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CAN THE CONTEXTUALIST WIN THE FREE WILL DEBATE?

by

REUBEN STERN

Under the Direction of Eddy Nahmias & Andrea Scarantino

ABSTRACT

This thesis explores the merits and limits of John Hawthorne's contextualist analysis of free will. First, I argue that contextualism does better at capturing the ordinary understanding of 'free will' than competing views because it best accounts for the way in which our willingness to attribute free will ordinarily varies with context. Then I consider whether this is enough to conclude that the contextualist has won the free will debate. I argue that this would be hasty, because the contextualist, unlike her competitors, cannot tell us whether any particular agent is definitively free, and therefore cannot inform any practices that are premised on whether a particular agent is morally responsible. As such, I argue that whether the contextualist "wins the free will debate" depends on whether it is more important to capture the ordinary understanding of 'free will' or more important to inform our practices of ascribing moral responsibility.

INDEX WORDS: Contextualism, Free will, Moral responsibility, Retributive punishment

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REUBEN STERN

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CHAPTER 1: MOTIVATING CONTEXTUALISM ABOUT FREE WILL

I. Introduction

Philosophical debates about free will's compatibility with determinism turn largely on whose definition of 'free will' we choose to adopt. Incompatibilists, on the one hand, typically claim that an agent must be the ultimate source of his/her action in order to freely will it.[1] Since determinism—the thesis that every event is necessitated by antecedent events and conditions together with the laws of nature—denies this possibility, incompatibilists conclude either that determinism is false (the libertarian view) or that free will does not exist (the hard determinist or skeptic view). Compatibilists, on the other hand, while not entirely united in their efforts to define 'free will', are united at least insofar as they claim that an agent need not be the ultimate source of her action in order to freely will it. That is, all compatibilists claim that humans have some *other* capacity that renders them free—some capacity not threatened by determinism—and thereby avoid issues pertaining to determinism.[2]

Whose definition is right? Moreover, how can we tell? One might fear that both sides merely stipulate the definitions they favor, but upon careful examination of the literature, one finds this not to be the case. Instead, on both sides of the debate, philosophers cite ordinary intuitions about free will as evidence in favor of their

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[1] Many incompatibilists treat 'having free will' as having the unconditional ability to do otherwise (i.e., to do otherwise holding fixed all past conditions and laws of nature). I treat such incompatibilists' conception of 'free will' as subsumed by the one I deliver in terms of 'ultimate sourcehood'. That is, I treat being the 'ultimate source of one's action' as a sufficient condition for 'having the unconditional ability to do otherwise'.

[2] In an unpublished manuscript, Dylan Murray and Eddy Nahmias typify compatibilist conceptions of free will by saying they identify "a type of freedom that requires a less metaphysically demanding set of capacities, such as the reflective, rational self-regulation of one's actions."

respective definitions.[3] For example, Derk Pereboom, an incompatibilist, reports that "[b]eginning students typically recoil at the compatibilist response,"[4] while Eddy Nahmias, a compatibilist, cites the results of experimental studies conducted on undergraduates as evidence in favor of a compatibilist treatment of 'free will'.[5] Philosophers, then, seem to agree that we should *ceteris paribus* favor definitions of 'free will' that capture the ordinary understanding, but seem to disagree about which notion of 'free will' best captures the ordinary understanding.[6]

In this chapter of my thesis, I argue that neither the incompatibilist nor the traditional compatibilist provides the definition that best satisfies this desideratum. Instead, I argue that John Hawthorne's contextualist treatment of free will ('CFW') best squares with the ordinary understanding. My strategy is, first, to argue that CFW best explains some empirical data that demonstrates that our willingness to attribute free will ordinarily varies with context, and, second, to respond to objections about the intuitiveness of CFW that can be staged from the armchair. But before I proceed in my

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[3] Why do philosophers prefer whatever definition of 'free will' best captures the ordinary understanding?
Answering this question would require a paper of its own. But for those who are curious: In an unpublished manuscript, Dylan Murray and Eddy Nahmias (2010) compellingly argue that "theorizing about free will is and ought to be constrained by the folk understanding of free will" because "theorizing about 'free will' in isolation from how people use and understand that concept risks devolving into a technical dispute about some other, homonymous concept that is irrelevant to non-philosophers' practices of assessing praise, blame, reward, and punishment, and to their understanding of themselves and their place in the world." They claim that "prescriptively relevant theories must appeal to the actual commitments in order to be reason-providing to those people." So, as Nahmias and Murray would have it, if free will theorists want their theories to potentially affect ordinary practice, they had better theorize in terms that people ordinarily understand; they had better mean something similar to what people ordinarily mean by 'free will'.
[4] Pereboom (2007), xvi.
[5] Nahmias, Morris, Nadelhoffer, & Turner (2006)
[6] Though no philosopher goes so far as to say that we should *at all costs* prefer whatever notion of 'free will' best captures the ordinary understanding, many philosophers seem to agree that capture of the ordinary understanding is *a virtue*, and therefore seem to agree that we should *ceteris paribus* prefer notions of 'free will' that capture the ordinary understanding.

defense of CFW, we should first get clear about what contextualism is and why Hawthorne believes it applies the free will debate.

II. Contextualism

In his paper, "Freedom in Context," John Hawthorne explores whether one might be a contextualist about free will.[7] His strategy is to outline the contextualist approach advocated by David Lewis in his paper, "Elusive Knowledge," regarding debates about skepticism in epistemology, and then to discuss how it applies to the free will debate. Hawthorne concludes that if Lewisian contextualist analysis works in epistemology, then it should work within the free will debate, too.[8]

The position that Lewis advocates in "Elusive Knowledge" is motivated by his desire to protect ordinary knowledge claims from skeptical arguments that aim to show that we actually know much less than we ordinarily think we do.[9] Consider, for example, Lewis's response to Cartesian-style skepticism.[10]

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[7] Hawthorne (2001)

[8] Hawthorne (2001) writes the following:
"For convenience of exposition, I have represented myself as confidently believing a Lewis-style contextualist analysis of freedom (CFW). In fact I do not confidently believe it. It is a controversial philosophical thesis and I don't confidently believe many of those. What's important is that it deserves to be taken seriously, that it is a worthy competitor to more standard philosophical positions in the area" (p. 77).
For convenience of exposition, I, too, represent Hawthorne as confidently believing CFW.

[9] Lewis (1996)

[10] The "Cartesian-style" skeptic's argument:

i. A person knows that P only if, for every Q that she knows to be incompatible with her knowing that P, she knows that not-Q; that is, only if, for every Q that she knows to be incompatible with her knowing that P, she has ruled out the possibility that Q. (Stroud 1984)
ii. I cannot rule out that I am dreaming right now. I cannot both be dreaming and typing on my Mac at the same time.
iii. Since I do not know that I am not dreaming (not-Q), I cannot know that I am typing on my Mac (P).

Lewis writes, "We know a lot. I know what food penguins eat… I know that Essendon won the 1993 Grand Final. I know that here is a hand, and here is another."[11] But Lewis also finds the skeptical argument compelling. He writes, "To speak of fallible knowledge, of knowledge despite uneliminated possibilities of error, just *sounds* contradictory."[12] If knowledge requires infallibility, then Lewis cannot know that Essendon won the 1993 Grand Final, since Lewis has not eliminated a possibility of error—namely, that Lewis might have been dreaming when he learned that Essendon won or, less fantastically, that he might have been tricked into believing Essendon won.

