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## **Libertarianism and the Problem of Clear Cases**

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Abstract: New varieties of libertarianism connect not only free will and moral responsibility to indeterminism, but also agency and choice as such. In this paper, I highlight what seems to be an embarrassment for all libertarian accounts, but especially for the ones just mentioned. The problem is brought out by clear cases of decisions in which there are strong and rather obvious reasons for one of the options and only relatively weak ones in favour of the alternatives. It is hard to insist that there be indeterminism even in such cases. Either it has no significant role to play, which means that libertarianism is in effect largely abandoned, or it has a purely negative role, being linked to some serious and thoroughgoing defect in the agent's rationality. Thus a dilemma for libertarians arises, which I spell out in the text. Furthermore I argue that some versions of compatibilism face essentially the same difficulty.

Keywords: Libertarianism, Clear Cases, Choice, Agency, Free Will, Two-Way Powers

### **1 Setting Up the Problem**

Recent years have seen the development of new varieties of, and new arguments in favour of, libertarianism. A characteristic move is to spell out agency in terms of genuine 'two-way abilities' or 'two-way powers'. Positions of this kind are taken by, e.g., Alvarez (2013), Keil (2007, <sup>3</sup>2017), Lowe (2008), Mumford and Anjum (2014), and Steward (2012). According to these authors, agency in itself presupposes, and is based on, indeterministically conceived

powers. In a deterministic setting, there are no actions or choices, but at best events that wrongly appear so.

In this paper, I would like to highlight what seems to be an embarrassment for all libertarian accounts, but especially for the ones just mentioned, according to which it is not only free will or moral responsibility that are tied to indeterminism, but agency and choice per se. The problem is that of clear cases of decision and action, exemplified by an agent facing a choice in a situation where there are strong reasons for one particular course of action – let's call it *A* – and only weak ones or none at all in favour of the (disjunction of) alternatives. If we further assume that the case at hand is sufficiently important to the agent to grab her attention and that the possible courses of action as well as the associated reasons cannot easily be missed, then it is to be expected that, after some not-too-difficult piece of deliberation, the agent realizes that *A* is by far the best thing for her to do, decides in favour of *A*, and goes ahead and does *A*. A libertarian, to be sure, will insist that this is no decision or action proper if there is not some element or aspect of indeterminism to it. Moreover, not any such element will do. It better had a central role to play in the process, or else it could all too easily be claimed that it might just as well be omitted.

It is surprisingly hard to find a fully satisfying term for the kind of possibility that is relevant here, i.e., the kind of alternative possibility implied by indeterminism and ruled out by determinism. 'Objective possibility' will not do, since the possibilities implied by conditional analyses of 'can' are also objective, and compatible with determinism. There need not be anything subjective about whether the subject would do *A* if she tried or intended or chose to do *A*. 'Real possibility' is rather unspecific and anyway very close to 'objective possibility'. 'Real' may even appear to be a mere rhetorical addition. 'Metaphysical possibility' is infelicitous, as determinism in its standard explication is about laws of nature and thus, plausibly, about physics. It may well be a physical possibility that is at stake here, and the relation of physical to metaphysical possibilities should not be prejudged. But I would like to

avoid ‘physical possibility’, too, because I do not want to imply that the notion of determinism *must* be spelled out in terms of (the laws of) physics. One may prefer to talk about sufficient causes instead, or altogether reject the reductive assumptions that are in the background when determinism is characterized via reference to laws of nature or of physics. The idea of determinism, taken by itself, has nothing to do with reductionism of any kind and is independent of mind–matter reductionism in particular. The mental workings and processes, whatever their relation to matter is, could be deterministic just as well as indeterministic. For these reasons I choose the term ‘ontic possibility’: alternative ontic possibilities are the kind of alternative possibilities ‘within being’ implied by indeterminism and ruled out by determinism. I will say no more on these notions, partly for reasons of space, partly to keep the discussion sufficiently general.

Now, why should there always be these ontic possibilities even in clear cases of choice and action, and not just by accident, but by the very nature of decision and agency? Why would one want to exclude the possibility that what the agent does is determined by the strong and obvious reasons she has for doing *A* in her situation? If one opposes the view of reasons as causes, it might rather be the agent’s mental representations of those reasons that are determining factors. Either way, the supposition of an essentially deterministic unfolding of events (deterministic, that is, with respect to what decision is made and which kind of action executed by the agent) seems to be quite natural in clear cases. I do not thereby presuppose any particular conception of choice or agency, just our everyday understanding of them. This is nothing very specific and will perhaps not yield a definite judgment to the effect that choices and actions are in fact determined in clear cases, but this seems at least to be a possibility, and not a far-fetched one. Let’s take a look at an example by Helen Steward:

Joe is attempting to decide whether or not to move in with his girlfriend. It is completely obvious to Joe, having briefly deliberated, what he ought to do. [...]

Joe loves his girlfriend very much and enjoys spending time with her; she has a lovely flat that is much nicer than his own mean bedsit, which he has always loathed, and which is also much handier for Joe's work; he dislikes his own company and solitude makes him depressed; it would be much cheaper to move in with her than to continue to pay a separate rental, separate gas and electricity bills, etc. [...] His reasons [for moving in with his girlfriend] are overwhelmingly good [...] (Steward 2012, 129)

If Joe happily agrees to move in with his girlfriend after this kind of reasoning, one would surely say that Joe decides and acts. It is, moreover, quite natural to suppose that Joe's decision is determined by his strong reasons to move in with her, or by his grasping these reasons. And the comprehension of the reasons can in turn be viewed as being determined by Joe's mental capacities and the circumstances. At the very least, such a determination in accordance with reason due to the comprehension of the obtaining reasons seems possible here without this, intuitively, detracting from the status of choice and action.

