The Problem of Radical Freedom[1]

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ABSTRACT.

Whether or not we are *able* to do x is on many philosophical accounts of our moral practice relevant for whether we are responsible for not doing x or for being excusable for not having done x. In this paper I will examine how such accounts are affected by whether a Humean or non-Humean account of laws is presupposed. More particularly, I will argue that (on one interpretation) Humean conceptions of laws, while able to avoid the consequence argument, run into what might be called "the problem of radical freedom": Humean laws fail to constrain what we can do. By contrast, non-Humean laws (and Humean laws on a second interpretation) avoid the problem of radical freedom but have no easy way out of the consequence argument.

Introduction

In the empiricist tradition it is sometimes argued that based on of what is now called a Humean conception of laws of nature the problem or at least the tension that is generated for free will by deterministic laws can be easily dissolved. Thus, Ayer wrote

> "But, I repeat, the fact is simply that when an event of one type occurs, an event of another type occurs also, in a certain temporal or spatio-temporal relation to the first. The rest is only metaphor. And it is because, of the metaphor, and not because of the fact, that we come to think that there is an antithesis between causality and freedom." (Ayer 1954, 283)[2]

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[1] This paper not only rehearses part of a joint paper with Christian Loew, the idea of the paper grew out of joint discussions (see also Hüttemann and Loew 2019). So insofar as this paper contains convincing thoughts, they can also be attributed to Christian Loew. I would also like to thank audiences in Oxford, DFG-Research Group on Inductive Metaphysics, the Colloquium in Cologne, Anna Marmodoro as well as an anonymous referee for helpful comments.

[2] Similar views have been voiced e.g. by Swartz (2003), Beebee and Mele (2002) and Perry (2004)

In this paper I will focus on the consequence argument – one attempt to articulate the tension between free will and deterministic laws. In particular I will examine how one premise of the argument, according to which the laws are not 'up to us', is affected by whether one adopts a Humean or a Non-Humean account of laws of nature.

After contrasting Humean and non-Humean conceptions of laws of nature (section 1) I will briefly examine why the consequence argument is a particular challenge for the non-Humean (section 2). In section 3, I will rehearse an argument (by Loew and Hüttemann (ms)) to the effect that the Humean has a way out of the consequence argument that is not open to the non-Humean. However, as I argue in section 4, the very same feature that allows the Humean to bypass the consequence argument makes her vulnerable to an equally vexing problem, the problem of radical freedom.

It will turn out that the Humean cannot claim both that she is able to bypass the consequence argument and to solve the problem of radical freedom. Depending on the Humean's understanding of necessity or constraint, she can either avoid the consequence argument but will then face the problem of radical freedom, or she is in the same position as the non-Humean and can cope with the problem of radical freedom but has to face the full force of the consequence argument.

1. Humean and non-Humean Conceptions of Laws

Humeanism (or Humean Supervenience) writes David Lewis „is named in honor of the greater denier of necessary connections." What is rejected here is that there are relations of necessity or constraints that obtain between distinct events. This denial is the essential feature of Humeanism that will be appealed to in the remainder of the paper. Lewis elaborates his view:

> It is the doctrine that all there is to the world is a vast mosaic of local matters of particular fact, just one little thing and then another. [...] perfectly natural intrinsic properties, which need nothing bigger than a point at which to be instantiated. For short: we have an arrangement of qualities. And that is all. All else supervenes on that." (Lewis 1986, ix-x)

All there is is an arrangement of non-modal categorical properties, the so-called Humean Mosaic. The claim that all else supervenes on the Humean Mosaic has to be understood as saying that whatever else there is it is nothing over and above the Mosaic. Supervenience is not to be understood as mere modal covariation but rather as a claim of ontological reduction.[3] I will, therefore, also use the term 'Humean reductionism'

Humean accounts of laws of nature illustrate how Humean reductionism is supposed to work. The central idea is to characterise laws of nature as an elite class of true generalisations, where whether or not a generalisation is an element of the elite class is completely determined by the Mosaic. Thus, suppose we have the following generalisation:

