

Moral Responsibility and Moral Luck

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Overview

The problem of moral luck is best understood as a clash of common beliefs about moral responsibility and moral judgment. On one hand, people commonly think that a person cannot be justly praised or blamed for his actions unless he controls them. So if a man releases a critical pulley rope on a construction job due to a sudden heart attack, leaves the scene of an auto accident because he's spirited away by kidnappers, or breaks a vase when knocked over by a strong gust of wind, his lack of control over his bodily movements should absolve him of any moral blame. The same is said of character traits and the outcomes of actions: a person may be justly praised and blamed only to the extent that he exerts control over them. On the other hand, ordinary moral judgments of persons routinely vary based on the actual goods or evils caused by the person, even when partly or wholly beyond his control. For example, the drunk driver who kills two pedestrians is blamed far more than the drunk driver who merely collides with a telephone pole, even if their driving was equally reckless. The only difference in what they've done is due to luck, yet they are blamed unequally by themselves and others. Similarly, the coward in Hitler's Third Reich who betrays his Jewish neighbors to the authorities is responsible for contributing to genocide, whereas a man of identical character in America today might never be guilty of worse than failing to defend his wife from his sniping parents. These two men differ radically in their moral records solely based on the accidental circumstances of their births.

The problem of moral luck is the apparent conflict between the idea that a morally responsible agent must control his actions and the standard practice of blaming people more simply for causing worse results. As developed most clearly and forcefully by Thomas Nagel, the proposed category of moral luck attempts to highlight a range of cases in which "a significant aspect of what someone does depends on factors beyond his control, yet we continue to treat him

in that respect as an object of moral judgment.”¹ Matters of luck arguably influence all that a person is morally judged for, not only his choices and actions but also his character.

Consequently, Nagel claims, “ultimately, nothing or almost nothing about what a person does seems to be under his control,” meaning that the consistent application of the principle that responsibility requires control threatens most if not all our ordinary moral judgments.²

My thesis, in brief, is that the problem of moral luck stems from a faulty understanding of the conditions of moral responsibility. A person need not solely determine all of that for which he is morally judged, as Nagel supposes. Instead, a person is properly held responsible for his voluntary acts. When a person acts voluntarily, (1) he has the power to act or not and (2) he knows what he’s doing. That Aristotelian understanding of the conditions of moral responsibility is not only consistent with standard intuitions but also grounded in basic facts about human capacities and about the purposes and demands of moral judgment. When developed in sufficient detail and extended to responsibility for a person’s products and qualities, that theory can effectively solve the puzzling cases of moral luck raised by Nagel and others, such that moral responsibility clearly tracks a person’s voluntary actions, products, and qualities.

The basic structure of this prospectus (and ultimately, of the dissertation) is fairly simple. First, I will describe the basic problem of moral luck as developed by Nagel and others. I will scrutinize the standard attempts to solve the problem of moral luck, as well as Nagel’s implicit understanding of the kind of control required for responsibility. I will also consider why the problem of moral luck as formulated by Nagel seems intractable. Second, I will develop a broadly Aristotelian theory of moral responsibility based on an analysis of the nature, purpose, and demands of moral judgment and the nature of human agency. Third, I will further develop

¹ Nagel 1993, p. 59. Bernard Williams (1993) and Joel Feinberg (1970) were also instrumental in the development of the problem of moral luck.

² Nagel 1993, p. 59.

and refine that theory of moral responsibility in the course of applying it in turn to each of the three basic kinds of moral luck: resultant luck, circumstantial luck, and constitutive luck. My analysis will show that the seemingly hopeless clash of intuitions in the various cases of moral luck can be satisfactorily resolved by a proper theory of moral responsibility, albeit perhaps not always quite as expected.

The dissertation will rely on Aristotle's ethics and moral psychology as a general framework for the development of a robust theory of moral responsibility. While I intend to generally steer clear of substantive moral questions, the work will presuppose a teleological rather than deontological approach to ethics, meaning that "the moral propriety of actions depends on their relationship to [the] overarching end" of the agent's own flourishing.³ It will also rely on an incompatibilist understanding of free will as the agent's power to perform or not perform some action, independent of prior conditions.⁴

In the following sections, I sketch the core arguments of my analysis of the problem of moral luck. I have chosen to do so in considerable detail because that enabled me to develop my account of moral responsibility clearly enough to test it against the core cases of moral luck.

The Problem of Moral Luck

Nagel's case for pervasive moral luck begins with a brief survey of "the ordinary conditions of moral judgment," particularly the "control condition" for moral responsibility.⁵ Appealing to the primitive intuition that "people cannot be morally assessed for what is not their fault, or for what is due to factors outside their control," Nagel observes that "the appropriateness

³ Smith 1999, p. 361.

⁴ My view of free will seems similar to agent-causation, but I'll need to do some further reading to conclude that definitively.

⁵ Nagel 1993, p. 58.

of moral assessment is easily undermined by the discovery that the act or attribute, no matter how good or bad, is not under the person's control."⁶ So "a clear absence of control, produced by involuntary movement, physical force, or ignorance of the circumstances, excuses what is done from moral judgment."⁷ The problem of moral luck arises from the attempt to consistently apply that control condition in our everyday moral judgments. When we look closely, Nagel claims, we find that "what we do depends in many more ways than [commonly thought] on what is not under our control," yet the "external influences in this broader range are not usually thought to excuse what is done from moral judgment, positive or negative."⁸ So the problem of moral luck is that our ordinary moral judgments routinely violate the control condition: people are praised and blamed for matters beyond their control.

Nagel classifies the various cases of moral luck as resultant, circumstantial, or constitutive luck—based on that which is affected by luck.⁹ In cases of resultant luck, a person is morally judged partly based on the outcome of his action despite his lack of control over that outcome, such as in cases of inherently risky action (e.g., inciting bloody revolution), failed attempts (e.g., shooting someone but not killing him as intended), and negligence (e.g., text messaging while driving).¹⁰ In cases of circumstantial luck, the person's moral record depends on accidental circumstances, as when a person faces a difficult moral test to which others are never put or when a would-be wrongdoer finds his deed already done for him by others.¹¹ In

⁶ Nagel 1993, p. 58.

⁷ Nagel 1993, p. 58.

⁸ Nagel 1993, p. 58.

⁹ I plan to ignore Nagel's fourth category of "causal luck," since it concerns the broader question of free will versus determinism. Some commenters on moral luck have suggested alternative schemes of classification, but none are more illuminating than that of Nagel. See, for example, Ollila 1993, pp. 19-21. These three kinds of moral luck will be explained in greater detail in later sections.

¹⁰ Nagel 1993, p. 60. Cases of resultant luck are also found in Williams 1993, pp. 38-9 and Feinberg 1970, pp. 32-4.

¹¹ Nagel 1993, p. 60. Cases of circumstantial luck are also found in Feinberg 1970, pp. 34, 191-2.

cases of constitutive luck, a person is praised or blamed for aspects of his moral character imposed upon him by his upbringing or his genes, for example.¹² These cases seem to show that our standard moral judgments of a person—whether for his products, his choices, or his character—are often substantially based on accidental factors outside his control.

Notably, the problem of moral luck does not merely present us with a limited set of puzzling cases about moral responsibility.¹³ Luck is a pervasive influence in human life. No one controls the particular family, culture, nation, or era of his birth. No one controls his genetic endowments. Few people have any significant power to influence the economic conditions, political institutions, or moral climate that shape their lives. Our actions often have far-reaching, unexpected, and unpredictable effects in the world. Such external forces seem to influence the thoughts, actions, qualities, and products for which a person is morally judged. If that's true, then the problem of moral luck undermines attributions of moral responsibility generally, not just in a few select cases. That's why Nagel claims that "if the condition of control is consistently applied, it threatens to erode most of the moral assessments we find it natural to make."¹⁴

Three Attempted Responses

If true, Nagel's conclusion—that most ordinary claims of moral responsibility cannot survive the consistent application of the principle that moral responsibility requires control—would be a bitter pill to swallow. Accepting it would spell the end of ethics as a practical discipline. If people aren't responsible for their actions and characters, the task of differentiating right from wrong and virtue from vice would be an intellectual exercise without further purpose. Consequently, most philosophers commenting on the problem of moral luck attempt to retain our

¹² Nagel 1993, p. 60; Feinberg 1970, p. 36.

¹³ Nagel 1993, p. 59.

¹⁴ Nagel 1993, p. 59.

practices of moral judgment in some form by developing alternative accounts of the relationship of morality and luck. That has proven more difficult than expected, in that neither the attempt to exclude luck from morality nor the attempt to include luck in morality seems to produce a plausible general theory of moral responsibility. Both approaches seem to work well when applied to some cases, then lapse into absurdity in others.

The standard strategy for eliminating the influence of luck in moral judgments is simple: remove any and all luck-based differences from moral judgments and punishments, so that cases differing only in matters of luck are judged and punished equally.¹⁵ The resulting moral equivalence is undoubtedly plausible in cases of attempted murder foiled after the attack, as when the rapidly exsanguinating victim of an assault is rescued from death by a neighbor who happens to be a trauma surgeon stopping by to return a borrowed garden hose at that very moment. Contrary to current legal practice, the fortuitous rescue of the victim doesn't seem to be legitimate grounds on which to weaken our moral condemnation of the violent act or its perpetrator, nor lessen his punishment. Similarly, the judge who would accept a bribe if offered seems worthy of equal condemnation (even if not equal punishment) as the judge who did accept such a bribe when offered. However plausible those analyses, the attempt to directly remove the influence of luck from all moral judgments yields the implausible conclusion that people with radically different moral records and moral characters should be blamed equally via a series of cases differing only in luck.¹⁶ Here's how:

¹⁵ This general approach is found in Richards 1993; Thomson 1993; and Rescher 1993. It's often described as "the epistemic solution" because differential judgments are explained as the product of differences in others' knowledge of the agent's true character.

