

HOW SHOULD LIBERTARIANS CONCEIVE OF THE LOCATION AND ROLE OF INDETERMINISM?

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~ Penultimate Draft ~

Philosophical Explorations 16:1 (2013): 44-58

For published version, go to

<http://www.tandfonline.com/doi/full/10.1080/13869795.2013.723036-.UoVbfY0jivY>

Libertarianism has, seemingly, always been in disrepute among philosophers. While throughout history philosophers have offered different reasons for their dissatisfaction with libertarianism, one worry is recurring: namely a worry about luck. To many, it seems that if our choices and actions are undetermined, then we cannot control them in a way that allows for freedom and responsibility. I argue that Robert Kane's influential formulation of libertarianism actually generates an acute worry about luck. My fundamental aim in this paper is to place libertarians on a more promising track for formulating a defensible libertarian theory. I carry out this aim by explaining why Kane's recipe for solving the problem of luck and his conception of the location and role of indeterminism derived from it, are deeply problematic. I then offer a reformulation of libertarianism—particularly a new conception of the location and role of indeterminism—that is capable of avoiding the problems that beset Kane's theory and that, I argue, places libertarians on a more promising track for formulating a defensible theory.

Free will—Libertarianism—Indeterminism—Luck—Robert Kane—Causal theory of action

1. Introduction

Libertarians believe that indeterminism holds one of the keys to solving the problem of free will and moral responsibility—the problem of showing how it is possible that agents are free and morally responsible. Throughout the history of philosophy libertarianism has, seemingly, always been in disrepute among philosophers. Although different reasons for rejecting libertarianism have been offered at different times, one worry is recurring: namely a worry about luck (Haji 1999, 2001; Hobart 1934; Hume 1740; Mele 1999, 2006; van Inwagen 1983, 2000). This worry can be captured by the following two premises:

(i) If an action¹ is undetermined, then it is a matter of luck.

and

(ii) If an action is a matter of luck, then no one is free with respect to, or responsible for, it.

These premises constitute the core of the problem of luck, or luck argument. This statement of the argument has the advantage of remaining neutral with respect to both why undetermined action is lucky and why lucky action cannot be action for which we are free or responsible. However, it suffers from being uninformative and certainly unmoving. No one should be convinced by such an abstract argument. Thus, the force of the luck argument depends on persuasively articulating the sense in which undetermined action is lucky and why agents cannot be free with respect to and responsible for lucky actions.

I believe that many (perhaps most) of those moved by the luck argument think that undetermined action is lucky because we cannot guarantee that such actions occur.² If an action is undetermined, then it is possible, given everything about the past and laws of nature right up until the moment of action, that the action not have occurred. That is, if the action is undetermined, then everything we do—all our choices, actions, and intentions—leave open whether the action will occur. And this seems to render our choices and actions lucky, eliminating the kind of control required for freedom and responsibility.

Robert Kane's influential and assiduously formulated event-causal theory of libertarianism (Kane 1996, 1999, 2011) is intended to explain why (among other things) freedom is compatible with indeterminism. Although Kane's account offers many important advances in the development of a defensible libertarian theory of free will and moral responsibility, I will argue that Kane made

¹ I use 'action' here as an umbrella term: all agential activity falls under the rubric 'action.' So choices and efforts of will count as actions. This use of action is consistent with Kane's. See especially Kane (1996, p. 125) where he classifies choices and efforts of will as actions. In other contexts I will use 'action' more narrowly, referring only to agential activity subsequent to choice, such as overt behavior (as Kane himself does (Kane 2011, p. 385)). The context should make clear how to disambiguate my use of 'action.'

² I discuss three other important formulations of the luck argument in Franklin (2011a).

two crucial mistakes in his formulation of libertarianism—both of which helped fan the flame of the luck argument. The first mistake concerns the location of indeterminism and the second the role of indeterminism. The source of these mistakes, I will show, flows from Kane’s following a recipe for developing a theory of freedom that is immune to luck. As we will see below, Kane’s conception of the location and role of indeterminism is a simple consequence of his following this recipe.

My fundamental aim in this paper is to place libertarians on a more promising track for formulating a defensible libertarian theory. I will carry out this aim by explaining why Kane’s conception of the location and role of indeterminism is problematic, and how, by reformulating libertarianism in the ways I suggest, we can avoid the problems that beset Kane’s theory. Our discussion begins with an explanation of what led Kane to offer his distinctive conception of the location and role of indeterminism. I will lay out the recipe (mentioned above) which Kane followed and explain why it seemed like a promising strategy for defending libertarianism. This will help to reveal the underappreciated motivation for certain features of Kane’s account that might otherwise seem eccentric (such as his doubling the efforts of will prior to choice). Turning next to a discussion of why his account is problematic, I raise two objections to Kane’s theory. The first objection establishes that Kane’s method for solving the luck argument *cannot* succeed. This objection undercuts the theoretical motivation for Kane’s conception of the location and role of indeterminism. The second objection maintains that his conception of indeterminism is not merely without motivation, but also problematic. I argue that Kane’s conception of the location and role of indeterminism is in tension with other features of libertarianism, and that by re-envisioning the location and role of indeterminism we can reformulate the theory in a way that places libertarians on a better track for constructing a defensible theory.