(G) $\forall s \forall t$ (If a system s is in state S1 at t it will develop into state S2 at t+Δt)

If (G) is a true generalisation it describes and is made true by a regularity or pattern in the Mosaic. According to Lewis' account, (G) is not only a true generalisation but also a law of nature "if and only if it appears as a theorem (or axiom) in each of the true deductive systems that achieves a best combination of simplicity and strength." (Lewis 1973, 73) There is no need to go into the notions of simplicity and strength. The important point is that what constitutes the best combination of these theoretical virtues is fixed by the Mosaic. There are other Humean conceptions of laws which replace or complement simplicity and strengths by other features (e.g., Beebee (2000), Cohen and Callender (2009), Dorst (2018), Hall (ms), Hicks (2018), Jaag and Loew (2020), and Loewer (1996)), however what is essential is that they all characterise laws exclusively in terms of the Humean Mosaic. Talking about laws does not introduce anything over and above the Mosaic. In this sense then, the laws have been reduced to the Mosaic.

By contrast, according to Non-Humean conceptions, laws of nature cannot be reduced to the Humean Mosaic. Non-Humeans argue that modal connections between distinct events have to be introduced in order to account for laws of nature and their role in scientific practice. It is argued that modal connections between distinct entities have to be introduced. A law of nature

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[3] "Imagine a grid of a million tiny spots – pixels – each of which can be made light or dark. When some are light and some are dark, they form a picture, replete with intrinsic gestalt properties. […] the picture and the properties reduce to the arrangement of light and dark pixels. They are nothing over and above the pixels." (Lewis 1999, 294).

that holds in virtue of these modal connections implies not only a true generalisation such as (G), it furthermore implies that, e.g., s being in state S1 at t *constrains* the system such that the system cannot but develop into state S2 at t+Δt, the state at t+Δt is *necessitated* by the law, given the initial state. Non-Humeans account for the constraint or the necessitation in terms of essences, dispositions, necessitation relations or in terms of primitive modal relations (Armstrong (1983), Bird (2007), Mumford & Anjum (2011), Maudlin (2007)). The details of these accounts need not bother us for the purposes of this paper. What they share is the view that laws cannot be reduced to the Humean Mosaic because what is constitutive for laws is at least partly something over and above the Mosaic, namely relations of constraint or necessitation (I use these terms synonymously in this paper) between distinct events.

On the basis of these brief characterisations the essential disagreement between the Humean and the non-Humean can be illustrated as follows: If it is a law that $\forall s \forall t$ (If a system s is in state S1 at t it will develop into state S2 at t+Δt) the non-Humean holds that if some s is indeed in S1 at t there is a relation of constraint or necessitation such that s will develop into state S2 at t+Δt, while the Humean denies that there is such a relation of necessitation or constraint and merely holds that as a matter of fact s develops into state S2 at t+Δt.

Even though the Humean denies the existence of modal connections on the fundamental level of the Mosaic, this does not mean that she has to abstain from modal talk altogether. Modal notions can be reintroduced at levels further up – as something that can be reduced to the Mosaic. For instance, once we have introduced a Humean conception of laws we can define nomological necessity in terms of these laws. Events can be said to be nomologically necessary if they are implied by certain initial conditions and the laws of nature. On the basis of this conception of nomological necessity the Humean can explain what it means that one event constrains what is going to happen next (in virtue of a law that pertains to these events). The Humean may thus argue that nomological necessity has been reduced to the Humean mosaic and that she is able to account for the way we modally characterize what is going on in world.

For the purposes of this paper we do not have to settle the question whether such a reduction (if feasible) shows that these higher-level modal features are real or that they are mere projections onto the world (or mere "metaphors" as Ayer put it). However, what is important for what follows, is that it cannot be the case that relations of necessity or constraint are on the one hand denied by the Humean but then on the other hand reintroduced and thus affirmed via reduction *in the very same sense*. The Humean must operate with two different senses of necessity and

constraint. I will indicate this difference by contrasting fundamental and less fundamental (higher-level) necessity or constraint: necessity$_{fun}$ vs. necessity$_{less-fun}$ and constraint$_{fun}$ vs. constraint$_{less-fun}$.