Lewis has a problem; his position seems schizophrenic. How can he grant the skeptic the force of his argument *and* protect our ordinary practice of ascribing knowledge? How can it be that ordinary people speak the truth when they ascribe knowledge to themselves *and* that epistemologists speak the truth when they say that ordinary ascriptions of knowledge fail the infallibility requirement?

In order to solve this problem, Lewis puts forth the following condition for knowledge: "S knows that P just if S's evidence eliminates every possibility in which not-P—Psst!—except for those possibilities that we are properly ignoring."[13]

So, Sam knows that Port-au-Prince is the capital of Haiti just if Sam's evidence eliminates every possibility in which Port-au-Prince is not the capital of Haiti —Psst!—except for those possibilities we are properly ignoring. The truth-value of 'Sam knows that Port-au-Prince is the capital of Haiti' can change, then, simply by changing the

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iv. If I don't know that I am typing on my Mac, there seems to be very little that I can know at all, since almost every other prospective piece of knowledge will fall prey to skeptical arguments in the exact same way.

[11] Lewis (1996), p. 549
[12] Lewis (1996), p. 549
[13] Lewis (1996), p. 561

possibilities attended to. If Sam were to walk into a café whose daily trivia question asked the capital of Haiti, and if Sam were not to attend to the possibility that all of the people he ever discussed Port-au-Prince with might have been a part of an evil plot to deceive him, then Sam might be said to *know* that Port-au-Prince is the capital of Haiti, since Sam might be said to be properly ignoring the possibility that he was deceived (depending, of course, on how we define 'properly'). However, if Sam were to converse with Barry Stroud, and if Barry Stroud were to question whether Sam actually knows that Port-au-Prince is the capital of Haiti, given that Sam cannot rule out that all of the people he ever discussed Port-au-Prince with might have been a part of an evil plot to deceive him, then Sam could *not* be said to properly ignore the possibility that he was deceived, since by attending to Barry Stroud's skeptical arguments in conversation, he is *not ignoring the possibility at all*. As Lewis puts it, "No matter how far-fetched a certain possibility may be, no matter how properly we might have ignored it in some other context, if in this context we are not in fact ignoring it but attending to it, then for us now it is a relevant alternative."[14]

Thus, as Lewis sees it, when the skeptic does epistemology, she establishes that we know very little precisely by ignoring very little. She entertains all of the possibilities that might render a knowledge claim fallible since epistemology requires that she do so. But in ordinary life, we ignore many possibilities, and there are therefore many possibilities that are at least candidates for us to be properly ignoring. By creating a device that depicts the truth of a knowledge claim as indexed to its speaker's sphere of attention, Lewis averts his "schizophrenia". His analysis depicts a world in which our

[14] Lewis (1996), p. 559

ordinary knowledge ascriptions can be truthfully uttered *and* in which the skeptic's claim that 'ordinary knowledge claims are wrong' can be truthfully uttered.[15]

III. Contextualism about Free Will

Now that we understand how Lewisian contextualism works, we can follow Hawthorne in considering how it applies to the free will debate. Hawthorne writes:

> When I told my friend this morning that I was choosing whether or not to have a bagel for breakfast, it seemed very clear to me that I had said something true, having noted the availability of the bagels in the pantry and there being no noticeable forces beyond my control that settled my having a bagel or not. But were I to have embarked on increasingly philosophical reflection, noting first the neurological springs of my action and then, indeed, that my actions are the result of operations of the laws of nature over which I had no control, coupled with the distribution of microparticles in the distant past over which I had no control, … I would then find myself in the position where I could no longer with good conscience ascribe to myself free will concerning whether or not I had a bagel. As I think harder about the range of determinants of my action, my inclination to ascribe freedom of choice to myself withers.[16]

Hawthorne, like Lewis, is worried about the "schizophrenia" of his position. On the one hand, it is very clear to him that he freely chose to eat his bagel. After all, there were no noticeable forces beyond his control that settled his having a bagel or not. But on the other hand, when Hawthorne contemplates that his choice was ultimately caused by factors far beyond his control, it is clear to him that he did *not* freely choose to eat his bagel.

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[15] Of course Lewis only gets the desired result if his analysis of 'properly' depicts us as ordinarily properly ignoring whatever possibilities would render attributions of knowledge false. But of course Lewis's analysis of 'properly' delivers just that; his definition of 'properly' is *designed* to yield this exact result.

[16] Hawthorne (2001), p. 66-67

In response, Hawthorne adopts Lewis's schizophrenia-aversion strategy. He provides the following alteration of Lewis's condition: "S does *x* freely only if S's action is free from causal explainers beyond S's control—Psst!—apart from those causal explainers that we are properly ignoring."[17]

Hawthorne's condition effectively renders the truth of some claim, 'S does *x* freely', as dependent upon the context of attention. When a skeptic about free will claims that Hawthorne did not freely choose to eat his bagel, he does so because he attends to the causal explainers that are outside of Hawthorne's control. The skeptic claims, "Hawthorne did not freely choose his bagel. If determinism is true, then there are sufficient causal explainers for his choosing the bagel that were beyond his control. For example, qua determinism, his choice was completely caused by the laws of nature coupled with the distribution of microparticles in the distant past over which he had no control. Moreover, if *in*determinism were true, then Hawthorne's free will would not be rescued, since indeterministic causation is necessarily outside of anyone's control, insofar as it is not determined by anything."[18] But in ordinary life, we ignore many causal explainers, and therefore ignore many causal explainers that are at least candidates for us to be properly ignoring. Thus, Hawthorne has created a device by which the truth of a freedom claim is indexed to its speaker's sphere of attention, and has thereby averted his "schizophrenia". When Hawthorne said that he freely chose to eat the bagel, did he speak the truth? Yes, as long as he was properly ignoring the causal explainers for his action that were ultimately beyond his control. No, as long as Hawthorne was doing philosophy

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[17] Hawthorne (2001), p. 68

[18] Here, I assume Galen Strawson's position that "one can hardly be supposed to be more truly morally responsible for one's choices and actions or character if indeterministic or random occurrences have played a part in their causation than if they have not played such a part" (1998).

and attending to the causal explainers that were ultimately beyond his control.[19] Hawthorne's condition for free will gets him exactly what he wants: a world in which the claim 'S does x freely' is truthfully uttered in ordinary contexts *and* in which the skeptic's claim, 'S does not do x freely', is truthfully uttered in other contexts.[20]

IV. The Ordinary Understanding of 'Free Will'

Now that CFW is on the table, we can consider whether it captures the ordinary understanding. Every analysis of 'free will' that hopes to capture the ordinary understanding makes predictions about the way people *actually* regard 'free will'. For example, compatibilism (in all of its forms) predicts that people will intuitively treat 'free will' as compatible with determinism, while incompatibilism (in all of its forms) predicts that people will intuitively treat 'free will' as incompatible with determinism.[21] CFW, on the other hand, predicts that people would intuitively treat 'free will' as incompatible with determinism so long as they attend to the causal explainers implied by determinism

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[19] This is not to say that CFW allows any person to simultaneously hold contradictory views. CFW only holds that someone who is attending to a particular set of causal explainers can speak the truth when they say that 'S does *x* freely' while someone who is attending to a different particular set of causal explainers can speak the truth when they say 'S does not do *x* freely.' CFW does *not* hold that a particular person, while attending to a particular set of causal explainers, can speak the truth when he says 'S does *x* freely' and can also speak the truth when, attending to the same set of causal explainers, he says 'S does not do *x* freely.' Thus, CFW is *not* relativistic; the truth of an 'S does *x* freely' claim is not dependent on the features of the context in which it's assessed, but is rather dependent on the features of the context in which it is uttered.

