

BREAKIN' THE LAW

Michael Nelson

UC Riverside

michael.nelson@ucr.edu

Abstract

Compatibilists maintain that it is possible that there are free acts in deterministic universes, whereas incompatibilists maintain that, necessarily, if determinism is true, then there are no free acts. The most influential incompatibilist argument has been some version of the consequence argument. Some compatibilists are tempted to respond to this argument by claiming that agents who act freely in deterministic universes have the ability to break laws of nature. I argue that this response is an adequate response to the consequence argument, but offers an inadequate defense against the strongest argument for thinking determinism threatens our freedom by robbing us of the control over what we do necessary for acting freely. I articulate such an argument—what I dub the *No Opportunity+* argument—for incompatibilism and show how it is immune to the above described compatibilist strategy.

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The Consequence Argument (CA) is one of the most influential arguments for incompatibilism, the thesis that, necessarily, if determinism is true, then there are no free acts.¹ The intuitive idea behind CA is that the truth of determinism would rob us of the ability to do other than we in fact do, possession of which is alleged to be necessary for acting freely. And this because, if determinism were true, being able to do other than one in fact does would require the incredible ability to effect either the laws of nature or the distant past, as determinism entails that it is impossible for the past and the laws to be as they in fact are and anything other than what in fact occurs to occur. Let '*L*' be the conjunction of all laws of nature, '*p*' a complete description of the intrinsic state of the universe at some point prior to my birth,² and '*q*' a true proposition to the effect that I performed some paradigmatically free act *A*. Then we can more rigorously state the argument as follows.

- (1) If I act freely in *A*-ing at *t*, then at some time prior to *t* (call it *t**) I had the ability to do other than *A* and hence the ability to render *q* false. [*PAP*]
- (2) If determinism is true, then, necessarily, (if *L* and *p*, then *q*). [definition]
- (3) For any time *t* and any propositions *p, q*, if I don't at *t* have the ability to render *p* false and I don't at *t* have the ability to render (if *p*, then *q*) false, then I don't at *t* have the ability to render *q* false. [*transfer principle*]
- (4) I don't at *t** have the ability to render (*L* and *p*) false. [*fixity of laws and past*]
- (5) If determinism is true, then I don't at *t** have the ability to render (if *L* and *p*, then *q*) false. [from (2) and *fixity of necessary truths*]
- (C) If determinism is true, then I do not act freely in *A*-ing at *t*.

There's no question of the validity of the argument. But there are questions of its soundness. In particular, there are questions of the truth of (1), (3), and (4). ((2) and (5) are beyond dispute.)

Although I think that all of these questionable premises are false, my focus here shall be (4).

Following John Martin Fischer [2-4] and David Lewis [11], I shall argue that (4) is false. But, I claim, recognition of this fact leads naturally to an improved incompatibilist argument—what, following Kadri Vihvelin [17], we can call *the No Opportunity argument*—that is immune to the problems that face (4) and is also independent of the transfer principle that supports (3). This argument is thus, I claim, a marked improvement over CA. It still relies upon the false (1), which, I claim, is the main difficulty with this line of argument.³ But developing a compatibilist

response won't be my object here. Here I aim to support the incompatibilist, even if that's not where I place my bets at the end of the shuffle.

First, some general comments about CA. There is an obvious connection between possessing the ability to do other than one does and being able to falsify a proposition. If I in fact A at t , then, if, just prior to t , I had the ability to not A at t , then I had at that time the ability to render false the proposition that I A at t . This is because my not A-ing at t suffices for the falsity of that proposition and hence my possessing the ability to not A entails my possessing the ability to render false the proposition that I A at t . Intuitively, the notion of being able to render a proposition false is serving the purpose of describing what is within an agent's power.

The idea behind thinking that possessing an ability to do otherwise is necessary for acting freely can be put thus. Acting freely involves being in control of what one does. What one does freely doesn't just happen. Rather, one makes it happen and is the ultimate source of its occurrence. But if this is so, then one should be free to do other than one in fact does. If it is truly up to me what I do, then it seems natural to insist that I could have brought about something else in its place. It seems that my being unable to keep something from happening is sufficient for its having just happened beyond my control. (Although intuitively appealing, I think that this line of reasoning is faulty, but shall not take the matter up here.)

