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## **ALF ROSS ON FREEDOM AND RESPONSIBILITY: A CRITICAL APPRAISAL**

### **Abstract**

Although Alf Ross is primarily known for his general philosophy of law, his contributions to the philosophy of criminal law – particularly regarding criminal responsibility – also offer an original and inspiring perspective. This paper focuses not on Ross's conceptual analysis of responsibility as the so-called *tū-tū* concept (a position already widely discussed in the relevant literature), but rather on his approach to the *substantive* conditions of criminal responsibility, especially the condition of freedom. Ross regards himself as a compatibilist: he argues that freedom from compulsion – not freedom of the will in a metaphysical sense – is sufficient for responsibility ascriptions. He explicitly rejects metaphysical free will as a fiction, yet simultaneously asserts that 'complete determinism' is incompatible with responsibility. This creates a tension within his account: if freedom of the will is not a necessary condition of responsibility, why should determinism pose a threat to responsibility at all? Thus, there appears to be a fundamental rupture in Ross's argument. As a result, Ross's final position appears incoherent – or, at best, ambiguous.

### **KEYWORDS**

Alf Ross, criminal responsibility, compatibilism, determinism, free will

### **SŁOWA KLUCZOWE**

Alf Ross, odpowiedzialność karna, kompatybilizm, determinizm, wolna wola

## I. ROSS'S GENERAL ACCOUNT OF THE CONDITIONS OF CRIMINAL RESPONSIBILITY

Although Alf Ross is best known for his general philosophy of law, his contributions to the philosophy of criminal law also deserve attention. While less widely discussed,<sup>1</sup> they offer an original and thought-provoking perspective on criminal responsibility. However, I will not address his analysis of legal responsibility *as a concept* in detail; Ross's general account of legal concepts (including the concept of responsibility) has already been examined in great detail in the literature, unlike his approach to the *substantive* aspects of legal responsibility. Suffice it to say that, according to the Danish philosopher, responsibility – like most other legal concepts (e.g., rights) – is, as he famously put it, a *tû-tû* concept.<sup>2</sup> That is, it lacks semantic reference; it does not denote a logical or causal connection between conditioning facts (such as guilt) and conditioning consequences (such as punishment). Instead, it expresses a legal link between them, which can take the form of an assertion (when describing the law from an external standpoint) or a demand (when speaking from within the law, using its normative language). It should be emphasized that this part of Ross's analysis of responsibility, which pertains to the general philosophy of law rather than the philosophy of criminal law, is entirely independent of his approach to the substantive issues concerning criminal responsibility – its general conditions, and in particular, the condition of freedom – which I will now address.<sup>3</sup>

<sup>1</sup> There is very little literature – and most of it in Danish – devoted to this aspect of his philosophical reflection; see, e.g., Kasper Lippert-Rasmussen, 'Ross og determinismen' in Jakob H Holtermann, Jesper Ryberg (eds), *Alf Ross. Kritiske gensyn* (Kopenhagen: Jurist- og Økonomforbundets Forlag 2006) 211–231; Jesper Ryberg, 'Ross og Straf' in Holtermann, Ryberg (eds), *Alf Ross. Kritiske gensyn* (Kopenhagen: Jurist- og Økonomforbundets Forlag 2006) 151–171.

<sup>2</sup> Cf Alf Ross, 'Tû-Tû' (1957) 70(5) *Harvard Law Review* 812–825; Alf Ross, *On Guilt, Responsibility, and Punishment* (Berkeley, CA and Los Angeles, CA: University of California Press 1975) 4–30. For an insightful and comprehensive analysis of Ross's account of legal concepts see, especially Torben Spaak, 'Alf Ross on the Concept of a Legal Right' (2014) 27(4) *Ratio Juris* 461–477.