This does not imply that moving in with his girlfriend is a 'volitional necessity' for Joe in the sense spelled out by Frankfurt (1982; 2004, ch. 2). The paradigm example for such a necessity is Luther's alleged dictum 'Here I stand; I can do no other.' It is a kind of psychological necessity, or something that is vividly felt or construed to be such a necessity by the agent, that nevertheless does not render him passive or unfree – quite the contrary. Such cases 'differ from situations in which it is clear to the person that he must reject the possibility of forbearing because he has such a good reason for rejecting it' (Frankfurt 1982, sec. IV). It is cases of the latter kind I am interested in here, and I leave open their relation to cases of volitional necessity. The phenomena may be altogether distinct, as Frankfurt indicates, but if not, it is at least true that comparatively very good reasons *need* not (be felt to) constitute or

give rise to a volitional necessity in Frankfurt's sense. They do not in Joe's case in particular, if it is not interpreted in a quite exceptional manner.

Libertarianism has to come to grips with the problem of clear cases, as it denies that an action or choice may be determined, and so denies in particular the possibility of a rational determination via the reliable grasping of, giving due regard to, and acting from, the pertinent reasons. At the same time libertarianism, like compatibilism, does not view itself as being revisionary. Thus clear cases constitute an embarrassment for any libertarian conception of choice and action, no matter whether it is agent-causal, event-causal, or acausal. This has sometimes been observed, recently in an especially forceful way by Nida-Rümelin (2016).<sup>1</sup> But the problem is still underestimated by libertarians. I want to highlight its force as well as review the whole range of libertarian responses to it.

Clear cases of choice and action are by no means exceptional. Generally speaking, there are often cases in which we can count on someone to decide in a certain way and proceed to act accordingly. While decisions of the kind Joe has to make do not occur on a daily basis, there are also many routine cases in everyday or professional activities. There is the physician deciding on a treatment, the chessplayer deciding on the next move, or any ordinary person planning her weekend trip. Minimally, people are very competent decision-makers at least in some areas. This competence is not only about having certain abilities, capacities, or powers, but also about putting these to proper use in the appropriate circumstances. Many people do this in a very reliable way. If the case at hand is of a certain type, and if circumstances are not

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<sup>1</sup> The libertarian will cheer up, however, when Nida-Rümelin writes (pp. 361–362): ‘*Example 3.* Christopher must undergo a surgical procedure. He must choose between two possible ways for the physicians to proceed. After having done what he could do within reasonable limits of time to gain all relevant information, Christopher is convinced that the first procedure is more expensive, more painful and more risky than the second. As far as Christopher knows, there are no other relevant differences between the two procedures. Christopher therefore takes the obviously rational decision of choosing the first one.’ Decision-making may prove difficult even in clear cases!

distracting or stressful, they can be trusted to figure out what to do and then proceed to do it. Thus the problem of clear cases cannot be downplayed by marginalizing them.

To be fully reliable in the indicated sense is an ideal. Nobody is perfect, not even in her areas of practical competence. But many people at least approach this ideal in some fields or for some types of choice and action. And ideal *instances* of deliberation, choice, and action, in which what ought to be done is reliably figured out and executed, without any chance of failure, could very well be real and, for all we know, even common. It is, to be sure, also conceivable that, for some fundamental reason, they are hardly ever or even never actualized. Maybe one thinks of microphysical indeterminism here, and of interferences that may occur with some minuscule probability in every single instance of choice and action. But even so, there seems to be no point in denying (possibly hypothetical) ideal deterministic instances of choice or action their status *as* choices or actions. Many actual examples are at least very similar to and, as a matter of fact, indistinguishable from them.

On the whole it seems to be quite natural to assume that if the case at hand is not too demanding it may often be fixed in advance what a person is going to decide and do. The agent can be truly counted on, and in principle also predicted, to find out what would be best to do and then do it. Thus people may be viewed as being essentially determined with respect to their decisions and actions in their areas of competence, without thereby denying their agency in any sense in which it is worth wanting. It is therefore no accident that we often use the subjunctive mode when we consider what someone *could* do. It is not 'can', but 'could', and this points to some conditional analysis of alternative possibilities. There is a hidden condition: Oh well, she *would* do it, *if* she wanted to, but she certainly does not want to. Or we have no idea whether it is possible that she wants to, and so the subjunctive mode is appropriate too. It indicates that the whole thing is hypothetical. There may simply be no chance that the antecedents of the conditionals expressing compatibilist alternative possibilities are fulfilled.

What about libertarian accounts, not of agency as such, but of *free* agency? In ideal cases of deliberation, choice, and action, the agent is determined in the relevant respects, and thus not free in a libertarian sense as far as these respects are concerned. Freedom is usually viewed as valuable, something that we would or should like to have. To choose freely is considered to be better than to simply choose; to act freely or from one's own free will is considered to be better than to simply act. If so, the problem of clear cases retains its full force against libertarian accounts of free will and free agency. Alternatively, however, freedom could be conceived as a fundamentally ambivalent quality precisely insofar as it implies ontic possibilities of success and failure alike. Free choice or free action need not be regarded as being per se more desirable than choice or action simpliciter. A perfectly reasonable creature would not be free (in many respects), nor are ordinary guys like ourselves free in our true areas of competence, where we can be relied on – and that may be fine. Freedom is not simply a gift, but a mixed blessing, and a prudent or reasonable agent does not have it (in many respects), but neither does he miss it. In fact, he is much better off without it. A free agent, by contrast, for whom there is some chance of his acting in a reasonable manner, but also of failing to do so, is only second best. If a libertarian with regard to freedom is prepared to make this kind of concession, he faces no problem with clear cases, but of course the concession is hard to make.

The motif is well known from the history of philosophy. There is the wise person in stoicism, or the holy will for whom no imperatives hold in Kant. While these characters may be a bit over the top, they illustrate in an especially powerful way what is at stake here. If there is nothing wrong with a very competent and reliable agent, as libertarians would not like to dispute, why should there be anything wrong with an agent who is perfectly competent and reliable? According to the Stoics and Kant, such agents exemplify ideals, not only of agency, but also of freedom. The more one resembles them, the better. As practical rationality, prudence, or wisdom are not only about having certain abilities, but also about executing them in a reliable way, the perfectly prudent person is essentially determined in many of her choices

and actions. If it is denied that she acts or decides or is free, the question arises what is so good about, or why we should care about, being free or being able to act or to decide in the first place. These features are then essentially tied to defects that we better not had. We would rather be wise and ‘quasi-choose’ our ‘quasi-actions’, thereby exercising our ‘quasi-freedom’.