2. Kane and the Location and Role of Indeterminism

Philosophers have differing dispositions toward incompatibility claims. I believe that if there is no reason to think that propositions p and q are incompatible, one is justified in believing that they are compatible. This is because compatibility is such an incredibly weak claim. Hence, if one cannot offer reason for thinking that determinism is incompatible with free will and moral responsibility, then it is reasonable to be a compatibilist. Moreover, if one cannot offer reason for thinking that indeterminism is incompatible with free will and moral responsibility, then it is reasonable to be a compatibilist about *this*. That is, as a compatibilist about freedom and *ind*determinism, I find no need to argue that indeterminism is compatible with freedom, but only to show that any arguments purporting otherwise are unsound. Kane, however, offered a series of examples that were intended to *show* that free will and indeterminism are compatible. Inspired by examples going back to J.L. Austin (1961) and Philippa Foot (1957), Kane offers the following example: “Consider an assassin who is trying to [shoot] the prime minister, but might miss because of some undetermined events in his nervous system which might lead to a jerking or wavering of this arm” (Kane 1999, p. 227). Suppose the assassin hits his target: is he morally responsible? Kane claims, and I agree, that he is indeed morally responsible. What does this show? Well, it seems to show that we can be responsible for undetermined events. The success of the assassin’s attempt is undetermined, but if he succeeds, he will be morally responsible. Why? Because he “intentionally and voluntarily succeeded in doing what he was *trying* to do” (Kane 1999, p. 227; cf. 2011, p. 388). The presence of indeterminism opens him up to the possibility of failure, and so he must overcome the indeterminism if he is to succeed; but if he does overcome it, then he is morally responsible.

This case seems to provide Kane with a recipe for showing that an agent is free with respect to, and responsible for, an undetermined action: show that the action was something the agent was trying to do and you have shown that the agent is responsible *if* he succeeds. In fact, Kane builds his theory of freedom to mirror the assassin case. Thus, let us take careful note of the structure of

this case—particularly the location and role of indeterminism. First, indeterminism occurs *after* the assassin's trying. What is undetermined is whether the assassin's bodily movements that execute his intention occur. Second, notice the role of indeterminism. Indeterminism functions as an obstacle, something the agent must overcome in order to carry out his intention. It is indeterminism that opens the assassin to the possibility of failure: try as hard as he might to kill the prime minister, and yet he may still fail. Nevertheless, indeterminism does not preclude freedom and responsibility since the assassin is (or seems to be) responsible for murdering the prime minister.

The assassin case, thus, offers a potential recipe for constructing an account of free will that avoids worries about luck. In order to show that an agent is responsible for some event *E* (a choice, an action, a consequence, etc.) show that *E* was something that the agent was trying to do. While applying this recipe to cases of bodily action or consequence is straightforward, Kane must show how this recipe can be applied to the case of choice.

It is at this juncture that Kane introduces the notion of an effort of will and locates indeterminism, the obstacle to the agent's success, within the agent's own will (Kane 1996, p. 128). In the assassin case the agent made an effort to execute his intention. An effort of *will* is not like this: an effort of will is an effort to make a choice (Kane 1996, pp. 26-27, 128). To understand the difference we need to consider the role that conflict of will plays in Kane's theory. According to Kane, there are various episodes in our lives in which we must make a choice between incommensurable alternatives, as for example, between moral duty and self-interest (Kane 1996, pp. 126-128).³ Consider a businesswoman who comes across a man who has just been mugged in an alley (Kane 1996, p. 126). She must decide between helping the victim and attending an important business meeting. She knows there are moral reasons that favor helping the victim, but also that if she misses the meeting her career aspirations will suffer a major setback. On Kane's account, the

³ The idea that free will requires scenarios in which agents are torn between two alternatives is also found in Balaguer (2009), Campbell (1967), and Kant (1785).

businesswoman makes an effort of will to choose to help the victim.⁴ The causal consequences of the effort of will are undetermined, and so it is possible, given the past and laws, that the effort succeeds and culminates in a choice to help the victim, or fails and results in a choice to go to the business meeting.

Note the structural similarity between Kane's theory and the assassin case. First, in both cases indeterminism occurs after the agents' efforts. The assassin makes an effort (i.e. tries) to assassinate the prime minister, and then indeterminism occurs; the businesswoman makes an effort of will to choose to help the victim, and then indeterminism occurs. The actional elements differ in each case: in the assassin case there is an effort, then (bodily) action, and then consequence. In the businesswoman case there is an effort of will, then choice, and then action (and then consequence). However, in both cases indeterminism occurs subsequent to the effort: at the moment of overt action for the assassin and at the moment of choice for the businesswoman. Given this isomorphic relation, it would seem that if the assassin is responsible for killing the prime minister, then the businesswoman is responsible for helping the victim. So long as the businesswoman succeeded in doing what she was trying to do (namely make a choice to help the victim), the fact that she was trying to make a choice while the assassin was trying to perform an action is irrelevant.

The efforts of will that are central to Kane's theory are also unique to his theory. Typically libertarians envision agents making free choices without first trying to make such choices. In deliberating about what to do, agents often make efforts to make up their mind about what to do, but this is different than an effort of will which is an effort to make a particular choice. Why would Kane introduce this mental action prior to choice? Why think that often when agent's make free choices they were trying to make these particular choices? Once we realize that Kane was following the recipe laid down by the assassin case, our answer becomes clear. Kane is attempting to show

⁴ To clarify, this is not an effort of will to make up one's mind about what to choose. It is an effort of will to make a particular choice, such as the choice to help the victim of the mugging.

that undetermined choices can be free and to do this he must show that the choices were something the agent was trying to do. In this way we arrive at the need to posit an earlier effort to the agent's making of the choice. And so efforts of will emerge as a centerpiece of Kane's theory.