¹⁶ The following set of examples is drawn from Greco 2006, pp. 18-20. Greco denies the moral equivalence of the cases by a distinction between "agent record" and "agent worth" (p. 23). As we shall see with Rescher, that strategy reduces all problems of moral luck to constitutive moral luck. Other versions of this step-wise reductio are found in Moore 1994, pp. 271-80 and Latus 2000, pp. 154-8.

Step 1: Eliminate differences in moral judgments due to resultant moral luck. Imagine that two people, Adam and Bonnie, voluntarily drive themselves home from a party, even though seriously impaired by alcohol. At various times, both drivers swerve into oncoming traffic, run red lights, and drive erratically—but only Adam strikes and kills a pedestrian. Since the presence of the pedestrian at the intersection was not in Adam’s control, the death is a matter of bad luck for Adam. To eliminate the effect of luck, Adam and Bonnie must be judged and punished equally for their drunk driving alone, since that’s what they did control.

Step 2: Eliminate differences in moral judgments due to circumstantial moral luck. Imagine a third party-goer Clive, who intends to drink and drive exactly like Adam and Bonnie, but who stumbles on a hidden rock while walking to his car, bumps his head, and passes out in the bushes. Since Clive’s intended drunk driving was prevented by the mere accident of an ill-placed rock, Adam, Bonnie, and Clive should be blamed and punished equally, based on their equal intention to drive drunk. Next, imagine David: he would have drunk to excess and driven home but was precluded from doing so solely by his work schedule. Perhaps he even attempted to switch shifts with his fellow workers but found no takers. Since David’s drinking and driving was precluded by the mere accident of his work schedule, he should be blamed and punished equal with Adam, Bonnie, and Clive based on a willingness to drive drunk. The only differences between them are the product of luck, so to judge them differently would be unjust.

Step 3: Eliminate differences in moral judgment due to constitutive moral luck. Imagine that Ernie would have driven home drunk from the party, had his best friend not been killed by drunk driver last year. Instead, he drinks club soda and lime then drives himself home safely. Ernie might seem to be a morally better person than the others since he refuses to drive drunk. Yet he would not always drive sober if his friend hadn’t been killed—and that experience was

purely a matter of luck. We can even imagine that Adam, Bonnie, Clive, and David would not drive drunk if something similar happened to them. Consequently, Ernie should be judged and blamed equal to Adam, Bonnie, Clive, and David.

In sum, the attempt to purge luck from moral judgments would require declaring Adam, Bonnie, Clive, David, and Ernie morally equivalent and treating them equally—despite the often-vast differences in the harms caused, the actions taken, the intentions formed, and the characters enacted by each person.¹⁷ Ultimately, the most vicious criminals might need to be judged morally equal to the most virtuous saints, on the grounds that some chain of purely luck-based differences connects them, just as Adam is connected to Ernie. Here, luck in the circumstances that shape a person's basic character is of particular concern. After all, the fiery abolitionist who helped slaves escape north to freedom in the 1850s might have defended and practiced brutal forms of slavery if unlucky enough to have been raised in a slaveholding southern family. And the 20-year-old thug who shoots a frightened bystander in a robbery might have been quietly studying in his college dorm if his parents had been more concerned with his education than with their next fix.¹⁸ If those counterfactuals are true, then the abolitionist must be judged the same as the slaveholder and the thug the same as the student in order to eliminate the effects of luck from our moral judgments. Even if those counterfactuals are merely probable or possible, then to praise one person and condemn the other seems to make the moral judgment unfairly dependent on luck. Yet equalizing the moral judgments to eliminate the effect of luck also seems deeply unfair, if not absurd.

¹⁷ Kessler embraces that view in part, arguing that mildly reckless driving could be justly punished the same as manslaughter and extremely reckless driving the same as murder (1994, p. 2227).

¹⁸ The idea that a person's moral character and record substantially depends on luck in basic circumstances is commonplace, as expressed in the phrase, "There but for the grace of God go I."

In addition, the equalization of judgments renders the proper judgments and deserts of persons totally mysterious.¹⁹ Does justice demand excusing everyone on the grounds that they might have driven sober with Ernie's good luck or blaming everyone on the grounds that they might have killed a pedestrian with Adam's bad luck? Absent some luck-free baseline for moral judgments, any answer seems arbitrary.²⁰

Philosophers seeking to exclude luck from moral judgments deny that Ernie is the moral equal of Adam, however. They often accept that Adam, Bonnie, Clive, and David should be judged and punished equally given their equal moral character, meaning based on the counterfactual claim that all would have acted the same under the same conditions.²¹ The same cannot be said of Ernie, however. On this approach, moral judgments are not made of a person's luck-infected choices, actions, or outcomes; instead, only a person's character is subject to moral judgment.²² So then what is said of the problem of constitutive moral luck, i.e., of luck in moral character itself? Rescher offers the standard reply, arguing that very concept of constitutive moral luck is logically incoherent because a person must be someone in particular in order to be subject to luck.²³ He claims that "one cannot meaningfully be said to be lucky in regard to who one is, but only with respect to what happens to one."²⁴ That's why it's not sensible, for example, to ask what kind of person you'd be if you were unlucky enough to be born to starving Somali refugees, medieval Germanic peasants, or abusive drug-addicted celebrities. In such cases, *you* wouldn't exist at all; someone else would.

¹⁹ Wolf 2001, pp. 7-9.

²⁰ Moore 1994, p. 255.

²¹ See, for example, Rescher 1993; Thomson 1993; and Kessler 1994.

²² This demand to only judge character is subject to serious epistemological objections because judgments of character are based on judgments of actions, if not also on judgments of outcomes.

²³ Rescher 1993, p. 155. Greco makes a similar claim (2006, p. 26).

²⁴ Rescher 1993, p. 155.

This attempt to avoid moral luck is subject to serious objections. Personal identity may well entail that some aspects of a person's character are essential to him, such that those aspects cannot be coherently attributed to luck. Yet the elimination of all luck in character would require the far stronger thesis that any and all aspects of a person's character are essential to his identity. Surprisingly, Rescher seems to endorse that strong view in describing "one's inclinations, disposition, and character," whether within one's control or not, as "a crucial part of what constitutes oneself as such"—without any qualification or distinction between essential and non-essential traits.²⁵ That view of personal identity would render even the most minor changes to a person's character impossible, meaning that Ernie would be a different person before and after his friend's accident.²⁶ In fact, such inessential changes are not only routine but also often inspired, influenced, or facilitated by accidental and unexpected external forces, i.e., by luck.

Worrisomely, the alternative strategy of abandoning the control condition so as to allow some role for luck in moral judgments is no more appealing in its general results. That approach would allow us to praise and blame a person based on what he actually does, causes, and is like—even when influenced by luck. So Adam should be blamed more severely than Bonnie because he caused more damage, while Bonnie should be blamed more severely than Clive and David because she acted wrongly while they merely intended and hoped (respectively) to do so. Far less plausibly, however, two equally vicious people with identical malicious plans executed in exactly the same way would be judged differently based on the unforeseeable intervention of random outside forces, like whether a bird flew into the path of the bullet intended to kill or whether the trauma surgeon attempted to return his neighbor's garden hose at just the right moment. That seems manifestly unjust, since the differences between the lucky and the unlucky

²⁵ Rescher 1993, p. 157.

²⁶ Further criticisms can be found in Latus 2003, pp. 470-2 and 2000, pp. 158-60.

wrongdoer had nothing to do with anything about them. Their choices, actions, and characters are the same, yet they are blamed unequally.²⁷ As we shall see, that approach would frustrate the basic purpose of moral judgment.

Moreover, the most plausible substitutes for the control condition seem unable to adequately account for our ordinary judgments of responsibility. Presumably, a person's moral responsibility must be limited to that which he causes; otherwise, car salesmen leading quiet lives in upstate New York might be blamed for a shortage of tea in remote villages in China.²⁸ That causal condition isn't sufficient, however, as people also shouldn't be held responsible for the myriad far-flung, improbable, and unforeseeable effects of their actions.²⁹ A person shouldn't be blamed for telling the time to a stranger at the mall, for example, even if that knowledge helps the stranger kidnap a child. Such false claims of responsibility could be excluded by requiring the outcome to be foreseen or at least reasonably foreseeable.³⁰ Yet that wouldn't preclude holding a person responsible for some event he foresees and causes but cannot act to prevent. So if clever terrorists kidnap Jack and securely rig him to a bomb set to explode after his heart beats a few hundred times, he causes and foresees the explosion, yet he is not

²⁷ Moore, for example, unconvincingly appeals to people's standard emotional responses to justify such differential judgments (1994, pp. 267-70).

²⁸ Even strict liability requires the liable party to be causally connected to the harm: if I fall off a ladder made by Bob's Ladder Company, I can't sue Joe's Ladder Company. General discussions of the role of causation in legal liability are found in Morris, ed. 1961, pp. 282-342 and Honoré 2005. Notable advocates of causation-based approaches to moral responsibility include Moore 1994, pp. 254-5 and Feinberg 1970, pp. 195, 207-11. Sartorio (2004) criticizes such approaches.

²⁹ Honoré observes that "if every causally relevant condition... is treated as grounding responsibility for the outcomes to which it is causally relevant[,] the extent of legal responsibility will extend almost indefinitely" (2005, sec. 3.2). Feinberg argues that causation is necessary but not sufficient for moral responsibility (1970, p. 195). Ripstein claims that no principled line can be drawn between what an agent causes and what he's responsible for (1994, p. 6).

³⁰ In the influential case on tort law, "Palsgraf v. Long Island Railroad Company," the dispute between the majority and dissenting opinions hinged on the foreseeability of the explosion and injury caused by the attempt of two train guards to help a passenger on the train. The passenger was carrying well-concealed fireworks that fell on the tracks and exploded, thereby injuring a bystander (Appeals Court of New York 1961). Zimmerman argues that negligence requires not just foreseeability, but actual foresight at some point in the past (1986, pp. 206-10).

properly blamed for it, most plausibly because he cannot control the beating of his heart. So notwithstanding the puzzling cases of moral luck, control does seem somehow necessary to moral responsibility, as Nagel claims.