To conclude the exposition, a final remark may be in order. Helen Steward uses the example of Joe to discuss not only clear cases but also the well-known luck objection, or as she prefers to say, ‘challenge from chance’ to libertarianism (see, e.g., Mele 2006). I do not deal with this objection here. The problem of clear cases is a different issue. The luck objection retains its force also in cases that are not at all clear, and, taken as an objection to libertarianism, works very differently from the problem of clear cases. The following paragraphs explain this a bit but should be taken as an aside only.

According to libertarianism, if an agent chooses and then does *A*, she could also have chosen some alternative *B* instead, in an ‘absolute’, ontic sense of ‘can’. But there may be more to say. Her choice of *A* can be explained by the reasons in favour of *A*, provided there are any and the agent chooses in view of and in line with them. Analogously if she had done *B* instead. The alternative was not only ontically open to her until she chose *A*, but its choice could have been explained by the agent’s reasons in favour of *B*, provided there were any. Thus her choice can be given an explanation via reasons either way, if only there are *some* (possibly weak) reasons for each course of action. But with libertarianism there is no *contrastive* explanation of the agent’s choice in terms of her reasons, i.e., no explanation why she chose and did the one *rather than* the other. One might be tempted to appeal to comparatively stronger reasons here, but then the symmetry would be lost: there would be a contrastive explanation for the choice of *A* over *B*, but not for *B* over *A* (or vice versa), while a libertarian insists that the latter choice is also possible in an ‘absolute’, ontic sense. Moreover, the case could be such that the competing reasons are of roughly equal weight.



The same holds for explanations in terms of *causes*. While there may be such explanations for the agent's choice of *A* even in an indeterministic setting – causes need not necessitate their effects – and, had she done *B* instead, an explanation by other causes (probably related to the reasons for *B*, if there were any), there is no *contrastive* explanation via causes why the agent did *A* rather than *B*. As far as the obtaining causal factors are concerned, the agent could also have done *B* instead.

Now, the suspicion would be that the connection of a not contrastively explicable choice to the agent is too thin to warrant ascriptions of responsibility or freedom. One may even doubt that it is, properly speaking, her choice, that it is really up to *her*, which alternative comes about. Nobody, neither the agent herself nor anybody else, can say anything true and informative about why she did the first *rather than* the second. It is just a matter of brute fact; there is a complete lack of contrastive explanations in terms of reasons or causes. Thus it can easily seem like a mere piece of good or bad luck or randomness (depending on the case) that she did not choose the alternative instead.

Note, however, that as a matter of fact there are plenty of choices that admit of no contrastive explanation in terms of the agent's *reasons* anyway. One can weigh reasons roughly – often only *very* roughly – but they typically do not come with anything like precise weights attached to them. There are bound to be many cases in which one cannot say that the reasons in favour of *A* outweigh the reasons in favour of *B*, or vice versa, nor even that the reasons are of equal weight, because this misleadingly suggests that one can weigh them quite precisely. The appropriate thing to say in these situations is that it is *not* the case that the reasons clearly militate in favour of one of the options. Also, there may be things like incommensurable reasons. So we definitely have to make many choices that admit of no contrastive explanation in terms of reasons. That's just life, and it has nothing whatsoever to do with compatibilism or libertarianism, determinism or indeterminism. *Prima facie*, there is nothing wrong with these choices. There is no doubt that they can be the agent's own choices in the proper sense of the

word. Moreover, it does not seem as if his freedom or moral responsibility is diminished just because the obtaining reasons do not clearly favour one of the options. While such choices *do* have contrastive explanations in terms of *causes* in a deterministic world, but not according to libertarianism, it is by no means clear why this should tell against libertarianism.

Now, the question would still be how indeterminism can *contribute* to the agent's freedom. This, indeed, libertarians should be able to answer: How is it that indeterminism can make a crucial difference with regard to action, or choice, or free choice, or morally accountable action, or whatever one wants to put in here? The luck objection brings out this question in a particularly pressing manner, but construed thus, the objection challenges supposed advantages of libertarianism and does not bring forward cases libertarianism apparently cannot cope with, or where the compatibilist's take is *prima facie* clearly superior. As it is precisely cases of the latter kind I want to discuss here, the ensuing objection to libertarianism is very different from the luck objection.

## **2 Restricting Libertarian Choice**

What can a libertarian say in view of the problem of clear cases? For him, a first strategy to deal with it would be to acknowledge that it may sometimes very well be determined what a person chooses and does. He may even go as far as Robert Kane (e.g., 1996, 2007) and claim that it is only in special circumstances that we exercise our libertarian freedom. So-called 'self-forming actions' or 'self-forming choices' occur when there are strong, perhaps incommensurable, motives for either course of action. According to Kane, the agent can even be said to try to do different things at the same time while struggling with the issue, and it is not determined in advance how the struggle will finally be resolved. Joe's choice would clearly not be of that kind. But still he is acting in the full libertarian sense, *if* there have been genuinely indeterministic self-forming choices in the past that in part explain why Joe's character is now

such that it is already settled what he is going to do. He has made himself into a person who, at this later point in his life and confronted with this kind of choice, has no ontic alternatives open to him.

Kane, to be sure, does not claim that actions and decisions as such require self-forming choices. His concern is about free will and ‘ultimate’ responsibility. When confronted with cases such as Joe’s, we are strongly inclined to think that the agents act from their own free will and are morally responsible for what they do. For this, Kane claims, it is necessary that the agents are also ‘responsible for anything that is a sufficient cause or motive for the action’s occurring’ (Kane 2007, 14), where that requirement is cashed out in terms of self-forming actions in the past. This account could be adapted to our purposes here. In view of the clear cases, libertarians might claim that *any* proper action or decision is either itself undetermined shortly before its occurrence, or else at least in part traceable back to indeterministic choices in the past.