2. The Non-Humean Conception of Laws and the Consequence Argument

The consequence-argument is a serious challenge for the Non-Humean, precisely because she postulates relations of constraint$_{fun}$. A well-known, informal presentation of the argument is due to van Inwagen:

> „If determinism is true, then our acts are the consequence of laws of nature and events in the remote past. But it's not up to us what went on before we were born, and neither is it up to us what the laws of nature are. Therefore, the consequences of these things (including our present acts) are not up to us." (van Inwagen 1983: 56)

Before I turn to the question of why this is a particular challenge for the non-Humean, let me briefly comment on the phrase *up to us*. According to van Inwagen this can be understood as us having the ability to render a proposition false, where:

> to be able to render a proposition false is to be able to arrange or modify the concrete objects that constitute one's environment—shoes, ships, bits of sealing wax—in a way sufficient for the falsity of that proposition. (van Inwagen 1983: 67).

To illustrate, the fact that *the number of chairs in my room is two* is up to me because I have the ability to render the proposition that *the number of chairs in my room is two* false by being able to bring in another chair – even if I don't exercise this ability. By contrast that *2 plus 2 equals 4* is not up to me because I cannot render the proposition that *2 plus 2 equals 4* false. Similarly, a true generalisation of the form $\forall x\ (Ax \rightarrow Bx)$ is up to me provided I can render it false, e.g. by being able to produce an *x* that is an *A* but not a *B*.

The consequence argument attempts to show that if determinism is true, then our actions are not up to us in the sense that we cannot do otherwise. The argument presupposes that there

are deterministic laws that apply to our actions (Helen Steward in her contribution to this volume explores some alternatives to this assumption). It furthermore depends on assumptions about the past (not up to us) and about laws (not up to us either).[4] In what follows I will be exclusively concerned with whether the Humean conception of laws is relevant for this latter issue. I will thus bypass the question whether the rejection of the premise, according to which the past is not up to us, is helped by a Humean conception of laws. Furthermore, I will not discuss Lewis' distinction of a strong and a weak reading of the laws being up to us, because Lewis' distinction is motivated by his semantics of counterfactuals, not by his Humean account of laws (Lewis 1981).[5]

Let us call the assumption that the laws are not up to us the 'Fixity of the Laws'

Fixity of the Laws (FOL). If it is a law of nature that *p*, then it is not up to us whether *p* is true.

(For a law not being up to us strictly speaking two conditions have to be met: It is neither up to us whether p is true nor whether p is a law. However, for the purposes of this paper all that is needed is that the truth of p is not up to us.)

What would it mean to render a law-proposition false? Take the example of the law we considered above: if a system s is in state S1 at t it will develop into state S2 at t+Δt. It could, for example, be the case that I myself am system s and that I am in state S1 at t and subsequently in state S2 at t+Δt. To be able to render this law false, I would have to be able to bring about a state S3 ≠ S2 at t+Δt (even though I didn't).

For the Non-Humean the consequence is a particular challenge because she has to accept FOL. It is a defining feature of non-Humean conceptions of laws that the antecedent state

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[4] These are by no means the only assumptions. There is an extensive debate about how the consequence argument should be understood that I don't need to go into for the purposes of this paper. (Some of the options are reviewed in Mauro Dorato's contribution to this volume. Esfeld (also this volume) explores whether the remote past may be up to us - contrary to what van Inwagen assumes.) What is relevant in this paper is that different conceptions of lawhood make a difference for whether or not the informal consequence argument discussed here comes out as plausible. (This question is also raised in the contribution by de Haan).