Not only are the assassin and businesswoman cases similar in terms of when indeterminism occurs, but also in terms of the role that indeterminism plays in them. In both cases indeterminism is conceived as an obstacle to the agent's success. The assassin tries to kill the prime minister, the businesswoman tries to overcome temptation, but, due to the presence of indeterminism, these efforts leave it open whether these agents will succeed. Kane maintains that "[o]ne thing does seem to be true about control which critics of indeterminist freedom have always maintained: indeterminism, wherever it appears, does seem to *diminish* rather than enhance agents' voluntary control..." (Kane 1999, p. 237). As Kane sees it, indeterminism is a hindrance or obstacle to our achieving our purposes and aims. At one point Kane compares indeterminism to the presence of a distracting noise that inhibits us from solving a difficult math problem (Kane 1999, p. 226). Kane believes that this is the price we pay for ultimate responsibility (Kane 1996, p. 144).

This is, as I will discuss more below, a rather paradoxical claim for a libertarian to make. Don't libertarians typically think of indeterminism as being relevant to enhancing control? Why then would Kane think of indeterminism as essentially *diminishing* control? As with Kane's positing of efforts of will, this claim becomes readily understandable once we realize that Kane was following the recipe laid out above. On this recipe, what is undetermined is what the agent is trying to bring about. Thus, given the presence of indeterminism, the agent becomes open to the possibility of failure and this forces us to view indeterminism as a hindrance to control—as an obstacle to agents' carrying out their aims and purposes.

One final element of Kane's theory that we need to touch on is that it is an *event-causal* theory of free will and moral responsibility. These theories are to be contrasted with agent-causal theories.

To appreciate the difference, consider the locution: An agent S brought about action φ .⁵ Event-causal and agent-causal theorists offer rival analyses of this (and similar statements). According to event-causal theorists, what it is for an agent to bring about an action φ is for certain agent-involving mental states and events—such as reasons, preferences, desires, beliefs, etc.—to cause φ in a non-deviant fashion⁶ (cf. Bishop 1989; Clarke 2003; Davidson 1980; Enç 2003; Mele 1992). In contrast, agent-causal theorists argue that if we trace the causal etiology of a free action back far enough we will arrive at substances irreducibly causing an action (Chisholm 1966; Clarke 2003; O’Connor 2000).⁷ So while it is possible on this account for a free action’s proximate cause to consist solely of states and events, this is possible only if the distal or proximate cause of (some of) these states and events is a substance. Kane defends the event-causal model: the causal etiology of free and responsible action is exhaustively constituted by states and events of the agent. On Kane’s theory, while a free choice is often nondeterministically caused by an effort of will to make the choice, the effort of will itself is caused solely by states and events, such as the agent’s reasons (Kane 1996, p. 136).

We have then the three crucial elements of Kane’s theory. First, indeterminism is located between actions—between the effort of will and choice. Second, indeterminism is envisaged as an obstacle or hindrance to carrying out our efforts. Third, the agent’s contribution to his free choices and actions is reducible to states and events of the agent.

⁵ I here assume a product view of action, according to which an event is an action in virtue of its causal history. On this account agents cause their actions. Alternatively, proponents of component views contend that an event is an action in virtue of its internal causal structure. For example, for O’Connor, agents do not fundamentally cause free choices, but rather free choices (partly) consist in the agent’s fundamentally causing “the-coming-to-be-of-an-action-triggering-intention-to-so-act” (2000, p. 94; cf. 2009, pp. 195-196). I am sympathetic to Clarke’s (2003, p. 25) contention that nothing of substance as regards free will depends on which theory we adopt. But regardless, none of my arguments in this paper turn on these issues. I will continue, for ease, to employ a product view of action.

⁶ The qualification of non-deviance is required to exclude cases in which mental states bring about an event, but, intuitively, there is no action. For example, a spy’s belief that if he doesn’t blink his eyes at a certain time, then the mission will go poorly and his desire to see the mission succeed might so unnerve him that he blinks his eyes at the right time (a nervous twitch). This event is caused by his belief and desire, but it does not seem to qualify as action, since it was brought about through a deviant causal path (cf. Davidson 1980).

⁷ Again, O’Connor would reject this description and insist, instead, that what we would find is a causally complex event of the agent fundamentally causing the coming to be of an action triggering event.

3. The Failure of Kane's Recipe

Kane's contention that indeterminism, *wherever* it occurs, is a hindrance to control strikes me as a paradoxical and, in the end, devastating concession for a libertarian to make. I began by noting that libertarians believe that indeterminism holds one of the keys to showing that freedom and responsibility are possible. One might naturally have thought that this is because libertarians believe that indeterminism allows agents to act in one of a variety of causally open ways: indeterminism furnishes us with opportunities that do not exist in deterministic worlds.⁸ In other words, one might have thought indeterminism was important because it is relevant to enhancing an agent's control. But it seems hard indeed to understand why indeterminism, a condition that according to Kane reduces control, is required for agents to possess a more robust kind of freedom and responsibility than is possible in deterministic worlds. Isn't the problem with determinism, according to incompatibilists, that it prevents agents from possessing or exercising the necessary degree of control over their choices and actions? If this is the correct diagnosis of the problem of determinism, then how can indeterminism be the remedy if it also is a hindrance to control?