For some philosophers, the failure of the attempt to eliminate luck from moral judgment shows that moral luck is inescapable.³¹ Yet as we've seen, the attempt to incorporate luck into moral judgments by rejecting the control condition creates significant problems for a general theory of moral responsibility, just as does the attempt to exclude luck from moral judgments by strictly applying the control condition. Nagel attempts a third approach: the problem of moral luck is the product of an irreconcilable conflict between the subjective and the objective perspectives on persons.³² He claims that we initially think of ourselves and others from a subjective (or first-person) perspective, i.e., as agents in control of and responsible for our own actions.³³ Yet as we investigate the external forces that influence a person's choices, actions, and character, we are forced to assume the objective (or third-person) perspective according to which "actions are events and people things."³⁴ Then we see the morally responsible agent as "merely... a bit of the world," such that "the alternatives that he may think of as available to him are... just alternative courses that the world might have taken."³⁵ So ultimately, Nagel claims, "nothing remains which can be ascribed to the responsible self, and we are left with nothing but a portion of the larger sequence of events, which can be deplored or celebrated, but not blamed or praised."³⁶ Nonetheless, we cannot abandon our original understanding of ourselves and others as agents, not "even when we have seen that we are not responsible for our own existence, or our

³¹ Latus 2000, p. 158.

³² Nagel 1993, pp. 67-9. Nagel substantially elaborates on his views in *View from Nowhere* (1986, pp. 110-24).

³³ Nagel 1993, p. 68.

³⁴ Nagel 1993, p. 68.

³⁵ Nagel 1986, pp. 122-3.

³⁶ Nagel 1993, p. 68.

nature, or the choices we have to make.”³⁷ Consequently, control still seems necessary for moral responsibility, even though the strict application of the control condition in the proposed cases of moral luck ultimately undermines all our standard attributions of moral responsibility.³⁸ So for Nagel, the problem of moral luck is ultimately insoluble. Like other related problems of autonomy and responsibility, it has “no available solution.”³⁹

This view of the origin of the problem of moral luck raises perhaps more troubling questions than the already-surveyed attempts to forbid or permit some role for luck in moral judgments. Nagel regards the subjective and objective perspectives on human agency as equally compelling and equally necessary—yet hopelessly contradictory.⁴⁰ In particular, the identification of ethical values requires the assumption of an objective perspective, yet that very perspective precludes regarding ourselves and others as morally responsible agents.⁴¹ The implications of Nagel’s willing acceptance of such major philosophic contradictions as beyond our power to resolve are disturbing, to say the least. Presumably, we are unable to rationally determine truth about the nature of human agency and responsibility either because humans are systematically deceived about our place in the natural world or because reality itself is contradictory. Either way, rational philosophy would be in serious peril, if even possible. In fact, however, the source of the Nagel’s irresolvable conflict is probably more mundane: although Nagel repeatedly denies that his arguments presuppose any form of determinism, that is precisely what the objective perspective seems to demand.⁴² However, neither Nagel’s

³⁷ Nagel 1993, p. 68.

³⁸ Nagel 1993, p. 59.

³⁹ Nagel 1986, p. 126.

⁴⁰ Nagel denies that the problem is that the control we do seem to exert in our lives is merely illusory (1986, p. 114).

⁴¹ Nagel 1986, pp. 135, 122.

⁴² Nagel 1986, pp. 110, 113-5, 120-3. On my incompatibilist view, human agency could not exist in a world determined by antecedent conditions.

understanding of moral luck as rooted in conflicting perspectives nor his seeming determinism is necessary to feel the force of his cases of moral luck; few (if any) other philosophers accept his account of the problem's origins.

The Necessity of a Fresh Start

In light of the failed attempts to solve the problem of moral luck surveyed so far, the most promising course would seem to be a direct investigation into the nature and demands of moral responsibility, particularly a re-examination of the “intuitively plausible” control condition used by Nagel. Nagel denies the viability of such an investigation, claiming that when we consider the various cases of moral luck, we do not suspect that the control condition might be false.⁴³ We do not persist in our original judgment that the person is fully responsible in spite of our new appreciation for his lack of control. Rather, we realize that the person's lack of control means that he isn't as responsible as we once thought.⁴⁴ So by Nagel's account, the problem of moral luck “emerges not as the absurd consequence of an over-simple theory, but as a natural consequence of the ordinary idea of moral assessment, when it is applied in view of a more complete and precise account of the facts.”⁴⁵ As a result, philosophers cannot hope to solve the problem of moral luck by investigating the nature and limits of moral responsibility, such as by identifying “a more refined condition which pick[s] out the *kinds* of lack of control that really undermine certain moral judgments.”⁴⁶ For Nagel, that would be a fruitless quest: our responses to the various cases of moral luck confirm our agreement with the intuitive control condition at work.

⁴³ Nagel 1993, p. 59.

⁴⁴ Nagel 1993, p. 59.

⁴⁵ Nagel 1993, p. 59.

⁴⁶ Nagel 1993, p. 59.

Happily, Nagel is wrong to deny that a solution to the problem of moral luck might emerge from the philosophic investigation of the conditions of moral responsibility. If his version of the control condition were flawed in some subtle way, that flaw would not necessarily be revealed merely by its application to a few specific cases. Moreover, something does seem amiss in softening the condemnation of a drunk driver who kills a pedestrian because the presence of the pedestrian was bad luck for him, as Nagel's analysis demands. Our original judgments of severe blame reassert themselves when we consider that the drunk driver could have avoided risking the life of that pedestrian entirely by not drinking so much or not driving once drunk. Consequently, the possibility of some theoretical fault in Nagel's conditions of moral responsibility cannot be summarily dismissed, as he would like. Rather, the accuracy thereof can only be confirmed or denied by a detailed inquiry into the nature and demands of moral responsibility.⁴⁷ In fact, we have good reason to worry that Nagel's understanding of the control required for moral responsibility is too demanding, in the sense that such control is neither possible to human agents nor necessary for moral responsibility.

Nagel begins his essay on moral luck by considering Kant's ideal of moral agency: that which is morally judged must be wholly within the agent's power, free from any external forces that might distort or mask the agent's pure act of will.⁴⁸ While Nagel does not explicitly endorse that ideal of "noumenal agency," his standards for moral responsibility clearly show its strong influence. The "intuitively plausible" control required for moral responsibility is not simply the power to do or not do found in Aristotle, such that a person morally judged for choosing amongst the better and worse alternatives available to him. Rather, the control required by Nagel is all-

⁴⁷ Nagel's denial of the utility of theoretical inquiry stems (at least in part) from his treatment of the control condition as a mysterious, unjustified intuition (1993, p. 58). In *View from Nowhere*, he plainly states that "we hold ourselves and others morally responsible for at least some actions," even though "we cannot give an account of what would have to be true to justify such judgments" (1986, p. 120).

⁴⁸ Nagel 1993, p. 57.

encompassing: it must shield the object of moral judgment from all outside influences. That is why the negligent mother who puts her baby in the bath then leaves the room with the water running is morally unlucky if he drowns: even though she had the power to safeguard her child by staying in the room, she lacks control over the flow of water once she leaves the room.⁴⁹ Similarly, the Nazi officer is morally unlucky for living during the Third Reich, despite his deliberate choice to support rather than oppose that regime, because he did not control the political events that made his choice possible.⁵⁰ The control absent in such cases is basically that of Kant's ideal noumenal agent. Similarly, in *View from Nowhere*, Nagel speaks of genuine autonomy as requiring us "to act from a standpoint completely outside ourselves, choosing everything about ourselves, including all our principles of choice—creating ourselves from nothing, so to speak."⁵¹ While Nagel recognizes that ideal of autonomy as "self-contradictory" because "to do anything we must already be somebody," he claims that we cannot escape wishing for it.⁵²

In addition, Nagel understands luck simply as that which lies beyond the control of the agent—so even highly probable events (e.g., one's spouse buying milk as promised) and wholly causally determined events (e.g., the rising of the sun in the morning) are classified as matters of luck capable of diminishing (if not eliminating) moral responsibility.⁵³ Once again, that shows that Nagel requires a person to exert an all-encompassing control, free of outside influences, in order to be fully moral responsible—even for that which he deliberately chooses. As Margaret Walker observes, "the view against which moral luck offends is that of *pure agency*: agency

⁴⁹ Nagel 1993, p. 59.

⁵⁰ Nagel 1993, p. 65.

⁵¹ Nagel 1986, p. 118.

⁵² Nagel 1986, p. 118.

⁵³ Nagel 1993, p. 59. This criticism has been developed in Latus 2003, pp. 465-6 and 2000, p. 167, note 5. Whether the causally-determined events would diminish or eliminate moral responsibility would depend on the nature and extent of their influence over the person's actions.

neither diluted by nor implicated in the vagaries of causality at all, or at least not by causality external to the agent's will."⁵⁴

With his control condition seen in this Kantian light, Nagel's case for moral luck can be understood as an indirect but extended argument that humans cannot satisfy the ideal of noumenal agency.⁵⁵ We cannot satisfy that ideal because what we cause, what we choose, and even who we are depends too thoroughly on the vast range of uncontrollable causal forces in the external world. Upon reflection, we seem to be mere phenomenal objects buffeted about in a phenomenal world—yet we cannot rid ourselves of the contrary idea that we are noumenal agents, free and responsible.

The fact that Nagel's control condition depends on an ideal of noumenal agency raises serious questions about its suitability as a standard for moral responsibility, as well as about its consistency with standard intuitions.⁵⁶ The former will be discussed in due course. As for the latter, ordinary discourse does not use the term "control" as Nagel does. For example, if I claim control over quenching my thirst, that would be understood as asserting the power to drink some nearby water or not—even though water flows through my tap thanks to the workers who maintain the pumps, sufficient annual rainfall, and so on.⁵⁷ To lack control would be understood as some kind of here-and-now physical incapacity to quench my thirst—such as paralysis due to a blow to the head or a burst pipe upstream and no other beverages in the house.⁵⁸ Similarly, toward the end of the NFL season, a team is said to "control its own destiny" if winning its own

⁵⁴ Walker 1993, p. 244.

