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## On Contextual Alternatives

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ABSTRACT

One of the main challenges faced by Frankfurt-style Cases has been elaborated by Carlos Moya. According to this argument, seemingly insignificant alternatives can become significant and exempting due to the context in which agents find themselves. Given that Frankfurt-style Cases involve extreme situations, seemingly insignificant alternatives become robust, rendering Frankfurt Cases ineffective against the Principle of Alternative Possibilities. This paper provides an overview of the contextual alternatives and Frankfurt Cases debate, presents Moya's strategy, and ultimately advances an argument to cast doubt on the effectiveness of Moya's attack on Frankfurt Cases.

KEYWORDS: *Contextual Alternatives, Frankfurt Cases, Alternate Possibilities, Carlos Moya, Tax Evasion.*

RESUMEN

Uno de los obstáculos más difíciles que enfrentan los contraejemplos tipo Frankfurt es un argumento presentado por Carlos Moya, según el cual una alternativa aparentemente insignificante se vuelve robusta dependiendo del contexto en el que se encuentre el agente. Al tratarse los casos tipo Frankfurt de situaciones tan extremas, alternativas aparentemente insignificantes se convierten en robustas y eximentes, desarticulando el ataque que los contraejemplos mismos pretenden hacer al Principio de Posibilidades Alternativas. En este artículo presento el contexto de este debate, para luego enfocarme en la estrategia de Moya y ofrecer, al final, un argumento que pretende sembrar un halo de duda acerca de su efectividad y solidez.

PALABRAS CLAVE: *alternativas contextuales, casos tipo Frankfurt, posibilidades alternativas, Carlos Moya, evasión de impuestos.*

Sometimes in philosophy, great contributions to important debates don't receive the attention and recognition they deserve. In this paper, I wish to address one such contribution. Much has been debated and written about the famous Frankfurt Style Cases, first presented by Harry Frankfurt in 1969. For over fifty years, the counterexamples presented by Frankfurt have been attacked and criticized, defended, reformulated,

and attacked again. Many strategies have been designed, either to prove them inadequate or to defend their validity, and the counterexamples themselves have flourished and branched into a vast array of types, depending on their structure [see Widerker and McKenna (2006); McKenna and Pereboom (2016)]. In the middle of this storm, Carlos Moya presented an argument intended to show that Frankfurt Cases are doomed to fail. The argument is ingenious and solid. In my opinion, it is one of the main obstacles every defender of Frankfurt Style Cases must face. Alas, it has not received the attention it deserves. To be clear, it has not gone unnoticed. The argument is directed against a specific Frankfurt Case devised by Derk Pereboom, and he has replied to Moya twice [Pereboom (2009), (2012)]. A couple of other authors have used Moya's argument to advance positions against Frankfurt Cases as well [Elzein (2013); Lockie, (2014)]. However, I believe that the strength of the argument deserves much more attention and debate, and I hope to help correct this mistake by addressing it in this paper. My aim, however, is not just to bring attention to it, but to engage in a debate and to try to prove it wrong. Moya, as is well known, is a libertarian, that is, an incompatibilist who believes we have free will; furthermore, Moya believes that the free will needed for moral responsibility involves having access to alternative courses of action.<sup>1</sup> That is why he feels the need to prove Frankfurt Cases wrong, for they attempt to show that moral responsibility does not require alternative possibilities. I, on the other hand, wish to defend Frankfurt Cases, and to do so, must face Moya's clever argument.

#### I. A BRIEF REMINDER OF THE DEBATE ON FRANKFURT STYLE CASES

Before presenting Moya's criticism of Frankfurt cases a brief reminder of the main topics on this debate is in order. The basic structure of the traditional Frankfurt counterexamples is reasonably straightforward. There's one agent who is debating on whether to decide to do something or not. There is another agent – the counterfactual intervener – who has a particular interest in the first agent's deciding for one of the alternatives but does not want to show his hand if it is not necessary. So the second agent designs an ingenious plan in which, usually by the presence of a prior sign that indicates that the first agent is going to choose the unwanted option, activates a contraption and forces him to decide as he wishes. Gladly, the first agent chooses on his own to do what the second agent wants him to do, so the latter doesn't need to intervene at all.

