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INCOMMENSURABLE GOODS, ALTERNATIVE POSSIBILITIES, AND THE SELF-REFUTATION OF THE SELF-REFUTATION OF DETERMINISM

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In his paper, “Free Choice, Incommensurable Goods and the Self-Refutation of Determinism,”¹ Joseph Boyle seeks to show how the argument for the self-refutation of determinism—first articulated over twenty-five years ago²—is an argument whose force depends on (first) a proper understanding of just what free choice is, and (secondly) a proper understanding of how free choice is a principle of moral responsibility. According to Boyle, a person can make a genuinely free choice only if he is presented with alternative options that are incommensurable in their goodness or desirability. If the goodness or desirability of alternative options could be commensurated, or compared in accordance with some common standard, then it would be possible in principle for a person to determine which of the two options offered more, and which offered less, of the same sort of good represented by the two options. But if this sort of commensuration or comparison were possible, according to Boyle, then there would really be no need to choose. Rather, the only task that would have to be performed in order to determine the person’s selection among alternative options would be the task clarifying or calculating which of the alternative options offered most fully what it is that makes both options desirable in the first place. Once the clarification or calculation is done, there would be no need—and in fact, no possibility—of really *choosing*: the calculation alone would settle which option is the best option, and thus which option is to be selected.

Now if genuinely free choice requires that the choosing person be presented with options that are incommensurable in goodness or desirability, then it also seems to be the case that genuine choice—and the moral responsibility that goes along with it—requires that the person be presented with *alternative possibilities* from which to choose. And yet some compatibilist thinkers have held that moral responsibility does not really require the presence of alternative possibilities. In particular, Harry G. Frankfurt has sought to show (by means of counter-example) that a person can be a moral agent and morally responsible, even if the person did not, in fact, have any alternative possibilities available to him (that is, even if the person could not have done

1. *American Journal of Jurisprudence* 50 (2005) 139-63.

2. See, for example, Joseph M. Boyle, Jr., Germain Grisez, and Olaf Tollefsen, *Free Choice: A Self-Referential Argument* (Notre Dame and London: University of Notre Dame Press, 1976).

otherwise). Frankfurt's counter-example offers a direct challenge to the sort of incompatibilism that Boyle seeks to defend; and so Boyle is quite right to address Frankfurt head-on. For if Frankfurt is right, then it is erroneous to hold "the principle of alternative possibilities" (the principle that a person can be morally responsible for what he has done, only if he had alternative possibilities, or only if he could have done otherwise). But if it is erroneous to hold the principle of alternative possibilities, then it also seems erroneous to hold the more robust position that Boyle wishes to defend: namely, the position that moral responsibility requires not only alternative possibilities, but also alternative possibilities representing options that are incommensurable in their goodness.

Boyle addresses Frankfurt's counter-example by making two observations. First, Boyle observes that some actions can involve moral agency and moral responsibility *derivatively*. For example, a person can be morally responsible for an action—even in cases where there are no alternative possibilities presently available to the person—provided that this present lack of alternative possibilities is itself the result of the person's prior choosing. Thus a person can be morally responsible for avoiding a particular temptation—even if that temptation does not presently emerge or is not presently felt by that person—if the very non-emergence of that temptation is the result of some prior free choice made by the person himself. While certainly true, this observation about derivative moral responsibility does not really address the Frankfurtian challenge—and Frankfurt would be quite prepared to acknowledge the sort of derivative moral responsibility to which Boyle draws our attention. What Frankfurt's counter-example aims to show is that one can be responsible not only in the *derivative* manner that Boyle highlights, but also in cases where there is no such derivative moral agency, i.e., in cases where the absence of present alternative possibilities can *not* be traced back to previous choices made by the person himself. This should be clear from Frankfurt's own articulation of the counter-example:

Suppose someone—Black, let us say—wants Jones to perform a certain action. Black is prepared to go to considerable lengths to get his way, but he prefers to avoid showing his hand unnecessarily. So he waits until Jones is about to make up his mind ... and he does nothing unless it is clear to him ... that Jones is going to do something *other* than what he [Black] wants him to do. If it does become clear that Jones is going to decide to do something else, Black takes effective steps to ensure that Jones ... does do what he [Black] wants him to do.³

3. Harry G. Frankfurt, "Alternate Possibilities and Moral Responsibility," in Gary Watson, *Free Will*, 2d ed. (Oxford: Oxford University Press, 2003), 172.