⁵⁵ Nagel's extensive discussion in *View from Nowhere* supports this interpretation (1986, pp. 110-24).

⁵⁶ My concerns about Nagel's overly strict understanding of control are not unique. For example, see Browne 1992, p. 348; Zimmerman 1993, pp. 219-22; and Moore 1994, p. 257.

⁵⁷ This example is from Zimmerman 1993, p. 221.

⁵⁸ From the preliminary research I've done, I'm doubtful of claims of purely psychological incapacity. For example, while long-time abusers of alcohol are often said to lack control over their drinking, psychological studies show that they can and do control their own drinking, when provided with incentives to do so (Fingarette 1989).

games is sufficient to secure a spot in the playoffs, regardless of the outcomes of games played by other teams. Yet obviously whether a team wins or loses its own games will depend on the performance of the opposing team. So Michael Moore is correct in his blunt observation that “Nagel’s stringent idea of control—where to control a result is to control all factors necessary to that result, even the normally occurring factors—finds no resonance in the ordinary notion of control, nor in the ordinary notion of moral assessment.”⁵⁹

In light of these doubts about the very foundations of the problem of moral luck, a fresh examination of the nature of moral judgment, of human agency, and of moral responsibility is in order.

Moral Judgment

The basic task of a theory of moral responsibility is to determine what is properly subject to moral judgment. So imagine that Mary bashes John over the head with a rock while out hiking, seriously injuring him. Why blame Mary for John’s injuries, rather than John or the rock? What might excuse Mary from blame: a brain tumor, too many lollipops, a violent childhood, dehydration, raging hormones, John’s unfunny jokes, ignorance of what rocks do to skulls? Is John’s roommate partially culpable for the injury because he suggested the hike? Is Mary to blame only for injuring John—or also for her violent character, her malicious intentions, John’s medical problems, and/or copycat crimes?

The answers to such questions about moral responsibility depend on underlying views about the demands and purposes of moral judgment, as well about as the nature of human agency. In this section, I will sketch my view of moral judgment. In the next section, I will develop a general theory of moral responsibility (with some remarks about human agency).

⁵⁹ Moore 1994, p. 257.

Finally, that theory will be applied to the three kinds of moral luck. So let us begin with an examination of the purpose that moral judgment properly serves in human life.

A person's flourishing depends on his effective pursuit of a wide range of values: a career in advertising, a happy marriage to Joanna, a relaxing vacation in Montana, careful management of diabetes, and a good grade on a biology exam. The pursuit of such values primarily depends on the thought and action of the individual—on his choices, capacities, resources, knowledge, foresight, perseverance, moral virtues, and so on.⁶⁰ When a person pursues values, however, his success also depends on factors external to him, such as available technology, natural events, social institutions, and other people.⁶¹ So the pleasure of a hike depends on the scenery and the weather, the effectiveness of treatment for breast cancer depends on access to advanced technology, and the profitability of a retail store depends on a slew of hard-working clerks. To ignore the possible impact of such external forces on our pursuits would put those pursuits in serious jeopardy. It would be foolish, for example, to fail to check the weather report before a day-long hike in the mountains or to leave all rain gear at home when downpours are forecasted. To protect our values, we must identify the state of the world, evaluate its likely impact on our plans, and act accordingly.

As concerns other people, such evaluations permit us to differentiate between those who will impede us and those who will assist us in the pursuit of our values. As Tara Smith observes:

Whatever the ends that individuals seek, their attainment of those ends depends on what they themselves as well as others do. Our values are vulnerable, since their achievement is uncertain. They must be carefully pursued, nourished, and protected. Whether a person seeks a house in the country, a career in journalism, or a rewarding marriage,

⁶⁰ For an argument that flourishing is fundamentally self-created, see Smith 1995, pp. 67-9.

⁶¹ Smith 1999, pp. 368-9.

other people's actions may affect her success. If a person simply wants to secure a ticket to the big game, she must evaluate the person offering to sell her one. Either through deliberate attempts to influence her fate or through actions which would indirectly aid or impede it, others can have a significant impact on a person's chances of attaining (or retaining) her values. Will a realtor mislead you about the house she is selling? Will a colleague fairly portray your work to others? Will a friend seek to sow distrust between you and your husband?⁶²

We need to judge other people because of their potential impact on our values. Those judgments are normative: they identify a person as in some way better or worse in his capacities, skills, intelligence, knowledge, talents, virtues, preferences, efforts, actions, and so on. Not only will they inform our choices about appropriate interactions with the person, but they may also shape the course and character of our projects themselves.⁶³ For example, a graduate student might legitimately choose his dissertation topic in part based on the expertise of the professors in his department. Only by such evaluations can we act purposefully and intelligently to protect and promote the values that constitute our flourishing.

Evaluations of persons are governed by the demands of the virtue of justice, understood as "the virtue of judging other people objectively and of acting accordingly, treating them as they deserve."⁶⁴ While all such evaluations are judgments of a person according to some relevant standard, they are not limited to a person's moral qualities.⁶⁵ Sarah's lack of skill in playing the violin is not a moral defect, but if I want to learn to play the violin I should choose someone else as my teacher. However, moral judgments are properly distinguished from other kinds of

⁶² Smith 1999, p. 369.

⁶³ Smith 1999, p. 368.

⁶⁴ Smith 1999, p. 362.

⁶⁵ Smith 1999, p. 366.

assessments of persons in that they concern the principles that underlie and guide a person's voluntary actions, products, and qualities.

Moral judgments must be limited to a person's voluntary aspects for the simple reason that all normative claims, whether moral or not, presuppose an agent with the power to conform to the prescription or not. Absent that power, to assert that X ought to do Y would be senseless: even if Y is the best course, that fact has no bearing on X's course of action. That is why we don't condemn a hurricane, however distressed we might be at the damage it causes, or tell paraplegics that they ought to walk, however much that activity would improve their lives. Notably, the point is not merely that "ought implies can." Normative prescriptions from which one cannot deviate—such as "you ought to obey the law of gravity" or "you ought to die if shot through the heart"—are just as senseless as prescriptions that one cannot fulfill. The point is that "ought" presupposes the capacity to do the act or not, i.e. voluntary action.

Ultimately then, moral judgments identify and evaluate the principles (whether consistent or not) by which a person governs his own actions. They ask, for example: Does this person indulge his feelings without thought for the consequences? Is he willing to admit his mistakes? Does he vigorously pursue his goals or cave in face of opposition? Does he put off thinking about unpleasant matters? Does he act on the basis of clearly defined principles? Does he discuss problems as they arise or secretly nurse bitter resentments? Does he act on personal biases? Can he be trusted to honor his promises? Does he blame others for his failures? Does he lie, cheat, and steal—or deal with other people justly? Obviously, the answers to such questions are hugely important to our dealings with other people, particularly if we regularly interact with the person or substantially depend on him. Our most general moral evaluations of a person, e.g., that John is dependable but Mary not, will be relevant to most if not all of our

interactions with that person, whatever the particular circumstances at hand. That is not true of judgments of skills, knowledge, talents, and the like. Moreover, a person's moral qualities determine the value of his other qualities. The low prices of a local grocer serve no good purpose if he sells tainted goods. Even worse, seeming strengths become liabilities when possessed by a vicious person.⁶⁶ So a dishonest employee is significantly more dangerous if also charming and clever. For these reasons (and others), the importance of moral judgments to our own flourishing cannot be overstated.

Moral Responsibility

As already noted, the basic purpose of a theory of moral responsibility is to determine that for which a person is properly moral judged. Since morality presupposes voluntary acts, a theory of responsibility must identify the essential qualities of all voluntary actions. Those criteria were originally defined by Aristotle in the *Nicomachean Ethics*, Book 3, Chapters 1-5. Aristotle's explicit purpose in those chapters on moral responsibility is to aid proper moral judgment. He observes that properly bestowing "praise and blame" on "voluntary passions and actions" and "forgiveness and also sometimes pity" on involuntary passions and actions presupposes that we can "distinguish the voluntary and the involuntary."⁶⁷ While wrong or incomplete in some details, Aristotle's control and epistemic conditions for voluntary action provide the basic outlines of a theory of moral responsibility consistent with the purpose of moral judgment and the nature of human agency.

⁶⁶ Kant 1990, p. 394 makes a similar point.

⁶⁷ Aristotle NE, 1109b30-5.

In this section, we will consider only the requirements of voluntary action.

Responsibility for products and character will be discussed with resultant and constitutive luck, respectively. So what does moral responsibility for actions require?

First and most obviously, a person must control his actions to be morally responsible for them. For Aristotle, that control condition means something very specific, namely that the action originates from within the agent himself, such that he has the power to do or not do the action.⁶⁸ Voluntary actions cannot be forced upon an agent; they must be the product of the agent's own powers of self-direction. That control over actions is found in ordinary bodily movements, e.g., answering the phone or not, standing up or not, turning on the television or not. It is also found in cognitive processes: as a self-reflective agent, a person is capable of identifying, evaluating, and directing some of his own mental processes.⁶⁹ For example, a person can choose to exert the effort of thinking or not, to think about some issue or not, to accept some argument or not, to confront painful facts or not, to trust gut feelings or not, and so on. Since actions originate in thought, that control over mental processes is the necessary foundation for control over bodily movements.

The most obvious cases of failure of control are movements produced by irresistible external powers, as in Aristotle's cases of the man spirited away by kidnappers or knocked over by the wind.⁷⁰ A person's uncontrolled bodily movements also might be purely physiological responses, like the secretion of bile by the gallbladder or twitching caused by a brain tumor. Less obvious is the proper analysis of actions commonly described as "forced on a person by circumstances"—such as when a tyrant orders evil acts upon pain of death of one's family or

⁶⁸ Aristotle NE, 1109b35-1110a2, 1110a17.

