understood in a way that requires the fixity of *all* features of the past and *all* the laws, is incompatible with causal determinism.⁸ Watson puts the point as follows:

It is more common, perhaps, to think of the traditional issue as ‘purely metaphysical’. Certainly Fischer’s explicit formulation of incompatibilism (that determinism is inconsistent with the belief in ‘genuinely open alternative possibilities’) is not stated in normative terms. But everyone knows that determinism is inconsistent with alternative possibilities construed in an absolute sense.⁹

Watson here seems to conflate—or at least associate—the “metaphysical” interpretation of the freedom to do otherwise with an “absolute” conception of such freedom; he goes on to recommend what he calls a “normative” conception which is “conditional.” I am puzzled as to why exactly we should associate the metaphysical with the absolute approach, and the normative with the conditional; I shall return to this point later in the paper. But I believe that Watson’s fundamental point is worth careful consideration: that it would be odd to interpret the compatibilist as saying that freedom, understood both “absolutely” (non-conditionally) and also in the specific way embraced in the Consequence Argument (according to which *all* features of the past are to be held fixed) is compatible with causal determinism. After all, it is just *obvious* that such freedom is incompatible with causal determinism.

Given that it is obvious that causal determinism is incompatible with a certain sort of “absolute” conception of freedom to do otherwise, Watson suggests that the thoughtful compatibilist will adopt a “conditional” conception of such freedom—a

⁷ Fischer (1994, p. 91).

⁸ Watson (1998, pp. 135–136).

⁹ Watson (1998, pp. 135–136).

conception he deems more congenial to the “normative background” against which discussions of freedom typically take place. He writes:

... we have a number of related concepts of freedom; if incompatibilism is the view that at least some of these conflict with determinism, everyone is an incompatibilist. The issue is: which of those concepts are implicated in the central values of our lives?¹⁰

Watson goes on to suggest that a “conditional” conception of freedom is centrally important in various “normative contexts,” including deliberation and situations in which we make attributions of moral responsibility. About deliberation, he writes:

One thing that deliberating whether or not to take door A or B *clearly* presupposes is the belief that which door you take depends on your will (on the upshot of deliberation)—that is, that if you decide to take B, you will take B.¹¹

Watson additionally suggests that a conditional notion of freedom is central to our attributions of moral responsibility, suggesting that in attempting to ascribe moral responsibility to someone, we naturally tend to adopt that individual’s deliberative perspective.¹² And, as we have seen, Watson thinks a conditional notion of freedom is centrally important within the deliberative context. Note that Watson does *not* say that conditional freedom is *all* the freedom we want or need for deliberation or responsibility; rather, his contention is that it is an important part of ordinary thought about these matters.

I wish to focus here on the suggestion that the conditional notion of freedom is the “freedom-relevant condition” necessary for moral responsibility; more specifically, I want to consider the idea (perhaps suggested by some of Watson’s formulations, but, as I stated above, not specifically endorsed by him) that conditional freedom is all the freedom required for moral responsibility. That is, I wish to evaluate the suggestion that what plays the crucial role in PAP is conditional freedom, and thus that conditional freedom is the sort of freedom about which we should be concerned in evaluating the Consequence Argument. Perhaps I could put the point as follows. Watson suggests that it is just *obvious* that absolute freedom (of a certain sort) is incompatible with causal determinism, so the proponent of compatibilism must have some other notion of freedom in mind. More specifically, Watson suggests that this notion plays a central role in various “normative contexts,” such as deliberation and responsibility-attribution; thus, Watson’s suggestion (or perhaps the suggestion that emerges from much of Watson’s discussion) is that the compatibilist must have conditional freedom in mind, when he contends that freedom—the sort that’s relevant to PAP—is compatible with moral responsibility.¹³ And, of course, the Consequence Argument is not sound, if

¹⁰ Watson (1998, p. 136).

¹¹ Watson (1998, p. 138).

¹² Watson (1998, p. 138).

¹³ Note that there is a bit of a tension in Watson’s views here. On the one hand, he is contending that it is conditional freedom that plays the relevant role in our thinking about moral responsibility; but on the other hand he hesitates to say that conditional freedom is all the freedom required for moral

the relevant sort of freedom is conditional freedom; the truth of the relevant conditionals does not require that all features of the past (together with the natural laws) be held fixed.

3 A Nasty Problem for Conditional Freedom: The Frankfurt-cases

Watson makes a fair point in wondering who the target of the Consequence Argument is. We all know, or should know, that causal determinism straightforwardly rules it out that we are free to do otherwise, where this sort of freedom requires that all the past and laws be held fixed. How could a compatibilist have been thought to disagree with this? Further, Watson's suggestion that we take the compatibilist to have in mind conditional, rather than absolute, freedom is helpful in providing a possible interpretation of compatibilism, according to which it is not obviously and straightforwardly problematic. But I shall argue in this section that there is a fatal problem for the suggestion that conditional freedom is the freedom linked with moral responsibility. Insofar as the Consequence Argument treats the freedom-relevant condition that is necessary and sufficient for moral responsibility, it cannot be conditional freedom.¹⁴

In his famous paper, "Alternate Possibilities and Moral Responsibility," Harry Frankfurt built on an example suggested by John Locke that appears to call into question PAP. In Locke's example, a man voluntarily decides to stay in a room whose door is, unbeknownst to him, locked. In Frankfurt's example, the locked door is, as it were, taken into the man's mind; although Frankfurt left the precise details aside, the idea is that another person—named "Black," in Frankfurt's presentation—stands ready to intervene if the man tries to leave the room, or even begins to consider choosing to leave the room. Black is a merely counterfactual intervener; Frankfurt's view was that Black's presence *ensures* that the actual choice and behavior occur, but, since Black never plays any role in how the actual sequence unfolds, the man can be morally responsible for what he chooses and for his behavior (say, staying in the room).¹⁵

Footnote 13 continued

responsibility. Indeed, he is quite aware of the problems for taking subjunctive conditionals to provide sufficient conditions for the sort of freedom at stake in attributions of moral responsibility. Now I take it that it is a presupposition of the Consequence Argument that it is discussing the freedom-relevant component of moral responsibility—not just a part of it or a condition that must be combined with other conditions to get it. Perhaps Watson is simply arguing that conditional freedom plays an important role in ordinary thought, but must be supplemented to get a theoretically acceptable specification of the freedom-relevant condition on moral responsibility. Please interpret my use of "Watson's suggestion" as "a suggestion that emerges from much of Watson's discussion, but may not in the end be endorsed by Watson himself."

¹⁴ Again, although this claim is suggested by some of what Watson says, he explicitly denies that he is claiming or presupposing that conditional freedom is *all* the freedom required for moral responsibility. What matters to me here is an evaluation of the idea, not whether Watson himself is to be associated with the idea.

¹⁵ Frankfurt (1969).