<sup>3</sup> It is important to note that Ross does not offer a distinct analysis of criminal and moral responsibility. He appears to assume that the conditions for both are identical. While this assumption is not without its challenges, it is arguably less problematic in the context of criminal responsibility than in other forms of legal responsibility. This is because criminal law has traditionally been viewed as the branch of law whose conceptual framework most closely aligns with – and should align with – our 'ordinary' moral intuitions. One reason for this is that criminal law justifies the use of state coercion on a large scale, and for this to be accepted by citizens, it must resonate with their moral beliefs. Furthermore, in his critique of incompatibilism, Ross explicitly addresses moral responsibility, implicitly extending his analysis to criminal responsibility.

Ross distinguishes two conditions of criminal responsibility.<sup>4</sup> First, there is the objective condition – *actus reus* – which refers to the actual violation of a legal norm: the agent must have committed a criminal act in order to be held accountable for it. Second, there are subjective or mental conditions – *mens rea* – which involve two distinct requirements. The *imputation requirement* pertains to the agent’s mental (both cognitive and volitional) attitude toward the act, requiring either intentionality or, in some cases, only negligence. The *imputability requirement*, on the other hand, addresses whether the act can properly be ascribed to the agent. This involves assessing whether any abnormal mental conditions – such as insanity, mental retardation, or an ‘irresistible impulse’ – or other factors like youth, might exclude or diminish the agent’s responsibility. Together, these conditions form the basis of Ross’s legal understanding of responsibility. At this point, it is expedient to make two observations.

First, although most scholars agree that these two conditions are necessary for establishing responsibility, there are some notable exceptions. For example, Barbara Wootton, an eminent British scholar of criminal law, adhered to the conception of strict liability: she argued that *actus reus* alone constitutes both a necessary and sufficient condition for the rightful conviction of an accused person<sup>5</sup> – a view that Ross characterizes in the following way:

[According to Wootton] the criminological reaction to crime should be arrived at in each individual case without regard to guilt and only with a view to what in the particular instance will offer the best chance of preventing recidivism. The traditional system, which bases punishment on retribution on guilt, should be replaced, according to this view, by a system designed as a means of preventive hygiene (...). Wootton’s doctrine amounts to no less than the view that questions of both imputation and imputability be discounted as conditions for convicting a person of an offence, while at the same time they are to be taken into account as circumstances which partially determine the nature of legal reaction to be applied in a particular case.<sup>6</sup>

It is worth noting that Herbert LA Hart, in his influential book *Punishment and Responsibility*, proposed a distinctive – or ‘intermediate’ – position between the traditional system and Wootton’s model of strict liability. Hart maintained that *mens rea* should remain a necessary condition for criminal responsibility, yet he carefully distinguished it from the requirement of mental sanity. In his view, issues of insanity should not be addressed during the trial itself, but rather in the post-trial phase, where medical experts would assume a central role. Using Ross’s

<sup>4</sup> Cf Ross (n 2) 60–80.

<sup>5</sup> Cf Barbara Wootton, *Crime and the Criminal Law* (London: Stevens & Sons 1963) 51–52.

<sup>6</sup> Ross (n 2) 73.

terminology, one could say that Hart rejected the imputability requirement as a condition for establishing criminal responsibility. Hart saw his own position as a ‘less extreme’ or ‘moderate’ version of the ‘new doctrine’ of strict liability advanced by Barbara Wootton.<sup>7</sup> In this light, Ross’s account can be regarded as more ‘traditional’ or ‘standard’, aligning with the classical model of criminal responsibility that maintains both *actus reus* and *mens rea*, including considerations of imputability, as essential elements.

Secondly, it is far from evident that the conditions of *actus reus* and *mens rea* are sufficient on their own to establish criminal responsibility. Should we not, in addition, recognize freedom of the will as a necessary third condition? Or, equivalently, should freedom of the will not be considered part of, or a presupposition of, imputability? Ross emphatically answers ‘no’. He asserts that responsibility ascriptions are possible without appealing to the notion of free will in the metaphysical sense – this reflects the doctrine known as *compatibilism*. According to Ross, for an agent to be held responsible, it is both necessary and sufficient that they are free in the sense of *freedom of action*: that is, they are not subject to internal or external compulsion that would have prevented them from acting differently, had they wanted to. This type of freedom is implicitly or negatively defined by the conditions of imputation and imputability. In other words, Ross endorses the view that, for the ascription of responsibility to be legitimate, it is sufficient that we could have acted otherwise if we had willed to do so – not that we could have willed otherwise than we did. With this, we arrive at the core of Ross’s compatibilist position, which will be the focus of our attention for the remainder of this paper. As we shall see, the originality – and indeed the peculiarity – of Ross’s contribution lies in the reasoning he offers in support of this position, which, as will be argued, appears ultimately at odds with the very view he claims to endorse. Before examining Ross’s reasoning in detail, it is helpful first to sketch the broader theoretical landscape in which his position is best understood.