⁶⁹ Binswanger 1991, p. 156.

⁷⁰ Aristotle NE, 1109b35-1110a3.

when a ship captain jettisons his cargo in a storm to save the ship.⁷¹ As Aristotle observes, such actions are properly regarded as voluntary because they are “worthy of choice at the time when they are done” and “the end of an action is relative to the occasion.”⁷² So the person’s ultimate regret does not prove his action to be involuntary because the actions were chosen at the time from amongst the alternatives available at the time—and chosen rightly, in the case of the ship captain. In general, since a person’s possible actions are always constrained by his particular circumstances, actions must be judged as voluntary or not within the context of those circumstances. So when a person must choose between two undesirable alternatives—like between total shipwreck and merely lost cargo—he selects his course voluntarily, even if regretfully. That’s why Aristotle observes that the terms “voluntary” and “involuntary” should be used “with reference to the moment of action,” rather than by any comparison to more favorable circumstances.⁷³

Significantly, the control condition sketched by Aristotle does not demand power over all aspects of an action—as does Nagel’s control condition. Instead, the morally responsible agent must simply have the power to regulate his own actions, in the sense that he has the power to act or not. Moreover, that control condition is not an intuition from nowhere, as Nagel supposes. It is grounded in basic facts of human agency, particularly that people are capable of regulating some (but not all) of their bodily movements. Where such self-regulation is possible, a person can choose to do or not do anything physically possible to him. He is then justly held

⁷¹ Aristotle NE, 1110a4-11.

⁷² Aristotle NE, 1110a11-13.

⁷³ Aristotle NE, 1110a13-4. This general principle will be critical to the proper analysis of circumstantial moral luck. Also, dire circumstances may influence the substance of our moral appraisals of actions and agents. So a man tortured by a tyrant may be praised for “endur[ing] something base or painful in return for great and noble objects gained” if he resists or forgiven for doing “what he ought not under pressure which overstrains human nature and which no one could withstand” if he succumbs (Aristotle NE, 1110b1-3).

responsible for that choice: he can be praised for acting as he ought or blamed for acting as he ought not.

Second and less obviously, a person must act with adequate knowledge of his actions to be morally responsible for them. The agent must be aware of “the particular circumstances of the action,” such as “who he is, what he is doing, what or whom he is acting on, and sometimes also what (e.g., what instrument) he is doing it with, and to what end (e.g., for safety), and how he is doing it (e.g., whether gently or violently).”⁷⁴ So if Cindy slaps her friend Joe on the back, not realizing that his shirt hides a sensitive sunburn, her action is not voluntary due to her ignorance of that crucial fact. More precisely, she does voluntarily slap Joe on the back but does not voluntarily slap Joe on his sunburn.⁷⁵ Given her ignorance, Cindy could not know that in doing the former she is also doing the latter. That’s why she will be horrified to learn what she’s done when Joe cringes in pain and shows her his sunburn.

The basic justification for this epistemic condition for moral responsibility is that when a person acts on the basis of a faulty understanding of the circumstances, his action is not what he supposes it to be. Since the person thought he was doing X when he actually did Y, he did not do Y voluntarily. While such mistaken actions may be evaluated, those evaluations would not constitute genuine moral judgments. Moral judgments seek to identify the basic principles and values by which a person governs his actions. Yet a person’s actions also depend on commonplace beliefs about the particular circumstances of the action, e.g., whether the shaker contains sugar or salt, whether that’s Joe or John across the room, whether Fanny enjoys or laments teasing about her name. When a person errs in those ordinary beliefs, his outward actions reveal little to nothing about his basic principles and values. Cindy’s ignorance of Joe’s

⁷⁴ Aristotle NE, 1111a3-5, 1111a 24.

⁷⁵ My analysis seems similar to the view that an action may be intentional under one description but not under other descriptions, as in Davidson 2001, pp. 43-51.

sunburn, for example, makes her back-slap perfectly consistent with her claims of deep affection for him. The same cannot be said if she was aware of his sunburn at the moment of her slap.

However, a person's ignorance of circumstances does not always render his actions involuntary. That depends on whether the person regrets his action or not, per Aristotle's critical distinction between "involuntary" and "non-voluntary" acts.⁷⁶ Aristotle describes mistake-based actions as "involuntary" only when contrary to the wishes of the agent, such that he regrets the action and would have done otherwise if he'd known the relevant facts.⁷⁷ However, often such factual errors are of little to no practical significance to the agent. If I carry a bag of dog food into the house, the fact that I might think it to be fifteen pounds rather than ten doesn't make my action involuntary. A person might even be pleased by an error due to some unexpected benefit, such as when a thief steals a silver goblet thinking it to be a tin cup.⁷⁸ In such cases, the person does not act according to his particular intention (i.e. voluntarily) nor contrary to his general preferences (i.e., involuntarily), so Aristotle classifies the action as "non-voluntary."⁷⁹ Aristotle never considers the question of responsibility for such non-voluntary actions.⁸⁰ However, because the person's action does not substantially depend on his mistaken belief, the action is

⁷⁶ Aristotle NE, 1110b16-24. Broadie uses the more clear term "countervoluntary" in place of "involuntary" (1991, p. 126).

⁷⁷ Bostock argues against the whole category of non-voluntary actions on the grounds that after-the-fact feelings are irrelevant to moral culpability (Bostock 2000, pp. 111-2). He claims that "if the act was due to ignorance, and ignorance which is not itself blamable, then clearly the agent cannot be blamed for it, whether or not he afterward regrets it" (Bostock 2000, p. 111). Yet that would render any action deviating slightly from the agent's plans involuntary and blameless, so long as the deviation was due to some non-culpable ignorance. For example, if a hit man's attempted strangulation of his victim caused a fatal heart attack instead of suffocation due to an undiagnosed heart condition, that would render the hit man blameless for the death of his victim. Like Urmson, I regard the "vexation" (1110b20) and "regret" (1111a21) felt after involuntary actions not as retroactively changing the nature of the action but rather showing that the action was directly contrary to (as opposed to merely inconsistent with) the motivating intention (Urmson 1988, p. 46).

⁷⁸ Aquinas 1993, #408.

⁷⁹ Aristotle NE, 1110b16-24.

⁸⁰ Once again, contemporary debates about actions intentional under some descriptions but not others promise to shed some light on the proper analysis of these kinds of cases.

properly regarded as near-voluntary.⁸¹ The agent's lack of regret constitutes an endorsement of the action, so he is properly held responsible for it. Consequently, the epistemic condition should be understood as removing moral responsibility only when the agent is mistaken about some fact of significance to him, such that he would have acted differently if he had known it.

Moreover, the epistemic condition only requires that the agent know the particular facts relevant to his action; ignorance of the relevant general principles (or universals, to use Aristotle's term) or a mistake in their application does not render the agent's action less than voluntary. Contrary to the suggestions of Aristotle and Aquinas, the reason is not that ignorance of the proper general principles of morality is always culpable.⁸² A person could be innocently ignorant of or mistaken about some general principle relevant to his action, e.g., whether parents should stay in a miserable marriage for the sake of the children. Yet that could only make the action excusable or understandable. It would still be voluntary because the person would not be wrong about the nature of his action, as with ignorance of particulars, but only about the propriety or wisdom thereof. That a person is ignorant of or mistaken about proper moral principles is relevant to our moral assessment of him, even if not always blameworthy in itself.

Worrisomely, the control and epistemic conditions might seem to permit a vicious person to evade responsibility for any bad act whatsoever by deliberately rendering himself ignorant and/or incapable. So the woman who steadfastly refuses to hear her daughter's desperate hints for protection against the sexual advances of her new husband could not be blamed for leaving them alone together for a week because she wouldn't know what her husband would do to her daughter. Similarly, a husband might evade responsibility for picking the kids up from school as promised simply by drifting into a nap because he can't control when he wakes up once he's

⁸¹ Urmson 1988, pp. 45-6 has a helpful discussion of this issue.

⁸² Aristotle NE, 1110b33; Aquinas 1993, #411.

asleep. Thankfully, that seemingly straightforward application of the control and epistemic conditions is completely wrong. A person is properly held responsible for his actions when ignorant or incapable—when he voluntarily places himself in that condition.

Although usually unnoticed, people routinely render themselves incapable or ignorant in various ways. Many cases thereof are morally blameless if not virtuous: the ignorance or incapacity is an insignificant side effect of the agent's pursuit of his legitimate ends or a means to those ends. For example, if Mary chooses to study economics rather than psychology, then she might never learn the difference between anorexia and bulimia. Similarly, if Jane doesn't buy ice cream at the grocery store, then she's better able to stick to her diet because she can't indulge in those delicious calories in the wee hours of the night. In these two cases, as in countless others, the ignorance and incapacity are voluntary. The control condition is satisfied because the person has the capacity to do otherwise, e.g., to study psychology, to buy ice cream. The epistemic condition is satisfied because the person knows the circumstances of his action, e.g., that not studying psychology will entail knowing less about the subject, that not buying ice cream will preclude eating it at home. Speaking generally, a person ought to be concerned for the possibilities for future action and for future learning foreclosed by the pursuit of one course rather than another. That's part of the active concern for the future required for flourishing.