To make the discussion here a bit more concrete, it will be helpful to have a specific version of a Frankfurt-case:

Jones has left his political decision until the last moment, just as some diners leave their decision about what to order at a restaurant to the moment when the waiter turns to them. In any case, Jones goes into the voting booth, deliberates in the “normal” way, and chooses to vote for the Democrat. On the basis of this choice, Jones votes for the Democrat. Unbeknownst to Jones, he has a chip in his brain that allows a very nice and highly progressive neurosurgeon (Black) to monitor his brain. The neurosurgeon wants Jones to vote for the Democrat, and if she sees that Jones is about to do so, she does not intervene in any way—she merely monitors the brain. If, on the other hand, the neurosurgeon sees that Jones is about to choose to vote for the Republican, she swings into action with her nifty electronic probe and stimulates Jones’ brain in such a way as to ensure that he chooses to vote for the Democrat (and goes ahead and votes for the Democrat). Given the set-up, it seems that Jones freely chooses to vote for the Democrat and freely votes for the democrat, although he could not have chosen or done otherwise... The neurosurgeon’s chip and electronic device has brought Locke’s locked door into the mind. Just as the locked door plays no role in Locke’s man’s choice or behavior but nevertheless renders it true that he could not have done otherwise, Black’s set-up plays no role in Jones’ actual choice or behavior, but it apparently renders it true that he could not have chosen or done otherwise.¹⁶

How exactly does the neurosurgeon Black “know” what Jones is about to do? This is left vague, just as Frankfurt left it vague in his original presentation. But there are various ways of attempting to resolve the vagueness and filling in the details. This is a big part of the impetus for the huge literature surrounding the Frankfurt-cases.¹⁷

It is (mercifully!) not necessary to go through the details of the debates about the Frankfurt-cases or to evaluate the issues they raise. Rather, I shall distill just a few central points that emerge from the literature on these examples, and apply them to the issues pertinent to this paper—in particular, the suggestion that the compatibilist should embrace a “normatively inspired” conditional conception of the freedom relevant to moral responsibility.

Return to the troubling vagueness in the presentation of the Frankfurt examples above. How exactly does Black know what Jones is about to choose (and do)—and thus how does Black know when to intervene, if at all? What triggers the intervention? If Black must wait until Jones begins to make a choice or decision, that is too late, because the beginning of a choice or decision seems to be a voluntary mental act, truncated as it may be. Here, as elsewhere in life, size is not what really matters; even a small alternative possibility may have the requisite “oomph.” So if Black must wait until Jones begins to make a choice, Jones would seem to have an alternative possibility of the relevant sort, that is, one that involves

¹⁶ Fischer (2007, p. 58).

¹⁷ For the tip of the iceberg, see Fischer (1999a) and Widerker and McKenna (eds.) (2003).

voluntariness. In this version of the Frankfurt-case, the responsibility intuition is elicited, but it is not the case that alternative possibilities are expunged.

One can understand much of the literature surrounding the Frankfurt examples as (sometimes elaborate) attempts to construct version of the cases in which the responsibility intuition is maintained but the alternative possibilities are successfully expunged—along with replies to these attempts. It is difficult to defend the contention that *both* of Frankfurt's key intuitions hold in any one example: that the relevant agent is morally responsible, and that he lacks alternative possibilities.

Here is a way of understanding the challenge for a proponent of the claim that the Frankfurt-cases impugn PAP. Given the vagueness in the “standard” presentation of the examples, one might ask, “What exactly triggers Black's intervention?” And the answer—the triggering event—would seem to be an alternative possibility. Thus one would not have entirely eliminated alternative possibilities. Now one promising answer to the question about what triggers the intervention posits a “prior sign”—a completely involuntary indication of a future choice to do otherwise (if left unmolested); if Black sees the prior sign, he can intervene prior to any voluntary activity (even mental activity) by Jones. Thus, although the prior sign would be an alternative possibility of sorts, it would not involve voluntariness, and thus arguably would not be of the *right kind* to ground ascriptions of moral responsibility. On this view, it is not the case that *any old* alternative possibility will do the trick (in grounding attributions of moral responsibility); rather, such an alternative possibility must be sufficiently *robust*.¹⁸

Again, it is not necessary (here) to explore whether this view is defensible. Nor is it necessary to evaluate the various versions of proposals for Frankfurt-cases in which it is putatively the case that both the relevant agent is morally responsible and there are no suitably robust alternative possibilities. It is sufficient here to note that there is considerable controversy over whether any such example has been—or even could be—presented.

To see why the Frankfurt-case skeptics resist the contention that both the responsibility intuition and the no-alternative-possibility intuition can be simultaneously defended (defended as true in the same example), consider the following dilemma.¹⁹ Return to the “prior-sign” version of the cases, just to fix ideas. Now either the prior sign is not causally sufficient for the subsequent voluntary beginning of (say) choice or it is causally sufficient for the subsequent mental activity in question. Suppose, first, that the prior sign is not causally sufficient. Now it emerges that nothing rules it out that (say) Jones can indeed begin to choose otherwise at the subsequent time; and this is evidently a robust alternative possibility. No matter how closely Black hovers over Jones (or watches the screen of the computer that is monitoring Jones's brain), he cannot intervene so quickly that he does not leave in place a robust (albeit truncated) alternative possibility. Darn! The situation is kind of like a border patrol agency that is authorized to apprehend individuals *only after they have crossed a border*; they can legally prevent individuals from getting very

¹⁸ For the original suggestion, see: Fischer (1982); for further discussion, see Fischer (1999a).

¹⁹ Roughly this sort of argument is in Kane (1985, 1996, esp. pp. 142–145); Widerker (1995a, 1995b); Ginet (1996); and Wyma (1997).

far, but they cannot entirely pre-empt any crossing at all. Black is kind of like a border control agent; he can prevent Jones from acting on his choice or even completing his choice; but he cannot preempt entirely the beginnings of choice.

It seems that the only way to get rid of such an alternative possibility is to accept the second horn of the dilemma: that the prior sign is causally sufficient for the subsequent mental activity. But now the Frankfurt-case skeptic will point out that it would be question-begging to say that Jones is morally responsible for his choice and behavior; after all, if the context of debate is one in which it is contested whether causal determinism is compatible with moral responsibility, one would not be entitled to posit causal determination in the example. The upshot of the dilemma is that either there emerge robust alternative possibilities, or the moral responsibility intuition cannot be sustained; again, it apparently emerges that it is difficult simultaneously to sustain *both* the responsibility intuition and the no-alternative-possibilities intuition.

The complexities and difficulties I have charted (in a rather schematic way) show at least part of the reason why the Frankfurt-cases are contentious. I do not here wish to go any further into the details of these debates, or to indicate what I take to be the most promising routes to a satisfying analysis of the examples.²⁰ Rather, here I simply wish to argue that, once one shifts from an absolute to a conditional notion of freedom (along the lines of Watson's suggestion above), the Frankfurt-cases are completely decisive. That is to say, the main points of controversy in the debates about the Frankfurt-cases become entirely irrelevant, and the Frankfurt-cases retain their full efficacy in oppugning PAP. Whatever inadequacies the Frankfurt type cases are alleged to possess, these do not obtain in the context in which a conditional conception of freedom is employed in PAP.

To explain. The proponent of the conditional notion of freedom (as pertinent to both deliberation and moral responsibility) will insist that it is important that our actions (and, more generally, behavior of various kinds) are dependent on our choices (or perhaps evaluations or judgments of certain sorts).²¹ So, for the proponent of conditional freedom, what is essential is that one's (say) bodily movements be dependent on (or a certain kind of "function of") one's choices (decisions, willings, etc.). More specifically, the kind of dependence involved is articulated by suitable subjunctive conditionals. Whatever else must be the case when one has conditional freedom, it must be the case that one's bodily movements "track" one's choices in roughly the following way: if one were to choose to do *X*, one would do *X*, and if one were to choose to do something else, *Y*, one would do *Y*. The proponent of conditional freedom typically points out that it is not much of a consolation that we can will certain bodily movements, if we cannot *translate* our wills into action; what we care about, according to such a theorist, is (among other things) that there be a suitable *connection* between what we choose to do and what we in fact do. On this view, our behavior must be choice-dependent in the specified way.

