

The Determinists Have Run Out of Luck—For a Good Reason

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In his paper “Bad luck once again” Neil Levy attacks our proof of the consistency of libertarianism by reiterating a time-worn compatibilist complaint.¹ This is, that what is not determined must be due to chance. If A has a choice of X or Y, neither X nor Y being causally determined, then if A chooses X it can only be by *chance*, never *for a reason*. The only “reason” that could explain the choice of X over Y would have to be a *causally sufficient reason*, which would rule out A’s having a genuine choice in the first place. Either X is causally necessitated or X is realized by sheer luck. But that these are the only alternatives is untrue. The exercise of deliberative reason opens the way between the Scylla of causal necessitation and the Charybdis of chance, as we shall try to make clear.

The central core of Levy’s argument is that any attempt to give a reasons-based explanation of a contrastive fact must fail. A contrastive fact is a fact of the kind “Jane decides to vacation in Hawaii rather than Colorado,” or “Jane assigns a greater weight to surfing than to white-water rafting.” In the last three paragraphs of his paper Levy argues that Jane’s assigning more weight to surfing than to rafting cannot be a reasons-based assignment, because, as he puts it, “the reasons that would explain the weighting are the weighted reasons *themselves*.” Similarly, prior to making her Hawaii/Colorado decision, Jane has

¹ Neil Levy, “Bad Luck Once Again” (next article), discussing McCall and Lowe, “Indeterminist Free Will,” *Philosophy and Phenomenological Research* LXX (2005), pp. 681–690.

reasons for both options, but no *decisive* reasons for either. As he says, "Her reasons have got her this far, but they can take her no further." Lacking a decisive reason, by which Levy apparently means a reason causally sufficient to produce Jane's choice, her decision must be due to pure chance or luck.

Levy's arguments are fallacious. Clearly, for him, a reason for A's doing or choosing to do X cannot count as "decisive" unless A's having that reason necessitates her doing X. It "explains" her action simply by excluding the possibility of any other course of action. But a libertarian cannot accept such a notion of a "decisive reason." For libertarians, A's reason for doing X was "decisive" if and only if it was, *in fact*, the reason for which A did X. The "decisive" reasons are just those that the agent *did* act upon, as opposed to those she could have acted upon but did not. Reasons which do not necessitate can still explain why this course of action resulted rather than that, contrary to Levy's apparent assumption. And such reasons are absent altogether in genuine cases of luck or chance.

Levy suggests that our position is no better than the Kane's. But we suggest on the other hand that Levy's objection is no better against Kane's position than it is against ours: it simply begs the question at issue between the libertarians and their opponents. Levy has failed to perceive what is distinctive about our position and makes it superior to Kane's, namely that the evaluation stage of deliberation is a continuous indeterministic process rather than a punctuated series of chance events. Despite what he says, the weighting of reasons can be reasons-based, and a decision to act on the reasons for X rather than the reasons for Y can be, and frequently is, rationally explicable and defensible. This emerges clearly in the example of Jane's vacation deliberations.

Suppose that Jane asks Susan, a friend, to help her make up her mind. She reviews with Susan the pros and cons of Hawaii versus Colorado, the luxury of a beach house, the incredible sunsets over the Grand Canyon, the danger of trail horses stumbling, the expense of flying halfway across the Pacific, etc. Over a period of days, during which time the two options remain continuously open and choosable, Jane attempts to make precise the importance she attaches to these different reasons pro and con. It turns out, perhaps, that Jane has an exaggerated fear of rattlesnakes, loves the smell of campfires, adores snorkeling but has never forgotten the horror of the movie "Jaws," etc. With Susan's help, she eventually arrives at a scale of weights attached to every conceivable feature of the two alternative vacations, and is able to articulate the reasons upon which her weighting system is constructed. Finally, on the day of decision, she makes her controlled, considered, reasons-based choice. Luck, or chance, does not enter into it. Jane's

decision is the antithesis of tossing a coin. It is fully rational and yet, both options continue to be physically possible future alternative courses of action up until the moment Jane phones her travel agent. If God were to order a re-play of Jane's deliberation it is conceivable that Jane's weighting system might be slightly different, and that her choice could go the other way. A situation of this kind is describable as "two-way rational."