A person's voluntary incapacity or ignorance can be morally blameworthy, however. For example, a father who breaks his promise to attend his daughter's basketball game because he chose to leave town on a last-minute fishing trip with his buddies is culpable for his absence, even though incapable of attending once out on the lake. Similarly, a student is properly blamed for his wrong answers to exam questions if he opted to sleep in class and party rather than study. In those cases, the person's incapacity and ignorance is of his own doing and damaging to his

chosen ends—and that’s why he’s properly blamed for his current state and its results. Notably, this analysis of voluntary incapacity and voluntary ignorance parallels the proper understanding of responsibility for outcomes: if I throw a stone at a window, knowing that the glass will shatter if hit, I cannot rightly deny responsibility on the grounds that I was unable to stop the stone after it left my hand.⁸³ The analysis is also consistent with Aristotle’s understanding of the control and epistemic conditions, particularly with his discussion of culpable ignorance.⁸⁴ Ultimately then, a person who voluntarily renders himself incapable or ignorant is responsible for his actions in that state, for better or worse.

Our discussion so far does not exhaust the complexities of moral responsibility. However, it provides a general framework for discussion of the proposed categories of resultant, circumstantial, and constitutive moral luck.

Resultant Luck

Resultant moral luck is “luck in the way one’s actions and projects turn out.”⁸⁵ Nagel’s basic claim is that a person’s moral record is influenced by the outcomes of his actions, yet those outcomes are not wholly of his own doing but often substantially influenced by factors outside his control.⁸⁶ The proposed cases of resultant luck fall into three broad categories: attempted wrongdoing, decision under uncertainty, and negligent action.

In attempt cases, a person is blamed and punished more severely for the successful completion of some wrongful action than for a mere attempt—even when the difference between

⁸³ Aristotle NE, 1114a13-22 uses this example in a somewhat different context.

⁸⁴ Aristotle NE, 1110b25-28, 1113b31-1114a3.

⁸⁵ Nagel 1993, p. 60.

⁸⁶ Nagel 1993, pp. 61-3.

success and failure is wholly due to luck.⁸⁷ This form of resultant moral luck is most easily found in the standard legal practice of punishing attempted crimes less severely than completed crimes. So as Nagel observes, “the penalty for attempted murder is less than that for successful murder—however similar the intentions and motivations of the assailant may be in the two cases.”⁸⁸ In such cases, the assailant’s culpability might depend on “whether the victim happened to be wearing a bullet-proof vest, or whether a bird flew into the path of the bullet—matters beyond his control.”⁸⁹ Conversely, virtuous actions may be praised and rewarded more if successful (e.g., if John rescues the baby from the burning building) than if thwarted by luck (e.g., if John drops the baby from a fourth story window due to an explosion behind him).⁹⁰

In uncertainty cases, the agent knowingly takes some inherently risky action, such that the outcome cannot be predicted with any reasonable confidence in advance, and the agent is morally judged based on that outcome.⁹¹ For example, “someone who launches a violent revolution against an authoritarian regime knows that if he fails he will be responsible for much suffering that is in vain, but if he succeeds he will be justified by the outcome.”⁹² Bernard Williams’ famous case of Gauguin involves similar moral uncertainty: Gauguin’s abandonment of his family seems justified if he succeeds in painting in Tahiti but not if he discovers his talents to be inadequate.⁹³ According to the advocates of moral luck, the only moral judgment possible at the moment of decision in such cases is that the agent will be blamed if he fails and praised if

⁸⁷ Nagel 1993, p. 61.

⁸⁸ Nagel 1993, p. 61.

⁸⁹ Nagel 1993, p. 61.

⁹⁰ Nagel 1993, p. 58.

⁹¹ Nagel 1993, pp. 61-3.

⁹² Nagel 1993, p. 63.

⁹³ Williams 1993, pp. 37-41.

he succeeds—because the outcome determines what the agent did, e.g., launching a glorious revolution or a failed bloody coup.⁹⁴

In negligence cases, a person is blamed and punished more when his careless action causes a worse outcome, even though forces beyond his control determine that particular outcome.⁹⁵ Imagine, for example, two identical truck drivers, both of whom are long overdue for a brake inspection.⁹⁶ One drives safely home through uneventful traffic. The other is forced to brake suddenly to avoid a child darting across the street; when his brakes fail, he kills the child. The second driver blames himself far more than does the first, as do other people. Yet, Nagel observes, “the *negligence* is the same in both cases, and the driver has no control over whether a child will run into his path.”⁹⁷ Similarly, “if one negligently leaves the bath running with the baby in it, one will realize, as one bounds up the stairs toward the bathroom, that if the baby has drowned one has done something awful, whereas if it has not one has merely been careless.”⁹⁸ So the negligent person is blamed more or less based on an outcome beyond his control.

To resolve the apparent conflict between luck and responsibility in these puzzling cases of resultant moral luck, the control and epistemic conditions for moral responsibility must be extended beyond actions to outcomes. Moral responsibility for the outcome of some action requires more than just that the action be voluntary. The action also must be the salient cause of the outcome, and the outcome must be voluntary too. The application of those three conditions to cases of resultant moral luck yields surprising results; the agent is sometimes but not always

⁹⁴ Nagel 1993, pp. 62-3; Williams 1993, pp. 38-9.

⁹⁵ Negligent action involves some willful indifference of the agent to the risks of his actions. In contrast, the agent in cases of decision under uncertainty knows the risks but lacks the power to substantially mitigate them. So the original action in cases of negligence is always wrong; that’s not true of decisions under uncertainty.

⁹⁶ Nagel 1993, p. 61.

⁹⁷ Nagel 1993, p. 61.

⁹⁸ Nagel 1993, p. 63.

responsible for the actual outcomes of his actions in those cases. So let us first briefly examine the three conditions for moral responsibility for outcomes, then apply them to cases of resultant moral luck.

First, to be morally responsible some outcome, the agent must be morally responsible for his original action: he must have acted voluntarily according to the control and epistemic conditions.⁹⁹ So Joe cannot be blamed for missing a critical meeting at work if he's rushed to the hospital with a heart attack, as the action that caused his absence was wholly involuntary.

Second, moral responsibility for some outcome requires that the action be the salient cause of the outcome, i.e., the unusual factor operating against the background of ordinary causes.¹⁰⁰ So the salient cause of the explosion in a machinist's shop would not be the commonplace sparks from welding that ignited it but rather the gas leak. The person responsible for the explosion would not be the welder but rather the person who cut the gas line. On a repair job for a leaky gas line, however, the gas would be the to-be-expected background condition, such that the careless worker who created the spark would be morally responsible for the resulting explosion. In general, a person ought to cultivate his knowledge of the ordinary causes that operate in his environment and affect his endeavors, as well as protect and expand his capacities to act on that knowledge. If he fails to do so, a person is properly blamed for voluntarily placing his projects, his flourishing, and even his life in jeopardy.¹⁰¹

⁹⁹ Sartorio 2004, p. 329. Sartorio argues that a person is not responsible for some outcome just because he caused it. Rather, the person must be morally responsible for the action that caused the outcome.

¹⁰⁰ For similar views of causation, see Moore 1994, p. 255 and Feinberg 1970, p. 166. To its credit, this view of causation seems to avoid the problems of the too-broad and too-narrow "but for" test often used in law. Still, many details remain to be worked out.

¹⁰¹ Such is why we can speak of what a person "knew or ought to have known." He ought to have known in the sense that the information was available to him and clearly relevant to his endeavors, yet he chose to ignore it.

Third, moral responsibility for some outcome requires the outcome to be voluntary, even if not desired or intended. The agent must (1) be able to produce the outcome or not and (2) know that his action might plausibly produce such an outcome—or be incapable and/or ignorant voluntarily. In other words, for some outcome of an action to be voluntary, the agent cannot be involuntarily incapable or ignorant with respect to that outcome. So if a professor gives all his students Bs regardless of the quality of their work, then those students might be praised and blamed for their work in the class but not for the outcome thereof, namely their grades. Since they could not have done better or worse by their own actions, they were involuntarily incapable with respect to that outcome. Similarly, a woman cannot be blamed for her family's food poisoning absent some reason for her to suspect the ordinary-looking bag of spinach used for the dinner salad to be infected with *E. coli*. Her ignorance is involuntary—unlike the ignorance of the person who dismisses news reports of tainted spinach as mere scare-mongering by the carrot lobby. In short, this third condition precludes moral responsibility for outcomes that the agent cannot reasonably avoid or predict.

So what do these conditions for moral responsibility for outcomes tell us about moral responsibility in the cases of attempt, uncertainty, and negligence? As we shall see, the first condition (voluntary action) is satisfied easily, but the second condition (salient cause) and third condition (voluntary outcome) are only sometimes satisfied.

Applying the first condition, the action in cases of attempt, uncertainty, and negligence is clearly voluntary. The agent satisfies the control condition since he has the power to act or not: the hit man can squeeze the trigger or not, Gauguin can abandon his family for Tahiti or not, the mother with the child in the bath can leave the room or not. The agent also satisfies the epistemic condition since he's aware of the basic character of his action, whether malicious,

risky, or negligent.¹⁰² So in the cases of resultant luck, the voluntary action satisfies the first condition for moral responsibility for outcomes. That shows that the person can be praised or blamed for his original action, even if ultimately not for the outcome thereof. Speaking generally, since an action is distinct from its ultimate outcome, it can and ought to be morally judged on its own merits, considering the information and alternatives available to the person at the time, regardless of the outcome.¹⁰³

The second and third conditions for moral responsibility for outcomes yield far more complex and interesting results than the first. In some but not all cases of resultant moral luck, the action is the salient cause of the outcome and the outcome is voluntary. In those cases, the outcome corresponds to the moral character of the action. To simplify the analysis of these cases somewhat, these two conditions will be applied together for each of the three kinds of resultant moral luck: first attempts, then negligence, and finally decision under uncertainty.

In cases of attempt, the second and third conditions are only satisfied when the attempt produces its intended outcome, not when the attempt fails. When a person deliberately pursues and successfully achieves some end, his actions are the salient cause of the outcome. For example, when the hit man kills his intended victim, his actions in pursuit of that end are the salient cause of her death. Similarly, when the firefighter rescues the child from the burning building, his efforts are the salient cause of that life's being saved. The outcome in such cases is

¹⁰² Malicious actions require conscious intent to do some wrong. Negligence requires some awareness of the care that could and should be taken in that situation. Decisions under uncertainty require knowledge of the risks of the action.