²⁰ For recent attempts, see: Fischer (2006a), reprinted in expanded form in Fischer (2006b, pp. 182–216).

²¹ I shall explore the idea that the crucial notion of freedom is some sort of "judgment-sensitivity" in the next section; this view is associated primarily with Thomas Scanlon.

Now it should be clear that Frankfurt-cases decisively show that conditional freedom is *not* the freedom linked to moral responsibility. This is because the “counterfactual intervener” Black can always swing into action based on the triggering event of an agent’s choice (or decision or act of will) to do otherwise; given this triggering event, presumably it is straightforward that Black can *block* the crucial connection between it and the chosen behavior. We saw above that the vagueness in the standard description of the Frankfurt-cases leaves it somewhat unclear how Black can foresee what Jones is about to do (or choose to do); this situation leads to complicated and delicate debates about whether Black can actually expunge all alternative possibilities. But, on the assumption that it is conditional freedom that matters, it is quite clear that Black can use the relevant choice (decision, act of will, and so forth) as the triggering event, and he can then sever the intended connection between the choice and behavior.

Given the conditional conception of freedom, there is no problem with finding a triggering event. We thus clearly avoid most of the salient problems for the Frankfurt-cases; indeed, I think we avoid them all. It is as though the conditional analysis gives rise to a “no-man’s land;” this space separates the “border” from the “protected territory.” So, as soon as an individual crosses the border and goes into the no-man’s land, he can be apprehended by the border patrol *prior to arriving in the protected territory*. The no-man’s land is a kind of buffer zone. Given the existence of this sort of buffer zone, we do not have to get into fine issues about border-crossings; the protected territory is, as it were, safe.

My conclusion is that the Frankfurt-cases decisively show that the conditional conception of freedom is not the sort of freedom linked to moral responsibility; it is clearly not the sort of freedom that plays the crucial role in PAP. Of course, there are well-known problems about the sufficiency of the subjunctive conditionals for true freedom.²² It is frequently noted that intuitively one cannot do *Y* if one cannot choose to do *Y* (perhaps because of a pathological aversion, phobia, or other sort of volitional incapacity); but this situation is entirely consistent with the truth of the conditional, “If one were to choose to do *Y*, one would do *Y*.” Thus, it is widely acknowledged that the subjunctive conditional is not sufficient for the relevant power.

Now in light of such problems various proponents of the conditional conception of freedom have sought to offer more refined conditional analyses. On one such analysis, what is taken to be sufficient is not a simple conditional, but a set of interlocking conditionals of a certain sort.²³ Other philosophers have sought to offer conditions that specify that the agent’s actual choice not have been the result of some factor such as a pathological aversion, phobia, and so forth.²⁴ These proposals all have their detractors. But I believe that the Frankfurt-cases can help us to sidestep such disagreements insofar as they decisively show that conditional freedom cannot be the sort of freedom that plays a crucial role in PAP. Even if one

²² Gary Watson is well aware of such difficulties, and he never asserts that the subjunctive conditionals specify *all* the freedom we need. For a more detailed discussion of the conditional analysis, see Fischer (2007).

²³ Lehrer (1980).

²⁴ See, for example, Foley (1978).

were to solve all the problems that were classically raised against the conditional analysis of freedom, the Frankfurt-examples show that such freedom is not the freedom linked to moral responsibility.²⁵

Return briefly to Watson's suggestion (or the suggestion derived from Watson) discussed above. The suggestion was that we take it that the compatibilist adopts a "normatively inspired" conditional conception of freedom, rather than the sort of "absolute" conception that would be straightforwardly ruled out by causal determinism. This was supposed to help us see how a compatibilist could resist the conclusion of the Consequence Argument. We have seen that such a move is not promising, quite apart from general problems with the idea that the relevant subjunctive conditionals are sufficient for the sort of freedom in question; the Frankfurt-cases show that conditional freedom just cannot be the freedom linked to moral responsibility (via PAP). Whereas it is contentious whether the Frankfurt-cases show that freedom to do otherwise (quite generally) is not required for moral responsibility, it should be uncontroversial that they show that *conditional freedom* is not a necessary condition of moral responsibility. So the compatibilist who adopts the suggestion that conditional freedom is the freedom relevant to moral responsibility (as specified in PAP) is out of the frying pan and into the fire.

4 Scanlon's Approach to Moral Responsibility

Thomas Scanlon has developed a distinctive and illuminating approach to moral responsibility.²⁶ Scanlon's view is highly nuanced, and much of his discussion is beyond the scope of this paper. It will however be helpful to have at least a bare sketch of some of Scanlon's main theses. It will be evident that an analysis of Scanlon's approach to moral responsibility should build on the analysis of "Watson's suggestion" in the previous section.

Scanlon distinguishes between two different notions of moral responsibility: responsibility as attributability and substantive responsibility.²⁷ Responsibility as attributability is present when some action (or behavior in general) can be attributed to an agent in the way that is required in order for it to be a basis for moral appraisal. Substantive responsibility (on Scanlon's view) involves claims about what people are required or not required to do for each other; when someone is responsible in this sense for an outcome, he cannot complain of the burdens or obligations that result. According to Scanlon, these two different notions of responsibility have different but related moral roots. He writes:

²⁵ The classical problems for the conditional analysis (phobias, volitional incapacities, and so forth) show that the relevant conditionals are not sufficient for the freedom associated with moral responsibility; the Frankfurt-examples show that the relevant conditionals are not necessary for such freedom. Joseph Campbell has reminded me that Kadri Vihvelin would distinguish between the simple conditional account and a revised, more sophisticated analysis: Vihvelin (2004). Vihvein argues that even in the Frankfurt cases, the relevant agents have freedom to do otherwise, in virtue of having a bundle of dispositions (analyzed via sophisticated conditionals). It is beyond the scope of this paper to discuss Vihvelin's intriguing move, but I hope to address it in future work.

²⁶ See Scanlon (1988, pp. 149–216); and Scanlon (1998, pp. 248–294).

²⁷ Scanlon (1998, pp. 248–251).

These two notions of responsibility are linked by the fact that both concern the moral significance of our judgment-sensitive attitudes and other responses. But they are distinguished by the fact that two different kinds of significance are involved. Conditions of responsibility in the first sense depend on the importance, for moral appraisal of an agent, of determining whether a given action did or did not reflect that agent's judgment-sensitive attitudes. Standards of responsibility in the second sense arise in large part from the importance, for agents themselves, of having their actions and what happens to them depend on and reflect their choices and other responses.²⁸

Scanlon's term for the value we place on having what happens to us depend on our choices is the "Value of Choice;" more specifically, he defines this value as "the reasons we have for wanting what happens to us to depend on the way in which we respond when presented with the relevant alternatives."²⁹

In the previous section, I argued that the Frankfurt-cases provide decisive reason to reject a conditional conception of freedom. It should be evident that these cases present similar problems for Scanlon's approach. In particular, the analysis in the previous section should cast considerable doubt on whether responsibility is based on judgment-sensitivity. It is also perhaps a bit unclear whether we do in fact place value on (roughly speaking) having our actions depend counterfactually on our judgments.