## II. ROSS’S CRITIQUE OF INCOMPATIBILISM

The relationship between responsibility, freedom of the will, and determinism has long been one of the central issues in both moral philosophy and the philosophy

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<sup>7</sup> Cf Herbert LA Hart, *Punishment and Responsibility* (Oxford: Oxford University Press 2008) 195–208.

of law.<sup>8</sup> Various philosophical positions on this issue can be neatly categorized by considering how they respond to two key questions: (1) Does freedom of the will exist? and (2) What kind of freedom is necessary for responsibility – freedom of the will in a metaphysical sense, or merely freedom from compulsion?

When philosophers assert that responsibility requires freedom of the will – that is, a form of freedom whose existence is denied within a deterministic view of the universe – they are embracing what is broadly known as *incompatibilism* (a term that reflects the belief that determinism is incompatible with the concept of responsibility). Within this camp, two opposing positions emerge, depending on whether one believes in the existence of free will. The first one, *incompatibilism as libertarianism*, affirms the existence of free will and therefore denies (universal) determinism. Thinkers such as, e.g., Augustine of Hippo, Thomas Aquinas, René Descartes, Immanuel Kant, Henri Bergson, and Jean-Paul Sartre can all be placed within this category. Although their respective accounts of freedom and responsibility may vary in detail, all of these thinkers maintain that responsibility necessitates metaphysical freedom – a capacity to will otherwise – and that such freedom exists (and exists universally: it is inherent in all human beings). The second one, *incompatibilism as hard determinism*, holds that determinism is a true doctrine and therefore free will – and, by extension, moral or legal responsibility – are empty concepts, metaphysical fictions (this view is also sometimes called, e.g., by Ross, ‘moral nihilism’ or ‘moral denialism’). Philosophers such as, e.g., Friedrich Nietzsche, Enrico Ferri, and Ingmar Hedenius, represent this view. For them, holding someone responsible is unjustified, as all actions are causally determined. A third incompatibilist view, which I propose to label *agnostic incompatibilism*, is an undecided or indeterminate stance that treats free will as a condition of responsibility but either suspends judgment about free will’s existence or claims that it is simply unknowable. In fact, it is difficult to provide examples of philosophers who consistently hold this slightly odd but coherent view.

An alternative approach, however, shifts the focus from freedom of the will to freedom of action (i.e., freedom from compulsion) – that is, to the question of whether a person could have acted otherwise if he/she had willed to do so. This view underpins *compatibilism*, which holds that determinism and responsibility are not mutually exclusive. The most well-developed form of this position is known as *compatibilism as soft determinism*, associated with figures such as, e.g., Aristotle (who defines a free action simply as *hekousios* – voluntary), Thomas Hobbes, David Hume, Arthur Schopenhauer, Moritz Schlick, and Alfred J Ayer.

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<sup>8</sup> For a useful collection of various papers on these issues see Bernard Berofsky (ed), *Free Will and Determinism* (New York and London: Harper & Row 1966).

According to this view, a person is responsible as long as his/her action was not the result of coercion or compulsion – even if his/her desires and choices are themselves causally determined.