¹⁰³ Nagel and Williams deny that the action is distinct from its outcome (Nagel 1993, p. 62; Williams 1993, pp. 38-9). That is commonly disputed, e.g., by Athanassoulis 2005, pp. 272-3; Rosebury 1995, pp. 517-9; and Latus 2005, pp. 1-4. Those critics also argue that, at least in some cases, a better or worse outcome might suggest some virtue or vice in the agent's reasoning in retrospect. Of course, proper moral judgment of risky actions may be exceedingly difficult in practice. When information about the decision is scarce, people's actual judgments may be prone to hindsight bias, meaning that success or failure is wrongly regarded as proof of right or wrong choice, respectively (Royzman and Kumar 2004, p. 338).

also more than voluntary: it's actively, deliberately intended. So in cases of successful attempt, the agent is clearly responsible for the outcome of his action. In contrast, when the attempt fails due to some intervening factor, that factor is the salient cause of the actual outcome. So the bird that flies into the path of the hit man's bullet is the salient cause of the continued existence of the intended victim. And the explosion that rocks the burning building is the salient cause of the death of the child. Those outcomes are also not voluntary but rather directly contrary to the wishes of the agent; he will regret the outcome. Consequently, the hit man is not responsible for the good outcome of his attempted murder and the firefighter is not responsible for the bad outcome of his attempted rescue. The hit man can be thoroughly blamed for his depraved action, for putting his intended victim at great risk, for putting him in fear for his life, and more—but not for killing him (since that didn't happen) and not for failing to kill him (since he didn't cause that). The same basic analysis applies to praise for the firefighter.

In cases of negligence, the third condition (voluntary outcome) is satisfied whatever the outcome, whereas the second condition (salient cause) is satisfied only when the negligence produces its expected kind of harm. As concerns the third condition of voluntary outcome, by acting negligently, a person fails to act with the care required to ensure some particular outcome. Instead, he permits the outcome of his action to be determined by the random forces in his environment. Genuinely negligent action is voluntary: the person must know, even if only dimly, that he is acting carelessly instead of taking due care. As such, the outcome of negligent action is clearly voluntary, even if greatly regretted thereafter. The mother who leaves her child in the bath alone could ensure his safety by remaining in the room, so she's not involuntarily incapable with respect to the outcome. She's also aware that an unattended child might drown, so she's not involuntarily ignorant with respect to that outcome. In fact, the negligent person

renders himself incapable voluntary: he willfully relinquishes control over the outcome of his action, allowing luck to determine what happens. As concerns the second condition of salient cause, the causal influence of luck in such cases does not automatically diminish the moral responsibility of the negligent person. When the negligence produces no disasters, as when the mother finds her baby alive and well in the tub, she deserves no credit for that outcome because her negligence is not the salient cause of the baby's safety. Then she can only be blamed for acting negligently, i.e., for needlessly risking harm to her child. However, if the baby does drown, then her negligence is the salient cause of that outcome. In that case, she would be culpable not just for acting negligently but also for the death of her child. For these reasons, the negligent person is responsible for the to-be-expected harms caused by his actions but not for the lucky avoidance thereof.

In cases of decision under uncertainty, the person is responsible for the outcome when he can succeed or fail and does so by his own efforts. The person satisfies the second condition when he is the salient cause of his own success or failure. So Gauguin could be responsible for becoming a world-class painter (or not) when due to his own choices and actions, but not when due to some external circumstances thrust on him.¹⁰⁴ So if his move to Tahiti was critical to his development as a painter, then Gauguin can take credit for his ultimate success. Yet if he failed in Tahiti due to a devastating injury to his dominant hand during a random criminal assault, then he cannot be blamed. In either case, however, he could be blamed for the negative effects of his departure on his family. The application of the third condition of voluntary outcome is somewhat more complicated. The person acting in uncertainty satisfies the epistemic half of that condition: he knows the range of possible outcomes, even if unable to determine their respective probabilities. However, the agent may or may not be able to satisfy the control half of that

¹⁰⁴ This analysis mirrors the distinction between intrinsic and extrinsic luck made in Williams 1993, p. 40.

condition: that depends on the capacities of the agent. Gauguin may well have the talent to make himself into a world-class painter, but he spends his time in Tahiti drinking his days away. In that case, he would be culpable for the outcome, i.e., for his failure to become a world-class painter. Yet imagine that Gauguin's talents are truly inadequate, such that the move to Tahiti can and does only marginally improve the quality of his work. In that case, he would not be responsible for his failure to become a world-class painter because he lacked the requisite capacity. That result is surprising but correct: he should not be blamed for failing to do the impossible. That does not render him exempt from blame, however. Depending on the wisdom of his decision, he might be culpable for a lack of good judgment concerning his own talents.¹⁰⁵ Then Gauguin could be blamed for trying to become a world-class painter, particularly for the harms he inflicts on himself and others in the process of that pursuit, but not for failing to achieve that goal, since he's not capable of success.

So far, the development of the three conditions for moral responsibility for outcomes and their application to cases of attempt, negligence, and uncertainty seems to have confirmed that the problem of resultant moral luck is genuine. Indeed, the analysis shows that a person's responsibility for the actual outcomes of his actions may depend on the influence of luck. In fact, however, a person's moral responsibility for the actual outcome of negligent, attempted, and uncertain actions is wholly distinct from the proper judgment of that person's actions or character. Because the lucky person is not any less dangerous to our projects and interests just because the disaster that his actions might have caused was forestalled by luck, he cannot be judged morally better than the unlucky person. The significance of moral responsibility for outcomes, at least in these cases involving luck, is that it determines that for which the person must atone (if he acted wrongly) or that for which he may reap the rewards (if he acted rightly).

¹⁰⁵ Kenny 1988, p. 110.

In particular, the person who acted wrongly yet avoided disaster by luck has less damage to repair than his unlucky counterpart.¹⁰⁶ That influence of luck is not morally problematic: no principle of morality dictates that people who do morally equivalent acts will have exactly the same effects in the world to remedy or enjoy. In addition, this distinction between blame and atonement promises to explain the seemingly problematic influence of luck in legal judgments, in that damages (e.g. for negligence) and punishments (e.g. for attempts) are (and ought to be) determined not only by the wrongness of the original act but also by the actual harms done by the defendant for which he must atone. As with moral judgments, the influence of luck in such legal judgments would not be unjust.

Circumstantial Luck

The central problem of circumstantial moral luck is that a person's moral record can be powerfully affected by the unchosen circumstances of his life.¹⁰⁷ A person's actions are "limited by the opportunities and choices with which [he is] faced"—yet "we judge people for what they actually do or fail to do, not just for what they would have done if the circumstances had been different."¹⁰⁸ If that is right, then all moral judgments of a person's actions (and the outcomes thereof) are tainted by luck.

The core cases of circumstantial moral luck concern the way that luck affects a person's opportunities to display his moral character in action. So if John were ever carjacked with his young son in the back seat of his car, he might bravely confront his attacker or run away screaming. Yet as Nagel observes, "if the situation never arises, [John] will never have the

¹⁰⁶ In serious cases, such as when a drunk driver kills a pedestrian, the damage may be irreparable.

¹⁰⁷ Nagel 1993, pp. 65-6.

¹⁰⁸ Nagel 1993, pp. 58, 66.

chance to distinguish or disgrace himself in this way, and his moral record will be different.”¹⁰⁹

Similarly, Jane might save a drowning baby from a shallow pond if she weren’t stuck in traffic on the far side of town; instead, the moral credit goes to Larry, who just happened to be at the right place at the right time.¹¹⁰ More ominously, Stanley Milgram’s famous experiments on obedience to authority suggest that a majority of Americans would be as complicit with the evil schemes of a totalitarian government as were Germans in the Third Reich—meaning that they are protected from moral condemnation for the vicious acts they would commit only by the lucky accident of living in a more just political order.¹¹¹

Notably, the concern is not that circumstances will shape a person’s character for better or worse, as when a man learns courage as a soldier in war: that is best understood as a kind of constitutive luck. Rather, the concern is that two people may choose two different courses of action, one morally better and one morally worse, not due to any difference in moral character but rather due to differences in the alternatives available to them in their particular circumstances. For example, an accountant might refrain from embezzlement solely due to his company’s strict monitoring policies whereas his moral doppelganger working at a more lax company might steal millions. Only the latter is guilty of theft, yet that is the result of company policies well beyond his control, not to any moral virtues. This worry about the impact of luck on a person’s moral record is substantially heightened if John Doris and other skeptics about global character traits are right that people’s conduct is far more influenced by circumstances than by any supposed qualities of character.¹¹²

¹⁰⁹ Nagel 1993, p. 65.

¹¹⁰ Richards 1993, p. 173.

¹¹¹ Milgram 1973.

¹¹² Doris 2002. Doris’ thesis is largely based on recent work in empirical psychology. Annas (2005) persuasively argues that Doris’ skepticism about character is based on critical misunderstandings of the nature and demands of moral character in the Aristotelian tradition.

Joel Feinberg develops the problem of circumstantial moral luck a step further with his cases of interrupted intent.¹¹³ In these cases, some outside force interrupts a person's wrongful intent before it is translated into action. So Joe might fully intend to kill his wife Sally in a fit of rage when a telephone call from his boss wipes that intention from his mind. Or Barry might fully intend to commit adultery with his co-worker Claudia, but he's prevented at the last possible moment by the sudden and unwelcome blare of the fire alarm in the motel. In those cases, the mere luck of intervening circumstances prevented Joe from murdering his wife and Barry from committing adultery.

In cases of circumstantial moral luck, the control and epistemic conditions confirm the standard intuition that the actions in question are voluntary despite differences in circumstances. Voluntary action does not require control over all the factors influencing the action. Rather, so long as a person can choose to do or not do some action based on adequate knowledge of its nature, the action is voluntary. The fact that a person doesn't fully control the circumstances in which he acts and may face substantially different circumstances than others does not alter the basic nature of the action: the person knew what he was doing and could have done otherwise. So within any given circumstances, such actions are voluntary—and properly subject to moral judgment.