I am not going to dwell on the question how these genuine self-forming choices are supposed to work. Rather, I note that it would be highly speculative to allow local determinism in clear cases of decision and action on the one hand, but also to assume that it partly derives from a set of earlier self-forming choices on the other hand. We certainly do not inquire into the past of an agent and seek to discover how he has shaped his own character in situations of a rather special kind before we grant that the behavior in question really is an action, or that the agent does in fact choose between options. With such an account taken seriously, a thoroughgoing ‘action skepticism’ and ‘choice skepticism’ would be almost inevitable, leading to hard incompatibilism instead of libertarianism.

This is no direct argument against Kane’s original account. It might still be plausible to claim that if there are no relevant self-forming actions in the past then Joe is not ‘ultimately responsible’ for what he does and, furthermore, that it is this kind of responsibility that we (ultimately?) have in mind when we blame or praise somebody. While phenomena such as

responsibility, praise, or blame may on closer inspection contain far-reaching preconditions concerning the agent's past, it is hardly plausible to extend this move to agency and choice *simpliciter*. There is something to the idea that we form our character through our actions, and our responsibility may in some way be linked to this, but such a prior formation cannot plausibly be invoked to account for action and choice per se, claiming that if some quite demanding assumptions about the agent's distant history are not fulfilled, he does not act but only seems to act, or does not decide but merely appears to do so. Thus, while Kane's account may be defensible with regard to moral responsibility, it ceases to be so when it is stretched to cover all actions and decisions (which Kane himself, to be sure, does not do).

A second and very different attempt to deal with clear cases by suitably restricting libertarian agency is contained in Steward 2012, ch. 6. Having introduced the case of Joe, she makes concessions to compatibilism that are quite remarkable for a libertarian:

[...] if the libertarian thinks that having the power to  $\varphi$  requires the existence of some objective chance that one will  $\varphi$ , she is mistaken, since where what puts one's  $\varphi$ -ing quite out of the question is only such things as one's own wants, principles, motivations, etc. (and where there are no further *special* worries about how these wants, principles, and motivations have been arrived at) there should be no concern that an absence of possibility here amounts to a lack of freedom.

(Steward 2012, 126, cf. sec. 6.3.2)

She nevertheless maintains that there is indeterminism in every episode of acting, because an action has to genuinely settle something that is not already settled. This is what being 'active' or 'acting' are about, according to her. In clear cases, it may be determined *what* the agent does, broadly conceived. What is open is *how exactly* he proceeds.

Steward discusses this possibility first and foremost in connection with animal behaviour (2012, ch. 4). She holds, very plausibly, that animals are active and genuinely *do* certain things. If libertarianism is to be based on the active–passive distinction, i.e., the distinction between what a subject does and what happens to or in or with him, it is very hard indeed to deny animals libertarian agency. The dialectical point of appealing to the active–passive contrast is lost when it becomes a newly introduced distinction of art rather than an everyday notion. Intuitively speaking, animals are undoubtedly often active, and thus, if the notion or phenomenon of activity is to provide the main rationale for libertarianism, as in Steward, a lot of animal behavior is to be included. Animals, however, cannot normally be said to choose or to contemplate their goals, nor the general manner in which they pursue them. Thus, the indeterministic aspect can at most concern *how exactly* they proceed.

Perhaps it is the same with Joe. It is already settled that he will move in with his girlfriend, but when and how he makes the decision and performs the corresponding actions may well be undetermined. These things are settled by Joe only *in* deciding and acting. If so, however, Steward’s account implies that Joe is passive with regard to the broad type of action he chooses and active only in view of the details of its implementation. There is no choice at all about the central matter. Joe does not choose, but merely ‘quasi-chooses’ and mistakenly thinks he chooses, to move in with his girlfriend, since it was already settled that he would.

This strategy undermines libertarianism by rendering the indeterministic aspects of actions and decisions inessential in clear cases. The point is evident in the case of decisions. When an agent makes a decision, several options seem to be open to him. His choice is between at least two different types of action. It would be strange if a libertarian account of choice did not concern which of them was chosen, but only minor aspects, for example, after how long a deliberation the choice is made. This would not be an indeterministic account of *choice* at all. The point of a libertarian conception of choice must be that the ‘main thing’, namely, which of

the available options is chosen, is settled only by and in deliberating and deciding and is not fixed in advance.

With agency it is a different matter. It is not unreasonable to claim that the indeterministic aspects of actions may well concern not *what* the agent does, broadly speaking, but merely how he proceeds. If, for example, decisions are actions (a matter I do not discuss here), it might be determined in advance that Joe performs the action ‘deciding whether or not to move in with his girlfriend’ as well as ‘deciding in favour of moving in with her’. He will not just push the matter aside and pursue other things, and he will not decline the offer. The choice may still be Joe’s *action* in a libertarian sense if it is not settled in advance how he goes about it. But the required indeterminism should better not concern marginal aspects only. The sense in which a decision is an action in the libertarian sense is the more elusive the more salient aspects of it are fixed in advance.

We do not know enough about Joe to definitely settle the matter in his case. When asked whether to move in with one’s partner, even if the answer is bound to be affirmative, it makes a big difference how exactly, and after how long a deliberation, the ‘yes’ comes out. But while Joe’s decision may be conceived of as an *action* in the libertarian sense, even if it is determined that he is going to move, the first point stands: it certainly cannot count as a *decision* or *choice* in the libertarian sense. Thus Steward’s line of defense does not help a libertarian who favours an indeterministic account of choice on the grounds that choosing presupposes several options being ontically open to the agent.

A third and final attempt to deal with clear cases of decision and action by restricting the scope of libertarianism draws on a distinction between choices that are appropriately or rationally open and those that are not (see Seebaß 2000). For the latter it is conceded that they may well be determined. This is, in a manner, the most straightforward way of dealing with clear cases, but essentially it just grants the compatibilist the point in question in a very direct way, by not insisting on a libertarian account of choice precisely in cases where this seems to

be implausible (or superfluous). Then there is clearly no longer any formal point of disagreement, and one could simply notice this and move on to the more comprehensive libertarian accounts. There is, however, also an issue with the inherent stability of this kind of libertarian position. To simplify matters, and because it helps to pin things down, I will contrast choice of ends and choice of means, although this is not exactly the distinction just mentioned.