These examples are supposed to prove the falsity of the Principle of Alternative Possibilities (PAP) according to which: “a person is morally responsible for what he has done only if he could have done otherwise” [Frankfurt (1969), p. 829]. The case is supposed to show a situation in which the first agent does not have alternatives to his decision, and nonetheless, is held morally responsible for he acted on his own. He was not forced to choose and act as he did. He decided on his own and, for all practical considerations, the plan, the contraption, and even the presence of the second agent are as if they had not been present at all. They played no causal role in the coming about of the first agent’s decision and action.

Frankfurt wishes to show that not having alternatives is not the same as being forced to act. The first agent supposedly has no alternatives but decides on his own. And by doing so, he renders the presence of the second agent, his contraption, and his plan, unimportant:

The circumstances that made it impossible for him to do otherwise could have been subtracted from the situation without affecting what happened or why it happened in any way. Whatever it was that actually led the person to do what he did, or that made him do it, would have led him to do it or made him do it even if it had been possible for him to do something else instead.

Thus it would have made no difference, so far as concerns his action or how he came to perform it, if the circumstances that made it impossible for him to avoid performing it had not prevailed [Frankfurt (1969), p. 837].

There are, of course, two scenarios at play. One in which the first agent shows an inclination to decide for the option the second agent does not want (which the second agent identifies because there is some indication – usually called *prior sign* – that allows the second agent to identify the first agent’s inclination), so the second agent activates his contraption and forces the first agent to decide and act differently. In this scenario, the first agent has been coerced and the decision (and action) is not his own. He is, thus, not morally responsible for what he has done.

The second scenario is the one in which the first agent shows an inclination to decide for the option the second agent wants, so the second agent does not intervene at all and lets the first decide and act on his own. Since the outcome is basically the same (the first agent decides and acts in a manner that is compatible with the wishes of the second agent), it looks like the first agent has no alternatives; however, in the second

scenario, since he has not been coerced at all, he is found morally responsible. If this is so, Frankfurt concludes that PAP must be false.

This is where Carlos Moya has his first disagreement with Frankfurt and his followers. For him, the presence of a second agent -the counterfactual intervener- cannot simply be dismissed as non-relevant or unimportant. For Moya, this presence changes the whole situation. To see why, we must first remember that Frankfurt Cases that use a prior sign must face what is known as the Dilemma Defense, first developed by Robert Kane [Kane (1985), p. 51 and (1996), pp. 142-144] and then further elaborated by David Widerker [Widerker (1995), pp. 147-161] and Carl Ginet [Ginet (1996)], among others. The strategy consists of placing Frankfurt cases in a dilemmatic situation regarding the sign the second agent uses to know that he does not need to intervene and activate his contraption. The idea is to show that a fully reliable sign has to cause the first agent's decision deterministically. But if it does, then Frankfurt and his followers cannot expect the libertarian to develop the intuition that the agent is morally responsible, since what is being asked is basically for them to consider morally responsible an agent for a deterministically caused decision and action. This is the first horn of the dilemma. The second horn is based on the idea that the sign does not deterministically cause the first agent's decision. Then the sign is not entirely reliable, and the agent had alternative possibilities, for even with the sign's appearance, he could have decided one way or the other.

So, a suitable Frankfurt Case should not assume the truth of determinism nor a deterministic relation between the prior sign and the agent's decision, but should be able to present a reliable prior sign that does not deterministically cause the agent's decision. That's what most defenders of Frankfurt Cases have set themselves to do.<sup>2</sup>

The Dilemma Defense leaves room for what has been called the "Flicker of Freedom Defense." The term "Flicker of Freedom" was coined by John Martin Fischer [Fischer (1994), pp. 134-147], but since then, many have used this defense against Frankfurt Style Cases [for more recent defenses, see Capes and Swenson (2017), and Robinson, (2019)]. The idea behind the Flicker Defense is that a non-deterministic Frankfurt case will rely on some sign to trigger (or not) the response of the counterfactual intervener, and this suffices to show there is some minimum margin, some residual alternative available to the agent. In Fischer's words:

[I]t is hard to see how a Frankfurt Type example could be constructed which would have absolutely *no* such flicker. For a Frankfurt-type case must

have an alternative sequence in which intervention is triggered in some fashion or other, and it is hard to see how to avoid the idea that the triggering event can serve as the flicker of freedom. Thus, it appears that, no matter how sophisticated the Frankfurt-type example, if one traces “backward” (from the event caused by the agent and toward the agent, as it were) far enough, one will find a flicker of freedom [Fischer, 1994, p. 136].