This classification helps to clearly situate Ross's theory of responsibility. As mentioned before, his emphasis on freedom of action (i.e., freedom from compulsion), rather than metaphysical freedom of the will, places him within the compatibilist tradition, likely aligning him with soft determinism. He maintains that responsibility does not require the ability to will otherwise, only the absence of internal or external compulsion preventing or enforcing an action. *Thus, it is clear that Ross considers himself a compatibilist; however, as will be shown, some of his arguments – though directed against incompatibilism – can in fact be interpreted as supporting it.* His critique of incompatibilism can be divided into two groups, corresponding to the two versions of incompatibilism he distinguishes: the moral and the pragmatic. In distinguishing these versions, Ross aimed to 'inject new life into the discussion'.<sup>9</sup> In fact, these two versions represent two distinct arguments for incompatibilism, as it is traditionally understood – namely, the view that determinism and responsibility are mutually exclusive.

The *moral version of incompatibilism*, as Ross calls it, is the view that responsibility must presuppose free will because this assumption is embedded in the 'moral consciousness' of people in Western societies.<sup>10</sup> In his critique of this version, Ross argues that Western 'moral consciousness' does not, in fact, contain such an incompatibilist requirement. Moreover, he contends that it would be paradoxical if it did, as this would imply that morality demands conditions for responsibility that (in his view) are inherently unsatisfiable – thereby undermining the very concept of responsibility it seeks to uphold; as he puts it, 'the thesis that disapproval must be disapproved of, or that it is immoral to moralize, is logical nonsense'.<sup>11</sup> However, Ross adds that if Western morality *did* indeed impose unsatisfiable conditions for responsibility, he would 'immediately renounce positive morality which had such an unreasonable content'.<sup>12</sup> But on what grounds would he reject it? The grounds he invokes are pragmatic in nature; as he writes: 'The only necessary presupposition for reacting to certain acts by invoking moral responsibility is that human conduct (within certain limits) is susceptible to the behavior-guiding influences that are elicited by awareness of the retaliatory actions that can be

<sup>9</sup> Ross (n 2) 106.

<sup>10</sup> This requirement was formulated, for example, by Ingmar Hedenius in his book *The Idea of the Freedom of the Will (Idén om viljans frihet)*. As a hard determinist, Hedenius believed that the requirement was unsatisfiable.

<sup>11</sup> Ross (n 2) 123.

<sup>12</sup> Ibid 124.

expected. But this indubitable empirical fact is compatible with both deterministic and indeterministic presuppositions'.<sup>13</sup> At this point, two comments are worth making. First, Ross does not address the core of the issue: while the question of the assumptions underlying 'Western moral consciousness' may be interesting in its own right – and could be a fruitful subject for investigation by historian of social morality as well as by experimental philosophers – it is only loosely connected to the fundamental problem of whether and why freedom of the will should be considered a necessary condition of responsibility. Second, by the end of the above quote, Ross adopts a substantially different conception of responsibility from the one he outlined when formulating the conditions of *actus reus* and *mens rea* – the conception which may be called a 'forward-looking', 'consequentialist' or 'pragmatic'. It implies that an agent can be held responsible for an action if he or she could have been influenced by rewards or punishments to perform or refrain from performing it. However, apart from the fact that this conception is directly at odds with the traditional one he outlined earlier, it is problematic in itself: for it is both over-inclusive and under-inclusive when it comes to identifying responsible agents. For instance, many individuals who are insane, mentally disabled, or minors can, in fact, be influenced by sanctions and thus, by this criterion, would qualify as accountable – despite widely accepted moral or legal intuitions to the contrary. Conversely, some deeply corrupt individuals may be largely impervious to sanctions and thus would not qualify as accountable, even though they are typically regarded as such. Moreover, this pragmatic conception does not align with Ross's more general account of accountability, even at the practical level, as it does not necessarily identify the same individuals as being responsible agents.

Let me now move on to the *pragmatic version of incompatibilism*, as Ross calls it. One can distinguish two quite different variants of this view. Although Ross does not clearly differentiate between them, his reasoning becomes more intelligible when this distinction is made explicit.

According to Variant 1, *in a deterministic world, moral and legal rules cannot have any causal influence on our behavior*. As Ross puts it when describing this view: 'if all events in the world, including human inferences and choice, occur necessarily in accordance with inexorable laws, then all moral efforts, demands, judgments and reactions must be condemned in advance as vain (. . .) If human will and action are subject to the law of causation, then the demands of the moral law will be without rational meaning, for men cannot act otherwise than they in fact do'.<sup>14</sup> In the course of his critique of this argument, Ross aptly observes that determinism is not fatalism, and therefore, the fact that our actions are predetermined

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<sup>13</sup> Ibid 129.