[5] It has been suggested (in conversation both by Helen Beebee and by Thomas Blanchard) that Lewis' semantics of counterfactuals may in turn be motivated by his account of laws. For the purposes of this paper I can bypass this issue.

constrains$_{fun}$ what is a possible state for s. Thus, given the antecedent state S1, S2 is necessitated$_{fun}$. It is because of the necessity relation that I am unable to bring about S3 and thus unable to render the law-proposition false. This illustrates why the non-Humean is committed to FOL. By contrast, the Humean does not postulate a necessity$_{fun}$ relation and thus needs not commit herself to FOL (see the next section for an extended argument)

3. The Humean and the Consequence Argument

In what follows I will examine whether Humean compatibilism is a tenable option in the free will debate. Beebee and Mele (2002) who made this label prominent characterise a Humean compatibilist as holding the *combination* of a Humean account of laws and compatibilism in the free will debate. I will use the term more exclusively for someone who holds a compatibilist view *in virtue* of a Humean account of laws. This stricter conception excludes, for example, Lewis, who is both a Compatibilist and a Humean, but he is not a compatibilist in virtue of his Humean account of laws, but rather in virtue of his account of counterfactuals.

Loew and Hüttemann (ms), elaborating on a paper by Beebee and Mele (2002), have argued that the Humean is in a better position than the Non-Humean to deal with the consequence argument because she is not committed to FOL. In this section I will rehearse the argument.

As I indicated above, Humean reductionists hold that the laws of nature reduce to the Humean Mosaic. Loew and Hüttemann understand Humean reduction in terms of grounding. According to this interpretation of Humean reductionism, the laws of nature are fully grounded in the Humean mosaic. However, the argument could just as well be presented in terms of supervenience as understood by Lewis or in terms of realisation. All that is needed is a synchronic, asymmetric dependence relation that allows for a distinction between difference-making and non-difference-making factors.[6]

Loew and Hüttemann provide the following argument for Humean compatibilism. The first premise is that 'up to us' obeys a transfer principle:

Transfer Principle (TP). If p is up to an agent A and p is a difference-making ground of q, then q is up to A.

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[6] Supervenience is generally understood to be a non-symmetric rather than an asymmetric relation. Lewis, however, seems to think of it as an asymmetric relation. Asymmetry will be relevant only when I briefly discuss Armstrong towards the end of this section.

Difference-making grounds are grounds that are non-redundant. Suppose the set F contains the complete grounds of q. A fact p is then a difference-making ground of q, just in case: (i) p is part of F, and (ii) without p the remaining facts in F would no longer be complete grounds of q (Krämer und Roski 2017: 1195).

Given the analysis of the phrase 'up to us' in terms of the ability to render a proposition false, TP says that if you have the ability to render p false and p is a difference-making ground of q, then you have the ability to render q false. For example, suppose you can render false the proposition that you raise your hand. And suppose that raising your hand is a difference-making ground of the fact that a certain candidate is elected into office. Then, according to TP, you can thereby render the proposition that the candidate is elected false. TP is a plausible principle that explains why we often prevent one thing by not doing another.[7]

While TP is plausible independently of whether Humeanism about laws is true, the second premise is motivated by a Humean analysis of laws:

Law-making (LM). Our actions are among the difference-making grounds of deterministic laws.

Given the assumption – which is common in the consequence argument literature – that deterministic laws cover our actions, LM follows from the grounding-based formulation of Humean reductionism introduced above, viz., that laws of nature are grounded in the Humean mosaic.
If Humean reductionism about laws is true, then laws of nature are elements of an elite class of regularities or generalisations. Like all universal generalisations, the truth of a generalisation like

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[7] Formulating TP in terms of difference-making grounds rather than grounds *simpliciter* avoids certain counterexamples. Suppose you can render the proposition that you will raise your hand false and raising your hand is among the grounds of a certain candidate's election. However, suppose the candidate received more votes than she needed to get elected. Even though raising your hand was then up to you and was also an ontological ground of the candidate's being elected, you could not have rendered the proposition that she gets elected false. The candidate did not need your vote to be elected. Using difference-making grounds instead of grounds *simpliciter* bypasses this problem because in the scenario described raising your hand is not a difference-making ground. Without you raising your hand, the remaining votes still would be complete grounds of the candidate's being elected.