The main objection I have to Scanlon's approach is his linking responsibility as attributability with judgment-sensitivity; more specifically, the objection is to the suggestion that the basis for such moral responsibility is to be found in judgment-sensitive attitudes. Sometimes Scanlon writes of moral responsibility for the attitudes themselves, whereas on other occasions he discusses moral responsibility for actions that are the results of the relevant attitudes. In any case, Scanlon emphasizes the importance of distinguishing features such as height, which are presumably not judgment-sensitive, with other attitudes, such as concern or indifference to another person, which are presumably judgment-sensitive. He writes:

Moral criticism claims that an agent has governed him- or herself in a manner that cannot be justified in the way morality requires, and it supports demands for acknowledgement of this fact, and for apology, or for justification or explanation. It would make no sense to criticize someone in this way, or to demand such responses, for something that is not even in principle sensitive to his or her judgment. "Why are you so tall?" cannot be a moral criticism.³⁰

But it is clear that a Frankfurt-case "counterfactual intervener," such as Black, could render it true that a particular attitude is not judgment-sensitive without intervening in the scenario at all. Just as such an intervener could straightforwardly employ the "decision" as a triggering event (as discussed in the section above on the conditional analysis of freedom), he could similarly use the relevant judgment as

²⁸ Scanlon (1998, p. 290).

²⁹ Scanlon (1998, p. 290).

³⁰ Scanlon (1998, p. 272).

a triggering event. He could thus block the *connection* between an alternative judgment and different attitudes and behavior.

In a suitably revised Frankfurt-case, the agent (say Jones) makes a judgment as to what is best based on his own reasons, and he is in no way impaired or interfered with. Further, this judgment issues in an appropriate attitude and also subsequent behavior. Intuitively, Jones acts freely and is morally responsible. But, given the presence of Black, it is true that had Jones judged differently, Black would have swung into action and induced the very same attitude and behavior as occur in the actual sequence of events. Thus, Jones's attitude is not judgment-sensitive (where judgment-sensitivity is defined in terms of subjunctive conditionals of the sort employed in the conditional analysis of freedom), and his behavior does not flow from a judgment-sensitive attitude.

Exactly the same considerations appear to apply to judgment-sensitivity as to the conditional conception of freedom. We can grant that the Frankfurt-cases are contentious in their application to an absolute notion of freedom. But they are uncontroversial in showing that the conditional conception of freedom is inadequate to play the required role in responsibility attributions, and they are similarly efficacious in exhibiting the inadequacy of the notion of judgment-sensitivity as providing the basis of moral responsibility.³¹

My main point here is that the Frankfurt-cases call into question Scanlon's contention that responsibility as attributability rests on judgment-sensitivity. I shall return to this point below, but I wish now to explore Scanlon's related idea that standards related to the notion of substantive responsibility depend on the Value of Choice. I will seek to clarify the sense in which this is true, and to argue that it no way supports the linkage of responsibility as attributability with judgment-sensitivity.

Recall that the Value of Choice is the value we place on its being the case that what happens to us depends on the way in which we respond when presented with the relevant alternatives. I believe that this can be understood in terms of the value we place on counterfactual dependence of outcomes on choice. So, for example, a restaurant patron appears to have an interest in its being the case that: if here were to order fish, he would get fish; and if he were to order turkey, he would get turkey; and if he were to order the vegetarian dish, he would get the vegetarian dish, and so forth. That is, the restaurant patron appears to have an interest in its being the case that what he gets is counterfactually dependent³² upon his choices.

In his illuminating and subtle analysis, Scanlon argues that the reasons we have for endorsing the Value of Choice can be divided into "instrumental" (or "predictive"), "representative," and "symbolic."³² To oversimplify, instrumental value pertains to maximization of preferences over time; the idea is (roughly) that if things are set up so that outcomes are counterfactually dependent on our choices, we are more likely to maximize the satisfaction of our preferences over time. The latter

³¹ Of course, if Scanlon wishes to offer a more refined analysis of the concept of "judgment-sensitivity," this might help him to avoid the problems I have developed in the text. This might however—depending on the particular refinements—bring Scanlon's analysis quite close to my notion of "reasons-responsiveness."

³² Scanlon (1998, pp. 251–256).

two categories of reasons for valuing counterfactual dependence of outcome on choice have to do with the “meaning” of our actions. Scanlon writes:

On our anniversary, I want not only to have a present for my wife, but also to have chosen that present myself. This is not because I think that I am more likely to come up with a present she will like (as far as that goes it would be better to have her choose the present herself). The reason is rather that the gift has a different meaning if I choose it myself—both the fact that I chose it and the choice that I make reflect my thoughts about her and about the occasion.³³

I agree with Scanlon about the various reasons we value some sort of dependence of outcomes on choice. In my subsequent discussion, I shall simply focus on something like “instrumental” value (for simplicity’s sake). But I think an interesting point emerges about the precise way in which we value such dependence. Consider, first, an ordinary choice and action. Let us go back to the example of Jones and Black above, but subtract Black. That is, let us begin by supposing that Jones deliberates in the “ordinary” way and decides for his own reasons (whatever they are) to vote for the democrat, and that as a result of the “normal mechanism” (whatever it is), he goes ahead and votes for the democrat. We do not make any special assumptions about causal determinism or particular impairments; indeed, we assume that Jones’ choice and action spring from the normal, unimpaired operation of the human deliberative mechanism. Here there is no reason to suppose that Jones lacks judgment-sensitivity. Call this the “Jones Scenario.”

Now add Black again, changing nothing else. That is, go back to the Frankfurt-case in which Black is a *counterfactual intervener*: he plays no actual role in the unfolding of the sequence that issues in Jones’s voting for a democrat. Call this the “Jones/Black” scenario. My clear intuition is that Jones is fully morally responsible for his choice and act of voting for the democrat in both scenarios, although his behavior stems from judgment-sensitivity in the Jones Scenario, but *not* the Jones/Black scenario. So, in terms of what we care about in caring about moral responsibility, nothing is lost when we go from the Jones Scenario to the Jones/Black scenario.³⁴ I believe that the value of acting so as to be deemed morally responsible is the value of a distinctive kind of self-expression.³⁵ And it is clear that whatever precisely this self-expression consists in, it is exactly the same in the Jones and Jones/Black Scenarios; moving from the Jones to the Jones/Black scenarios does not have any effect on the relevant instances of self-expression.

If I am correct about the claim that we do not lose anything of value (in terms of what we care about in caring about moral responsibility) in moving from the Jones to the Jones/Black Scenario, this simply highlights the fact that responsibility as attributability does not have its basis in judgment-sensitivity. But this claim might

³³ Scanlon (1998, p. 251).

³⁴ Indeed, nothing of value—or, more specifically, nothing we care about in caring about moral responsibility—gets lost in going from what we take to be “ordinary contexts” to contexts in which there are *global* Frankfurt-case counterfactual interveners. Here we would compare possible worlds or scenarios in which there is (sometimes at least) judgment-sensitivity with possible worlds or scenarios in which there is *never* judgment-sensitivity.

³⁵ See Fischer (1999b); reprinted in Fischer (2006b, pp. 106–123).

appear to call into question Scanlon's idea that standards related to the notion of substantive responsibility depend on the Value of Choice. Given that we do not affect what we care about in a particular case of behavior for which an agent can be deemed morally responsible in moving from a context of judgment-sensitivity to a context of no judgment-sensitivity, how can Scanlon's point about substantive responsibility be defended?

I believe that consideration of the transition from the Jones Scenario to the Jones/Black Scenario points to the fact that in defending the Value of Choice for substantive responsibility, we are adopting a different standpoint from the standpoint from which we evaluate the relationship between judgment-sensitivity and responsibility as attributability. So not only are the notions of responsibility different, but the perspectives from which the relevant assessments are to be made are fundamentally different. It is perfectly appropriate to evaluate the claim that responsibility as attributability can be linked to judgment-sensitivity by considering scenarios such as Jones and Jones/Black; here the consideration assumes full knowledge (by the evaluator) of how things actually go in Jones's deliberations, and so forth. One could perhaps call this a more "concrete" evaluation.