Black might exercise control over Jones in any number of ways—e.g., by observing and, if necessary, manipulating Jones’s brain activities—but the point of the counter-example is that Jones *cannot do otherwise* if Black does not allow him to do so. And yet if Jones decides *on his own* to do as Black wants him to do (that is, if Jones decides to do something without any intervention by Black), then Jones is genuinely responsible for what he did. Accordingly, Frankfurt concludes that the principle of alternative possibilities is false; in other words, he concludes that it is possible for a person to be a moral agent and morally responsible for an action, even if he did not have any alternative possibilities and could not have done otherwise.

In his second observation about Frankfurt’s counter-example, Boyle observes that what is crucial to our correct ascription of moral agency and moral responsibility to a person is not so much the availability of *actual* alternative possibilities, but rather the person’s *belief* that there are alternative possibilities. As part of this observation, Boyle makes a two-fold assertion:

- (a) a person’s belief that he has alternative possibilities is a *necessary* condition of that person’s being able to exercise moral agency and bear moral responsibility: “If the agent knew that the option not allowed by the controller was not available, then he could not choose it, or choose to try for it. One cannot choose to do what one believes impossible. Now if that is the only option allowed by the controller, the agent will presumably go for the allowed option, but for the agent it is no longer an *option*, so here there are no conflicting motivations, no selecting and no choice....”; and
- (b) a person’s belief that he has alternative possibilities is also a *sufficient* condition of that person’s being able to exercise moral agency and bear moral responsibility: “if the agent believes that the option not allowed by the controller is available, then he can make a free choice with respect to it....”

Now Boyle seems to hold that the combination of (a) and (b) will allow him to rebut Frankfurt’s counter-example:

... I think to be plausible the counter-example requires that the agent believe that the option not allowed by the controller is available. Without that belief there is no choice but just a desire and perhaps a wish, but nothing that might lead us to think the effective desire was a source of moral responsibility. In short, once its unavailability comes to light, there is no choice and no obvious responsibility. But if the agent believes the option not allowed by the controller is available, then he can make a free choice with respect to it.⁴

4. Boyle, *supra* note 1, at 149-50.

But it is precisely here that Boyle begs the question against Frankfurt. For Boyle's appeal to (b) can help him to rebut Frankfurt, only if the notion of "free choice" that is operative in (b) is taken to imply the existence of alternative possibilities—and it is precisely this notion of free choice and moral agency that Frankfurt seeks to undermine with his counter-example.

To see just how Boyle begs the question against Frankfurt, let us consider the following passage from Boyle:

Ordinarily, one discovers that a belief in the existence of an option is a mistake.... When one chooses such an option, plainly one is responsible for choosing it; only the discovery that one cannot do it stops it from being an ordinary choice and action. But if one did choose it from among options one thought were available, one is so far forth fully responsible for what one did, even if that was only vainly trying to do what one discovers impossible. So, one can exercise agency among options one believes, even mistakenly, to be open.⁵

Notice that Frankfurt would fully endorse Boyle's concluding sentence here: Frankfurt—like Boyle—would hold that (c) a person can exercise moral agency and be morally responsible, even if that person wrongly believes that there are alternative options open to him. But there is a crucial difference between Boyle and Frankfurt on this point. Boyle holds (c) only because he also holds that the person's very belief in the existence of alternative possibilities—false though it may be—entails that there are alternative possibilities *for that person*, or *in that person's mind*. If such alternative possibilities did not exist *for that person*, then—for Boyle—there could be no moral agency and no moral responsibility.

In his articulation of the problem, Boyle reveals an unexamined presupposition which serves as a crucial premise in his response to Frankfurt; this is Boyle's presupposition that the correct attribution of moral responsibility to a person requires that the person choose from among (real or imagined) alternative possibilities: "Now if that is the only option allowed by the controller, the agent will presumably go for the allowed option, but for the agent it is no longer an option, so here there are no conflicting motivations, no selecting and no choice." But by presupposing that the correct attribution of moral responsibility to a person requires alternative possibilities (whether they exist in reality or only in the person's mind), Boyle begs the question against Frankfurt. For it is precisely this requirement of alternative possibilities (whether real or imagined) that Frankfurt wishes to dispute. In other words, Frankfurt—like Boyle—accepts (c), but his acceptance of (c) is not allied to the disputed premise that one can correctly attribute moral responsibility to a person only if there exist (either in the person's mind or in reality) alternative

5. *Ibid.*, 150.