It may with a certain plausibility be claimed that the significance we attribute to *freedom* of choice primarily concerns ends and the relative weight they are given by the agent, but not mere means, so that for a libertarian, once the agent has settled upon a goal, there need not be any ontic openness with respect to her choice of means. The question of freedom only arises in connection with uncertainty whether to pursue this or that aim, or whether to lead this or that kind of life. If an agent is indeterministically free regarding such matters, it hardly matters whether she is also free in her choice of corresponding means. Provided that she has settled on her aims, including their relative importance, we may well grant that she, as a competent agent, will surely take one or another efficient means to realize her aims, and if there is a clearly best way to do so it may be determined that she chooses it. This does by no means diminish her freedom – or so a libertarian might claim.

The line between ends and means is often difficult to draw, however. When an agent deliberates what to do, the two may be intertwined in a way that is extremely hard to disentangle. In addition to that the distinction is context-dependent, and accordingly the line can be drawn in different ways. Intermediate goals for some further end play the role of means in certain choices and the relevant deliberations, the role of ends in others. This points to a hierarchy of ends and means, but the idea of such a hierarchy is a gross idealization already: rarely do people contemplate their most fundamental or ultimate goals in anything like a direct manner. Most would even be at a loss when they were asked to state them, although it is to be expected that the ultimate goals, whatever they are, influence and shape many more ‘local’ and smaller choices.

Take the case of Joe. While it is clear that this is a clear case – it was introduced in that way – it is not at all clear to what extent the choice Joe confronts is about means and to what extent about ends. Might it be construed as being all about means? When it is, after a brief deliberation, completely obvious to him what he should do, is the reason for this that his relevant goals were fully fixed already and the moving in with his partner is the most efficient way of achieving them? This does not sound true to life, but the idea of purely instrumental reasoning is not outright absurd in his case either. In decision theory, choice may be said to be always and exclusively about means, insofar as an agent does not choose his utility function. Rather, this function is given, and the agent's choice is modelled as being between certain options in light of the probabilities and utilities of the possible consequences of these options. While this *may* be viewed as a generalized recipe for choosing means, and it is therefore often claimed that decision theory only gives a reduced and impoverished account of choice, it should be noted that the notions of means and ends are not employed by and in decision theory at all.

All in all, and putting aside conceptual and theoretical difficulties, there are many real-life decisions to which the means–end contrast does not apply in any clear-cut way. It is very much an idealization, and the question whether, or to what extent, a certain choice concerns means or ends may even often strike one as artificial. The distinction applies easily only to certain types and contexts of routine choice where the goal is fully and precisely given in advance, but it is *prima facie* ill suited to deal with cases where the agent's aims, and their relative importance, are vaguely but not fully fixed. Options for action usually do not come with a neat distinction on their sleeves between aspects that are about (ultimate) ends and aspects that concern (mere) means. Thus this contrast is no proper basis for a fundamental dichotomy between decisions that may be determined without thereby diminishing, or possibly even thereby enhancing, the agent's freedom on the one hand, and decisions in which determinism obliterates freedom on the other hand.



The point can be generalized: Choices and associated deliberations just do not come in two neatly separated varieties, nor can they be broken down or otherwise reduced to anything like this. Surveys of examples rather point to different spectra that are connected and entangled in a complicated manner, ranging from choices that concern strictly only means to choices that concern exclusively ultimate ends, from choices that are rationally fully arbitrary to choices with no rational leeway whatsoever, from choices concerning tiny to choices concerning hugely important issues, etc. Clear cases, to be sure, also fall into such a spectrum. The problem they pose for libertarianism does not rest on the assumption of a dichotomy; rather, the clearer a case is, the more pressing the problem becomes. The here-discussed strategy for suitably restricting libertarianism does not gain sufficient foothold in these various spectra to justify a dichotomy between choices (or actions) where determinism is harmless or even freedom-enhancing and such choices (or actions) where it annihilates freedom.

### **3 Maintaining Full-blown Libertarian Choice**

Instead of making concessions to compatibilism in clear cases of decision and action, libertarians may dig in their heels and claim that even in cases such as Joe's there is essential indeterminism with respect to what broad type of action the agent chooses and performs. Agents are endowed with 'genuine two-way powers'. In deliberation, they can use or fail to use or misuse them. And having exercised them properly, they can act or fail to act upon the result. As the operation of two-way abilities involves indeterminism, the person may simply not deliberate, or deliberate but refrain from making a decision on the matter, or she may deliberate or decide or act in an irrational way. Thus it is ontically possible that Joe does not deliberate and simply lets the opportunity pass. Or that he deliberates but grossly misjudges the balance of reasons. Or that he correctly judges that he has overwhelmingly good reasons to move in with his girlfriend but does not make the corresponding decision. Or that he makes the decision

but does not act accordingly. At a minimum, being endowed with such powers entails that the agent can exercise them or refrain from exercising them in an indeterministic sense. This would be the line of Alvarez (2013), Keil (2007, <sup>3</sup>2017), Lowe (2008), and Mumford and Anjum (2014).

But how are we to conceive of these purported ontic possibilities when the case at hand is so clear? Why should we believe in their existence? To repeat: practical rationality or prudence consists in putting one's respective abilities or powers to proper use, not only in having them. If Joe, being an ordinary guy, fails in the clear case at hand, this calls out for an explanation. When he behaves in one of the mentioned alternative ways we would suspect that he has strong, presumably subconscious or half-conscious, motives *against* moving in with his girlfriend. These can take several forms.