In seeking to defend the contention that judgment-sensitivity is an important basis of substantive responsibility, I believe one is (perhaps implicitly) engaging in a more "abstract" evaluation. That is, one is adopting a different standpoint—one that abstracts from particular cases and asks about general institutions. So I might ask myself why in general I would prefer to have institutions and practices that allow outcomes to be counterfactually dependent on choices, abstracting away from specific knowledge about what my particular preferences will be. That is, not knowing what my preferences will be, I would presumably prefer that my situation be such as to allow for the pertinent kind of preferred-sensitivity, since this will probably maximize my chances of having my preferences satisfied over time (Again, for simplicity's sake, I am simply focusing on what Scanlon calls the "instrumental/predictive" reason for valuing the relevant kind of counterfactual dependence; I believe that the same analysis will apply, *mutatis mutandis*, to the other reasons). More specifically, it is plausible that *ex ante*—that is, prior to knowing what my particular preferences, commitments, and projects are or are likely to be—I can see that it is in my interest that things be set up so that what happens to me is counterfactually (or perhaps subjunctively) dependent on my choices.

Think of it this way. Suppose you know that there might be individuals such as Black, who will let people alone, as long as they choose on their own to vote for the democrat, but who will intervene, if the individual shows signs of choosing to vote republican. Further, you do not know what your political views are—for all you know, you might be a card-carrying and committed republican. Given this lack of knowledge, presumably you would prefer that there not exist individuals such as Black; after all, if you are a republican in a world in which Black is around you will not be allowed to give effect to your "real values." *Ex ante* it would be very plausible to prefer that outcomes depend on choices, since the chances of getting whatever we care about in caring about moral responsibility would thus be maximized.

To take stock, in thinking concretely about Jones's moral responsibility, there is no difference between the Jones scenario and the Jones/Smith scenario. If Jones is morally responsible in the Jones Scenario, he is equally morally responsible in the Jones/Smith Scenario. Thus, instances of moral responsibility cannot be traced back to instances of judgment-sensitivity in the way suggested by Scanlon. But it does not follow that we do not place a value on judgment-sensitivity and the related notion of counterfactual dependence of outcomes on choice. This value can be seen to issue from a different, more abstract perspective. *Ex ante* one would rationally prefer to have outcomes depend counterfactually on choices (and judgments); from this more abstract standpoint in which one does not know one's particular normative orientation, one would prefer to live in a world in which one can satisfy his (relevant) preferences, whatever they turn out to be. The Value of Choice emerges from the more abstract perspective; it cannot be maintained from the more concrete standpoint of evaluation. Thus, what is plausible and attractive in Scanlon's analysis of the Value of Choice and its relationship to substantive responsibility cannot be translated into a defense of his suggestion that responsibility as attributability is based in judgment-sensitivity.

Perhaps the point I am making—or a related point—can be put in slightly different terms. We can distinguish between freedom to choose and do otherwise (regulative control) and choosing and acting freely (guidance control). The fact that we do not change our responsibility attributions in going from the Jones Scenario to the Jones/Black Scenario indicates that guidance control is all the freedom required for moral responsibility. But there might be a lingering feeling that if one has guidance control but not regulative control, something is missing—something of value is somehow left out. Perhaps I can capture this point by invoking the idea that *ex ante* (that is, from a perspective that abstracts away from knowledge of one's actual motivational states, projects, commitments, and so forth) one would rationally prefer that one's environment be set up to allow for regulative control; this is because *ex ante* having such an environment would maximize one's chances of exhibiting guidance control and thus getting whatever it is we value in acting so as to be deemed morally responsible.³⁶

In the preceding paragraphs, I have contended that the Value of Choice (and the value of having regulative control) emerges from the abstract rather than the concrete context of evaluation. I wish now to offer a qualification to the contention that we would value regulative control from the abstract perspective. Black—the “counterfactual intervener” in the standard presentation of the Frankfurt-cases—is

³⁶ Alfred R. Mele has presented a position he has called “Soft Libertarianism” [See, for example, Mele (2006, pp. 95–102).] The soft libertarian argues that free action and moral responsibility may well be compatible with causal determinism, but he maintains “that the falsity of determinism is required for a more desirable species of free action and a more desirable brand of moral responsibility” (Mele 2006, p. 95). Note that nothing in my argument in the text would support Soft Libertarianism. That is, I have argued that, from the abstract perspective, regulative control (which involves freedom to do otherwise) is desirable. But the argument is neutral about the relationship between causal determinism and regulative control. If one combined the argument in the text for the *ex ante* rationality of a preference for regulative control with an argument (such as the Consequence Argument) for the incompatibility of causal determinism and such control, then one would indeed have an explanation of the appeal of Mele's Soft Libertarianism.

presented as having an antecedently fixed orientation. That is, Black is presented as wishing to ensure that Jones vote for the democrat; it just so happens that there is a felicitous coincidence of Black's antecedent and fixed goal and Jones's ultimate decision (and action). Let us call an intervener with an antecedently fixed orientation—a set of relevant goals that do not depend on the agent's actual preferences, decisions, and behavior—a “rigid intervener.” Jones—in the standard Frankfurt case—is fortunate that Black is a mere counterfactual intervener.

In contrast, we can imagine a “flexible intervener.” Such an intervener would simply stand by and ensure that an agent act as he actually does—whatever that turns out to be. One perhaps need not speculate on the motivations of such an intervener; maybe he is by nature a philosophical sort, and he wishes to highlight that there can be situations in which an agent acts freely (however he wishes to act) and yet cannot choose or do otherwise. From the *ex ante* perspective—from which one does not know one's actual preferences—one could know that, whatever one's preferences actually turn out to be, the counterfactual intervener would allow one to decide and act freely (exhibit guidance control), but would ensure that one is unable to choose and act differently. A flexible intervener (as I have defined him) is by his very nature a counterfactual intervener.

Note that the existence of *either* sort of intervener—a rigid or flexible intervener—equally rules out regulative control or freedom to do otherwise (and thus Scanlon's “Value of Choice”). But from the *ex ante* perspective I do not see any reason to object to a *flexible*, as opposed to a *rigid*, intervener. Thus it is not quite correct to say that from the more abstract perspective of evaluation it would be rational to prefer regulative control to the absence of regulative control. Rather, what would be problematic from that perspective is a rigid intervener—a certain way of eliminating regulative control. Of course, in the real world as we know it and in various relevant alternative worlds, the threats to regulative control would *not* be flexible in the way involved in flexible (counterfactual) intervention. Thus, although it is a simplification to suppose that we would prefer regulative control from the more abstract perspective (and thus that the Value of Choice emerges from the abstract perspective), it is not perhaps an objectionable or distorting simplification, given the nature of the sorts of threats to our freedom that are realistic.³⁷

Scanlon points out that both judgment-sensitivity and the Value of Choice could be present in causally deterministic worlds (and also worlds in which there is universal causation that is not deterministic causation). Thus, he believes that his analysis can aid in the project of defending compatibilism. Scanlon states:

³⁷ In Feinberg (1980), Joel Feinberg helpfully explores the question of our interest in liberty (or, in my terminology, regulative control). He argues that a central interest we have in liberty is our interest in not being coerced or forced to do what we do; but the analysis in the text shows that this interest entails only an interest in securing guidance control, not regulative control. Additionally, when one considers the Scanlonian Value of Choice, this strictly speaking only entails the absence of a rigid intervener (and similar constraints), rather than the absence of a flexible (and thus merely counterfactual) intervener. Thus, *strictly speaking*, our interest in satisfying our preferences, whatever they turn out to be, as it emerges from the abstract evaluative perspective, does not *entail* an interest in regulative control. Of course, as I argue in the text, this point is compatible with the idea that it is plausible to prefer regulative control *ex ante*, given reasonable assumptions about the nature of threats to such control.