Kane is sensitive to these objections and devotes considerable attention to them (Kane 1996, pp. 171-187; 1999; 2011). For example, in later work he envisages the agent not making a single effort of will, but two different and incompatible efforts of will: in the case of the businesswoman we are now to imagine that she makes both the effort of will to choose to help the victim and the effort of will to choose to go to the business meeting.⁹ Many have worried about the psychological

⁸ In Franklin (2011b) I argue that this is exactly the role that indeterminism plays (or can play) on event-causal libertarian models of free will.

⁹ What moved Kane to double the effort of will was the following kind of worry: it seems that the businesswoman would not be responsible in worlds in which her effort of will failed to culminate in a choice to help the victim (Mele 1999). In such worlds, she tried as hard as she could to execute her intention, but through no fault of her own she is frustrated. In order to accommodate the possibility that agents can be responsible for *whichever* choice they make, Kane doubled the effort of will. While this move is odd in certain respects, it is completely intelligible once we realize that

intelligibility of this claim (cf. Clarke 2003, p. 88), but I believe that the need to double the effort of will is a sign that something more fundamental has gone wrong—it is a symptom of deeper problems.

The first step in unveiling the deeper problems in Kane's theory is to realize that his recipe for solving the problem of luck *cannot* succeed, and thus it is a mistake to construct a theory of freedom on it, as Kane does. While the assassin case may show that it is possible to be morally responsible for an undetermined event, it does not provide the right structure on which to model a *general* theory of freedom. The case assumes that the assassin is free with respect to, and responsible for, his effort to kill the prime minister.¹⁰ Therefore, the businesswoman is only responsible for succeeding in helping the victim if she is responsible for making the effort of will in the first place.¹¹ A general theory of freedom must offer a set of conditions under which the effort of will is also free. Under what conditions, then, is the effort of will free? Kane faces a dilemma at this juncture: a free effort of will must either be undetermined or not. Suppose, as is natural, that we opt for the first horn. This is natural for Kane since he is an incompatibilist, maintaining that free will and moral responsibility are incompatible with determinism. But now worries about luck reemerge at the level of the effort of will. Why isn't the businesswoman's making the effort of will to choose to help the victim rather than the effort of will to choose to go to the business meeting simply a matter of luck?

Kane is, once again, applying his recipe: show that the agent was trying to do what she did (choose to go to the business meeting) and you have shown that she is responsible despite the presence of indeterminism. Kane thought that if the businesswoman was trying to make both choices, then she would be responsible regardless of which choice she made. And thus, we get a second effort of will. I will largely ignore Kane's doubling of the effort of will as it makes no progress toward answering the objections I raise. Below I will argue that Kane's recipe cannot solve the problem of luck and thus we have no reason to follow Kane in doubling the efforts of will. In fact, I will argue that we have no need to introduce any efforts of will in the first place.

¹⁰ Others (e.g. Clarke 2003; Mele 2006) have pointed out this problem. What has not, I believe, been appreciated is that Kane, given his recipe for solving the problem of luck, *cannot* solve this problem. That is, while others have picked up on some of the problems that beset Kane's view, the problems I raise, and specifically the problems generated from his recipe (as revealed by the dilemma I am about to present), have not been sufficiently appreciated.

¹¹ In defense of this claim Mele (2006, p. 52) offers a case in which the effort of will is implanted in the agent via manipulation. The causal connection between effort of will and choice is indeterministic and so the effort may culminate in one of two mutually exclusive choices. Yet it seems, given that the agent is not responsible for making the effort, that she is not responsible for outcome of the effort either.

Importantly, the assassin case provides no guidance here, for we cannot simply posit an additional prior effort of will. We cannot solve the problem of luck besetting efforts of will in the same way that Kane attempted to solve the problem of luck besetting choices. The recipe Kane followed for solving the problem of luck was to imagine that the agent was trying to perform the action for which we are assessing the agent's responsibility. In the assassin case we imagined that he was trying to shoot the prime minister. In the businesswoman case we imagined that she was trying to choose to help the victim. According to this recipe, if we are to show that the businesswoman was responsible for the effort of will, we must imagine that she was trying to make the effort of will to choose to help the victim. But this move cannot help. It is not just that this option won't work because it is psychologically implausible (though it is that), but because it simply forestalls the original question. Now we will want to know: what is it to be responsible for this yet earlier effort of will? Therefore, Kane's recipe for solving the problem of luck cannot work if we assume that the antecedent efforts of will are undetermined, for under this assumption an infinite regress of temporally antecedent efforts is generated.

The target of my objection (at this moment) is not Kane's theory of freedom, but his recipe for solving the problem of luck. Kane never builds into his theory of freedom the requirement that an event counts as an action only if it is caused by a prior action (e.g. an effort of will), nor does he claim that an action is free only if it is caused by an earlier free action (e.g. an effort of will).¹² It is precisely because of Kane's lack of commitment to these views that it has go unnoticed that his *approach* to constructing a theory of free will is subject to familiar regress problems that volitionist theories of action or freedom face.¹³ Although Kane's theory of freedom is not susceptible to this

¹² Kane explicitly rejects the former claim (Kane 1996, p. 24).