[20] Of course Hawthorne only gets the desired result if his analysis of 'properly' depicts us as ordinarily properly ignoring whatever causal explainers would render attributions of free will false. But of course Hawthorne's analysis of 'properly' delivers just that; his analysis of 'properly' is *designed* to yield this exact result.

[21] For convention's sake, I will not treat the contextualist as a type of *compatibilist*. Though there is a sense in which the contextualist is a type of compatibilist—contextualists believe that certain attributions of free will are true even when uttered in a deterministic world—they also are, in a sense, not compatibilists since they take determinism to render certain *other* attributions of free will (in other contexts) false. So, for the purposes of this paper, when I speak of *compatibilists*, I mean *traditional* compatibilists, or compatibilists who believe determinism never threatens free will.

(antecedent events and conditions together with the laws of nature), but also that people would treat 'free will' as compatible with determinism when their attention is elsewhere. Whose prediction is right? Since this question is empirical in nature, we must leave the armchair and *observe* how people attribute 'free will'. Luckily for us, "experimental philosophers" have already done this; they have conducted survey-driven experiments in which they ask undergraduates whether some particular individual in a deterministic world is free or morally responsible when she performs some action, and, in turn, they have compiled empirical data of the exact sort to suggest an answer to our question.[22]

Though there has thus far been little consensus as to whether the majority of respondents use any particular notion of free will,[23] there are several trends in the data upon which everyone can agree. First, in every experiment there are some respondents who treat 'free will' as compatible with determinism and other respondents who treat 'free will' as incompatible with determinism. Though the majority shifts from experiment to experiment,[24] there is *always* a dissenting minority. Second, across all experiments, respondents have been found more likely to attribute 'free will' in what philosophers call *concrete* scenarios than in what philosophers call *abstract* scenarios.[25] Here, *concrete* scenarios are those that are likely to induce affective/emotional responses because they

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[22] A few of these studies ask about 'moral responsibility' and not 'free will'. Though it would have been ideal if philosophers had asked about 'free will', findings about 'moral responsibility' still suggest an answer to our question. This is true because (i) 'free will' is typically considered an essential (not-quite-but-almost-necessary) condition for 'moral responsibility', and (ii) because when philosophers have asked about *both* moral responsibility and free will, subjects' willingness to attribute 'free will' has co-varied with subjects' willingness to attribute 'moral responsibility' (Cf. Nahmias, Morris, Nadelhoffer, & Turner (2006), Nahmias, Coates & Kvaran (2007), Nichols & Knobe (2007), Sommers (2010).)

[23] Cf. Nahmias, Morris, Nadelhoffer, & Turner (2006), Nichols & Roskies (2008), Nichols & Knobe (2007), Sommers (2010)

[24] Cf. Nahmias, Morris, Nadelhoffer, & Turner (2006), Nahmias, Coates & Kvaran (2007), Nichols & Knobe (2007), Sommers (2010).

[25] Cf. Nahmias, Morris, Nadelhoffer, & Turner (2006), Nahmias, Coates & Kvaran (2007), Nichols & Knobe (2007), Sommers (2010).

specify the relevant agent and action, while *abstract* scenarios are those that are less likely to induce affective/emotional responses because they do *not* specify the relevant agent and action. For example, in a seminal study by Shaun Nichols and Joshua Knobe ('NK'), the concrete scenario depicts Bill as burning his house down with his family inside so that he can be with his secretary, while the abstract scenario depicts "a person" performing "actions". Third, respondents are more likely to attribute 'free will' in scenarios that take place in *this* world than in scenarios that take place in *other* worlds. For example, Shaun Nichols and Adina Roskies recently found that the folk are more likely to attribute 'free will' when given a scenario that describes scientists' confirmation of determinism than when given scenarios that depict an *alternate universe* in which determinism is true.[26]

Do any of the candidate views predict these results? Compatibilists and incompatibilists (collectively '(in)compatibilists') both predict that respondents will share their respectively favored definitions *no matter the scenario*. (In)compatibilists also predict that *everyone* will share their respectively favored definitions.[27] Neither of these predictions comes true; a variance in willingness to attribute 'free will' is found both between scenarios and between people. Of course (in)compatibilists can posit theories that explain the *error* of responses that stray from their favored notions, but this tactic seems *post hoc*.[28] (In)compatibilists' efforts to explain away the folk's competing

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[26] Nichols & Roskies (2008)

[27] Perhaps no (in)compatibilists would *actually* make this prediction because they are so aware of their interlocutors' competing intuitions. Nevertheless, insofar as (in)compatibilists' *definitions* of 'free will' act as predictions of how people ordinarily regard free will, neither predicts any variance in a willingness to attribute 'free will' among people, since neither accounts for any variance within its set of necessary and sufficient conditions.

[28] In case you are wondering more about what these error theories look like:

intuitions are like Ptolemy's epicycles: mere attempts at *backtracking* in order to *accommodate* the empirical results.

CFW, on the other hand, predicts that people's willingness to attribute 'free will' depends on what people attend to. As such, not only does CFW predict that people's willingness to attribute 'free will' will vary when certain features of a context make it more likely to attend to certain causal explainers, but CFW also predicts that people's willingness to attribute 'free will' will vary if they are differently predisposed to attend to different causal explainers. It seems, then, that CFW is the only view on the table that predicts systematic variance. But two questions remain: First, can the contextualist account for the ways in which differences between *abstract* and *concrete* scenarios and differences between *this-world* and *other-world* scenarios cause respondents' willingness to attribute 'free will' to vary by identifying the causal explainers to which respondents

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Nichols and Knobe (2007) argue that the folk can be moved to deliver apparently compatibilist responses, but that they are incompatibilists upon calm and cool (not affect/emotion-driven) reflection. Thus, as Nichols and Knobe would have it, though certain results seem to indicate a compatibilist understanding of free will, they actually do not because they are explained by an *affective performance error model*.

The best known compatibilist error theory belongs to Eddy Nahmias and Dylan Murray ('NM'). They argue that "most laypersons who take determinism to preclude free will and moral responsibility do so because they mistakenly interpret determinism to involve fatalism or "bypassing" of agents' relevant mental states." To test this, NM replicate experiments like Nichols and Knobe's but control for their subjects' (mis)understanding of 'determinism'. The results confirm NM's theory; though subjects *are* less likely to attribute free will in abstract scenarios, they are also *more* likely to misunderstand determinism. Thus, as NM would have it, the folk have a compatibilist concept of 'free will' that subjects misuse when a misunderstanding of determinism leads them astray. Since NM get empirical confirmation of their theory, it is less *post hoc* than other error theories. That is, since NM actually *find* error—error in the understanding of determinism—their theory is less *post hoc* than competing theories that posit that one set of intuitions is erroneous without empirically identifying any aspect of the folk's thinking that is uncontroversially erroneous. Nevertheless, problems lurk for NM. One such problem is that NM cannot rule out the possibility that the direction of causation goes in the other direction. Subjects might, first, judge that *S* is not morally responsible because she is not the ultimate source of her action (because she treats free will as incompatible with determinism, properly construed), and, second, judge that "bypassing" must be taking place (because she believes that having mental states that cause one's actions is sufficient for having free will). This competing explanation is aided by the fact that NM ask about 'moral responsibility' first in the study in which they find the highest "bypassing" effect.

attend? Second, do people actually vary in ways that render them differently predisposed to attend to causal explainers?