The difficulty that some philosophers experience in grasping the possibility of controlled, indeterministic, rational, open-ended processes which typically constitute deliberations may be explained by their neglect of the concept of probabilistic causation. Although Humean causes are invariably followed by their effects, probabilistic causes are not. It is possible that during deliberation, the activity of the central nervous system is best described as an indeterministic neurological mechanism subject to the force of probabilistic causes, these causes corresponding to the various reasons and weightings of reasons that deliberators like Jane deal with. This is not to say that reasons *are* causes, but only to suggest that probabilistic causation may be a useful concept when studying deliberative processes. The notion of probabilistic causation completely undercuts the false Scylla/Charybdis dilemma of the determinists, to which Levy appeals.

When a deliberator is deliberating, the probabilities of each option being selected vary continuously, with swings toward one option or another as new considerations occur to the deliberator, or as she attempts to justify her weighting system to a third party. Finally, with the decision, each option's probability moves smoothly and continuously to assume the value of zero or one. In this model of libertarian deliberation, there is room for probability, and for probabilistic causation, but no room for unadulterated chance or luck.

A final example, taken from judicial deliberation, shows that in some cases it may prove not just mistaken, but even risky, for a determinist to assert that a person's choice of option X rather than option Y is due to chance or luck. In June 2005 the Supreme Court of Canada brought down a decision in the case of *Chaoulli vs the Attorney General of Quebec* which surprised many jurists. Chaoulli, a physician, had a patient with a number of health problems who was deprived of the timely care he needed by the long waiting times for hospital treatment. Chaoulli had tried unsuccessfully over a period of years to have his home-delivered medical services recognized and to operate an independent private hospital, for which patients could purchase private health insurance in addition to the public insurance that every Canadian possesses automatically. The Quebec government had refused to permit such private insurance on the grounds that it violated the Canada

Health Insurance Act. However, Chaoulli argued that the lengthy waiting times for certain surgical procedures, which inflicted needless pain and suffering on patients and in some cases increased their risk of mortality, infringed their rights as guaranteed in the Canadian Charter of Human Rights. Section 7 of the Charter states that every citizen has the right to life, liberty and security of the person. Chaoulli argued that patients who were deprived of urgent health care when there was a remedy through private insurance were being deprived of a fundamental Charter right, and to the great surprise of many Canadians the court agreed with him. The Canada Health Act which guarantees health care to all regardless of their ability to pay is a cornerstone of Canadian society, and the Chaoulli decision, which may now force the government to permit access to some forms of health care through private insurance, is a landmark decision. Canada, it seems, is the only OECD country which prohibits insurance for health care provided by non-participating physicians.

The Chaoulli decision is an example of a controlled, rational, indeterministic process. Its relevance to the libertarian/determinist debate lies in (a) the unpredictability of, and surprise occasioned by, the Supreme Court judgment, and (b) the great care which the participating judges took in comparing the legal weight of the Canada Health Act with that of individual rights enshrined in the Charter. No doubt the eventual decision arrived at could have gone the other way. But for Neil Levy or anyone else to assert that the Supreme Court's judgement was arrived at "by luck," or "by chance," would be a bold and risky move. To stand up and say this in a legal tribunal would be to invite the charge of contempt of court. In throwing around the word "luck," determinists should be careful.

Summing up, there are in deliberation many contrastive facts which admit of reasons-based explanations. The Supreme Court decision to support individual Charter rights over the Canada Health Act is one of them, and the reasons for and against this decision will surely be argued for years to come. To say, with the compatibilists, that the decision was arrived at by luck adds nothing to the debate but obfuscation and confusion.