Note that there is no arguing whether or not determinism is incompatible with the ability to do other than one does *holding fixed the past and the laws*. This falls directly out of the definition of the thesis of determinism, which states that every true proposition concerning the state of the universe is entailed by the conjunction of p and L . So, any world in which the past and the deterministic laws are exactly as they in fact are is a universe in which exactly the same events occur; there is no possibility in which the laws and past are just as they in fact are and I do other than I in fact do. Yet it would be wrong to conclude from this observation that the truth of determinism thus entails that no one has the ability to do other than she in fact does. Thinking such an entailment immediate is to conflate determinism with the thesis of necessitarianism, which is the thesis that every truth is necessarily true and every falsehood necessarily false.

Determinism is compatible with there being possible worlds in which I, say, stand up right now and walk up the stairs for some more tea and other possible worlds in which I stay seated at my computer and type some more instead. What determinism requires is that these worlds either contain some difference of past events leading up to the point of my standing up and walking up the stairs or not have the same laws of nature. The incompatibilist must argue, and not merely assume, that the sort of ability necessary for freedom is an ability to do otherwise holding fixed the laws and the past. And, I think, it is precisely here that CA fails.

We aim to challenge premise (4). This will allow us to claim, given that agents in deterministic universes possess the ability to render false the conjunction (L and p), deterministic agents have the ability to do other than they in fact do. I shall assume that if an agent has the ability to render false one conjunct of a conjunction, then she has the ability to render false that conjunction. With this assumption in place, there are two ways of challenging (4). According to the first, deterministic agents with the ability to do other than they in fact do possess the ability to render false L ; according to the second, such agents have the ability to render false p .⁴ I shall focus on the first, as it fits more naturally with the best available theory of counterfactuals—namely, the possible worlds semantics developed by David Lewis [10].

In a characteristically brilliant yet frustrating paper [11], Lewis distinguishes two senses in which an agent has the ability to affect the laws. He argues, in effect, that CA turns on conflating these two senses. One of these sense—the strong sense—is indeed incredible, but it is the other sense—the weak sense—that compatibilism requires, on Lewis's view. An agent has the ability to break a law in the strong sense just in case she has the ability to do something that is or causes something contrary to actual natural law. Lewis agrees that no one has this kind of ability to break a law and so, under this sense, premise (4) is true. But then premise (1) is false, as acting freely only requires the ability to do something such that were one to do it the relevant proposition would have been false. (Or so one might argue.) An agent has the ability to break a law in the weak sense, on the other hand, just in case she has the ability to do something such that, were she to do it, a law (or laws) would be different, in the sense that what is in fact a law

would not have been a law. This, Lewis claims, is just the ability to perform or refrain from performing some ordinary action like raising one's hand. And that, claims Lewis, is an ability that some agents possess even in deterministic universes. So, if it is the weak sense that is operative in the argument, (4) is false. Either way, there is no single sense of being able to render something false on which all of the premise of CA are true. Following John Fischer [4], I shall call this *Local Miracle Compatibilism* (LMC).

A proponent of LMC is committed to the claim that free agents in deterministic universes have the ability to break the laws of nature in the weak sense but that, leaving to the side the relationship between divine agency, if such there be, and laws of nature, no agent has the ability to break the laws of nature in the strong sense. Helen Beebe [1] argues against LMC on the grounds that it cannot “provide us with any reason to suppose that it is *impossible* for agents at deterministic worlds to break the laws of nature” (*ibid.*, p. 268). She argues that, if true, this is problematic as “if it cannot rule out such a possibility, then it is committed to the claim that it is merely a contingent matter whether or not agents are able to perform law-breaking acts,” whereas such a ban is not a mere contingent claim “about how our world happens to be, but a conceptual claim about the nature of laws” (*ibid.*, p. 268).

We should admit that it is a noncontingent conceptual truth that agents are not able to perform law-breaking acts in the sense that they cannot perform an act that is itself or causes a law to be broken. Beebe is right about this. But she is wrong, I claim, that a proponent of LMC cannot offer a reason for this. Indeed, she just gave us all a reason for this! It is a conceptual truth. In defense of her claim, Beebe imagines herself at a real estate auction where someone else has bid above the price she had previously decided would be her highest bid. Very much wanting the house, she deliberates and decides to stick with her original conviction and does not raise her hand to become the highest bidder. She claims that a proponent of LMC is likely to think that this is a free act, at least if we suppose that nothing “funny” is going on in the background, and hence that, as she deliberates, she was able to make it so that she raises her hand. Had she raised her hand, a divergence miracle would have occurred. A proponent of LMC is committed to the