Since Hawthorne explicitly suspends judgment on what *attention* amounts to, it is hard to say whether CFW, as he construes it, can account for the observed variance.[29] Nevertheless, it is easy to see how Hawthorne could expound upon his analysis to account for the specific ways in which the folk's 'free will' judgments vary. In concrete scenarios, for example, Hawthorne can say that the folk never really attend to the causal explainers implied by determinism because their attention is so occupied by the concrete aspects of the scenario that induce strong emotional responses. In abstract scenarios, Hawthorne can say that the folk judge *S* as lacking 'free will' because they are free to attend to the causal explainers implied by determinism in the absence of emotional distracters. Similarly, Hawthorne can say that the folk more readily attend to the causal explainers implied by determinism in *other-world* scenarios than *this-world* scenarios because other-world scenarios are "more removed and less personally involving than our own,"[30] and are therefore less likely to include emotional distracters than this-world scenarios.

In response to the second question, Hawthorne can say that humans *do* seem differently predisposed to attend to the relevant features of their environments (or contexts). My mother, for example, is far more likely to attend to the features of her environment that are likely to induce emotional responses—she cries at *every* wedding—while psychopaths *never* pay attention to the affect-inducing features of their

[29] Hawthorne (2001), n. 6
[30] Nichols & Roskies (2008), p. 9

environments.[31] As such, Hawthorne can say that certain people (those on my mother's end of the spectrum) are more likely to judge that 'free will' is compatible with determinism because they are more prone to attend to emotional distracters, while other people (those on the psychopath's end of the spectrum) are more likely to judge that 'free will' is incompatible with determinism because they are less likely to attend to emotional distracters.[32] Therefore, Hawthorne can explain why there is always a dissenting minority: because people come into the survey environment with varying predispositions to attend to relevant causal explainers.

One might argue that I am too kind to the contextualist because positing a theory of attention that is *designed* to explain the data seems just as *post hoc* as (in)compatibilists' error theories. But this seems wrong. CFW is unique in that it predicts systematic variance with respect to contextual variables, and this is exactly what is found. Moreover, it may be to Hawthorne's credit that he remains silent about what *attention* amounts to. 'Attention' is the stuff of the cognitive sciences. Hawthorne is no expert on the cognitive sciences. Thus it makes sense that he would leave this variable to be filled in later by scientists and empirically informed philosophers who are better equipped.

One might also argue that my proposal *sounds* like an error theory despite what I say. The line goes: "You continue to speak of *emotional distracters*. Don't emotional *distract*ers just *distract* us from the proper understanding of 'free will'?"

No. Though it's true that our emotions sometimes get in the way of our calm and cool reflection, we also know that our emotions "sometimes reflect beliefs and support

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[31] Prinz (2006)

[32] For more discussion of the impact personality traits have on the folk's willingness to attribute 'free will', see Feltz and Cokely (2008), in which they find empirical confirmation that personality traits (e.g. how extraverted one is) affect one's willingness to attribute free will.

cognition."[33] This is especially true when the beliefs in question are about subjects that are tied up with our *theory of mind* capacities (our capacities to reason about the beliefs, desires, and intentions of other minds), and 'free will' and 'moral responsibility' are arguably two such subjects. Moreover, as Nahmias and Murray (2010) claim, it may be in some sense true that people's intuitions are more reliable when they have more details about a scenario, as in concrete cases. As such, it seems irresponsible to currently favor either set of intuitions, since our emotional capacities plausibly both help and hinder our mastery of 'free will'.

V. Objections from the Armchair

Keen observers may have noticed that Hawthorne provides a necessary condition but not a definition of 'free will'.[34] Since our greatest aim is to establish how philosophers should *define* 'free will', this seems a potentially damning objection. But Hawthorne seems able to deliver on this charge, too. Consider the following modification of Hawthorne's condition:

S does *x* freely iff *S*'s action is not completely random and *S*'s action is free from causal explainers beyond *S*'s control—Psst!—apart from those causal explainers that we are properly ignoring.

As Richard Feldman notes in his paper, "Freedom and Contextualism,"[35] the most obvious problem with treating Hawthorne's original condition as a definition is that

[33] Sinnott-Armstrong (2008)
[34] Hawthorne writes about his condition: "What I have to say does not require that the right hand side is sufficient as well as necessary. A good thing too, since the stronger 'iff' claim is far more questionable" (2001), p. 68.
[35] Feldman (2004)

"[a]ctions that are completely random would satisfy the specified condition".[36] Feldman is surely right that we never understand "completely random" actions as freely willed since they fail to satisfy even compatibilist conditions for 'free will'. But Hawthorne has an easy fix: He can, as I've done, modify the condition such that the conjunction of the original condition and a new *not-random* condition is jointly necessary and sufficient for 'free will'. Detractors might argue that the new definition would identify certain *non-intentional* actions as free, but when it comes to these *non-intentional* actions—e.g., scratching one's nose or involuntarily swerving a car to avoid an accident—we are quite likely to cite causal explainers outside of our control—namely, our subconscious cognition—as the reason that these actions are not free. Thus Hawthorne's new definition would not identify these actions as freely willed since in evaluating such actions we so readily attend to causal explainers outside of *S*'s control. Anyway, regardless of whether *my* modification gets Hawthorne the definition he needs, it should be obvious that there is nothing in principle that stops him from making the necessary modification.

Feldman also claims that CFW is not intuitive because people typically are not contextualists about free will. As he puts it, "when people are moved by considerations about determinism to say that they are not free, I think that they typically regard this conclusion as incompatible with their ordinary attributions of the word 'free'."[37] Feldman misunderstands the sort of theory that CFW is. Hawthorne never suggests that people typically regard attributions of 'free will' as compatible with each other. Instead, Hawthorne depicts himself as explaining how we can consistently believe that people can be free in some contexts and not free in other contexts, *despite* the fact that we typically

[36] Feldman (2004), p. 272
[37] Feldman (2004), p. 270

treat these beliefs as inconsistent. Moreover, Hawthorne's condition does *not* predict that people will use 'free will' in the way Feldman suggests. It does *not* claim that a particular person, while attending to a particular set of causal explainers, can speak the truth when he says 'S does *x* freely' and can also speak the truth when, attending to the same set of causal explainers, he says 'S does not do *x* freely.' *Maybe* one could argue that the contextualist is committed to the thesis that people would become contextualists *were* they to attend to CFW itself, but this claim does not gain any ground, since the folk unfortunately do not read Lewis and Hawthorne.

Finally, the contextualist can readily answer two charges frequently lodged against (in)compatibilists. First, compatibilists often charge incompatibilists with being unable to account for our varying willingness to attribute 'free will' when we are *not* attending to determinism. For example, compatibilists often point out that we treat brain-damaged or coerced individuals as less free or less morally responsible than their normally functioning, non-coerced counterparts. Unlike incompatibilists, the contextualist can explain this by identifying the causal explainers to which one attends that are outside of *S*'s control but that are not determinism itself (e.g., neuropathologies or coercion). Thus, the contextualist, too, can explain non-deterministic threats to 'free will'.