Perhaps Joe is risk-averse. Moving in with somebody no doubt *is* a risk. The relationship may end up in quarrel and disappointment. Joe may want to avoid that risk and rather go on as before. Or Joe is too proud to move. It is his girlfriend's flat, after all. He wants to look for a new apartment into which they both move. This, he feels, is his task. Or he is just lazy. Surely there must be a reason why he lives in this mean bedsit he has always loathed. To move means making an effort and spending some money, and perhaps Joe shies away from that. 'Not now', he might say. Or Joe cannot believe that he should be so lucky. He may have little self-esteem and feel that the opportunity is just too good to be true. Or Joe decides to go on living in his mean bedsit simply because he is used to it. Most humans are not only satisficers rather than maximizers but can somehow get along even in very unfavourable circumstances. This ability has a downside: there is no definite psychological pressure to look for or pursue improvements of one's situation or even to take advantage of attractive options that are handed on a silver platter. Moving in with his partner may be very fine, but it is not an absolutely necessary thing for Joe to do.

These are somewhat disturbing features of human psychology. There is plenty of evidence that they play an important role in actual agency. Given each of these motives Joe may conceivably fail (to decide) to move in with his girlfriend. We understand what is going on if one or another of these mental conditions guide Joe's behavior, even if we would also say that he then behaves in an irrational or imprudent way. The case is *still* clear in terms of the obtaining reasons. It was introduced this way, or at least meant to be such a case, so this is not negotiable. Consequently, we may not take the adverse motives just sketched as constituting reasons against moving but have to assume that if they are reasons at all, they do not carry much weight. Thus while the case is clear, normatively speaking, it may not be clear in terms of Joe's motivation. There may be strong, albeit irrational, motives against moving in with his girlfriend.

We have to exclude this possibility to pose a problem for libertarianism. Plenty of realistic examples remain that are clear in normative as well as motivational respects. We have to assume that Joe is neither risk-averse, nor too proud, nor lazy, nor has little self-esteem, nor is a very low-profile satisficer. The important thing about clear cases, of course, is that they should be clear in terms of the agent's *motives*. Many philosophers, however, are inclined to think that ordinary people can or could behave rationally (or morally, but the example at hand is not of that kind) under normal circumstances, if one uses an everyday, not-too-fancy idea of rationality or morality. So the embarrassment for libertarianism is not vividly felt when the subject is rationally or morally required to do *A* while being strongly inclined towards *B*. Most libertarians will claim that, in such cases, the agent's taking either course of action is perfectly intelligible and poses no explanatory problems whatsoever. Therefore we have to stick to cases that are clear in terms of normative reasons as well as in terms of the subject's motives, and where both favour the same option.

Even so, moving in with somebody is a serious matter that has to be considered carefully. It is entirely understandable if Joe, instead of making his decision right away, contemplates the issue for some time. He does not want to rush. So maybe the alternative for

Joe is not to decide *against* moving in with his girlfriend, but to *not* decide in favour of it and to deliberate the matter further. This is how Keil (<sup>3</sup>2017, chs. 4.6, 7.4) deals with the luck objection to libertarianism, and the idea also has bearing on the problem of clear cases. The rational or comprehensible alternative to choosing *A* when there seem to be comparatively very strong reasons in favour of *A* is not to choose *B* for weak or no reasons at all – this may even be psychologically impossible – but to further deliberate the matter. Reasons need not be obvious, they can be missed, and sometimes one changes one’s mind upon reconsideration. Also, it is not uncommon to regret a seemingly easy choice afterwards, saying to oneself that one should have considered the issue more carefully. Thus, even if Joe’s case is clear, it is not clear that Joe can know that it is, and therefore it is not unreasonable if he does not straight away follow the strong reasons he sees in favour of moving.

This manoeuvre, however, is more of an epicycle. One can make such decisions quickly or slowly, but *if* the circumstances are as described, Joe will sooner or later, and rather sooner than later, decide to move. Otherwise, we would again suspect hidden motives against it. Also, maybe not in Joe’s case (we do not know very much about his girlfriend, after all) but in many similar ones, not to decide in favour of something within a certain well-defined stretch of time has essentially the same consequences as deciding against it. If someone receives a very attractive job offer, she may deliberate for a certain time whether to accept, but there will be a deadline, and the opportunity will be gone if she does not accept until then. Pondering the offer is perfectly rational, but if there appear to be strong and rather obvious reasons in favour of it and very little or nothing to say against it, then, if the deadline approaches, further reasoning becomes less and less comprehensible, provided the case is indeed motivationally as well as normatively clear.

Furthermore it is incoherent to suppose that, at each point within the relevant stretch of time, the person may decide to accept the offer but may also go on deliberating, while it is fixed in advance that she will, at some point or other, accept. If the latter is true, she is bound to

accept in the last moment provided she has not accepted before. Few libertarians would like to base their position on the assumption of an infinity of possible ‘decision points’ in time converging to, but not including, a specific upper bound. Moreover, any such position again renders the indeterministic aspects of the choice inessential. If it is already settled that the agent will decide to accept a certain offer within some fixed period, it hardly matters when exactly she does so. Or, to be more precise: this kind of leeway may be enough to view the choice as an action in the libertarian sense, but it is insufficient for libertarian accounts of the ‘garden of forking paths’ that consider decisions to be undetermined because they are between alternative courses of action.

So, libertarian attempts to point to something like rational or comprehensible alternatives even in clear cases are ultimately doomed to fail. But can’t a libertarian just live with this and point, without further ado, to the fact that sometimes people choose irrationally, or deliberate in an irrational way, or irrationally for too long, even in clear cases? If the subject fails to decide in favour of the prominent option within an appropriate time interval, this may be, first, due to a loss of control resulting from an interference that upsets the decision process. Disruptions of many kinds may unexpectedly occur. There is, however, no reason to think that such events have no sufficient causes and can indeterministically happen in each single instance of choice and action. And even if they could, it would be indeterminism of the wrong kind, as the agent is no longer in control then. Second, as far as the agent herself is concerned, as far as what happens is up to her, there may be inexplicable oversight of strong and quite obvious reasons, or extreme irrationality by not choosing in line with them. Such blunders are bizarre, but they may constitute genuine actions instead of something that merely happens to or with the agent.