The Flicker Defense has been resisted by Frankfurt Style Cases defenders by appealing to the “Robustness requirement.” This states that not all alternatives are viable to defend the Principle of Alternative Possibilities. The alternative present in the case should be robust enough to ground ascriptions of moral responsibility.

This leads to the next step in this brief reminder of the debate, for it is necessary to say a few words about the difference between *robust* and exempting alternatives. Moya describes the difference in a footnote of his (2014) paper:

The robustness of an AP [Alternative Possibility] and its exempting character are different properties. They are neither extensionally nor intensionally equivalent. The robustness of an AP has to do with its explanatory virtues concerning the agent’s blameworthiness. Its exempting character refers instead to its capacity to preclude the agent’s blameworthiness were she to choose it. Now, an AP can be robust and non-exempting, as well as exempting and non-robust [Moya (2014), p. 6].

An exempting alternative is one that, if the agent chooses it, is exempted from being held morally responsible. The fact that an alternative is exempting does not imply that it is also robust. Paraphrasing an example given by Moya, suppose I lied to you, and I had in my pocket a caramel such that, unbeknownst to me, if I had eaten it, it would have caused a severe allergic reaction forcing me to go immediately to the hospital and thus would have prevented me from lying to you. In this case, I had an alternative available that would have exempted me from responsibility. I could have eaten the caramel. But this is not a robust alternative, for it does not explain my responsibility for lying to you: “Although the alternative is exempting, it is not robust, because it is not relevant to explain the responsibility of the agent for lying. [...] To decide not to lie and act accordingly is an alternative in reach of the agent that is both exempting and robust” [Moya (2017), p. 107].

So, the flicker defense needs the presence of a robust and exempting alternative to show that the Frankfurt Case fails. Derk Pereboom provides a definition of this type of robustness:

For an alternative possibility to be relevant per se to explaining why an agent is morally responsible for an action it must satisfy the following characterization: she could have willed something different from what she actually willed such that she has some degree of cognitive sensitivity to the fact that by willing it she thereby would be, or at least would likely to be, precluded from the responsibility she actually has [Pereboom, (2009), p. 112].

This characterization of the robustness requirement is composed of two elements, both crucial to ascriptions of moral responsibility: the control element, in which the agent has to have some control over her will: “She could have willed something different from what she actually willed”; and the epistemic dimension, in which the agent has to have a particular belief as to the moral value of her action: “she has some degree of cognitive sensitivity to the fact that by willing it she thereby would be, or at least would likely to be, precluded from the responsibility she actually has”.

The challenge for Frankfurt and his followers is now set and can be stated as follows:

Present a scenario in which:

- 1) The relevant sign does not causally determine the agent’s action.
- 2) No robust and exempting alternatives are available to the agent.

Derk Pereboom has presented a scenario he thinks complies with both conditions: it is the famous “Tax Evasion Case.”

## II. PEREBOOM’S TAX EVASION CASE AND MOYA’S ARGUMENT AGAINST IT

Derk Pereboom’s Tax Evasion case first appeared in (2000) and was further developed in (2001), (2003), (2009), and (2012). This is Pereboom’s Frankfurt-style case:

Joe is considering claiming a tax deduction for the registration fee that he paid when he bought a house. He knows that claiming this deduction is illegal, but that he probably won’t be caught, and that if he were, he could

convincingly plead ignorance. Suppose he has a strong but not always overriding desire to advance his self-interest regardless of its cost to others and even if it involves illegal activity. In addition, the only way that in this situation he could fail to choose to evade taxes is for moral reasons, of which he is aware. He could not, for example, choose to evade taxes for no reason or simply on a whim. Moreover, it is causally necessary for his failing to choose to evade taxes in this situation that he attains a certain level of attentiveness to moral reasons. Joe can secure this level of attentiveness voluntarily. However, his attaining this level of attentiveness is not causally sufficient for his failing to choose to evade taxes. If he were to attain this level of attentiveness, he could, exercising his libertarian free will, either choose to evade taxes or refrain from so choosing (without the intervener's device in place). However, to ensure that he will choose to evade taxes, a neuroscientist has, unbeknownst to Joe, implanted a device in his brain, which, were it to sense the requisite level of attentiveness, would electronically stimulate the right neural centers so as to inevitably result in his making this choice. As it happens, Joe does not attain this level of attentiveness to his moral reasons, and he chooses to evade taxes on his own, while the device remains idle [Pereboom (2009) p. 113].

The example presents a situation in which the prior sign (the sign that triggers the intervention of the neuroscientist) does not deterministically cause Joe's decision. However, attending to a certain level of moral reasons is a necessary (although not sufficient) condition for Joe to decide not to evade taxes. For Pereboom it is clear that Joe has an alternative possibility available, for he could consider moral reasons not to evade taxes with a certain level of attention, but this is not, in his view, a robust alternative:

This alternative possibility is not robust. Joe does not understand, and, moreover, he has no reason to believe, that voluntarily achieving the requisite level of attentiveness would or would likely preclude him from responsibility for choosing to evade taxes. True, were he voluntarily to achieve this attentiveness, the intervention would take place, and he would then not have been responsible for this choice. Still, Joe has no inkling, and has no reason to believe, that the intervention would then take place, as a result of which he would be precluded from responsibility for this choice. In fact, one might imagine that he believes that achieving this level of attentiveness is compatible with his freely deciding to evade taxes anyway, and that he has no reason to suspect otherwise. Nevertheless, Joe is morally responsible for deciding to evade taxes [Pereboom (2009), p. 114].

But here is where Moya's ingenious arguments make an entrance. As was said before, Moya disagrees with Frankfurt and his followers in that he doesn't think that the presence of the counterfactual intervener and his contraption can be taken to be irrelevant or unimportant. The fact that we are in a Frankfurt scenario is already something different from any other regular situation, and those particular circumstances must be considered.

Mainly, these unusual circumstances affect what counts as a robust alternative, for the robustness of an alternative is, for Moya, a highly contextual matter. Let's consider an example to see this more clearly.

Peter is resting by the pool when a boy is drowning, and no one is around, but he is lazy, so instead of jumping into the pool to save the boy, he decides to yell, calling for help. In this situation – Moya defends – Peter will be blameworthy for not jumping into the pool to save the boy.

Now, suppose Peter does not know that if he jumps into the pool, as soon as he hits the cold water, a cramp will make it impossible for him to swim towards the boy and save him. In this situation, if Peter still decides to cry for help instead of jumping into the pool, he will be blameworthy for not trying to jump into the pool. Perhaps he could not have saved the boy, but at least he could have tried to jump into the pool with the intention of saving him.

If, in a third scenario, Peter cannot swim for he never learned how, and all he can do is scream for help, (and that is just what he does), he wouldn't be blameworthy, for he did all that was in his power to save the boy.

The moral of the story is, for Moya, the following:

[W]hat constitutes a robust, or even an exempting, AP is a highly contextual matter, and depends not only on what an agent *believes* she can do in a certain situation, but also on what she can *effectively do* in that situation [Moya (2014), p. 7].

So, in the first case, the robust and exempting alternative was to jump into the pool and save the boy. In this case, just jumping into the pool would not have been enough.

But in the second case, since Peter does not know he'll get a debilitating cramp on his leg and believes he can save the boy, the best he could have done was jump into the pool. He *believed* he could save the boy, but all *he was able* to do was *try* to save him. In this case, jumping into the pool would have been a robust and exempting alternative. Note that in these two scenarios just calling for help is in no way robust or ex-



empting. But in the third case calling for help becomes robust and exempting. Given the circumstances (Peter does not know how to swim), it's the best he could do.