<sup>14</sup> Ibid 137.

by inexorable causal laws does not imply – *contra* the so-called ‘futility’ or ‘lazy’ argument<sup>15</sup> – that they cannot be influenced by moral or legal rules (even if the acceptance of these rules is itself the necessary result of prior causes). This line of reasoning is both clear and uncontroversial: determinism does not entail fatalism, and in a deterministic – but not fatalistic – universe, moral and legal norms can, like any other causal factor, influence behavior. However, after presenting this argument, Ross shifts to a different argumentative path. This shift is justified, as he himself seems to recognize that the initial rebuttal – though valid – is insufficient to fully disarm the incompatibilist challenge. The real force of that challenge lies in what can be called Variant 2 of the pragmatic version of incompatibilism.

According to this variant, *in a rigorously deterministic world, all morality becomes meaningless*: if determinism ‘implies that the future, given certain conceivably if not actually fulfilled assumptions, is predeterminable to any desired degree of accuracy, then one must accept that such a determinism makes all human deliberations and decision, and thus all morality, meaningless’;<sup>16</sup> ‘determinism [which] postulates that the future is uniquely determined [...] would make moral deliberations and struggles meaningless’.<sup>17</sup> *Given that this is also Ross’s view (not just a reconstruction of the view he entirely rejects), the question inevitably arises: is he really an incompatibilist?* He claims he is not, because, as he argues, this kind of determinism – which, as he admits, leads to incompatibilism – is ‘a logical impossibility’.<sup>18</sup> However, this claim is hard to accept, for there seems to be nothing ‘logically impossible’ about this form of determinism (referred to as ‘metaphysical’ as opposed to ‘scientific’). Thinkers such as Hobbes, Spinoza, Hume, Schopenhauer, and other determinists found nothing logically impossible in it. In fact, *this form of determinism is precisely what makes incompatibilists... well, incompatibilists*: if every event in the universe – including human actions – has a set of antecedent conditions that necessitate its occurrence, and in theory could be predicted by an omniscient agent (even if these conditions cannot be known, in principle, by the human mind), then there are no deeper (moral, not practical) grounds for holding agents responsible for their actions. This point was made suggestively by John R Lucas:

<sup>15</sup> The argument, often raised against the Stoic doctrine of determinism, posits that fated events will occur regardless of our actions. This view has been criticized on various grounds. For instance, the Stoic philosopher Chrysippus argued that while events may be fated, they still occur through necessary connections between them – what he called ‘co-fated’ events. Therefore, the claim that ‘you will recover whether or not you call in a doctor’ is fallacious, as whether or not you call in a doctor is just as fated as whether or not you recover. Cf Tad Brennan, *The Stoic Life. Emotions, Duties, and Fate* (Oxford: Clarendon Press 2007) 270–287.

<sup>16</sup> Ibid 145.

<sup>17</sup> Ibid 150.

<sup>18</sup> Ibid 145.

Arguments put forward to show that determinism has no bearing on moral responsibility are light-weight. (...) There are two reasons why we feel that determinism defeats responsibility. It dissolves the agent's *ownership* of his actions; and it precludes their being explicable in terms of their *rationale*. If determinism is true, then my actions are no longer really my actions, and they no longer can be regarded as having been done for reasons rather than causes (...) Constraint makes my decision irrelevant; determinism makes it redundant. When I am constrained, my will can be left out of consideration, because what happens, happens willy-nilly; if I am determined, my will can be left out of consideration as an independent factor, because it can be calculated from the other features already given (...) Determinism dissolves human agency into a set of other factors over which we have no control.<sup>19</sup>