¹³ According to volitionism about freedom and responsibility, an agent is free with respect to, or responsible for, a bodily action only if that action was caused by a temporally prior volition or act of will. Ryle (1949, p. 67) argued that this view is subject to an infinite regress objection: if what makes an agent free with respect to, and responsible for, a bodily action is that it was caused by a temporally prior volition, won't volitions for which agents bear freedom and

style of objection, his application of his recipe in attempt to solve the problem of luck faces just such a regress problem. According to Kane's recipe, we can show that an agent was responsible for an undetermined choice if the agent was trying to bring about the choice. We observed above that in such a case the agent is responsible for the choice only if he is *also* responsible for the effort to bring about the choice. It is at this juncture that Kane faces a dilemma. If Kane maintains that this earlier effort of will was also undetermined, then we can show that the agent was responsible for making the effort of will only if he was responsible for trying to make the effort of will to bring about the choice. Under the assumption that the effort of will is undetermined, Kane's recipe for solving the problem of luck succeeds only if there is an infinite regress of earlier free and responsible actions. But if freedom and responsibility exist at all, then there must be some choices, or actions, or efforts of will, for which our freedom and responsibility do not depend on, or derive from, earlier actions. Given that we are finite agents and have not been performing actions forever, if we ever act freely and responsibly, then we must sometimes perform directly free actions and be directly responsible. Our freedom and responsibility cannot always been indirect, it cannot always trace back to early actions. The assassin case, thus, fails to provide the right structure on which to model a theory of freedom—for it shows that freedom is compatible with indeterminism only by positing the existence of some earlier free and responsibly performed action. A theory of freedom must specify the conditions of control for direct freedom and responsibility, and for this task the theorist

responsibility also need to be caused by prior volitions? This objection has no force against Kane since he does not ascribe to a volitionist view either with respect to action or freedom. Indeed, he explicitly rejects the former view (Kane 1996, p. 24).

My regress objection is not aimed at Kane's theory of freedom, but his recipe for solving the problem of luck. While Kane never claims that in order for an agent to be free and responsible for an undetermined event the agent *must* be trying to bring about the event, he does claim that if the agent is in fact trying to bring about the event, then he is (or at least can be) free and responsible for it. His recipe is meant to offer a strategy for *proving* that an agent is free with respect to, and responsible for, an undetermined event. My regress objection is part of a more general objection that targets Kane's strategy for dismantling the luck argument

must look elsewhere than the assassin case.¹⁴ Therefore, Kane's recipe, under the assumption that the effort of will is undetermined, cannot succeed.

Alternatively, Kane might try to stop the regress by envisioning the effort of will as determined.¹⁵ Thus, given the businesswoman's reasons and preferences, she was causally determined to make the effort of will to choose to help the victim. However, the effort of will still gives rise to choice in a nondeterministic fashion, and so it is possible, given the same past and laws, that the effort either succeeds and culminates in a choice to help the victim, or fails and results in a choice to go to the business meeting. Since the effort of will is determined, no worries about luck emerge for it, and so there is no reason to require a yet earlier effort of will. On this horn, since the above regress is stopped it might seem that Kane's recipe for solving the problem of luck can succeed.

To begin to see why this move cannot work, note that on this horn, given Kane's incompatibilism, he cannot envision the effort of will as directly free. But the effort of will also cannot be indirectly free, receiving its freedom from earlier actions, for this would simply give rise to the regress objection. So, on this horn the agent is not responsible for the effort of will that gives rise to choice. Second, recall that Kane conceives of indeterminism as something that diminishes control. We are inclined to judge the businesswoman responsible for her choice to help the victim because we assume that she exercised enough control over her making the effort so that, indeterminism's control-diminishing presence notwithstanding, she still exercised a sufficient degree of control over the choice to bear responsibility for it. However, we are now asked to imagine that

¹⁴ Let me be clear what the objection is here. I believe that Kane *should* grasp the first horn. My objection is not that if he grasps the first horn, then he cannot solve the problem of luck. Rather my objection is that if he grasps the first horn, he cannot use his recipe to solve the problem of luck. The significance of this objection, as we will see, is that it undercuts the motivation for following Kane in his conception of the location and role of indeterminism. If the only reason offered for adopting Kane's conception of the location and role of indeterminism is the theoretical advantages of his recipe, and if this recipe turns out not to offer any theoretical advantages, then we have no reason to adopt Kane's conception of the location and role of indeterminism.

¹⁵ There is some evidence that this is the horn Kane would grasp. See Clarke (2003, p. 90) and Mele (2006, p. 53).

the businesswoman's effort of will is not free and that she is not responsible for it. So Kane's recipe now comes to this: in order to show that an agent is free with respect to, and responsible for, performing an undetermined choice, we must require that she first make an unfree and non-responsible effort of will to make that choice. Moreover, this effort of will cannot even guarantee that she succeeds in making the choice she is trying to make. This simply will not do.

To illustrate the problem with this proposal, we might think of control as a property that can transfer between actions: my control over my choice can be transferred to my action if my choice causes that action.¹⁶ In the case of the businesswoman, again, we are inclined to judge her responsible for her choice because her control, that we assume she possesses over her effort of will, is great enough to transfer to her choice, which is caused by the effort of will. However, as Kane himself claims, the presence of indeterminism diminishes the control that the agent exercises over the choice. Although the agent, presumably, exercises less control over her choice than the effort of will, we assume that her control over the effort of will is great enough to transfer sufficient control to the choice, so as to render it free despite the control-diminishing presence of indeterminism. But on the second horn, we are to assume that the effort of will is not a free action—the agent does not possess enough control over it for it to qualify as free. But then we have no reason to think that choice is free. It is implausible to think that we can perform a free action *by* doing something unfree. But this is doubly so when we assume that the connection between the effort of will and choice diminishes the agent's control: the agent exercises even less control over the choice. But if the agent's effort was not free, and he exercises even less control over his choice, then his choice cannot be free either.