Moya, once again, defends the contextual character of robust and exempting alternatives:

The exempting (and robust) character of an alternative is a highly contextual matter. The same type of acting can be exempting (and robust) in one context and not in another. Thus, an alternative, by itself, without context, cannot be said to be robust or not [Moya (2017), p. 130].

This leads Moya to formulate a principle and two corollaries to it.

The principle is called DBB for "Doing one's Best and Blameworthiness":

**DBB:** If someone cannot reasonably do more than she actually does in order to behave in a morally right way, she is not morally blameworthy for not doing more [Moya (2014), p. 7].

And the two corollaries are:

**NBA-ign** (for Next Best Action + Ignorance): this corollary deals with cases in which the agent is ignorant of the inability to perform a specific action.

- **NBA-ign:** If, unbeknownst to her, an agent cannot do something A such that, if she did it, she would behave in a morally correct way and be precluded from blame (and she knows that she would), then, to be so precluded, she should perform the next best action that reasonably was in her power to perform to behave in a morally correct way, where the "next best action" may be characterized as trying or attempting to A, or at least taking some steps directed to A [Moya (2011), p. 15; (2014), p. 9; (2017), p. 133].

The second one is **NBA-kn** (Next Best Action + Knowledge): this corollary deals with cases in which the agent is aware of the inability to perform a specific action.

- **NBA-kn:** If an agent knows (or justifiably believes) that she cannot do something A such that, if she did it, she would behave in a morally correct way and be precluded from blame, then, to be so

precluded, she should perform the next best action that reasonably was in her power to perform to behave in a morally correct way [Moya (2011), p. 16; (2014), p. 9].

Once the principle and the corollaries have been presented, Moya returns to the Frankfurt Style- Cases:

Even if the factor never intervenes in the process of the agent's deliberation, decision and action, its mere presence is not without consequences, for, according to the preceding arguments, in reducing drastically the APs available to the agent, it lowers correspondingly the standards for an act to be a robust and exempting AP in that situation. So, a tiny event, which in normal circumstances, without the factor in place, would not exempt the agent from moral responsibility, would actually do so, according to the principles DBB and NBA-ign, if performing that act was the most the agent could reasonably have done, in the circumstances, to comply with morality [Moya (2014), p. 10].

So, in Pereboom's Tax Evasion Case, Joe's considering reasons not to evade taxes, which, in normal circumstances is not considered a robust and exempting alternative, becomes a robust and exempting alternative precisely given the presence of the neuroscientist and his contraption, for that is the most he could reasonably have done, in the circumstances, to act in a morally correct way.

If Moya is right, then not only has Pereboom failed in presenting a successful Frankfurt Style Case, but any case that does not assume the truth of determinism and leave some alternative to the agent is doomed to fail, for this small alternative can become a robust one due to the particular circumstances the agent is in. I would like to say it again, I find this objection to Frankfurt cases among the most serious and dangerous for the purposes of Frankfurt defenders. If Moya is right, then Frankfurt cases face an enormous challenge, and the way out should be, perhaps, to defend the viability of Frankfurt Style Cases in deterministic contexts, or cases that need no prior sign at all as some have already attempted to do.<sup>3</sup>

### III. RESISTING MOYA'S ARGUMENT

To start building an argument to resist Moya's insightful strategy, one should go back and recall the reasons behind the formulation of the *robustness* requirement for alternative possibilities. As already said, not any

alternative will do. Moreover, not any *exempting* alternative will do either, for an exempting alternative can be one not related at all to the moral value of the action the agent performs and for which he is considered morally responsible (remember the caramel example mentioned above). The alternative, to also be *robust*, needs to have a special explanatory power. The possibility of eating a caramel that, unbeknownst to the agent, will render him unable to lie does not explain why he should be regarded as morally responsible for lying. In Pereboom's words:

But whether he could have voluntarily taken a sip from the coffee cup [in our example, eating the caramel] is intuitively irrelevant to explaining why or whether he is morally responsible for his choice. What's missing is that he has no inkling that taking the sip [caramel] would render him blameless. This motivates the epistemic component of the robustness condition: if he were morally responsible because he has an alternative possibility in this situation, it must be that he in some sense understood that or how it was available to him [Pereboom (2009), p. 299].