But Ross insists that this kind of determinism (i.e., metaphysical determinism), which makes all morality meaningless, is 'logically impossible'. How does he justify this thesis? In fact, he does not justify it at all, for he, as it seems, unconsciously, shifts the focus of his analysis to an entirely different type of determinism, namely, 'scientific determinism', and argues (following Popper's line of thought from *The Open Universe: An Argument for Indeterminism*) that it is 'logically impossible' due to the so-called 'Oedipus effect' – the effect of prediction on the event or object being predicted – and the impossibility of obtaining complete initial information about the object of prediction.<sup>20</sup> However, even if Ross (and Popper) is correct (as seems to be the case) that scientific determinism is an incoherent stance, this is entirely irrelevant to the debate between compatibilists and incompatibilists. The incompatibilists will not abandon their position simply because it has been demonstrated that scientific determinism is a mirage – that science will never be able, for fundamental reasons (such as the paradoxes of self-reference in the style of the 'Oedipus effect' and the insurmountable problems involved in obtaining complete information about 'initial states') to provide accurate predictions of human behavior. After all, why should they abandon it? They assert that moral responsibility is irreconcilable with *metaphysical determinism*, the form of determinism that is relevant and central to this discussion, as it eliminates free will.

What would Ross's response to this critique be? Most likely, he would argue that his (or Popper's) critique of scientific determinism also serves as a critique of

<sup>19</sup> John R Lucas, *The Freedom of the Will* (Oxford: Clarendon Press 1970) 26–27.

<sup>20</sup> For clarity's sake, let us expand a bit on this difference. Metaphysical determinism, as the name suggests, is a metaphysical (and thus non-falsifiable) doctrine according to which every event in the universe is unequivocally caused by a set of antecedent conditions (or, in epistemic terms, that an omniscient agent could predict any event on the basis of its causes and the laws of nature). By contrast, scientific determinism claims that science – at some sufficiently advanced (even purely hypothetical) stage – will be capable of predicting all events in the universe. Ross conflates these two senses of determinism.

metaphysical determinism (though Popper would disagree, as he clearly distinguished between the two types of determinism, stressing that the rejection of the former does not entail the rejection of the latter; and even if he ultimately rejected also metaphysical determinism, he did not claim that it is logically impossible). As Ross puts it, ‘such a determinism [asserting that the future is uniquely determined] is, in fact, indistinguishable from one that implies exhaustive predictability’.<sup>21</sup> Therefore, Ross infers, the refutation of the latter automatically refutes the former. But Ross’s point is quite confusing, and the confusion seems to be twofold. First, as already mentioned, Ross blurs the distinction between metaphysical and scientific determinism, as the notion of ‘exhaustive predictability’ carries different meanings in each context: in the former, it refers to what a hypothetical omniscient being could foresee; in the latter, it concerns what a human agent could predict using the most advanced scientific theories conceivable. Second, and most importantly, *if Ross believes he has demonstrated the falsity or ‘impossibility’ of ‘complete determinism’, why does he not declare himself an adherent of incompatibilism as libertarianism?* In other words, what is the purpose of Ross’s campaign against ‘complete determinism’ if not to support a version of incompatibilism? This question becomes all the more pressing given that his primary target appears to be moral nihilism – also referred to as hard determinism or moral denialism – which, it bears repeating, results from the conjunction of incompatibilism and determinism. This is precisely why Ross seeks to demonstrate that ‘complete determinism’ is untenable; as he writes emphatically:

Moral nihilism – I mean genuine moral nihilism, the theory that one can never rightfully censure anyone for anything, that all talk of morality and of moral responsibility is vacuous and should therefore be dispensed with by those with sufficient insight to realize the unsatisfiability of the conditions of responsibility – is in my view one of those patent absurdities, well-known in the history of philosophy, which could only have been brought about by philosophical speculation, and which in fact no one (...) has taken seriously.<sup>22</sup>

To summarize: the most straightforward and characteristically compatibilist way of rejecting the ‘moral version of incompatibilism’ would be to assert that the question of whether all events in the universe are causally determined – that is, whether ‘complete determinism’ (i.e., metaphysical determinism) is true – is entirely irrelevant to the legitimacy of ascribing responsibility. On this view, freedom of action (i.e., freedom from compulsion), the kind of freedom invoked by compatibilists, is fully compatible with determinism. However, rather than

<sup>21</sup> Ross (n 2) 149.