The reasons I have listed for preferring principles that make what happens to us depend on the ways we respond when presented with alternatives are not undermined if it turns out that these responses have causes outside us. As long as these causes affect our responses only by affecting what we are like, it will remain true that these responses can be good predictors of what will bring us enjoyment or advance our aims. Similarly, in the case of representative value, it is quite plausible to suppose that many of the tastes and capacities for discernment that we want our choices to express have a basis in our causal makeup, but this fact does not make them less a part of us and hence does not diminish the value of choices that express them.³⁸

Whereas I am sympathetic to the general project of defending compatibilism, I am not sure how far we can get with Scanlon's intriguing suggestion. I can concede that nothing should force someone taking the more abstract perspective of evaluation to reject causation or causal determinism. But this still leaves it open what the precise notion of freedom is that plays a crucial role in PAP. Even the concrete mode of evaluation issues in the conclusion that judgment-sensitivity is not the sort of freedom that is linked to responsibility as attributability. More specifically, it issues in the conclusion that judgment-sensitivity is not *necessary* for such responsibility. And just as above (in our discussion of the conditional conception of freedom), it is quite implausible (or, at the very least, highly contentious) to suppose that judgment-sensitivity would be *sufficient* for the sort of freedom linked to moral responsibility.

Above it was pointed out that the truth of such conditionals as, "If I were to choose to do *Y*, I would do *Y*" cannot be sufficient for the freedom to do *Y*, since the conditional can be true compatibly with my having some pathological aversion to choosing *Y*. Presumably the same sort of analysis can be applied, *mutatis mutandis*, to the subjunctive conditionals that specify judgment-sensitivity. Thus, the reasons why the conditional conception of freedom is too weak to help significantly with the compatibilist project would apply, *mutatis mutandis*, to judgment-sensitivity. For example, it can be conceded that the truth of causal determinism does not render false subjunctive conditionals, such as, "If I were to choose to do *Y*, I would do *Y*." But this is not yet enough to show that causal determinism does not rule out the sort of freedom that is necessary and sufficient for moral responsibility. Similarly, it can be conceded that the truth of causal determinism does not render false the subjunctive conditionals that specify judgment-sensitivity. But this is not yet enough to show that causal determinism does not rule out moral responsibility. There is a crucial gap between showing that causation or causal determination does not threaten the pertinent conditionals—or sever the relevant *connections*—and showing that causation or causal determination does not threaten moral responsibility. So even if we agree with Scanlon that causation or causal determination does not threaten *much* of what we care about and value in moral responsibility, we still do not get all the way to the conclusion that (for example) causal determination is compatible with the kind of freedom linked with moral responsibility.

³⁸ Scanlon (1998, p. 255).

In a fascinating discussion of the “preconditions of moral appraisal,” Scanlon argues that a careful analysis of the conditions in which we would withhold or modify moral appraisal does not issue in the conclusion that causal determinism (or causation that falls short of deterministic causation) rules out such appraisal (and thus moral responsibility).³⁹ Scanlon divides the conditions that can undermine moral appraisal into three categories: those in which the action is not, in the proper sense, attributable to the agent, those which do not block attribution of an action to an agent but do change the character of what can be attributed (such as duress and coercion), and those that render it true that the individual lacks the capacity to understand and assess reasons or that his judgments have no effect on his actions. He concludes:

These explanations of how various conditions can undermine moral blame do not lead to the conclusion that blame is always inapplicable if determinism, or the Causal Thesis, is true. The mere truth of those theses would not imply that our thoughts and actions lack the continuity and regularity required of rational creatures. It would not mean that we lack the capacity to respond to and assess reasons, nor would it entail the existence of conditions that always disrupt the connection between this process of assessment and our subsequent actions. So, even if one of these theses is true, it can still be correct to say that a particular action shows a person to have governed herself in a way that is morally deficient.⁴⁰

It is interesting to note that Scanlon focuses on conditions that actually play a role in forming one’s character, the production of judgments and choices, and the connection between those motivational states and actions. He argues that causal determination (or causation) in itself need not threaten the relevant capacities for assessment of reasons, the proper generation of judgments and choices, or the appropriate connections between such states and actions.

I am largely in agreement with Scanlon here. That is, I agree that there is nothing in causation or causal determination per se that would rule out the kind of capacities of reasons-assessment required for moral responsibility; nor do I believe that there is anything in causation or causal determination per se that would imply that the way that our judgments and choices are produced is inconsistent with moral responsibility, or that would etiolate the required connections between such motivational states and actions. I do however disagree with Scanlon’s contention that the basis of moral responsibility is judgment-sensitivity. Clearly, judgment sensitivity is not ruled out by causation or causal determination, but I have argued that it is *not* a necessary condition for moral responsibility.

Recall that judgment sensitivity involves a certain sort of counterfactual dependence on judgment. So, the idea is that judgment sensitivity (with respect to *Y*) would be present only if the following two kinds of subjunctive conditionals would be true: “If the individual were to judge *Y* best, he would choose and do *Y*,” and “If the individual were to judge *not-Y* best, he would choose and do *not-Y*.” It is important to

³⁹ This is, roughly speaking, a “Strawsonian” strategy for defending compatibilism. See Strawson (1962); for a detailed development of such a strategy, see Wallace (1994).

⁴⁰ Scanlon (1998, p. 281).

note that the mere presence of Black—or any similar counterfactual intervener—will render the second subjunctive conditional false, and yet (as argued above) have no impact on the individual’s moral responsibility. Notice that the mere existence of a counterfactual intervener has absolutely no impact on the actual production of the pertinent motivational states, and, similarly, no impact on the actual connection of those motivational states with the relevant action. The existence of the counterfactual intervener simply has an impact on the “hypothetical” or “counterfactual” connection between the relevant motivational states and the action in question.

This shows that (somewhat ironically) it is (arguably) *more difficult* to reconcile judgment-sensitivity with moral responsibility than it is to reconcile causal determination (or causation) with moral responsibility. Thus the appeal to judgment-sensitivity in seeking to provide a basis for moral responsibility makes compatibilism more difficult to support—more difficult than it already is, and more difficult than it need be! Again, my complaint is not with Scanlon’s compatibilist conclusion, or his Strawsonian strategy of argumentation; indeed, I have expressed my basic agreement with the contentions that causal determination (and causation) do not threaten the relevant requirements for production of judgments and choices, or the required connections between these sorts of states and behavior. I have, however, pointed out that the invocation of judgment-sensitivity does not quite get the freedom-relevant condition on moral responsibility correct; and because it is too strong, it would make the reconciliation of causal determinism and moral responsibility needlessly difficult.⁴¹

Scanlon’s invocation of judgment-sensitivity is thus, in the end, a distraction; he employs judgment-sensitivity as an explanation for why (say) causal determination is compatible with moral responsibility, but insofar as it can be absent even in the presence of moral responsibility, it cannot be an explanation of (or the “basis of”) moral responsibility. It is not necessary to demand for moral responsibility *hypothetical connection* between (say) judgment and action; and if one makes this sort of demand, one needlessly opens oneself up to devastating counterexamples.⁴²

5 Guidance Control versus Regulative Control

Above I presented the worry articulated by Gary Watson that the Consequence Argument is (in a problematic way) a “no-brainer.” That is, it should be obvious to everyone that causal determinism (in virtue of its very definition) rules out a freedom to do otherwise that requires holding all elements of the past and all natural laws fixed. Who could deny this? Why would it be controversial at all? Watson

⁴¹ Of course, this is precisely the claim I have made about the purported requirement of freedom to do otherwise (regulative control) for moral responsibility. In both the instances of regulative control and judgment-sensitivity, not only do the Frankfurt-cases show that the requirements in question are implausible, but they render the compatibilist project much more challenging than it need be. See, for example, Fischer (2002); reprinted in Watson (ed.) (2003, pp. 190–211).