(G) is grounded in its instances (see, e.g., Fine 2012). The generalisation '$\forall s \forall t$ (If a system s is in state S1 at t it will develop into state S2 at t+Δt)' is grounded in: (i) all instances of S1; (ii) the instances of S2 that follow them after Δt; and (iii) the fact that these are all of the instances of S1. For example, suppose there are three instantiations of S1: S1', S1'', and S1''', and each is followed, within the relevant time period, by, say, a hand-raising, S2', S2'', and S2'''. The complete grounds of (G)'s truth then are: S1', S1'', S1''' S2', S2'', S2''' plus the fact that S1', S1''and S1''' are the only instances of S1. Any particular hand raising of yours, S2', say, is then among the grounds of (G). However, it remains to be shown that S2' is a *difference-making* ground of (G).[8]

Your hand raising, S2', is not just a ground but a difference-making ground of (G). Without S2', the remaining grounds are: S1', S1'', S1''', S2'', S2''' plus the fact that S1', S1''and S1''' are the only instances of S1. These facts, however, are not complete grounds of (G) because they do not make (G) true: there is now an instance of S1 at t, viz., S1', that is not followed by a hand raising within the requisite time period and so (G) is false. Hence, S2' is a difference-making ground of (G) because without it the remaining grounds are not complete grounds of (G).

With TP and LM in place the following argument can now be formulated:

1. If *p* is up to an agent *A* and *p* is a difference-making ground of *q*, then *q* is up to *A*.
   (Premise (TP)).
2. If our actions (or rather: propositions characterising our actions) are up to us and these actions are difference making grounds of deterministic laws, then the laws are up to us. (from 1)
3. If the laws are not up to us, either our actions are not up to us or these actions fail to be difference making grounds of deterministic laws. (by contraposition from 2)

Thus far Humeans and Non-Humeans will agree. If the laws are not up to us at least one of two conditions has to hold: Either our actions are not up to us or the actions fail to be difference making grounds for the laws. The relevant difference between the Humean and the Non-Humean is that the Humean affirms (by holding **LM**) that our actions are among the difference making grounds for laws whereas the Non-Humean denies this. So, for the Humean (3) implies that the laws fail to be up to us only if our actions are not up to us. The argument can thus be completed as follows:

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[8] Note that we are only concerned with the grounds of the fact that (G) is true. The additional fact that (G) is a law of nature has further grounds.

4. Our actions are among the difference-making grounds of deterministic laws. **(Premise (LM))**

5. If the laws are not up to us, then our actions are not up to us. (from 3 and 4)

Given a Humean conception of laws it is a necessary condition for FOL to hold that our actions are not up to us. The above argument does not show that FOL is false, rather it shows that Consequence argument is dialectically ineffective given a Humean conception of laws. TP entails that if a fact q is not up to you, then no fact that is a difference-making ground of q is up to you. After all, if a difference-making ground of q were up to you, TP would entail that q itself is up to you. So, by assuming FOL as a premise and thereby assuming that deterministic laws are not up to us, the Consequence argument ipso facto presupposes that no difference-making grounds of the laws are up to us. But given that Humeans are committed to LM, this assumption already entails (regardless of any of the other premises of the Consequence argument) that our actions are *not* up to us. Hence, by assuming FOL as a premise, the Consequence argument already presupposes what it is supposed to show. The Humean does not have to commit herself to FOL.