<sup>22</sup> Ross (n 2) 138.

following this obvious route, Ross adopts a surprising strategy: *he criticizes determinism as though he accepts, along with incompatibilists, that it bears on the legitimacy of responsibility ascriptions*. Ultimately, this strategy leads him to reject a particular form of incompatibilism – namely, hard determinism or moral nihilism – but not incompatibilism as such. Indeed, Ross’s critique of ‘complete determinism’ in the context of his rejection of moral nihilism appears to push him, perhaps unwittingly, toward a libertarian version of incompatibilism – a move he neither acknowledges nor seems to recognize.<sup>23</sup>

### III. CONCLUDING REMARKS

So, what is Ross’s final position in the controversy between compatibilists and incompatibilists? On the one hand, he declares himself a compatibilist, and much of his analysis aligns with this declaration. As he writes:

I believe that I have demonstrated the incorrectness of incompatibilism in its two versions, that is, established that it is neither immoral nor futile to moralize. It would be natural in this connection to try to explain how the misunderstanding has arisen that determinism and morality exclude each other. On this point I confine myself to the explanation already offered by Hume. It is to the effect that the misunderstanding is due to the confusion of determinism and compulsion. In moral matters, just as much as in legal ones, compulsion strong enough to be said to nullify freedom of action is generally accepted as an excuse which absolves the person so compelled of guilt and responsibility. At the same time there undoubtedly linger in the concept of cause remnants of metaphysical-anthropomorphic ideas about the cause possessing a power which compels its effect.<sup>24</sup>

He suggests that freedom of the will is a metaphysical fiction (though he does not examine this concept in detail), explicitly asserts that freedom of action – i.e., freedom from compulsion – is sufficient for justifiable ascriptions of responsibility (though he does not consider the possibility that it might provide a weaker basis for such ascriptions than freedom of the will). He also ‘flirts with’ the pragmatic/consequentialist conception of responsibility. On the other hand, Ross

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<sup>23</sup> Incidentally, it is worth noting that one might advance a kind of ‘pragmatic’ argument in favor of compatibilism – though Ross himself does not do so – namely, that unlike incompatibilism, it does not risk collapsing into moral nihilism if freedom of the will turns out to be a metaphysical fiction. In this light, given our uncertainty about which view is ultimately correct, compatibilism might be seen as the ‘safer’ philosophical position.

<sup>24</sup> Ross (n 2) 151.

– like the incompatibilists – believes that ‘complete determinism’ is incompatible with moral responsibility, and he seeks to demonstrate that such determinism is impossible. As argued above, this strategy places him, unwittingly, within the camp of libertarian incompatibilists. Furthermore, Ross seems to claim that, in order to be a compatibilist, it is sufficient to assume that ‘limited determinism’ (which, among other things, excludes making accurate predictions of human actions) is compatible with moral responsibility. However, this assumption is not sufficient, as incompatibilists will agree with it as well; a genuinely compatibilist position consists in recognizing the legitimacy of responsibility ascriptions even in the universe which is ‘completely deterministic’, ‘exhaustively predictable’ (an incompatibilist will, of course, peremptorily refuse to grant such recognition). All in all, there appears to be a fundamental rupture in Ross’s argument. What other reason could he have for claiming that ‘complete determinism’ is incompatible with moral responsibility, if not the belief that such determinism rules out freedom of the will? And yet, paradoxically, he also maintains that freedom of the will is not a necessary condition for ascriptions of responsibility. As a result, Ross’s final position appears incoherent – or, at best, ambiguous. Nonetheless, one aspect of his analysis remains especially valuable: his emphatic rejection of ‘complete determinism’ reveals a clear awareness of the naïveté inherent in what John Lucas once described as ‘determinism without tears’ – the belief that ‘we can be determinists without upsetting any of our notions of responsibility and human freedom’.<sup>25</sup>

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<sup>25</sup> Lucas (n 19) 115.

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