Second, incompatibilists often claim that compatiblists cannot explain their students' starting intuitions on the matter. Consider Peter van Inwagen's claim:

> It has seemed obvious to most people who have been exposed (perhaps 'subjected' would be a better word) to philosophy that free will and determinism are incompatible. It is almost impossible to get beginning students of philosophy to take seriously the idea that there could be such a thing as free will in a deterministic universe.[38]

[38] van Inwagen (2009)

This poses no problem for CFW. On the contextualist reading, these students correctly judge that 'free will' is incompatible with determinism in the philosophy classroom precisely because their professors bring their attention to a causal explainer (determinism) outside of anyone's control.

VI. Conclusion

Considering that the contextualist is most capable of predicting and explaining the empirical data, and that the contextualist can respond to charges often lodged against her competitors about the intuitiveness of her construal of 'free will', we can conclude that CFW best captures the ordinary understanding of 'free will'. Perhaps this means that we should be contextualists about 'free will', or, alternatively, perhaps this means that we should not care so much whether our notion of 'free will' captures the ordinary understanding. The subsequent chapters of this thesis will help us reflect on this choice.

CHAPTER 2: CONTEXTUALISM AND THE LAW

I. Introduction

So far we have learned that CFW provides the analysis of free will that best captures the ordinary understanding. Can we say, then, that the contextualist wins the free will debate? Perhaps not. Though capturing the ordinary understanding is certainly a virtue when it comes to defining 'free will', it is not the *only* virtue. Many philosophers also believe that the ideal notion of 'free will' should be capable of informing our moral responsibility practices.[39] As these philosophers see it, free will is worth studying because *S*'s having free will is necessary for *S*'s being morally responsible, and because *S*'s being morally responsible (or not) partially determines how we ought to treat *S*.

In this chapter, I argue that the contextualist fails to provide a notion of 'free will' that is capable of informing our moral responsibility practices. I argue that CFW is fundamentally different from the most traditional stances on free will (libertarianism, skepticism, and compatibilism) because it does not tell us whether any particular agent is definitively free, and therefore cannot inform our moral responsibility practices, including practically important legal issues, in a way that each of the other positions can. As far as this chapter goes, I remain silent on whether this means that we should abandon CFW.

II. Contextualism, Moral Responsibility, and the Law

It is not immediately clear where CFW falls within the landscape of the free will debate. Does the contextualist claim we are free creatures? Does she claim that we are morally responsible creatures?

[39] Cf. Strawson (1998), Nahmias & Murray (2010), Vargas (2010), Greene & Cohen (2004).

If Kevin decides to shoot an innocent man, CFW not only holds that Ryan (a philosopher who tries not to ignore any causal explainers) speaks the truth when he claims that Kevin did *not* freely decide to shoot the man, but CFW also holds that Steve (a non-philosopher who properly ignores many causal explainers) speaks the truth when he claims that Kevin did freely decide to shoot the man. Thus, CFW entails that Kevin both is and is not a free agent… free to Steve, but not to Ryan, whereas traditional analyses would require that Kevin is or is not a free agent, full stop.

To complicate things further, free will is often considered a necessary condition for moral responsibility. That is, most philosophers would be reluctant to call an agent morally responsible if his actions were not freely willed. Is Kevin morally responsible for his crime? For the traditional compatibilist or libertarian, the answer is simple: Yes, Kevin is blameworthy since his decision to shoot the man was formed freely. The answer is likewise simple for the traditional skeptic: No, having free will is necessary for being considered morally responsible for one's actions, and Kevin lacks free will.
Yet CFW entails that Kevin be considered free by folks like Steve, and not free by folks like Ryan. Thus, it would seem that CFW allows for certain individuals to speak the truth when they say that Kevin is morally responsible for his actions, and for other individuals to speak the truth when they say that he is not. Is this position defensible?

Assuming contextualism is true, there appears to be no problem with applying it in this way to judgments of moral responsibility. It is perfectly coherent to hold that Steve is correct in his judgment that Kevin is morally responsible, and also hold that Ryan is correct in his judgment that Kevin is not morally responsible.[40] CFW would only promote

[40] There might be arguments that suggest otherwise, but such arguments would undercut the entire contextualist project, because they would amount to questioning whether the same

an incoherent view if it allowed for Ryan (or Steve) to truthfully say in the *same* context that Kevin is both morally responsible and not morally responsible. One might adopt the following condition for being considered morally responsible: "S is morally responsible for doing x only if S's action is free from causal explainers beyond S's control—Psst!—apart from those causal explainers that we are properly ignoring."

But the truth of moral responsibility claims is no trifling matter. The way that we treat people largely depends on whether we find them to be morally responsible. If it is true that Kevin is morally responsible for his crime, then we might be justified in acting retributively towards him. That is, we might be justified in *punishing* him for his crime because he *deserves* to be punished. For instance, we might execute Kevin just because Kevin *deserves* to be executed, not because doing so will teach him never to kill again, and not because doing so will help deter others from shooting innocent people in the future. Conversely, if Kevin is *not* morally responsible for his crime, then he cannot *deserve* punishment, since he cannot be considered blameworthy.[41] We might incarcerate Kevin because it would help deter others from shooting people, and because it would teach Kevin never to shoot anyone again or at least keep him from being able to, but we would not be justified in incarcerating, or executing, Kevin because he *deserves* to be *punished*.[42]

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propositions can have different truth-values in different contexts. And since this paper just assumes that contextualism is true, these objections would best be delivered to those who defend contextualism.

[41] 'Moral responsibility' is a controversial term. I am using 'moral responsibility' as Derk Pereboom (2007) suggests: "(F)or an agent to be morally responsible for an action is for it to belong to her in such a way that she would deserve blame if she understood that it was morally wrong, and she would deserve credit or perhaps praise if she understood that it was morally exemplary" (p. 86).

[42] From this point forward, *punishment* (in italics) means retributive punishment. Retributive punishment, I take it, happens whenever someone is punished *simply because* they *deserve* to be,

Moreover, in practice, we seek laws that are consistent with moral responsibility claims. If moral responsibility exists, then we would hope that the law would give us the means to treat people as they *deserve* to be treated. Conversely, if moral responsibility does not exist, then we would hope that the law does not punish people for punishment's sake, and would only use means to quarantine, deter, or rehabilitate lawbreakers, given that said punishment could not be deserved.

Consider, for example, Clarence Darrow's famous defense of Nathan Leopold and Richard Loeb, two wealthy teenagers who were candidates for the death penalty because they pled guilty to the kidnapping and murder of a 14-year-old boy. Darrow's strategy was essentially to argue that the two boys were not morally responsible for their actions because they lacked free will—or in his words, "because somewhere in the infinite processes that go to the making up of the boy or the man something slipped." As Darrow saw it—and in fact as the presiding judge saw it—if these boys were not morally responsible for their actions, then the death penalty could not be justified since there were better ways to ensure optimal *pragmatic* results.[43] No matter whether Darrow was right that Leopold and Loeb lacked free will, it seems that lawmakers should be clear whether people can be considered genuinely morally responsible, since it is exceedingly unlikely that the set of laws at which lawmakers would arrive by retributive justification is identical to the set of laws at which lawmakers would arrive solely by pragmatic justification.