Why couldn't the Non-Humean employ the same kind of reasoning? The non-Humean is clearly entitled to argue that by assuming FOL as a premise and thereby assuming that deterministic laws are not up to us, the Consequence argument ipso facto presupposes that no difference-making grounds of the laws are up to us. However, these difference making grounds – in the case of the Non-Humean – are not the instances of the laws. Rather, the Non-Humean treats necessity$_{fun}$-relations as difference-making grounds for laws. The laws obtain exclusively in virtue of essences, dispositions, necessitating relations, primitive modalities, etc.[9] Our actions are not among the difference-making grounds of deterministic laws. In the context of the consequence argument it is not question-begging to assume that these features are not up to us. Whereas it would be question-begging to assume that our actions are not up to us.

The Non-Humean – on standard accounts – does not and cannot accept LM and thus the above argument is not available to her. (One might think of two non-standard theoretical options for Non-Humeans to allow for embracing premise LM: (a) One might argue that the dispositions in virtue of which the relevant laws obtain are up to us after all because they are character dispositions which we form ourselves; (b) One might argue that the laws are only partly

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[9] Armstrong (1983) … Aristotelian requires instantiation but still the instatiations obtain in virtue of the necessity relation not vice versa (asymmetry!) …

grounded in modal$_{fun}$ relations and partly grounded in facts that are up to us. I don't think anybody has defended such views and will set them aside in the remainder of the paper.)

4. The Problem of Radical Freedom

One might worry that Humean Compatibilism has the implausible consequence that we have outlandish abilities, such as to travel faster than light. If we have the ability to render the laws false by doing otherwise than we are lawfully determined to do, why can we not also perform other law-violating actions? According to Beebee and Mele (2003: 212), "[t]his is a legitimate worry to have because the Humean View does indeed have those consequences."[10] Let us call the problem that we seem to have the ability to break the laws (by rendering them false) "the problem of radical freedom".

In the remainder of the paper I will argue that the problem of radical freedom is a serious problem for those who embrace the argument for Humean Compatibilism outlined in section 3.[11] However, the argument for Humean Compabilism (more precisely: the argument that shows that the consequence argument – an argument in favour of incompatibilism – is dialectically ineffective given a Humean conception of laws) does not *entail* that we have outlandish abilities such as moving faster than the speed of light. In fact, the argument by itself does not even show that we have the ability to do otherwise than we are lawfully determined to do. It only shows that *if* we have independent reasons for thinking that we are able to do otherwise, then the mere fact that doing so would falsify deterministic laws does not undermine this ability (henceforth: The Conditional). The argument implies a conditional claim and is as such not committed to the existence of any abilities (whether outlandish or not).

However, even though the argument for Humean Compabilism is non-committal, the situation changes when it comes to the analysis of situations which are the dialectical starting point for discussions concerning the consequence argument. In such situations we (sometimes) do

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[10] Beebee and Mele go on to argue that while their Humean compatibilist arguments entail that there is a legitimate sense of ability according to which we do have outlandish abilities, there might be a different sense of ability according to which agents can do otherwise yet do not have outlandish abilities. But Humean compatibilists would then still have to show that this second sense of ability is indeed supported by a Humean metaphysics of laws.

[11] As indicated above this is not a problem for Lewis' proposal (Lewis 1981) to deal with consequence argument.

assume that agents have the ability to do otherwise, i.e. that certain actions are up to them. We then have both The Conditional plus a true antecedent claim, which then imply that the law is up to the agent.

To illustrate how the above argument helps the Humean to get the right verdict on blaming, consider the following case:

(NEWSPAPER) S, while standing close to his 4-year-old son is reading a newspaper. The son trips over a stone and harms himself. S continues to read the newspaper. We assume that S could have acted otherwise and we, thus, blame him for not helping his son.

The consequence argument attempts to show that if the laws are deterministic (and a few further assumptions in place) this case of rightfully blaming S cannot be accounted for. Our actual practice (of blaming S) turns out to be undermined by deterministic laws, the incompatibilist concludes on the basis of the consequence-argument. The next move in the dialectic is that the Humean defends our original verdict (blaming S) by pointing out that the consequence-argument presupposes a Non-Humean conception of laws. The Humean need not commit herself to FOL, can thus reject the consequence argument and account for the moral practice of blaming S in a situation as described above.