So, the epistemic component present in the robustness condition is supposed to explain why the agent is blameworthy if he does not opt for the available alternative, or blameless should he opt for it. Recall the drowning boy in the pool example. There Moya presented three cases. One in which the agent could have saved the boy by jumping into the pool and getting him out (but opted just for crying out for help); one where the agent, unbeknownst to him, was not able to swim to rescue the boy, but could at least jump into the pool to try to save the boy (but decided to limit himself to cry for help) and one in which the agent knows he cannot swim, so the only available alternative is to cry for help, which is what he ends up doing. The agent, in all three scenarios, performs the same action. But the context is different in each of them. In the first, calling for help is not enough to avoid blameworthiness, nor is it merely to jump into the pool. The agent should have saved the boy. In the second, since unbeknownst to him he cannot swim, the action of jumping into the pool, which was not robust in the first scenario, becomes robust, for it is the best he can do in the situation. And finally, on the third, he does the best he can do given the circumstances and is thus not blameworthy. In this example, it is fairly easy to see why the available alternatives have the explanatory power required to become robust. Crying for help when one can save the boy oneself (which would be quicker and less risky) explains why one is morally responsible; there was an alternative to do something better and it was not taken. It is important to note

that this explanatory power hinges on something the alternative says about the agent. It is not just a matter of an alternative being taken or not, but the fact that the action of opting for it (or not) says something about the agent himself. In the first two scenarios, there was something else the agent could have done to comply with the requirements of morality, and he decided not to do it. He intentionally chose not to do his best.

I think Moya jumps too quickly from this case to the tax evasion one. And I don't think that quick movement comes without consequences. The three drowning boy scenarios are about situations in which the agent can do something, he can make a decision and perform an action.<sup>4</sup> Either saving the boy, jumping into the pool, or calling for help. Their moral value is clear, for it is transparent that calling for help is not the same, nor does it imply, jumping into the pool and saving the boy oneself. In those cases, not opting for the available alternative is a clear case of the agent deciding not to do his best. Conversely, whether he performs the actions or tries/attempts to perform them, he's trying to do the right thing. He knows he is doing something good or, as Moya puts it at the end of the corollary NBA-kn, he is attempting "to behave in a morally right way".

But the difference between these cases and Pereboom's case seems to me to be enormous. When Joe is considering evading taxes, it is clear he has a strong (although not overriding) desire to advance his self-interest regardless of its cost to others or even if it implies acting illegally.

He has an alternative available, sure, he could attend to moral reasons not to evade taxes, and, if he reaches a certain level of attentiveness, that level could (in the absence of the neuroscientist and his contraption) lead him to decide not to evade taxes. However, reaching that level of attentiveness is also compatible with his deciding to evade taxes anyway. So, Joe, who is unaware of the presence of a neuroscientist, is inclined to evade taxes and also believes that even if he considers moral reasons not to evade them, those reasons are not strong enough to drive his decision, so he could end up evading taxes anyway.

Note that, unlike the case of the drowning boy, Joe does not have an alternative to act otherwise or even to decide to act otherwise. The best he can do, his alternative, his flicker, is to consider moral reasons not to evade taxes with a certain level of attentiveness. This is, for me, not a minor difference between the two cases. In the case of the drowning boy, the agent has the alternative to decide to do otherwise and to act otherwise. In Tax Evasion all Joe can do is consider moral reasons not to evade taxes. Nothing more; he cannot form a different intention, make a different decision,

or act so as not to evade taxes. Moreover, considering moral reasons not to evade taxes does not imply he will decide not to evade them. He could consider those reasons and still decide to evade taxes.

A robust alternative, as already seen, has to have some explanatory power as to why the agent is morally responsible for acting as he does. The agent himself has to believe – or at least have some cognitive sensitivity to the fact –, that, by taking that alternative he would be (or would likely to be) exempted from responsibility. And, of course, Joe believes that not evading taxes for the right moral reasons is an action that would render him blameless. But there is a gap between considering moral reasons and deciding not to evade taxes. Does Joe believe that considering moral reasons would render him blameless? Of course not. It could be if attending to moral reasons would drive him with certainty to decide not to evade taxes, but this is not the case. For all he knows, considering moral reasons can be as effective as not considering them at all. This casts doubt on whether merely attending to reasons not to evade taxes has the explanatory power required for a robust alternative.