possibilities (indeed, this is the very premise that Frankfurt seeks to challenge with his counter-example).⁶

Now to say—as I have—that Boyle begs the question against Frankfurt is not to say that Frankfurt’s counter-example cannot be successfully challenged. Indeed, I believe that Frankfurt’s counter-example has been successfully challenged, but on grounds quite different from those offered by Boyle. Relying on what has been called “the indeterministic world objection,” Robert Kane⁷ has compellingly argued that Frankfurt’s counter-example does not, on its own, refute the principle of alternative possibilities. According to “the indeterministic world objection,” Frankfurt’s counter-example can succeed against the principle of alternative possibilities, only if one first assumes the truth of determinism (only if one first assumes that the world within which we humans live and act is not an indeterministic world). We can see why this is so, if we return to the earlier example of Black and Jones.

In an indeterministic world, Black has a problem that Frankfurt does not properly consider: the problem is that Jones’s choice will remain undetermined (and thus unknowable to Black) right up to the moment when Jones actually makes his choice. If Black waits until Jones actually makes his choice, then it will be too late for Black to intervene. In that case, Jones will be responsible for his choice, since Black did not intervene; but by the same token, Jones will have made his choice by selecting from among alternative possibilities (for Black did not intervene and Jones’s choice remained undetermined right up to the moment of his making the choice). If, instead, Black chooses to intervene so as to ensure that Jones will choose his (Black’s) preferred option, then Black will have to act *in advance* of Jones’s actual

6. In his footnote 12, Boyle suggests that I misunderstand his response to Frankfurt since—in (a), for example—I attribute to him a claim about the necessary conditions of moral agency and moral responsibility, but then cite to a passage about the necessary conditions of free choice. But notice the ellipses in my citations in both (a) and (b). These citations are not meant to provide complete evidence for my attribution of propositions (a) and (b) to Boyle, but only to point the reader in the direction of the relevant cluster of claims that Boyle makes. The attentive reader will see that Boyle does indeed assert both (a) and (b) as premises in his argument against Frankfurt. And to the extent that Boyle asserts (a) as a premise in his argument against Frankfurt, he begs the question against Frankfurt, for (a) is the very premise that Frankfurt’s counter-example calls into question. Of course, Boyle’s “dialectical” approach which focuses on *sufficient* conditions for free choice and moral responsibility may help to illuminate certain aspects of free choice and moral responsibility. But no account of what is *sufficient* for free choice and moral responsibility can by itself yield the conclusion that the having of (real or imagined) alternative possibilities is a *necessary* condition of free choice and moral responsibility. And it is precisely this conclusion (about *necessary* conditions) that Boyle must argue for, if he is to respond to Frankfurt without begging the question.

7. Robert Kane, *A Contemporary Introduction to Free Will* (New York and Oxford: Oxford University Press, 2005), 87-88; and Robert Kane, *Free Will and Values* (Albany, N.Y.: SUNY Press, 1985), 51.

choosing (for in an indeterministic world, Jones's choice remains undetermined and thus unknowable to Black, right up until the moment of Jones's choosing). Now if Black intervenes in this way in order to ensure that Jones chooses Black's preferred option, it will certainly be true that Jones had no alternative possibilities open to him; but it will also be true that Jones is not morally responsible for the action thus brought about. In short, Frankfurt's counter-example can refute the principle of alternative possibilities, only if one also accepts the truth of determinism. Thus an indeterminist, incompatibilist thinker like Boyle can continue to accept the principle of alternative possibilities without the least worry over whether the principle is directly refuted by Frankfurt's counter-example.⁸

If I am correct, the preceding observations show not only why Boyle's argument against Frankfurt is question-begging, but also why Frankfurt's refutation of the principle of alternative possibilities (if unsupplemented by a separate argument for determinism) is itself unsuccessful. But furthermore, I believe that the preceding observations might also reveal why Boyle's attempted argument for the self-refutation of determinism is question-begging as well, and indeed question-begging precisely for reasons presented in Boyle's own account. Recall that, on Boyle's account, (a) a person's belief that he has alternative possibilities is a *necessary* condition of that person's being able to exercise moral agency and bear moral responsibility. But if Boyle is correct about this, then moral agency and moral responsibility cannot be correctly attributed to a person who undertakes certain actions with the genuine belief that he has no alternative possibilities regarding those actions. But the determinist genuinely believes that he has no alternative possibilities when it comes to his belief in determinism. And so on his own account, Boyle is wrong to hold that a moral norm is inescapably involved in the determinist's belief in determinism. For given premise (a) in Boyle's own account, the determinist is unable to exercise moral agency and bear moral responsibility with respect to his belief in determinism, just so long as the determinist genuinely believes that he has no alternative possibilities when it comes to his belief in determinism. So if there really are any determinists in the world (people who genuinely believe that they have no choice but to believe in deter-