claim that this divergence miracle was neither identical to nor caused by any possible act of Beebee's. And this is what Beebee challenges. She asks why the divergence miracle cannot be her *deciding* to raise her hand. In general, and all other things being equal, a world in which the divergence miracle occurs closer to the time of the event in question rather than earlier will be more similar, as it will involve less divergence of past fact. But, of course, this can be overridden if the later divergence miracle is "too large" a miracle. So, it would seem, all other things being equal, having the divergence miracle be her deciding to raise her hand results in a world more similar to the actual world in which she doesn't raise her hand than a world in which the divergence miracle occurs earlier. But, of course, if her decision to raise her hand is a divergence miracle, then, pace LMC, finite beings do have it within their powers to do something that is or causes a law-breaking event.

I don't think that this is a compelling argument against LMC. And that is because all other things are not equal. To repeat, Beebee herself has given a reason—a reason fully available to a proponent of LMC—for why the divergence miracle is not her decision itself when she tells us that it is a conceptual truth regarding the relationship between finite beings and laws of nature that no of us can perform law-breaking acts. A world in which the divergence miracle is her decision, or indeed any other act on her part, is a world much less similar than a world in which some earlier event outside the agent's control constitutes the divergence miracle as the former kind of world violates the conceptual truth Beebee reports. For such a world requires violating a conceptual truth about finite beings and their relation to laws of nature; it requires too big of a miracle.

We can see this more clearly by considering a case similar to one that Beebee herself uses to illustrate the difference between small and big miracles. Suppose I am sitting in my house and that there is a bar 2 miles from my house. I could have been in the bar right now. Consider now which of the following two worlds is more similar to the actual world. In the first world everything is just as they are in the actual world up until 1 millisecond from now, at which time I disappear from my house and reappear at the bar a millisecond later. In the second world

everything is just as they are in the actual world up until 10 minutes from now, at which time I walk out of my house, get in my car, and drive to the bar. It is obvious that the second world is more similar to the actual world than the first. And this because my travel through space 10 miles in a millisecond constitutes a larger departure from actuality as it involves a big violation of law. Similarly, the world in which Beebee's decision to raise her hand (given that in fact she doesn't) is a law-breaking event constitutes a larger departure from actuality as it involves a violation of a conceptual truth. I conclude that Beebee has not succeeded in refuting LMC. A proponent of LMC is right to insist that ordinary agents can break laws of nature in the weak but not strong sense.

LMC constitutes a sound refutation of CA. But I don't think we should find LMC satisfying. Let me build up to this by first talking about the nature of abilities. Suppose that I have the ability to turn a cartwheel. What does this ability consist in? Well, it's plausible that it at least involves the following: If I were to try to turn a cartwheel *in the right conditions*, then I would likely succeed. So, having this ability does not entail that I am likely to succeed in turning a cartwheel when I try with broken arms or with 200lbs weights strapped on my ankles or neck high in quick sand. In these circumstances, I am not at all likely to turn a cartwheel when I try; but, and here's the important point, even when I am in these unfortunate circumstances, I still have the ability to turn a cartwheel. (That is, I have the ability [to turn a cartwheel] even when I am neck high in quick sand, not that I have the ability [to turn a cartwheel even when I am neck high in quick sand], which I don't have.) One's abilities do not disappear when one is not in the right kind of circumstances for successful exercise of them. Abilities are similar to dispositions in that they have what we can call *actualizing* conditions. Actualizing conditions are something like the conditions necessary for the exercise of a given ability to be successful. If actualizing conditions are absent, then possession of an ability to do such and such need not imply success is likely. Not being neck high in quick sand is an actualizing condition for my exercising my ability to turn a cartwheel.

Lewis shows us that it is wrong-headed to think that determinism robs of us our ability to do otherwise, just as it would be wrong-headed to think that being neck high in quick sand robs me of my ability to turn a cartwheel. But what is less clear is that merely establishing that a weak-ability to do otherwise, which I have admitted LMC has shown is compatible with determinism, is all the more ability to do otherwise that is needed to capture our intuition that in acting freely one *makes* something happen as opposed to merely being caught up in the causal flow of the universe. It seems very intuitive that the kind of ability to do otherwise relevant to freedom is the ability to *bring something about of one's own powers* and, at least one can argue, this requires its being within one's powers to bring something else about holding the past and the laws fixed. If that's so, there's no denying incompatibilism. I shall now turn to an argument, inspired by Kadri Vihvelin's [17] excellent discussion of just such a thesis.