⁴² Perhaps Scanlon overlooks (or fails to focus on) this point because he never addresses the Frankfurt-cases. That is, as far as I can tell, although in his work Scanlon discusses some of Frankfurt’s work on moral responsibility, in particular, Frankfurt (1971), he never refers to or discusses Frankfurt’s importantly related (1969).

suggested that we move from an absolute to a conditional conception of freedom in part to provide a notion of freedom that at least makes the debates about the Consequence Argument sensible; more specifically, it at least gives the compatibilist a chance. I have, however, argued that gaining this chance to rebut the Consequence Argument comes at a steep price: one opens oneself to *decisive* refutation by the Frankfurt-cases.

What is a compatibilist to do? One approach would be to stick with an absolute conception of freedom to do otherwise, but construe it without the requirements of holding all elements of the past and all natural laws fixed. This would still be an absolute conception of freedom in that it would not be a conditional conception; it would not employ (simple) subjunctive conditionals to analyze freedom. But it would loosen the requirements that the past and laws be held fixed.⁴³ Here the compatibilist and the incompatibilist could be seen to be accepting an absolute (that is, non-conditional) conception of freedom (in the sense that involves access to alternative possibilities), but simply disagreeing about the specific constraints on such freedom. Whereas this makes the debate about the Consequence Argument a real debate, it leads to what I have called a “dialectical stalemate.”⁴⁴

Because of the apparently intractable stalemates that issue from adopting an absolute conception of freedom together with the interpretation of such freedom as requiring genuine access to alternative possibilities (regulative control), I have suggested that we seek to “restructure” the debates by switching from an “alternative possibilities” notion of freedom (regulative control) to an “actual-sequence” notion of freedom (guidance control). I will be the first (well, maybe among the first!) to admit that the Frankfurt-cases do not *decisively* establish that absolute freedom to do otherwise is not required for moral responsibility; above I have conceded that there is considerable controversy about this point. Here I shall simply assert that I believe that the Frankfurt-cases show that absolute freedom to do otherwise is not required for moral responsibility, even though I am well aware that the examples and ancillary argumentation fall short of being apodictic.⁴⁵ I have argued that the Frankfurt-cases show that all the freedom that is required for moral responsibility is “acting freely” or, in my terminology, “guidance control.”

In previous work, I have contended that the best way to accommodate the insights of the Frankfurt-cases is to distinguish between the “actual-sequence mechanism” that issues in the relevant choices and behavior and those mechanisms that play roles in the range of non-actual or hypothetical scenarios. I was careful to argue that my use of “mechanism” did not presuppose or signify any kind of “reification;” I think of a mechanism as a process or, more abstractly, a “way”—in this case, a way of producing choices and behavior. In my view, an analysis of the Frankfurt-cases should start by noting that the actual sequence flows in a different way from the salient alternative scenario: in the actual sequence, one finds (say) the

⁴³ For such compatibilist approaches, see Lehrer (1976) and Horgan (1979). For critical discussions, see Horgan (1977) and Fischer (1979).

⁴⁴ I define the term “dialectical stalemate” and argue that the debates about the Consequence Argument seem to end in such stalemates in Fischer (1994, pp. 83–85).

⁴⁵ I have attempted to argue for this point elsewhere, most recently in Fischer et al. (2007, pp. 56–61 and pp. 188–190).

unimpaired operation of the normal human deliberative mechanism, whereas in the salient alternative scenario one finds (say) direct electronic stimulation of the brain. Even if we do not have an elaborate theory of individuation of such processes, it is intuitively clear that the ordinary human deliberative mechanism is different from a range of “manipulation mechanisms.”

So the first step in analyzing the Frankfurt-cases is to distinguish the actual-sequence mechanism from the alternative-sequence mechanism(s). I then suggest that we “hold fixed” the actual mechanism—that is, the *kind* of mechanism that actually operates—and ask whether it is suitably reasons-responsive. The Frankfurt-cases are examples in which the actual-sequence mechanism is appropriately reasons-responsive, but the *agent* is not. That is, the agent could not have responded to a good reason to do otherwise, since Black (or his representative!) would have stepped in; but there is no reason to deny the reasons-responsiveness of human practical reasoning *holding fixed the non-intervention of Black*.

Of course, this is the barest sketch of the approach I find most promising, and the details need to be filled in.⁴⁶ Some philosophers do not draw the same conclusions I draw from the Frankfurt-cases, and there are certainly other ways of seeking to make sense of the conclusions, if one does agree with them. I am certainly aware that there are difficult problems with mechanism-individuation and also specifying the relevant sort of reasons-responsiveness, and I have sought to provide at least some preliminary work toward addressing them.

It is perhaps not entirely surprising that the approach I have suggested has not met with universal approval, even among theorists inclined toward my compatibilist conclusion. Consider, for example, this passage from R. Jay Wallace:

The deeper problem, however, lies in the supposition that questions of moral accountability can be clarified by attending exclusively to the modal properties of the ‘mechanisms’ involved in action. This approach brings an objectifying, third-personal vocabulary to bear on phenomena that have their natural place within the deliberative perspective of practical reason, with the result that the intuitive locus of responsibility, the person, seems to drop out of view. A better approach would focus not on the counterfactual behavior of the *mechanisms* that issue in action, but on the normative competence of the *agents* who performs those actions, and are morally responsible for them.⁴⁷

The switch to guidance control, and the accompanying switch from the dispositions of persons to the dispositions of mechanism was designed to accommodate the lessons of the Frankfurt-cases. These moves also allow us to side-step the dialectical stalemates produced by the Consequence Argument. Wallace’s claim that this approach “brings an objectifying, third-personal vocabulary to bear on phenomena that have their natural place within the deliberative perspective of practical reason” is difficult to assess; it raises various issues that are beyond the scope of this paper. Perhaps it suffices here to note that it is not obvious that it is wrong-headed to seek a broadly “naturalistic” approach to the phenomena of deliberation and moral

⁴⁶ For at least some of the details, see Fischer and Ravizza (1998) and Fischer (2006b).

⁴⁷ Wallace (1997, p. 159).

responsibility, or at least an approach that is *compatible* with naturalism. I am not sure however that Wallace would disagree here, or that my observation is indeed inconsistent with his claim; this is in part because I am not sure exactly what the claim amounts to.