The context in which the defence of the original verdict takes place is a context in which we assume that S does have the ability to act otherwise than he actually does (and that we thus rightly blame him for not helping his son). In the defence of the original verdict the Humean commits herself to S having the ability to act otherwise. She then points out that this ability is not undermined by deterministic laws that cover S's acts because the Humean holds that the law is grounded in the actions of the agents rather than in the existence of necessitating relations. According to the Humean it is not the case that the laws constrain$_{fun}$ and thus S has the ability to stop reading his newspaper even though, as a matter of fact, he does continue reading. In order to account for our practice of blaming S the Humean Compatibilist will endorse the claim that S can do otherwise because the law under which his continuing to read the newspaper falls, is up to S.

By contrast the non-Humean appears to be forced by the consequence argument to conclude that S – given certain initial conditions that are not up to S and the deterministic laws – could not have done otherwise and thus ought to be exempted from blame (assuming the ability to act otherwise to be a necessary condition for responsibility). The Non-Humean cannot account for our practice of attributing responsibility in cases like the one described, while the Humean can. The consequence-argument is a problem for the Non-Humean but not for the Humean (though I will qualify this claim below).

Let us now consider a second case.

(SKID) S and his son visit a playground. They both use the skid in turn (a long and exciting slide). While S is sliding down the skid the son trips over a stone and harms himself. S continues to slide. Because S cannot simply stop, we would not blame S for not (immediately) helping his son.

Assuming again that the ability to act otherwise is relevant for blame, it is now the Non-Humean who can explain why we exempt S. Given that S was already in the skid he couldn't stop. Given the initial condition and the law of gravity S was necessitated$_{fun}$ to continue. The Humean, might argue that in this case we do not assume that the antecedent of The Conditional is true. We assume that it is not up to S to stop sliding. Thus, in this case we have no reason to conclude that the law that covers the sliding is up to S. However, the question arises whether the Humean can explain in virtue of what the sliding (and thus the relevant law) is not up to S while in (NEWSPAPER) continuing to read (and the relevant law) were up to S. The Humean cannot appeal to a relation of necessity$_{fun}$ to account for the sliding not being up to S. There is no constrain$_{fun}$ that limits what S can do. It seems that given the Humeans' analysis of laws S should be able to do whatever S likes – unconstrained by laws. This is what might be called the 'problem of radical freedom'. The problem of radical freedom is a problem for the Humean but not for the Non-Humean.

It now seems that the Humean and the Non-Humean score evenly. While the Humean can avoid the consequence argument she has to face the equally vexing problem of radical freedom. The Non-Humean does not run into the problem of radical freedom but has to face the full force of the consequence argument.

The Humean might object that this assessment is not quite correct (see Loew and Hüttemann (ms)). Humeans do allow for *some* notion of constraint and necessitation, and they could therefore try to resolve cases like SKID by relying on constraint$_{non-fun}$ whilst still relying on the absence of constraint$_{fun}$ to respond to the consequence argument.

According to this line of argument, there is no tension between having the ability to render the laws false and the laws constraining what we can do. This works because the first modal claim (about what we can or cannot do) concerns necessity$_{fun}$ or contstraint$_{fun}$, while the second claim concerns constraint$_{less-fun}$. By contrast, the Non-Humean, when discussing the necessity of laws or the laws' constraining our action uses a univocal notion of necessity or constraint: constraint$_{fun}$. It is the univocity that generates a problem for the Non-Humean: For her the laws cannot both be up to us and constrain what we can do. For the Non-Humean the laws

constrain$_{fun}$ and are thus not up to us$_{fun}$. For the Non-Humean there is indeed a tension between these two claims.