Vihvelin distinguishes abilities from opportunities, which corresponds to the above discussion about abilities and their actualizing conditions. Vihvelin agrees with LMC that determinism does not undermine abilities. But Vihvelin claims that this is a shallow victory for the compatibilist because the incompatibilist should simply recast her argument in terms of opportunities, arguing that determinism, although not robbing us the *ability* to do other than we in fact do, does rob us of the opportunity, which can be argued to be necessary for freedom. To act freely, the incompatibilist insists, there must be nothing outside one's causal control preventing one from exercising one's abilities to do otherwise. One's ability to do other than one does is not sufficient for controlling what one does if there are factors outside one's causal control that prevent her from being able to successfully exercise that ability. Vihvelin thinks that the following principle captures this intuition. (My formulation slightly changes, and I hope improves, Vihvelin's; see *ibid.*, p. 146.)

Agent Causation Assumption (ACA): A person acts freely in X-ing only if she has the opportunity as well as the ability to do otherwise; that is, only if it is true both that she has the ability to do something other than X and also true *that if she had tried and succeeded in doing otherwise, everything except her choice, action, and the causal consequences of her choice and action would or at least might have been just the same.*

Vihvelin thinks that this principle gives voice to the following intuition: “Someone has the opportunity to exercise her ability to do X just in case there is no impediment to her doing X. If there is no impediment to her doing X, then *nothing would have to be different* in order for it to be true that her attempt to do X succeeds—except of course, her choice, action, and the causal consequences of her choice and action” (*ibid.*, p. 146).

I have the ability to turn a cartwheel. But poor me, I’m up to my neck in quick sand. Given my circumstances, I can’t turn a cartwheel, despite my possessing (even while I’m in the quick sand) the ability to turn a cartwheel. For me to successfully exercise the ability I possess, things outside my causal control (at the time, at least) would have to be different. I’d at least have to be out of the quick sand. Similarly, even if determinism doesn’t rob us of our abilities to do otherwise, as LMC establishes, it still may threaten our freedom by robbing us of opportunities, just like the quick sand robs me of the opportunity to exercise my ability to turn a cartwheel. Determinism may make us hapless bystanders to our action, even while leaving intact our abilities to do otherwise, precisely because it robs us of the opportunities to exercise the abilities we have. LMC leaves this worry untouched.

Consider the following “No opportunity argument” (“No-Op” for short), a simplification of the argument from p. 147 of *ibid.*

- (1) I act freely in A-ing only if I had the ability and opportunity to not A.
- (2) If I have the ability to not A, then I also have the opportunity to do not A only if, had I tried and succeeded in not A-ing, everything except my choice, action, and the causal consequences of my choice and action would or at least might have been just the same as they actually are.
- (3) If I had not A-ed, neither my choice nor action would have caused the past (prior to my decision) to be different than it actually is.
- (4) If determinism is true, then, if I had not A-ed, the past prior to my choice would have been different than it actually is.
- (5) Therefore, if determinism is true, if I have the ability to not A, I lack the opportunity to not A.
- (C) Therefore, if determinism is true, I do not act freely in A-ing.

Vihvelin claims, and I agree, that this represents a marked improvement over CA and helps bring to light why so few find LMC satisfying. The kind of ability to do otherwise it grants us does not seem to generate sufficient control over what we do necessary for our acting freely.⁵

Vihvelin goes on to argue against her own No-Op. She argues that premise (4) is false because it relies upon a faulty view of counterfactuals. The moves she makes are very reminiscent of Lewis's moves in responding to CA: Namely, she claims that in evaluating counterfactuals we countenance divergence miracles, leaving the past largely in tact. So, on Lewis's theory of counterfactuals, the backtracking conditional 'Had such and such occurred, then the past would have been different' is typically false, whereas the contra-law conditional 'Had such and such occurred, then a local violation of actual law would have occurred' is true.

But I think Vihvelin makes things unduly easy for the compatibilist. Consider the following argument—call it *No-Op+*—which is just like Vihvelin's No-Op but with the following replacements for (3) and (4).

- (3') If I had not A-ed, neither my choice nor action would have caused the past (prior to my decision) nor the laws to be different than they actually are.
- (4') If determinism is true, then, had I not A-ed, either the past prior to my choice or the laws would have been different than they actually are.