8. In his footnote 10, Boyle suggests that (i) Frankfurt's original article on "Alternate Possibilities," and (ii) the "lucky guesser" counter-example, provide sufficient rejoinders to "the indeterministic world objection" [IWO] to which I refer. But it is generally recognized—now even by Frankfurt himself—that neither Frankfurt's original article nor "lucky guesser" scenarios provide adequate responses to the IWO. Just consider: if the "lucky guesser" scenario is to serve as an adequate counter-example to the IWO, then the lucky guesser would have to be much more than a lucky guesser; he would have to be an infallible Newcomb-type predictor. And recent attempts to construct better Frankfurtian counter-examples by introducing Newcomb-type predictors into indeterministic worlds have been highly problematic indeed.

minism), then they must be—on Boyle’s own account—unable to exercise moral agency and bear moral responsibility when it comes to their belief in determinism. Thus Boyle’s latest elaboration—contrary to its own stated purpose—may well have demonstrated why any *self*-refutation of determinism is actually impossible.⁹

9. In his footnote 16, Boyle claims that my response to the argument for the self-refutation of determinism [ASRD] proceeds “on the assumption that it [the ASRD] requires that those who affirm that no one can make a free choice [NFC] are so far forth engaged in human agency that involves free choice.” But this claim is false. Boyle rightly observes that the ASRD does not depend on the proposition that: “those who affirm that no one can make a free choice [NFC] make a free choice in affirming this position.” But I do not attribute that proposition to him—nor do I need to do so. The crucial proposition that I attribute to Boyle is this: “if the determinist believes that he has no alternative possibilities when it comes to his belief in determinism, *then*—because belief in alternative options is a necessary condition for the exercise of free choice and moral responsibility—the determinist is unable to exercise free choice and moral responsibility when it comes to his belief in determinism.” But if the determinist is unable to exercise free choice and moral responsibility when it comes to his belief in determinism, then—on Boyle’s own account—there is no norm in force by which the determinist can rationally or justifiably affirm NFC (or rationally believe in determinism). This is because on Boyle’s account (see, for example, *Free Choice: A Self-Referential Argument*, 163) there is in force a norm by which NFC can be rationally affirmed, only if the person to whom the norm is addressed (in this case, the determinist) can make a free choice. But—once again, on Boyle’s account—if there is no norm in force by which the determinist can rationally affirm NFC, then the determinist’s affirmation of NFC is not rational (or not justified as a matter of reasoned argument). This is because, on Boyle’s own account, the affirmation of NFC (or the belief in determinism) is rational or rationally justified, only if there is in force a norm by which determinism can be rationally affirmed. So for Boyle, if the determinist believes that he has no alternative possibilities when it comes to his belief in determinism, then he is unable to exercise free choice and moral responsibility when it comes to his belief in determinism, in which case his belief in determinism is not responsive to the required (freedom-presupposing) rationality norm, and so is not a rational or justified belief or affirmation. For Boyle, it is the determinist’s very having of the belief that he has no choice but to believe in determinism, that entails that the determinist’s belief in determinism is not rational or justified. The problem with Boyle’s ASRD, then, is not that it rests on the proposition that Boyle says that I attribute to him. The problem with the ASRD is that it presupposes what the determinist will not—and cannot—concede, namely that the determinist’s belief is not rational or justified (i.e., it is not based on any rational affirmation), just so long as the determinist really does believe in determinism (i.e., really does believe that he has no choice but to believe in determinism). And so for reasons that Boyle himself gives, the attempted self-refutation can never be a *self*-refutation of determinism, but only a refutation of determinism from the point of view of those who already believe that determinism is false. This also explains the sense in which Boyle holds that a moral norm is “inescapably involved” in the determinist’s belief in determinism—not because the determinist’s belief actually is rational or justified (or based on an affirmation responsive to a moral norm), but rather because the determinist presents his belief as rational or justified, and (for Boyle) this very claim to rationality or justification necessarily involves or implicates (or is inescapably subject to assessment on the basis of) a freedom-presupposing (moral) norm about rational affirmation or justification.