I would also simply point out that, whatever Wallace's claim amounts to in the end, my view does not have the "result that the intuitive locus of responsibility, the person, seems to drop out of view." After all, it is the *person* who is morally responsible (partly) *in virtue of* the operation of *his own* suitably reasons-responsive mechanism. I do not believe I have ever contended that we attend "exclusively" to the modal properties of the relevant mechanisms, if this entails (or suggests) that we do not thereby have a deep interest in the agents who own the mechanisms. Note an important parallel here with "reliabilist" accounts of justification or knowledge. On such an approach, an individual *S* has (say) justification for believing that *p* only if he believes that *p* as a result of a reliable belief-producing mechanism. Here it is evident that an analysis that adverts to the modal properties of the relevant mechanism does not in any way entail or lead to the disappearance of the knower; similarly, an analysis of moral responsibility that adverts to the modal properties of the actually operative action-producing mechanism need not lead to the agent's dropping out of view.

The sort of analysis of actual-sequence freedom ("acting freely" or "guidance control") that employs the distinction between the actual kind of process that issues in behavior and alternative kinds of processes could be invoked to defend a Scanlon-type approach. That is, one could in principle combine a demand for judgment-sensitivity with the requirement of holding fixed the actually operative kind of mechanism. Of course, Scanlon does not avail himself of this theoretical resource, and he might share some of Wallace's worries. But it seems to me that Scanlon in the end would need some similar sort of theoretical machinery—some way of distinguishing the properties (some of which are modal) of the *actual* process from properties of *other* processes (the kinds that would take place in salient alternative scenarios). If this is correct, then whatever worries there are about my specific approach to analyzing actual-sequence freedom would apply more broadly; indeed, I think they would apply to *any* account that sought to accommodate the insights of the Frankfurt-cases.

Wallace contends (in the passage quoted above) that we should not focus on the properties of the kinds of processes that issue in our choices and behavior, but rather, on the "normative competence" of agents.⁴⁸ If normative competence requires access to alternative possibilities, which is a very natural assumption, then the Frankfurt-case argumentation raises serious problems. As I have suggested above with respect to a related set of issues, an appealing way to handle these

⁴⁸ Similarly, Gary Watson says:

What is missing here [in someone who does not meet one of the conditions specified in Fischer and Ravizza, *Responsibility and Control: A Theory of Moral Responsibility* for "taking responsibility" and thus for guidance control], it seems to me, is a set of beliefs and (I would add) concerns and skills in virtue of which individuals are capable of reflective critical reason and are therefore capable of participating in the practices of critical evaluation. It is not relevant, as far as I can see, how, or even whether (if this supposition is coherent) they acquired them. What is crucial is not a kind of control but the competence required for meaningful response to the norms to which we hold one another responsible (Watson 2001, p. 393).

problems would be to distinguish between displays of *this competence* and behaviors that issue from some *different kind of capacity*. The approach would then hold fixed the capacity in question—the actually operative normative competence—when assessing moral responsibility. But this approach would seemingly run afoul of exactly the same sort of worries that Wallace adduces against my approach. Of course, I am not at all convinced that they are genuine or insuperable objections; I wish here simply to point out that they would apply to a “normative competence” view, construed so as not to require access to alternative possibilities.⁴⁹

To summarize, Wallace suggests that we replace my notion of “guidance control” with “normative competence” (Watson evidently seconds the motion). Wallace objects to my specific analysis of guidance control insofar as it invokes the modal properties of mechanisms (or kinds of mechanisms). I have replied by addressing Wallace’s worries about mechanisms; that is, I have emphasized that my use of “mechanism” is not intended to pick out something inappropriately reified, but rather a process or “way.” Further, I have suggested that *any* plausible approach to accommodating the insights of the Frankfurt-cases (and, in general, structures of pre-emptive overdetermination) will involve something like my distinction between how the actual sequence proceeds and how salient alternative sequences develop.

An appeal to normative competence might be part of an approach to moral responsibility that either embraces freedom to do otherwise (regulative control) as the freedom required for moral responsibility or acting freely (guidance control) as the freedom required for moral responsibility. On the first approach, both the Consequence Argument and the Frankfurt-cases present significant challenges. I would thus argue for the second approach, insofar as one wishes to appeal to normative competence at all. Switching from regulative to guidance control not only avoids the Dialectical Stalemates deriving from the Consequence Argument, but allows one to accommodate the insights provided by the Frankfurt-cases. But *any* such approach would seem to require *some* distinction between the relevant features of the actual sequence and the range of alternative (non-actual) sequences.

6 Conclusion

Some philosophers—especially compatibilists—have wondered what the big fuss is over the Consequence Argument. They point out that it is just obvious that absolute freedom, holding the past and laws fixed, is incompatible with causal

⁴⁹ In 1998, Wallace appears to endorse the view that all that is required in the way of freedom or control is that an agent perform an action while possessing a general capacity to understand and respond to reasons. That is, Wallace seems to hold that the freedom-relevant condition on moral responsibility does not require viewing the action as issuing from the relevant general capacity or normative competence; it is enough that the agent possess that competence. Whereas this approach avoids the putative problems with my approach—including the vexed issue of mechanism-individuation—it faces significant problems of its own. For example, an agent who possesses the relevant general capacity might act as a result of “manipulation” of some sort; on Wallace’s theory, it would appear that such an agent must be deemed morally responsible. Of course, one might seek to respond to such cases in various ways, and I do not contend that the possibility of direct clandestine manipulation straightforwardly provides a decisive refutation of Wallace’s approach. For a more detailed discussion, see Fischer (1996).

determinism—that is a “no-brainer.” But the compatibilist might also point out that he never meant to deny the claim, so interpreted. I have considered a suggestion—derived from comments by Watson but not explicitly endorsed by Watson—that the compatibilist is really employing a conditional notion of freedom. I have argued that whereas this move provides an interpretation of compatibilism according to which it can respond to the Consequence Argument, it renders compatibilism hopelessly vulnerable to the Frankfurt-cases. I have granted that there are many difficulties and controversies pertaining to the Frankfurt cases, but I have pointed out that these are largely if not entirely avoided, once a compatibilist makes it explicit that he is employing a conditional notion of freedom.

I have explored some themes in Scanlon’s work on moral responsibility. I have noted that the problems posed by the Frankfurt-cases for conditional freedom are re-inscribed within the context of an evaluation of Scanlon’s association of moral responsibility with judgment-sensitivity (defined in terms of simple subjunctive or counterfactual conditionals). In assessing Scanlon’s view, it is important to distinguish a more concrete from a more abstract perspective. Strictly speaking, the Value of Choice—or the interest in regulative control—does not emerge unconditionally from either perspective. But from the more abstract evaluative perspective it is plausible to prefer regulative control, given natural assumptions about the threats to such control. The distinction between the different perspectives thus helps to explain why we all might care about having political institutions that safeguard certain liberties while some of us at least also accept that the Frankfurt-cases show that we do not need regulative control in order to be morally responsible; that is, the distinction between perspectives shows how political liberalism (in a classical sense) is entirely consistent with the denial that regulative control (freedom to choose/do otherwise) is necessary for moral responsibility, dignity, and personhood.

My discussion here has revealed (at least) three dimensions of variation among theorists who link freedom with moral responsibility (Note that these dimensions of variation cut across the compatibilism/incompatibilism divide). First, in accepting PAP, some theorists opt for absolute freedom, whereas others select conditional freedom. Second, among those who adopt absolute freedom, there are various different constraints on this freedom; some of these involve assumptions about the past and natural laws. Finally, some philosophers wish to reject PAP. They typically distinguish an actual-sequence notion of freedom (acting freely or guidance control) from a notion that involves metaphysical access to alternative possibilities (freedom to do otherwise or regulative control). One’s philosophical challenges will depend importantly on the kind of freedom one selects as relevant to moral responsibility.

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