No-Op+, it seems to me, has just as much plausibility as Vihvelin's No-Op. Indeed, the stronger (3') seems even more in keeping with the motivation behind ACA than Vihvelin's own weaker (3). Everyone, including Lewis, admits that it is incredible to claim that anyone has the ability to do something that is or causes a law breaking or that is or causes the past to be different.⁶ But then ACA would seem to not only council holding the past fixed, as Vihvelin's (3) asserts, but also the laws, as (3') asserts. After all, it isn't just the past that is outside one's current causal control and, remember, Vihvelin's ACA tells us that we need to hold fixed *everything outside the agent's current causal control* in evaluating the relevant agency counterfactuals.

Vihvelin's objection to (4) doesn't carry over to (4'). (4'), unlike (4), does not rest upon the (arguably) mistaken idea that in evaluating counterfactuals we vary past facts, countenancing the truth of backtrackers. Indeed, (4') seems impeccable, as it falls immediately out of the definition

of determinism as the thesis that any world that exactly overlaps the actual world at any point of time and has the same laws as the actual laws overlaps the actual world at every point of time. But then Vihvelin's compatibilist response to No-Op is unsuccessful against No-Op+. Her own ACA principle counsels holding fixed not just the past but also the laws in evaluating the relevant agency counterfactuals. But if we hold both fixed, there's really no debate about whether or not determinism entails that those counterfactuals are false, as determinism (definitionally!) entails that there are no worlds just like the actual worlds in both past and history that diverge in the future.

I claim that the only premise of No-Op+ up for dispute is (1). The argument is independent of how counterfactuals are evaluated. Everyone should agree that finite beings do not have it within their powers to cause the past or the laws to be different than they actually are. So, the worries proponents of LMC, and Vihvelin following their lead, raise do not cut against No-Op+. I claim that the compatibilist only hope is to deny (1). The transfer principle and the fixity of the laws and the past are, I claim, not where the action is. Whether or not the compatibilist has hope in denying (1) is a topic for another day.

NOTES

¹ CA has been developed independently by Ginet [6-8], Lamb [9], van Inwagen [14-16], and Wiggins [18].

² What we are trying to exclude with the qualification to the universe's intrinsic state at a time is future-tensed statements to the effect that, for example, I will A. If we allow the description of the universe to contain information about future states, then the thesis of determinism is significantly weakened. (Some claim that the thesis is then trivialized, which is incorrect as some views entail that some future tensed truths are indeterminate, which is incompatible with future-tensed statements being determinately true.)

³ Harry Frankfurt [5] has argued that an agent can be morally responsible for an act even though that act was unavoidable. The literature on Frankfurt's argument is, of course, mountainous and I shall not here engage with it but to say that I find Frankfurt's argument extremely compelling and equally compelling in showing that acting freely, in any sense worth caring about, also does not require the ability to do otherwise. There is another line of incompatibilist argument that is independent of (1)—the so-called ultimate source argument and arguments for analogy, developed most effectively by Derk Pereboom [12]. See also Eleonore Stump [13]. I shall here not be concerned with this argument.

⁴ John Martin Fischer [2-3] independently developed a similar response to Lewis, as well as a version of the second variety in which it is claimed that free agents in deterministic universes have the power to affect the past in one sense but not in another. Fischer has since apparently altered his view of the successfulness of these responses—see [4]. Fischer's reasons for abandoning his earlier view, however, are unsatisfying. He claims that both responses lead to a dialectic stalemate. However, he doesn't develop the dialectic very far, it seems to me. Indeed, as I shall attempt to show, matters are quite different: The response is adequate with regard to CA, even if inadequate with regard to the best development of the incompatibilist intuition.

⁵ There is one important thing to note about this argument. Unlike the CA, which evidently relies upon the transfer principle, No-Op (and the improved version No-Op+ considered below) is independent of that principle. At no point do they turn on distributing any power operator across a material conditional. They thus seem to not warrant the title *consequence argument*. Furthermore, it vindicates John Fischer's claim, in [4] against van Inwagen, that not every argument for incompatibilism relies upon the transfer principle.

⁶ If time travel into the past is possible, then, it is possible to do something that affects the past, as it is possible for me to travel the past and hence causally affect the past. (It is, of course, an entirely different issue whether or not I am therefore able to *change* the past, making it other than it actually is.) But we should set aside cases of time travel as irrelevant to the discussion at hand. Even if it is possible to causally affect the past as a time traveler, this is clearly of little help to the compatibilist who would like to argue that ordinary, non-time traveling agents can act freely.

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