This is especially clear with behaviour due to oversight. When Vladimir Kramnik was world chess champion, he once overlooked a mate in one move in an important game, while still having plenty of time on his clock. His opponent (a computer) threatened mate on the next

move, and Kramnik simply did not see it. The pieces were arranged in a somewhat unusual pattern, and this provides kind of an explanation, but still, it was a mate in one, and Kramnik was the world champion. He lost the game and because of that the whole match against the computer. In his case, there was deliberation, choice, action, and full control over what he did, everything being up to him in favourable circumstances, but still, it happened. Such painful lapses are clearly to be distinguished from losses of control due to external interferences.

Occurrences of all of these kinds can never be to a hundred percent excluded, epistemically speaking, but it seems over the top to suppose that they are ontically possible in each single case. There is no good reason to assume that every person is susceptible to commit some severe error in each single instance of deliberation, choice, and action, just as there is no reason to suppose that anyone can suffer a heart attack at any moment. Furthermore, even if there was some chance of failure in each single instance of choice, it would be strange if the ideal situation, where the subject fully reliably figures out, decides in favour of, and executes, the best option, was ruled out by our very concept, or by the metaphysics, of action or choice. Then the question would again be why we should care about deciding and acting in the first place instead of ‘quasi-acting’ and ‘quasi-deciding’.

Thus the problem with all of the strategies discussed is that they either abandon central parts of libertarianism or that they link it to serious and thoroughgoing defects in the person’s rationality. In the former case they leave indeterminism no essential role to play in clear cases, so there is choice and action without significant indeterminism. In the latter case they make unfounded assumptions about what is ontically possible in each single case, and they tie agency and decision conceptually or metaphysically to a thoroughly defective mental constitution.

#### **4 Compatibilists in the Same Boat**

There are compatibilist accounts facing essentially the same dilemma. Holton (2009, ch. 3) claims that choices in the proper sense of the term are not determined by the agent's prior beliefs and desires. According to Holton, this is one important source of the idea that we are free in our decisions, i.e., that we could also choose another option. Nothing about the agent's prior psychological profile settles the choice, or else there would be nothing for him to choose. Nevertheless, choices need not be undetermined simpliciter, nor is there anything that gives or even could give us *this* impression. Part of the content of our experience in choosing is that nothing about our prior mental states settles the matter, but we mistake this experience all too easily with a much farther-reaching one, namely, with that of the absence of determining factors of any kind (Holton 2009, ch. 8).

In a similar manner, List (2014) argues that free actions are only psychologically or 'agentially' undetermined, while they may be physically determined. A specific type of mental state can be realized by or correspond to several different physical or brain states. Thus even in a deterministic world, two agents with exactly the same mental profile in circumstances that are exactly alike may proceed to do different things. Before they are about to act, or to make their respective decisions, or at least before they start deliberating, the difference between the agents is not discernible on the psychological level, but only on the physical level. Thus, their different actions are not explicable in terms of varying motives or other psychological features. Freedom of the will means, according to List, that there are no sufficient causes for one's choices that could be described in psychological terms, but there may be such causes in a physical or all-things-included sense.

Holton and List present their views as compatibilist, and rightly so. According to them, however, choice and determinism are *incompatible* if there is determinism at the relevant level – that is, at the psychological or 'agential' level (as List calls it). They are, so to speak, 'psychological libertarians', and accordingly affected by the problem of clear cases. It is hardly credible that there should be essential indeterminism at the psychological level in cases such as

Joe's, and so the same problem as for libertarians arises for Holton and List: they either have to claim that subjects do not make decisions in clear cases or have to insist on a psychological indeterminism where there very likely is none. Like full-blown libertarians, 'psychological libertarians' require too much from a choice.

List's concern, to be sure, is only with *free* choice, which is not my primary topic. But the only feature List relies on in his considerations in List 2014 is that the agent can do otherwise, that more than one course of action is open to him. As this feature – no matter how it is spelled out – follows from the very idea of making a choice, in List's account the predicate 'free' does not in fact do any work. This is also evident from List (manuscript), where he fittingly dubs his position a 'compatibilist libertarianism' and an 'agential-level incompatibilism'. List and Rabinowicz (2014), by contrast, characterize a free choice by the possibility to do otherwise in combination with the intentional endorsement of the option in fact chosen by the agent. It is *not* required that the agent be able to do otherwise *with endorsement*. Thus, according to List and Rabinowicz, acting from one's own free will requires the ability to do otherwise, but not the ability to do otherwise freely. They illustrate their point via reference to decision theory: an agent at a decision node has several options open to him, but a *rational* agent can only choose freely, i.e., with intentional endorsement, those courses of action that maximize his expected utility.

This is fair enough, but then, the question arises again in which sense of ability or possibility a *rational* agent can pursue the other alternatives at all. He can, if a sufficiently liberal sense of ability or possibility is underlying, for example, a conditional analysis. But if his case is like Joe's, he cannot in any demanding sense, be it compatibilist or incompatibilist. If, for example, a simple conditional analysis of 'can' is supplemented by the requirement that the antecedent of the conditional be true in close possible worlds (Peacocke 1999, ch. 7), or by the requirement that the choice not be fixed by prior mental states of the agent, then Joe *cannot* do otherwise. Thus the framework of List and Rabinowicz surely makes room for choices like



Joe's being free (and, of course, genuine choices), but only if 'ability/possibility to do otherwise' is spelled out in a manner that does not require indeterminism at the psychological or agential level.

What reason is there in the first place for being a 'psychological libertarian' but a compatibilist when everything is taken into account? One reason is the claim that choice is superfluous as soon as one arrives at a judgment about what would be best to do (Holton 2009, ch. 3). When, after deliberating, we conclude that it would be best to do *A*, we do not normally make a subsequent choice in favour of *A*, discernible as a separate mental act, but simply go ahead and do *A*. There is, to be sure, the phenomenon of *akrasia* in its many variants, and of course we might also, for whatever reason, reconsider the issue, or there may be external interferences, but the idea would be that there is no *proper* place for choice of action after a practical deliberation has produced a definite result. But when, on the contrary, there is no time to deliberate properly, or if the deliberation does not yield a specific result while the agent has to or wants to make up her mind without further delay, she has to make a choice. It is important that agents have the ability to act on inconclusive reasons, and this, precisely, is the place for choice.