¹⁶ Obviously more must be added to generate a sufficient condition for control-transfer. For example, we might think that the agent will have to satisfy some sort of epistemic condition concerning the relationship between his action and its causal results. But the simple version of the idea should suffice for present purposes.

To restate the above dilemma: either the effort of will that precedes choice must be undetermined or not. There are deep problems for assuming that the effort of will does not need to be undetermined. But if it must be undetermined, then Kane's recipe for solving the problem of luck fails: it does not provide the right structure on which to model a general theory of freedom, for it fails to solve the problem of luck for directly free actions.

Consequently, we should reject Kane's *strategy* for solving the problem of luck. This is a significant conclusion, since the motivation for Kane's positing efforts of will antecedent to choice, for locating indeterminism in the causal connection between efforts of will and choice, and viewing indeterminism as a hindrance to control all stemmed from following this recipe. According to the recipe, we can show that an undetermined choice is free by showing that the choice was something that the agent was trying to bring about. Thus, efforts of will enter the scene. And since the choice is, *ex hypothesi*, undetermined, the causal connection between effort and choice must be nondeterministic. Finally, by so locating indeterminism we are *forced* to view it as an obstacle, as a feature that opens the agent to the possibility of failure, potentially hindering his goals. The failure of Kane's recipe undercuts the theoretical motivation for Kane's conception of the location and role of indeterminism, as well as for making efforts of will central to a theory of freedom.

4. Reformulating Libertarianism

I have argued that Kane's recipe cannot solve the problem of luck—at best it simply moves the problem back a step. The significance of this conclusion is not to be underestimated. The main reason offered for adopting Kane's conception of the location and role of indeterminism was the supposed theoretical advantages of following his recipe (namely that it solves the problem of luck). Kane's conception of the location and role of indeterminism, then, has little to recommend it. I will now extend my attack on Kane's conception of the location and role of indeterminism to argue

(although we have already seen the seeds of this objection above) that the location and role of indeterminism that he derives from his recipe are problematic, so that, even if Kane could escape the above dilemma, we still have reason to reject his account. That is, I will now argue that we not only lack reason to adopt Kane's conception of the location and role of indeterminism, but that we also have reason to reject it. My argument comes in four steps. First, I argue that Kane's conception of the role of indeterminism is in tension with the intuitive rationale for adopting libertarianism in the first place. Second, I argue that Kane's conception of the role of indeterminism is a simple function of his conception of the location of indeterminism. Third, I argue that we can re-envision the role of indeterminism by relocating indeterminism. Fourth, I indicate how this reformulation of the theory places libertarians on a better track for defending their theory.

According to Kane, indeterminism is a hindrance to control (Kane 1999, p. 237). This is a paradoxical claim for a *libertarian* to make. Libertarians are incompatibilists and so maintain that free will and moral responsibility cannot exist in deterministic worlds. The usual argument for incompatibilism maintains that determinism prevents agents from possessing the requisite degree of control required for freedom and responsibility (Fischer 1994; Ginet 1990; van Inwagen 1983). But this cannot be Kane's argument, since he thinks that indeterminism *diminishes* control and thus that determinism, not indeterminism, enhances control.¹⁷ That is, so far from indeterminism being required for agents to possess more control than is possible in deterministic worlds, indeterminism in fact makes less control possible. Kane is forced to concede, then, that indeterminism is necessary for freedom and moral responsibility even though the presence of indeterminism diminishes an

¹⁷ One might argue that both indeterminism and determinism are incompatible with free will. On such a position, it would not follow from the fact that indeterminism is incompatible with free will (and thus in some sense diminishes control) that determinism is necessary for free will (and thus in some sense enhances control), since determinism is also incompatible with free will. Likewise, someone might be suspicious of my claim that if indeterminism diminishes control, then determinism must enhance it. But such an inference does follow, given the *sense* in which Kane argues that indeterminism diminishes control. Indeterminism constitutes an obstacle to our carrying out our efforts. If indeterminism were absent, we would be guaranteed to succeed in doing what we were trying to do. *This* would be an enhancement of our control.

agent's control.¹⁸ This is one reason to reject Kane's conception of the role of indeterminism as a hindrance: such a conception of indeterminism undercuts the intuitive rationale for incompatibilism.

Kane was driven to this unorthodox conception of the role of indeterminism because of his conception of the location of indeterminism. Consider the following action-sequence: an agent chooses to raise his arm and then raises his arm. We have two actions: a choice and the bodily movement that executes it. Kane's recipe for showing that the arm raising was free bids us to imagine that the choice nondeterministically caused the arm raising; it was possible that, given the past and laws, the agent failed to execute his choice. This possibility is not due to the fact that the agent might have changed his mind as a result of stumbling upon some new evidence, but *simply* due to the presence of indeterminism. This location of indeterminism *makes* indeterminism a hindrance to control. By locating indeterminism between actions in an action-sequence (e.g. choice and bodily movement, or effort of will and choice) Kane is driven toward a conception of indeterminism as control-diminishing.