When Pereboom replied to one of Moya's objections, he attempted to say something similar to what I'm saying: "Joe is not cognitively sensitive to the fact that by voluntarily achieving the requisite level of attentiveness he would (likely) not be blameworthy, and, moreover, he has no reason to believe this" [Pereboom (2012), p. 303]. Of course, this is when Moya's "NBA-ign" corollary comes into play and, even though the agent doesn't know it, the best he can do is just to consider moral reasons at a certain level of attentiveness, and – for Moya – that becomes an exempting and robust alternative.

However, I have trouble seeing Joe's available alternative of attending to reasons as an action in which he is doing his best (or the best he can). Not because I think he can do more -he can't- but because I fail to see with clarity that this would be, in Joe's eyes, a good action, or an attempt to do good, or to behave in the right way. As I see it, in Moya's case of the drowning boy, the alternative open to the agent is one in which he can opt to behave rightly, to do what is best. Of course, there are decisions and actions available for him. In Tax Evasion nothing like this is available to the agent. Considering reasons for and against is something we do in a fairly standard way. Considering reasons usually leads an agent to form an intention to do something according to some of those reasons,<sup>5</sup> but in the Tax Evasion example, the agent cannot form an intention not to evade taxes, given the constraints of the example. For Joe considering moral reasons not to evade taxes could be futile because,

in the end, he could still decide to evade taxes. The option available is not as clear as jumping into a pool with the intention of saving a life.

To be clear. Could Joe have acted in a better way? Yes. I believe so. He could have considered moral reasons. Is this a robust alternative because there is a counterfactual device in place that, unbeknownst to him, will take control and not let him arrive at a decision not to evade taxes? Of that I'm not so sure. This flicker is supposed to explain why Joe is morally responsible for evading taxes, and, since for Joe considering moral reasons does not grant the decision not to evade them, merely considering reasons fails – for me – to have this explanatory power. In Joe's mind considering moral reasons not to evade taxes is not the same as attempting not to evade them. His mind is not yet made up; he is merely attending to reasons in order to make a decision.

Joe could have thought things better, sure. But since he was not even able to make a decision, to make an attempt to act in the right way and not evade taxes, merely considering reasons does not seem to be enough to ground his responsibility for evading taxes. There is a big asymmetry here, and in order to make it more visible allow me to change the example just slightly. Change "Tax Evasion" to "Murder". All is the same, but the action Joe performs is murdering someone. Due to the gravity of the action, I think it becomes clearer that to judge Joe as morally responsible for murdering someone, not because he could have done otherwise, or because he could at least have decided not to murder, but because he could have considered reasons not to murder, reasons that did not guarantee at all that he would have decided against murder for considering them, seems counter-intuitive, to say the least.

Under the circumstances Joe is in Tax Evasion it is hard to see what "considering moral reasons" says about Joe. He might be considering these reasons just to have a glimpse of what he has to deny knowing should he get caught (remember Pereboom says that Joe believes that if he gets caught, he can plead ignorance). I believe Pereboom used this attentiveness to moral reasons not to evade taxes as a prior sign in his example mainly because it is not at all clear that by attempting to do this the agent is doing something commendable. It is not at all similar to jumping into a pool to attempt to save a child (whether one ignores that one will be able to swim or not). Considering moral reasons says too little about the agent to explain his blameworthiness for evading taxes.

I gladly admit I agree with Moya regarding his principle and his corollaries. But I also believe that the principle DBB and the corollaries must have a limit of application. Moya surely would grant that not any al-

ternative can become robust just because it is the only one available and is related somehow to the moral dimension of the action the agent is being blamed for. But where would the limit be? Moya does not define one. For me, Pereboom's Tax Evasion case is an example of an alternative that crossed that limit.

In a way my point can be stated as follows: there is a difference between having the alternative to do something else and trying to do the best you can. If an alternative is exempting and robust, following Moya, it should be one in which the agent is trying to do the best he can, even if he ignores that it is the best he can do (in such case, he takes steps towards what he falsely thinks is the best he can do). But I believe Pereboom's Tax Evasion Case has been constructed in a way in which merely entertaining reasons with a certain level of attentiveness does not qualify as attempting to do the best you can, nor does it count as a step toward what you believe is the best, for even considering those reasons, the agent could have decided not to evade taxes.