In this way, clear cases are *by definition* excluded from the range of decisions. And that is by no means *ad hoc*: While there may be more or less clear cases, there can be none that are *entirely* clear to the agent, because then there would be nothing to decide for him, after all. Having deliberated, the agent may still be uncertain what would be best to do. Then he has to make a decision. But if there is no longer any subjective uncertainty about the proper course of action the agent just goes ahead and does *A*, barring *akrasia* and external interferences. Joe, then, does *not* make a choice, according to Holton. Having deliberated briefly, he might say to himself: 'There is nothing to choose here. *Of course* I will move in with her.'

This view, however, amounts to an artificially restricted conception of choice. Although one *may* talk like Joe here, it cannot be taken literally. Having deliberated, Joe judges that the

reasons for moving in with his girlfriend are overwhelmingly good and *thereby* makes up his mind about what to do, i.e., makes his decision. It is too restrictive a notion of choice that rules out an agent's being fully confident about his choice, his being certain that he actually takes the best course of action among the ones available. That there is in fact no decision involved may be said with respect to cases where an agent *just* acts, without any deliberation. Joe, however, is confronted with an offer which he has to accept or to reject, so he has to make a choice and, as the case is construed, deliberates on the matter. The aim of deliberation is to choose the best one among alternative possible courses of action, and if it produces a definite result, so much the better. We need not view the choice as a separate mental act, occurring after the agent has finished deliberating, as Holton has it. Rather the choice flows together with the judgment about what the best thing to do is. The agent chooses *in* and *by* reaching that result, which may well be fixed by the agent's prior psychological states.

Thus the problem of clear cases besets all accounts of choice that are libertarian in *some* sense, no matter whether or not they are compatibilist in *another* sense. Clearly I thereby deviate from the standard notions of compatibilism and libertarianism, but it seems to be illuminating to look at things in this way. Another, and final, example would be this: If someone holds that prima-facie decisions can only count as decisions proper when they are humanly unpredictable, her position is incompatibilist with respect to an epistemic variety of determinism. But again, a choice in a clear case may be perfectly predictable by the agent's fellows who know him well enough, or by sensible persons foreseeing the decision of another sensible person, without this, intuitively, distracting from its status *as* a choice, or as a free choice. While it is probably true that, in the course of a practical deliberation, while the agent is still pondering the alternatives, he cannot at the same time already judge a certain course of action to be clearly the one to take, this is by no means excluded as a result. It may well be that the agent's prior mental profile fixes this result (and with it, the decision) and thus it may well be foreseen by other people who

know him well. An ‘epistemic libertarian’ would have to deal with this, facing the same difficulties as the aforementioned varieties of libertarianism.

## **Conclusion**

I have set up what seems to be a serious problem for every account of decision or choice that is libertarian (in an epistemic, psychological, or ontic sense, or whatever other sense there may be in addition). If one is a libertarian about decisions *qua* decisions (and not merely *qua* actions), it is because a choice is between options that one thinks must be construed to be indeterministically open (in whatever sense). These options are usually only vaguely characterized, they are broad types of action. Therefore it does not help libertarian accounts *of choice* to claim that, while it may be fixed in advance which of the options will be chosen, it is at least not settled how the chosen one will be executed. Furthermore, in view of the clear cases it will not do for libertarians to simply refer to arguments in favour of incompatibilism and claim that they show that any decision between alternatives in which a specific option is chosen with (epistemic, psychological, ontic, or whatever they would have here) necessity is not a decision proper. If one acknowledges, for the sake of argument, that it is only a quasi-decision, one may ask what would be wrong with quasi-deciding. Is the debate all about labels? And if in addition it turns out that quasi-decisions even constitute ideal cases of prudent choice, as I have argued, one should not want to deny them the status of the real thing.

The basic error of the libertarian seems to be that he thinks ‘that having the power to  $\varphi$  requires the existence of some objective chance that one will  $\varphi$ ’ (see the above quote from Steward). In choosing or deciding, if it is not illusory, several options are open to the agent, but this does not mean that for each of these options it is possible (in an epistemic, ontic, psychological, or whatever sense) that the agent chooses this one. For her having the option to  $\varphi$ , it must be possible *for her* to  $\varphi$  in the specific situation, but it need not be possible *that she*

$\phi$ s under these circumstances. It need not be possible (in an epistemic, ontic, psychological, or whatever sense) that she actually performs an action that is possible for her (that is in her power) to perform, because it need not be possible (in whatever sense) that she decides in favour of this option. That some course of action is open *to* the agent does not imply that it is also open (in whatever sense) *whether* the agent pursues that course. The importance of the distinction between ‘possible for her to do’ and ‘possible that she does’ has been observed by Nida-Rümelin (2016), Rosenthal (2017, sec. 11.6) and, in a more general context, Vetter (2015, ch. 6). Considerable work has to be done to turn it into a convincing argument for compatibilism – simple conditional analyses face well-known difficulties – but it seems to be basically the right idea to resist libertarianism about choice.

The situation is somewhat different with respect to action. There is more wiggle room for libertarians here. Even if it is (in an epistemic, psychological, ontic, or whatever sense) fixed in advance that an agent will perform an action of a specific kind within an appropriate interval of time – e.g., that after not-too-long a deliberation Joe will happily agree to move in with his girlfriend – it is not altogether clear that this means trouble for libertarian accounts. There are various ways in which Joe can perform this type of action, and it may be open (in whatever sense a libertarian would have here) how he proceeds. That may be enough for a libertarian account of action, but of course the question what would be wrong with ‘quasi-acting’, and why we would rather be agents than ‘quasi-agents’, is hard to answer.

The situation is still different for libertarian accounts of *free* agency or moral responsibility. Although these features are normally viewed as desirable, a libertarian is perhaps not committed to this evaluation. If he conceives of freedom or moral responsibility as features of agency that are demanding and ambivalent at the same time, there is no problem at all with clear cases of choice and action. It can then be granted that a perfectly reasonable (or reliably morally good) creature is not free, nor morally responsible, and neither are ordinary folk in their

true areas of competence where they can be trusted fully. But not many libertarians, I guess, will like to go for this option.

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