However, the Humeans' equivocal use of modalities generates a problem of its own. It gives rise to different senses of "ability". Let us have a closer look at an argument by Beebee and Mele who explicitly use the strategy of distinguishing different abilities to reply to the problem of radical freedom (though they don't use this latter phrase). Beebee and Mele concede that there is a sense of ability, supported by Humean Reductionism, according to which, agents can move faster than the speed of light and defy gravity. However, Beebee and Mele (2002: 213) maintain that:

> [t]he existence of the legitimate (by Humean lights) sense of ability already identified does not entail that there are no other legitimate senses of 'ability', consistent with Humeanism, according to which Fred is able to eat cake [even though he is nomically determined not to] but unable to raise his hand faster than the speed of light.

Humean Compatibilists are free to distinguish different senses of abilities. But doing so does not allow them to both maintain that the premise FOL of the Consequence Argument is false and avoid the problem of radical freedom. The core claim of Humean Compatibilism is that there is a sense of ability that can be motivated in light of a Humean metaphysics according to which FOL is false. Call this sense of ability "ability$_{fun}$." According to this sense of ability humans can perform such outlandish actions as moving faster than the speed of light and jumping over large buildings – the problem of radical freedom. Beebee's and Mele's response is to invoke a second sense of ability according to which we can act otherwise than we are nomically determined to act yet we *cannot* perform these more outlandish violations of the laws of nature. Call this sense of ability "ability$_{less-fun}$." (Beebee and Mele define ability$_{less-fun}$ in terms of counterfactuals. But the details of the definition are irrelevant. What is essential – in order to avoid the tension that the Non-Humean has to confront – is that ability$_{less-fun}$ needs to invoke relations of constraint that are non-fundamental, whether in terms of laws, causal structure, dispositions, and/or counterfactuals does not matter.)

In a situation in which I do not raise my hand, there is no tension in saying on the one hand that I have the ability$_{fun}$ to render false a law according to which I raise my hand, and on the other hand that the law constrains what I can do, and that I thus lack the ability$_{less-fun}$ to raise my hand.

Though there is no tension, there is still a problem. To illustrate, let us return to SKID. The question that needs to be raised is whether it is the ability$_{fun}$ or ability$_{less-fun}$ that we need to appeal to in order to account for not blaming S in SKID. S has the ability$_{fun}$ to stop and help his son immediately but he does not have the abilty$_{less-fun}$ to stop and help his son immediately. Since, clearly, we cannot both blame S and exempt him at the same time, we have to decide whether it is ability$_{fun}$ or ability$_{less-fun}$ that is morally relevant. If ability$_{fun}$ is the morally relevant ability we should blame S for not having helped his son immediately because he could have done so. I take it that this is an implausible verdict in this situation. More generally, assuming that ability$_{fun}$ is morally relevant yields the problem of radical freedom. That was why the second sense of ability had to be introduced. If ability$_{less-fun}$ is morally relevant we get the 'right' verdict for SKID and more generally avoid the problem of radical freedom. But now the question arises why ability$_{fun}$ rather than ability$_{less-fun}$ was taken to be the morally relevant ability in NEWSPAPER. The Humean has her special way out of the consequence-argument only if she appeals to ability$_{fun}$. But why should different kinds of abilities be morally relevant in SKID and NEWSPAPER? It is hard to see that there is a relevant difference between SKID and NEWSPAPER that would motivate why we should appeal to different conceptions of ability in these two cases when we are evaluating whether or not we should blame S. It seems that the very same sense of being able to act otherwise is relevant in both cases.

If the latter consideration is granted there remain only two options for the Humean: Either the morally relevant ability in both cases is ability$_{fun}$. If that is the case the Humean can bypass the consequence-argument but has to confront the problem of radical freedom. Or the morally relevant ability is in both cases ability$_{less-fun}$. In that case the Humean is very much in the same position as the Non-Humean: The problem of radical freedom can be avoided, but the consequence argument looms.

Thus, whether one's conception of natural modalities is Humean or non-Humean may make a significant difference for the debate of free will. The dialectic and the problems to be addressed crucially depend on this choice (as well as on the interpretation of the morally relevant abilities). *Pace* Ayer however, it does seem that the Humean has no distinctive advantage over the Non-Humean.

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