Thus, a relevant question emerges for the contextualist: How can our laws incorporate our convictions about moral responsibility when a particular individual can

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and not because doing so will produce any desired consequences (Greene and Cohen, 1777-1778).

[43] Sommers (2004)

be truthfully judged to be morally responsible by some people, and not responsible by others, depending on what the people making the judgments happen to be properly ignoring? How can the law offer an exact prescribed course of action to its followers when it is grounded in moral responsibility claims with shifty truth-values?

Take Kevin's case for example. Should we *punish* Kevin because he deserves it? Or should we do whatever will prevent Kevin from behaving the same way in the future, and whatever is most likely to deter others from shooting innocent people? The two options are not mutually exclusive; those who believe that Kevin is genuinely morally responsible and deserves to be *punished* presumably also believe that we should promote deterrence from murder. But lawmakers need to decide whether there is also a place for retributive punishment, and it is not clear how the contextualist can help lawmakers make this decision.[44]

If the contextualist were to attempt to ground a rule of law in what she considers true moral responsibility ascriptions, her law would not look very law-like. Instead, for instance, certain judges and jurors might rightfully decide to *punish* Kevin, while others might rightfully decide *not* to *punish* Kevin, so long as their respective spheres of attention differed. The law cannot practically take on such a form. Laws exist to clearly

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[44] Joshua Greene and Jonathan Cohen (2004) write: "The forward-looking-consequentialist approach to punishment works with all three responses to the problems of free will (compatibilism, libertarianism, and hard determinism). This is because consequentialists are not concerned with whether anyone is really innocent or guilty in some ultimate sense that might depend on people's having free will, but only with the likely effects of punishment… The retributivist approach, by contrast, is plausibly regarded as requiring free will and rejecting hard determinism. Retributivists want to know whether the defendant truly *deserves* to be punished. Assuming one can deserve to be punished only for actions that are freely willed, hard determinism implies that no one really deserves to be punished" (p. 1777). Since the contextualist's claim is that one can truthfully espouse hard determinism (or skepticism) in certain contexts, but not in others, it is unclear whether the law should or should not treat defendants as being able to *deserve* their punishment.

determine how a given society should respond to particular transgressions. That is, a law that governs how we should treat people who shoot innocent victims is only useful and acceptable if it establishes what we, as a society, are meant to do when someone does shoot an innocent victim. A good law will not say that it is permissible to *punish* Kevin so long as we attend to a specific set of causal explainers, but impermissible if we attend to a different set of causal explainers. Such a law would do very little to help us coordinate our actions. A good law will instead say that it *is* or *is not* permissible to *punish* Kevin, full stop.

But good laws are not determined arbitrarily; instead, as we saw in Darrow's case, laws should cohere with the truth-values of moral responsibility claims. If Kevin *is not* morally responsible, then a law that says we should *punish* Kevin would seem wrong, since Kevin would not deserve his punishment, and since there may be better ways to ensure optimal pragmatic results. But if Kevin *is* morally responsible, then it is at least conceivable that the law rightfully dictates that we *punish* Kevin.

The contextualist, then, is left between a rock and a hard place. She cannot use her working notion of moral responsibility to ground her laws since the resulting laws would not clearly delineate what society is meant to do. But laws also seem like they need to be grounded in society's notion of moral responsibility. How might the contextualist avoid this precarious position?

The contextualist has two responses: She can deny that free will and moral responsibility are so intimately connected, or she can deny that moral responsibility and the law are so intimately connected.

If the contextualist denies that free will is necessary for moral responsibility, then there is no problem grounding the law in moral responsibility, since the contextualist about free will would no longer need to be a contextualist about moral responsibility. But this seems like a strange move to make. First, intuitively, it just seems as if moral responsibility and free will *are* deeply connected. How could someone be morally responsible for his action if he did not freely choose to act? If we find Kevin responsible for his crime, don't we find him responsible in part because the action is his, or because he freely willed it? Second, and more importantly, if the contextualist denies that free will and moral responsibility are so intimately connected, then her account of free will is much less explanatorily powerful than other accounts. Normally, when a philosopher puts forth a potential solution to the problem of free will, her solution tells us who should be considered morally responsible, assuming they satisfy other necessary conditions for responsibility. But if the contextualist denies this connection, then we would require an additional theory that is unconnected to free will in order to establish when one could truthfully say that someone is morally responsible.

If the contextualist instead chooses to deny that moral responsibility is so intimately connected with the law, then her offered solution will still be less explanatorily powerful than that of her competitors. Most solutions to the problem of free will offer advice to our lawmakers.[45] That is, skeptics say there is no free will, there is no moral

[45] Certain legal thinkers deny this. For example, Stephen Morse (2004) holds that the law is not concerned with the traditional free will debate, and is only concerned with whether its subjects are fully rational and able to understand the rule of law. Such a view very well might be true in that it captures legal practices on a case-by-case basis, i.e. how we treat children and mentally retarded individuals as less responsible. However, whether retributive punishment is justifiable *at all,* or put another way, whether physical creatures can be considered genuinely morally responsible, seems precisely like the sort of question that most theories of free will answer, and

responsibility, and that the law should accordingly do away with any of its retributive aspects.[46] Traditional compatibilists and libertarians say there is free will, there is moral responsibility, and that there is nothing inherently wrong with the law having retributive aspects.[47] Meanwhile, contextualists say that one can truly say that there is free will and there is moral responsibility when one properly ignores certain causal explainers, but also truly say that there is not free will and there is not moral responsibility when one attends to sufficient causal explainers outside of a subject's control. The contextualist's analysis of free will and moral responsibility does not offer any advice to our lawmakers on the issue of responsibility and retribution. The question of whether retributive punishment deserves a role in our legal system avoids her grasp.[48]

Some readers might object that I am not giving the contextualist her due. One might argue that the contextualist need not sever either connection because she might be

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further, precisely like the sort of question whose answer should be germane in law-makers' discussions.

[46] Greene & Cohen (2004)

[47] Notice that I do not go so far as to say that compatibilists and libertarians find that the law should have retributive aspects. This is because 'having moral responsibility' is a necessary, but not necessarily a sufficient, condition for being justifiably *punished.* That is, one *certainly* can only deserve to be *punished* for crimes for which one is morally responsible, but some may argue that one can be morally responsible for a crime, but still not be justifiably *punished* for said crime. Thus, the advice that compatibilists and libertarians offer lawmakers might be considered weaker than the advice offered by skeptics, but it is still advice all the same. Skeptics inform lawmakers that there is no place for retributive punishment in the law. Compatibilists and libertarians inform lawmakers that a necessary condition for retributive punishment is present. Contextualists do neither.

[48] Some readers may be wondering if this question really matters. One might think that our legal system already lacks any retributive aspect, and that we accordingly need not worry whether retribution is morally permissible. This, however, is empirically false. Our legal system *does* have retributive aspects. Effective demonstration of this point, however, cannot be accomplished in a meager footnote. For those readers who would appreciate a quick intuition pump, think about Darrow's case, and whether capital punishment is practiced for deterrence's sake or for retribution's sake. Similarly, I suggest that the reader compare the legal systems of the United States and Portugal (though most European countries would work), and ask whether the American legal system involves more retributive practices. I agree with Joshua Greene and Jonathan Cohen (2004) when they write, "Our penal system is highly counter-productive from a consequentialist perspective, especially in the USA, and yet it remains in place because retributivist principles have a powerful moral and political appeal" (p. 1783).

able to treat the law *as* a particular context in which there are no contradictions about who is free or morally responsible. That is, one might believe that 'the law' presents a context in which a particular set of causal explainers are properly ignored (or not), thereby requiring lawmakers to operate as if free will either is or is not possible, but not both. One might believe that the contextualist's account can determine which causal explainers lawmakers should attend to by elaborating on which explainers lawmakers can *properly* ignore.