We can avoid Kane's problematic conception of the role of indeterminism by finding a new location for indeterminism in the action-sequence. Kane locates indeterminism at the second moment of action, rendering the causal connection between the agent's actions nondeterministic. The agent first makes an effort of will in order to make a certain choice, and the effort of will

¹⁸ In order to explain away the air of paradox, Kane distinguishes two kinds of control (cf. Kane 1996, pp. 144, 186-187). Under "plural voluntary control", which is indeterministic in nature, an agent cannot guarantee an outcome before it happens. Under "antecedent determining control", which is deterministic in nature, an agent *can* determine an outcome before it happens. Kane concedes that indeterminism eliminates antecedent determining control, but argues that indeterminism is necessary for plural voluntary control and that only plural voluntary control is necessary for freedom and responsibility. In other words, according to Kane, what is at stake in the incompatibilist debate is not the quantity of control but the quality.

It is hard to know exactly how to respond to this unorthodox and provocative suggestion. It seems that Kane is committed to the following claims: plural voluntary control affords an agent less control than antecedent determining control (after all Kane admits that indeterminism diminishes control), that plural voluntary control is necessary for freedom and responsibility, and that antecedent determining control is incompatible with freedom and responsibility. These claims jointly entail the following: an agent S_1 can have greater control than an agent S_2 and yet, precisely because S_1 possesses this greater control, S_1 is not free or responsible. But surely this implication reveals that something has gone wrong. Part of the attraction of my reformulation of libertarianism is that it allows us to avoid these problems with, or at the very least, peculiarities of, Kane's account.

nondeterministically causes this choice. Thus, on Kane's account it is the second-moment of action, in this case the making of a choice, that is undetermined. Rather than locating indeterminism at the second-moment of action, I contend that we should place it at the first moment of the action-sequence, at the moment of the agent's basic action. Just as we saw above that if finite agents are ever free and responsible, then they must sometimes be directly free and responsible, it is also true that if finite agents ever act, then they must sometimes perform basic actions. If finite agents ever act, then it cannot be the case that all of their actions count as actions in virtue of *earlier* actions they have performed. Such an account will immediately lead to an infinite regress. Thus, if finite agents act, then some of their actions must be basic (cf. Danto 1965; Enç 2003; Ginet 1990; McCann 1974). The basic action performed in Kane's case of the businesswoman is her effort of will to choose to help the victim. So by moving indeterminism to the moment of basic action, what would be undetermined is not choice, but the effort of will to make the choice. However, we also have reason to eliminate Kane's efforts of will from a place of prominence in our theory. First, we are not required to posit such efforts. Our original reason for positing efforts of will was Kane's recipe: if we want to show that an undetermined choice is free we must show that it was something the agent was trying to do. But given the failure of this recipe, we have no reason to think we must posit such efforts of will. Second, I have doubts that efforts of will (if they ever occur) play an important part in our agency. We do often make efforts to figure out what to do, to make up our mind about how to act. We also often make efforts to implement our decisions. Temptation is naturally understood as a source of resistance not to the actual making of a decision, but to the implementation of the decision. Neither of these efforts, though, are efforts of will—efforts to make particular decisions.¹⁹ While these points do not show that we never make efforts of will, they

¹⁹ There are two points here. The first is this: whatever actions libertarians conceive as basic should be the actions that they require to be undetermined. If libertarians have reasons for thinking that efforts of will antecedent to choice are the basic actions that agents typically perform, then they should hold that these efforts are undetermined. The second point

do suggest that we should not give efforts of will pride of place in our theory. Thus, I will view choice as a basic action.

We have made two revisions to Kane's theory. First, structurally speaking, we have moved the location of indeterminism to the moment of basic action. Rather than indeterminism occurring at the second-moment of action, rendering the causal connection between an agent's basic and non-basic actions nondeterministic, we have located indeterminism at the moment of basic action. Second, we discarded, or at least demoted, efforts of will and are now envisioning the agent's basic action as choice. Somewhat ironically, then, on both Kane's theory and my reformulated theory it will be choice that is undetermined. However, on my proposed reformulation of libertarianism, the agent's undetermined choice is not caused by an effort of will, but by non-actional features of the agent, such as his desires and reasons.²⁰ Since free choice is undetermined, the mental states of, and events involving, the agent that cause free choice do so in a nondeterministic fashion, so that it is possible, given the past and laws, that these states and events not have caused the choice they did in fact cause. It is perfectly acceptable on this account of free will that our basic actions, such as our choices, deterministically cause all later moments of action in the action-sequence (such as bodily movement). This is neither required nor prohibited.

Let us return to the businesswoman case and see how this modification plays out. As before, the businesswoman is torn between two alternatives: choosing to help the victim and choosing to go to the business meeting. She has reasons and desires that favor each alternative. Let us suppose she chooses to help the victim. On the account that I am advocating, this is the first moment of action—there is no prior effort of will. The businesswoman makes the choice

is this: libertarians have no theoretical need for efforts of will, and so we should conceive of choice as the basic action that free agents typically perform.

²⁰ This account bears similarities to Randolph Clarke's "unadorned event-causal libertarian view" (Clarke 2003, pp. 29-56). Although Clarke offers a limited defense of this view, in the end he rejects it (Clarke 2003, pp. 93-118). In my Franklin (n.d.) I argue that this unadorned account requires further refinements in order to handle other worries about luck, such as the problem of the disappearing agent (Pereboom 2005, forthcoming).

straightaway and not by first doing something else. Furthermore, the choice was caused by the antecedent reasons and desires that favored making the choice, such as the value of human life, being in a position to help, and so forth. Finally, if the choice was free, then these non-actional elements nondeterministically caused the choice. Consequently, it was possible given the same past and laws of nature, that her reasons that favored helping the victim did not cause her to decide to help the victim. Crucially, what is possible here is not that her desires and reasons favoring helping the victim might have caused her to choose to do something else, such as to go on to the business meeting.²¹ Rather, what is possible is that her alternative and competing desires and reasons that favored going to the business meeting be causally efficacious, in which case her reasons favoring helping the victim would be causally silent.