Moya's principle and corollaries DBB, NBA-ign and NBA-kn must have a range of applicability. It seems to me there is a limit to how small possibilities can be to become robust. I have not shown what that limit is. I have not provided the criteria for finding it. I have just attempted to show it makes sense to think there is a limit. If I happen to be right, there is still work to do to find it. If, on the other hand, there isn't any, then Frankfurt Cases are in serious trouble and the only exit would seem to be to attempt to defend the validity of deterministic Frankfurt Style Cases or cases without a prior sign.

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vast number of corrections and suggestions to improve the argument and its overall quality. Any remaining errors are solely my responsibility.

#### NOTES

<sup>1</sup> Incompatibilism is the thesis that it is not metaphysically possible that determinism is true, and some person has free will. Under this broad umbrella, there are several different refinements. For example, *Hard determinism* is incompatibilism that commits to the truth of determinism. Since the central thesis is about this rendering impossible for someone to have free will, hard incompatibilism denies that anyone has free will. Libertarianism commits to the truth of free will and the falsity of determinism.

One can be an incompatibilist by defending that the truth of determinism leaves no alternative possibilities (AP) to the agent, and AP are an essential requirement for free will (this position has been known as *Leeway incompatibilism*). One can also defend that incompatibilism makes it impossible for the agent to be the true source of his actions, and this sourcehood is an essential requirement for free will; this position is known as *Source incompatibilism* [MacKenna and Pereboom (2016), pp. 30-33].

<sup>2</sup> Not all Frankfurt Cases must face the Dilemma Defense, for a case can be constructed without needing a prior sign. Alfred R. Mele and David Robb elaborated on this idea by designing what are known as *Blockage cases* [Mele and Robb (1998), (2003)]. However, Moya has argued that blockage cases fail to present a morally responsible agent, for the agent in them is not adequately reasons-responsive [Moya (2003)], and moderate reasons responsiveness is a requirement for a morally responsible agent [Fischer and Ravizza (1998), Chapter 3].

Others have tried to attack the Dilemma Defense by refusing to accept one of its horns. For them, a Frankfurt Case can be designed in a deterministic context without begging the question against the incompatibilist [Fischer (2010); Haji and McKenna (2004), (2006)].

For Moya this line of thought is ineffective for it violates one of the main conditions for a successful Frankfurt Case, namely, that the circumstances that make it impossible for a person to avoid performing a specific action, do not bring it about that she performs it [what David Widerker has dubbed the IRR assumption (2000)]. For Moya, a Frankfurt case in a deterministic context cannot avoid violating the IIR assumption [Moya (2011), (2018)].

Whether any of these lines of defense of Frankfurt Cases is promising and whether Moya's arguments against them succeed goes beyond this paper's reach.

<sup>3</sup> As mentioned in footnote 2, there are efforts to create Frankfurt Cases that don't require a preexisting signal or are situated in deterministic scenarios. Moya disagrees with both approaches, but someone supporting Frankfurt Cases could investigate further to determine if the strategies hold potential and if Moya's objections can be countered.



<sup>4</sup> An interesting strategy was developed by Justin Capes and Phillip Swenson (together) and Michael Robinson (independently). They attempt to defend the flicker of freedom strategy by presenting Frankfurt-style cases where the agent can freely omit to make a particular decision. For them, an agent can freely omit to decide without this omission being the result of a prior choice. This would not be a mere flicker but a robust alternative. Taylor Cyr attacks this line of thought by defending that, in those cases, the agents at play are not free to omit.

Neither Pereboom nor Moya include the omission of a decision in their arguments. And I don't believe Moya's principle and corollaries apply to these indecision cases. For more information regarding this debate, see [Capes & Swenson (2017); Robinson (2012), (2019); Cyr (2022)].

<sup>5</sup> What Searle has called the *prior intention*, as something different from *intention in action* [Searle (1997), pp. 84-87].

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