Such a reader, however, would misunderstand the role of 'properly ignoring' in Lewis's (and Hawthorne's) condition. By providing an account of which possibilities or which causal explainers may be properly ignored in a given context, Lewis and Hawthorne do not provide an account of what is *properly attended to* in a given context. That is, as long someone attends to certain possibilities, that person is not ignoring them at all, and is thereby outside of the scope of Lewis's condition. Remember Lewis: "No matter how far-fetched a certain possibility may be, no matter how properly we might have ignored it in some other context, if in this context we are not in fact ignoring it but attending to it, then for us now it is a relevant alternative."[49]

In the context of lawmaking, certain individuals will inevitably bring up the "skeptical" argument. That is, certain lawmakers (whose convictions resemble Galen Strawson's and Clarence Darrow's) will direct their fellow lawmakers' attention to the fact that there is no place in the law for retributive punishment precisely because there are causal explainers for humans' actions beyond humans' control. The contextualist will not be able to say it is improper for them to do so because the contextualist has no account of 'properly attended to'. Upon said lawmakers' introduction of the skeptical argument into

[49] Lewis (1996), p. 559

conversation, other lawmakers will no longer be able to properly ignore the causal explainers outside of humans' control, since the conversation will have drawn the other lawmakers' attention to the relevant causal explainers, and the other lawmakers *would not be ignoring the causal explainers at all*.[50] Thus, though it might seem like there is some *proper* sphere of attention for law-makers to have since the law is meant to govern ordinary life in which our ordinary causal explanations are meant to be satisfactory, certain individuals will bring up skeptical arguments, and not improperly be doing so, thus forcing their conversation partners to attend to them as well.[51]

One may object that this is not problematic for contextualism about free will writ large, but is rather only problematic for Hawthorne's specific formulation of CFW. The line goes: "Though Hawthorne's condition results in the skeptic winning when the context of attention shifts to the skeptic's, not every formulation of contextualism must deliver the same result. To confront this difficulty, a different contextualist could espouse the following modification of Hawthorne's Lewisian condition: *S* does *x* freely only if *S*'s action is free from causal explainers beyond *S*'s control—Psst!—apart from those causal explainers that we do not properly attend to."

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[50] Lewis (1996) makes this point well: "Is resistance useless? If you bring some hitherto ignored possibility to our attention, then straightway we are not ignoring it at all, so a fortiori we are not properly ignoring it. How can this alteration of our conversational state be undone? If you are persistent, perhaps it cannot be undone—at least not so long as you are around" (p. 559).

[51] One might see this as CFW definitively claiming that retributive punishment cannot be justified. That is, since the skeptic succeeds in shifting his interlocutor's sphere of attention, one might say that the skeptic succeeds in making the claim, 'There is no room for retributive punishment,' the only truthfully uttered claim in said context. There are two problems with this view. First, it would be *weird* for the contextualist to advocate that we truthfully ordinarily regard agents as justifiably retributively punished *and* to argue that agents cannot actually be justifiably retributively punished, since the law intuitively is intended to govern the ordinary context in which our ordinary causal explanations are meant to be satisfactory. Second, and more damning, is the problem that it is not at all inevitable that lawmakers will raise the skeptical argument in *every* conversation about retributive punishment. Because of this, certain conversations' context of attention would stay 'ordinary', and would thus yield the 'ordinary' result.

While this might be an interesting strategy to pursue in its own right, it would seemingly come at the expense of providing the analysis that best captures the ordinary understanding. Hawthorne's CFW is so good at capturing our ordinary intuitions because it explains how we can consistently believe that people can be free when we ignore determinism but free *whenever* we attend to determinism. The proposed contextualist would sacrifice this ability because the truth of 'free will' attributions would be entirely determined by the context in which they are spoken, and not their speakers' respective spheres of attention. For instance, if my objector were to construe 'properly attended to' such that that one can only properly attend to "ordinary" causal explainers in the context of lawmaking, and if I were a lawmaker that *improperly* attended to the skeptic's causal explainers, then my objector would have to claim that my belief that Kevin lacks free will would be false, despite the fact that it would be considered true in other contexts where I entertain the exact same causal explainers and where Kevin's history is identical. This seems counter-intuitive. If I am thinking about Galen Strawson's arguments for skepticism and stumble into a conversation about lawmaking, it just *can't* be the case that the truth-value of my thoughts about Kevin's free will shift without the content of my thoughts changing and with Kevin's history remaining fixed. The proposed contextualist fix, then, sacrifices Hawthorne's ability to capture ordinary intuitions because it gives rise to counter-examples (like the ones just identified) that we ordinarily find counter-intuitive.

It also seems that the proposed contextualist fix would render it such that it would no longer be the contextualist's analysis of *free will* informing the law, but would rather be the contextualist's analysis of *the legal context* informing the law. By creating room

for a theory of 'properly attended to' that allows for different contexts to have different rules regarding our use of 'free will', the contextualist effectively renders it such that her analysis requires supplementary analyses of these different contexts in order to know whether 'free will' attributions are true. Hawthorne does not have this explanatory burden because he can use what is not being ignored (which can be identified without any additional theory) to determine which attributions of 'free will' are true attributions. Since we are interested in the possibility of an analysis of *free will* informing our legal practices, and not the possibility of an analysis of *the legal context* informing our legal practices, Hawthorne's condition seems more relevant than the proposed contextualist fix to the current discussion.

Someone else might argue that I have not given the contextualist her due because it is not the task of an analysis of free will to inform our moral responsibility practices in the way I have argued the contextualist cannot. The line goes: "Sure, you have shown me that CFW cannot inform the law in the way that skepticism, libertarianism, and compatibilism can, but that does not stop the contextualist from endorsing a single set of laws that is *detached* from her analysis of free will."

Such an objection is surely right and actually does not contradict anything I have said. Nothing I have argued demonstrates that the contextualist cannot consistently endorse a single set of laws. Contextualists, like everyone else, have a need for laws, and likely would, in fact, either agree to have laws that contain retributive aspects, or agree to have laws that do not contain retributive aspects.

But the fact remains that there is an open question as to whether the law should have any place for retributive punishment. Skeptics argue that it should not because free

will is an illusion, and thus so is moral responsibility, and thus so is any notion of people *deserving* punishment. Compatibilists and libertarians argue that there is nothing inherently wrong with a legal system that has retributive punishment, since neither free will nor moral responsibility is an illusion. CFW, on the other hand, provides no answer to this question. Instead, it protects not only the legitimacy of our normal 'free will' ascriptions, but also the legitimacy of the skeptic's argument. Sure, the contextualist will inevitably hold that the law should either have a place for retributive punishment or should have no place for retributive punishment, but not both; but unlike skeptics, compatibilists, and libertarians, the contextualist cannot ground her position on the law in her analysis of 'free will', because she finds that the truth of free will ascriptions depend on their speaker's sphere of attention, and the law requires a definitive stance on the matter; i.e., the law requires that a particular person either is morally responsible, or is not morally responsible, but not both.