By relocating indeterminism and placing it between the *non-actional* elements, such as desire and reason, and the actional elements, such as choice and intention formation, we also re-envision indeterminism's role. On Kane's account, indeterminism functioned as an obstacle to the agent's successfully carrying out his efforts. Indeterminism diminished control precisely because it played this role. My account of indeterminism does not envision indeterminism functioning in this way. According to my reformulated account, what is undetermined is not whether we succeed in doing what we have chosen to do, but what choice we made in the first place. What is undetermined in the case of the businesswoman is whether she chooses and forms the intention to help the victim. But once she has formed this intention, there need not be any chance of failure. On Kane's account, all our efforts leave open what we will do. On my account, what is left open is not success in executing our choices, but which choice we made in the first place. This then leads to a new conception of the role of indeterminism: indeterminism functions to furnish agents with access to a range of different possible choices, given the past and laws of nature. Rather than indeterminism

²¹ Levy (2011, p. 45) seems to saddle libertarians with this commitment.

functioning as an obstacle to our carrying out our already formed intentions, indeterminism contributes to our having access to a range of alternatives concerning which intentions to form.

This conception of the location and role of indeterminism places libertarians on a better track for constructing a defensible theory. Two fundamental problems for libertarianism are the problem of enhanced control and the problem of luck. If libertarians are to vindicate their claim that indeterminism is necessary for free will and moral responsibility, they must show both how indeterminism is relevant to enhancing control (the problem of enhanced control) and thus also why indeterminism does not diminish control (the problem of luck). As we have seen, Kane's theory is a non-starter as an attempt to answer these problems, for on Kane's view indeterminism does not enhance control and in fact diminishes it. Thus, a significant source of the difficulty for solving these problems for someone who endorses Kane's theory comes from his very conception of the location and role of indeterminism. But by relocating indeterminism to the moment of action, we remove this obstacle to solving the problems. First, by locating indeterminism at the moment of basic action, we are no longer forced to conceive indeterminism as an obstacle to carrying out our choices. By locating indeterminism at the second moment of action, Kane rendered indeterminism an obstacle since it opened the agent to the possibility of failing to do what he was trying to do. But if indeterminism is located at the moment of basic action, it does not function as obstacle to carrying out our choices, for the agent has yet to settle on a course of action. Moreover, in the case of the businesswoman, by locating indeterminism at the moment of choice, she comes to possess a variety of genuinely accessible alternatives concerning what to choose, and this, arguably enhances her control. If her choice to go on to the business meeting is causally determined, then the choice was inevitable given the past and laws. But if her choice was undetermined, then she could also choose to help the victim, and libertarians may well be able to exploit this fact to mount an explanation concerning how indeterminism is relevant to enhancing control.

Let me be clear that I do not take any of these reflections by themselves to solve the problem of enhanced control or the problem of luck. What I do intend them to show is that my reformulated theory places libertarians on a more promising track for constructing satisfactory replies to these problems. Kane's locating indeterminism at the second moment of action and his conceiving indeterminism as a hindrance to control, may seem to make these problems all but unsolvable. However, by locating indeterminism at the moment of basic action we are no longer *forced* to conceive of it as an obstacle to control and thus we have removed a rather large obstacle to mounting responses to these twin problems. But whether, in the end, my reformulated theory can indeed solve these problems will have to wait for another occasion.²²

5. Conclusion

I have sought to diagnosis what went wrong in Kane's theory of freedom and responsibility and explain how we should reformulate libertarianism so as to avoid the problems intrinsic to, and generated from, his theory. I argued that Kane's recipe for solving the problem of luck, and the location and role of indeterminism derived from it, are deeply problematic. The recipe failed because it does not offer a general method for solving the problem of luck; rather it assumes that there are some free undetermined actions, and on the basis of this assumption, explains how other actions, properly connected to these earlier actions, could also be free. Embedded in this recipe was a conception of indeterminism as located between actions—an effort of will and choice—and of indeterminism as constituting a hindrance to control. I argued that libertarians ought to jettison both conceptions of indeterminism and that this can be done with a single modification: namely by relocating indeterminism earlier in the action-sequence, between the non-actional features and basic action. I went on to suggest that this is indeed an improvement to libertarianism as it places us on a

²² Though see my Franklin (2011a, 2011b, 2012, n.d.) for attempts to show that it does have the resources to solve both problems.

better track for solving the problem of enhanced control and the problem of luck. I also conceded that *more* must be done to furnish a full defense of my reformulation of libertarianism. My goal here has been to free us of mistaken assumptions about event-causal libertarianism so as to afford us a better foundation on which to construct a defensible libertarian theory.²³

²³ An earlier version of this paper was presented at the 2011 American Philosophical Association, Pacific Division Meeting, in San Diego, CA. I am grateful to the audience for their helpful comments and especially to my commentator, Al Mele, and fellow presenter, Neal Tognazzini. I am also grateful to two anonymous referees for their careful and instructive comments on earlier versions on this paper.

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