Perhaps the contextualist could provide an additional theory that explains whether the law should honor our ordinary free will ascriptions or, instead, the skeptic's argument, but the contextualist cannot provide an answer to this question *in virtue of* her stance on free will. Thus, even if the contextualist can coherently decide how the law should be by arguing that the law constitutes a context in which a particular set of causal explainers should be attended to, the contextualist still cannot establish which causal explainers are the right ones in virtue of her view on free will. The contextualist, then, must sever the connection between free will and moral responsibility, or the connection between moral responsibility and the law, since her analysis of free will *cannot* have any practical effect on the law. Though, like anyone else, the contextualist may offer advice

to lawmakers regarding the justifiability of retributive punishment, her advice cannot be justified by her analysis of free will.

III. Conclusion

CFW is attractive because it protects seemingly contradictory claims. That is, CFW allows for me to speak the truth when I claim that I freely chose to eat a bagel this morning, but also allows for me to speak the truth when I claim that I could not have been free to eat the bagel because I start to consider all of the distal causes of my action. The problem for CFW, though, is that any view that holds that both of those claims can be true gives us no help in deciding whether retributive punishment has any place in our laws, since it does not definitively decide whether claims that are true in ordinary contexts or claims that are true in philosophical contexts are more suitable for grounding the law. The contextualist's competitors have no such problem, since they do not hold that both of those claims can be true. So, though we already have learned that contextualism provides the definition of 'free will' that best coheres with the ordinary understanding, CFW does not give us something *else* that we desire from an analysis of 'free will': CFW does not tell us definitively whether *S* is morally responsible, and therefore does not tell us whether we ought to treat *S* as a morally responsible creature.

While I have limited the discussion to the law, this problem would plague CFW's ability to inform any of our practices that are premised on whether *S* is morally responsible or not. I chose to focus on the law only to narrow the discussion on a particular practice with which we are all familiar, but there are probably many practices

premised on individuals being morally responsible. To see this, consider the following exchange:

Mother: Don't hit your sister back!
Son: But she deserves it!

Does she? *The contextualist cannot tell us.*

CHAPTER 3: CAN THE CONTEXTUALIST WIN THE FREE WILL DEBATE?

I have defended two claims in this thesis:

1) The contextualist provides the analysis of 'free will' that best captures the ordinary understanding of 'free will' and we should prefer analyses of 'free will' that capture the ordinary understanding.
2) The contexualist provides an analysis of 'free will' that does not inform moral responsibility practices but we should prefer analyses of 'free will' that do inform our moral responsibility practices.

Given the truth of these two claims, it is not clear whether the contextualist "wins the free will debate." Claim 1 seems to suggest that the contextualist does win the free will debate, while claim 2 seems to suggest that she does not.

Whether we consider the contextualist the winner of the debate seems to depend on whether we consider it more important for analyses of 'free will' to capture the ordinary understanding of 'free will' or more important to inform moral responsibility practices. On the one hand, we might think that free will is only worth studying because of its impact on our moral responsibility practices, in which case we would deem the contextualist a loser of the debate. But on the other hand, we might also think that 'free will' is only worth talking about insofar as we are talking about what people actually mean when they talk about free will, in which case we would deem the contextualist the clear winner of the debate. Thus it seems the contextualist's fate depends on how we construe "the free will debate": Does winning mean capturing the ordinary understanding or does it mean informing moral responsibility practices?

Perhaps disappointingly, I will not argue that we should favor either construal of "the free will debate" and therefore remain silent on whether the contextualist wins. I remain silent because it would feel irresponsible to weigh in on how we should construe "the free will debate" given that this is my first foray into the debate, and given that there are others who have a better sense of what continues to drive the debate forward. That said, I believe this thesis should shape future discussions of this nature in an important way.

If we had not explored the ways in which the contextualist "wins" and "loses" the debate, we might have thought that the winner should *both* capture the ordinary understanding *and* inform moral practices. But we now know these criteria for "winning" are mutually incompatible since CFW *does* capture the ordinary understanding but *does not* inform moral responsibility practices. As such, philosophers have to make a choice that they otherwise might not have realized is necessary; they have to choose whether it is more important for analyses of 'free will' to capture the ordinary understanding or to inform moral practices. Only once philosophers have made this choice will we know whether the contextualist wins the free will debate.

Works Cited

Feldman, R. (2004). "Freedom and Contextualism". *Freedom and Determinism*. MIT Press: 255-276.

Feltz, A. & Cokely, E. (2008). "Do judgments about freedom and responsibility depend on who you are? Personality differences in intuitions about compatibilism and incompatibilism". *Consciousness and Cognition*. 18: 342-350.

Greene, J. and Cohen, J. (2004). "For the Law, Neuroscience Changes Nothing and Everything". *Philosophical Transactions of the Royal Society of London*. 359: 1775-1785.

Hawthorne, J. (2001). "Freedom in Context". *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition*.104 (1): 63-79.

van Inwagen, Peter. (2009). *Metaphysics* (3rd ed). Westview Press.

Lewis, D. (1996). "Elusive Knowledge". *Australasian Journal of Philosophy*. 74 (4): 549-567.

Morse, S. (2004). "New Neuroscience, Old Problems". *Neuroscience and the Law*. Dana Press: 157-198.

Murray, D. & Nahmias, E., (2010). "Explaining Away Incompatibilist Intuitions". Unpublished manuscript.

Nahmias, E., Morris, S., Nadelhoffer, T., & Turner, J. (2006). "Is Incompatibilism Intuitive?". *Philosophy and Phenomenological Research*. 73: 28-53.

Nahmias, Eddy, Coates, J., & Kvaran, T. (2007). "Free Will, Moral Responsibility, and Mechanism: Experiments on Folk Intuitions". *Midwest Studies in Philosophy*. 31:

214-242.

Nahmias, E. & Murray, D. (2010). “Experimental Philosophy on Free Will: An Error Theory for Incompatibilist Intuitions”. *New Waves in Philosophy of Action*. Palgrave-Macmillan: 189-216.

Nichols, S. & Knobe, J. (2007). “Moral Responsibility and Determinism: The Cognitive Science of Folk Intuitions”. *Nous*. 41: 663-685.

Nichols, S. & Roskies, A. (2008) “Bringing moral responsibility down to earth”. *Journal of Philosophy* 105 (7): 371-388.

Pereboom, D. (2007). “Hard Incompatibilism”. *Four Views on Free Will*. Oxford: Blackwell Publishing: 85-125.

Prinz, J. (2006). “Emotional basis of moral judgments”. *Philosophical Explorations*. 9: 29-43.

Sinnott-Armstrong, W. (2008). “Abstract + Concrete = Paradox”. *Experimental Philosophy*. Oxford University Press: 209-230.

Sommers, T. (2004). “Darrow and Determinism: Giving Up Ultimate Responsibility”. Web. 23 Nov. 2010. <http://www.naturalism.org/sommers.htm>.

Sommers, T. (2010). “Experimental Philosophy and Free Will”. *Philosophy Compass*. 5 (2): 199-212.

Strawson, G. (1998). “Luck Swallows Everything”. *Times Literary Supplement*. June 26.

Strawson, Peter. (1962). “Freedom and Resentment”. in Gary Watson (ed.), *Free Will* (2nd ed). New York: Oxford University Press: 72-93.

Stroud, B. (1984) *The Significance of Philosophical Skepticism*. New York: OUP.