However, a person rarely finds himself thrust into morally significant circumstances substantially beyond his control. Rather, a person's present circumstances are often the voluntary product of his past choices. For example, the teenager who chooses hoodlums as friends voluntarily risks involvement in their criminal activities; the person who drops out of school voluntarily risks limiting himself to dead-end, low-income jobs; and the woman who ignores the need to save for retirement risks the deprivations of poverty in her old age. So if

¹¹³ Feinberg 1970, p. 34.

those circumstances arise, the person is properly held responsible not only for his voluntary actions in those circumstances but also for creating those circumstances for himself. A person need not desire the circumstances he creates for himself: a man who pursues and accepts a lucrative job across town voluntarily lengthens his commute, whether he enjoys that extra time in his car or not.¹¹⁴

The fact that a person's actions may be voluntary whether his circumstances are thrust on him or of his own creation does not solve all the puzzles of circumstantial moral luck. Important questions linger about the justice of our ordinary moral judgments, particularly given that some people face difficult moral dilemmas and tests unknown to others. Yet such concerns are ultimately misplaced, not only because proper moral judgments must account for the circumstances of the action but also because moral tests and dilemmas reveal far less about a person's moral character than his actions under ordinary circumstances.

First and most importantly, Nagel's talk of a person's "moral record" suggests that a person is morally judged simply for what he's done, e.g., for lying to the police, betraying a friend's secret, grading papers fairly, etc. Yet in fact, actions in isolation do not morally speak for themselves. A person's actions can only be fairly judged as better or worse in light of the surrounding circumstances.¹¹⁵ As concerns moral responsibility, the basic reason is simple: since a person is not responsible for any involuntary incapacity or ignorance, moral judgments must consider the circumstances of the action, particularly the alternatives and information available to the person at the time.¹¹⁶ So in the movie *Sophie's Choice*, Sophie's moral record is not

¹¹⁴ The doctrine of double effect might be relevant to my claims here.

¹¹⁵ Nagel seems to recognize that elsewhere (1986, pp. 120-1).

¹¹⁶ Circumstances matter in other significant ways to moral judgments. A husband who conceals painful news from his wife on her deathbed should be judged better than the husband who does so as a matter of course—but not due to any involuntary incapacity or ignorance. The reason seems to be that circumstances affect what constitutes the proper means to our ends.

stained by the fact that she gave away her daughter to the Nazi officer since her only alternatives were equally bad (giving him her son) and worse (allowing him to take both children).

Similarly, a doctor cannot be faulted for failing to offer his ailing patients potentially life-saving drugs in off-label uses if those findings haven't been published yet. In essence, moral judgments must be limited to a person's voluntary actions, yet those actions can only be understood and fairly judged when considered in the context of the surrounding circumstances.

Second, while Nagel's cases of circumstantial moral luck focus on a person's choices in terribly difficult circumstances, such choices may not be a good basis for our general moral judgments of a person. In the ordinary course of his life, a person has ample opportunity to display his moral character, whether for better or worse. A woman will remain faithful to her husband or not, a mother will smack her misbehaving children or not, a CEO will cook the books or not, a man will spend money within his budget or not. In general, such routine actions seem far more revealing of a person's true character than the painful choices required in moral dilemmas (e.g. between informing on your neighbor and dying of starvation in North Korea) or the quick decisions required in moral tests (e.g. between jumping into the dangerously cold water to rescue the child or running for help). In fact, although a person surely ought to act well when faced with difficult moral choices, he is far better off avoiding such dire situations by foresight and planning when possible. A person might display his character in moral dilemmas and tests but only at the terrible price of risking if not losing much of value to him.¹¹⁷ In some cases, the circumstances might be so dire as to exert "pressure which overstrains human nature," such that

¹¹⁷ In contrast, a deontological ethics like Kant's might regard moral dilemmas as the only way to reliably determine whether a person is acting from duty or merely in accordance with duty (Kant 1990, pp. 407-8).

the action warrants pity rather than blame.¹¹⁸ Those are situations to be avoided, if one's goal is to flourish.

In short, proper moral judgments of an action should treat the particular circumstances of that action as a variable to be controlled. That's done in particular cases by consideration of the actual circumstances of the action, as well in general by largely basing moral judgments on actions taken in the ordinary circumstances of human life. If done well, that eliminates the effect of luck in circumstances from moral judgments.

Constitutive Luck

Constitutive luck is luck in “the kind of person you are, where this is not just a question of what you deliberately do, but of your inclinations, capacities, and temperament.”¹¹⁹ Nagel's particular concern is the propriety of moral praise and blame for moral dispositions and feelings given our lack of control over them.¹²⁰ He observes that “a person may be greedy, envious, cowardly, cold, ungenerous, unkind, vain, or conceited, but *behave* perfectly well by a monumental effort of will.”¹²¹ Yet “to possess these vices is to be unable to help having certain feelings under certain circumstances, and to have strong spontaneous impulses to act badly.”¹²² As a result, “even if one controls the impulse, one still have the vice.”¹²³ Although such feelings may be “may be the product of earlier choices” and at least partially “amenable to change by current actions,” Nagel insists that they are nonetheless “largely a matter of constitutive bad luck,” presumably because a person cannot simply will his dispositions and feelings to be

¹¹⁸ Aristotle NE, 1110a25.

¹¹⁹ Nagel 1993, p. 60.

¹²⁰ Nagel 1993, pp. 64-5.

¹²¹ Nagel 1993, p. 64.

¹²² Nagel 1993, p. 64.

¹²³ Nagel 1993, p. 64.

otherwise. So in moral judgments of character, “people are morally condemned for [certain] qualities, and esteemed for others equally beyond the will: they are assessed for what they are *like*.”¹²⁴

While Nagel focuses on a person’s present lack of control over the moral dispositions and feelings for which he is judged, the problem of constitutive moral luck also concerns three influences of luck in the formation of moral qualities over the course of a person’s life. First, children are born with the rudiments of a distinct personality likely to influence the development of moral qualities. So the person born with an anxious temperament might find the cultivation of the virtue of courage particularly difficult, whereas the habits of contingency planning would become second nature quickly. Yet a person has no control over that innate temperament. Second, a child’s overall upbringing and particular experiences would matter enormously to his moral development, even though he exerts little control over them. Whether parents encourage, ignore, or correct a child’s lies, for example, will likely impact his commitment to honesty as an adult. That child does not choose his parents and may not realize the effects of their parenting on him at the time or even later. Third, an adult’s moral character will be influenced by the lucky and unlucky events, people, and opportunities that present themselves in his life. A woman might reasonably wonder whether she’d be as level-headed if she’d not met her now-husband in the park while walking her dog, whether she’d be more friendly toward strangers if not mugged two years ago, whether she’d be bitter and resentful if she took that well-paying but brutal job last year. In all these cases, a person does not deliberately direct his moral development, yet he is morally judged for the resulting character.

The proper analysis of those proposed cases of constitutive moral luck depends on the general case for moral responsibility for character. The key point is that moral character is not

¹²⁴ Nagel 1993, p. 64.

under a person's direct control but rather is the indirect product of his corresponding voluntary actions.¹²⁵ A person cannot simply will himself to have an honest and just character; he cultivates that character by consistently acting honestly and justly. Consequently, a person is properly praised or blamed for his character in accordance with the three conditions of responsibility for outcomes outlined in the earlier discussion of resultant moral luck. First, he must act well or badly voluntarily. Second, those voluntary actions must be the salient cause of the corresponding moral character. Third, the resulting qualities of character must be voluntary, not the product of any involuntary incapacity or ignorance. Those three conditions are easily satisfied in ordinary cases of character development, as least for teenagers and adults. First, when a person acts honestly or dishonestly, he acts voluntarily. Second, by such actions, he cultivates the corresponding honest or dishonest character. Third, he has the capacity to develop an honest or dishonest character: he's not involuntarily incapable. He's also not involuntarily ignorant, as he can know by simple introspection that he's cultivating a certain characteristic mode of action, whether the virtue or the vice.

Unsurprisingly, this approach to moral responsibility for character is similar to that sketched by Aristotle in the *Nicomachean Ethics*. There, Aristotle argues that careless people "are themselves by their slack lives responsible for becoming men of that kind ... for it is activities exercised on particular objects that make the corresponding character."¹²⁶ As a result, "it is irrational to suppose that a man who acts unjustly does not wish to be unjust or a man who acts self-indulgently to be self-indulgent. But if without being ignorant a man does the things which will make him unjust, he will be unjust voluntarily."¹²⁷

¹²⁵ See Aristotle NE, 1103b6-25, 1105a30-5b1.

¹²⁶ Aristotle NE, 1114a4-7.

¹²⁷ Aristotle NE, 1114a10-13.

In light of this view of moral responsibility for character, what should be said about the problematic cases of constitutive moral luck?

First, as concerns a person's innate temperament, moral judgments of character must distinguish between natural and cultivated qualities. A person ought not be praised or blamed for natural qualities per se since those are given, not produced by voluntary action. In fact, since genuine virtue (or vice) requires the guidance of practical reason, natural qualities of temperament are not moral qualities at all.¹²⁸ Moral responsibility only pertains to a person's cultivated qualities, i.e., those created by voluntary action under the guidance of practical reason. So Joan might be empathic by nature, but whether she becomes a kind person or not is up to her.¹²⁹ She is properly praised for her cultivated kindness but not for her natural empathy. That's consistent with standard practice, as Aristotle observes in the case of vices associated with the care of the body. He writes, "while no one blames those who are ugly by nature, we blame those who are so owing to want of exercise and care. ... Of vices of the body, then, those in our own power are blamed, those not in our power are not."¹³⁰

In response, the advocate of constitutive moral luck will argue that no bright line can distinguish innate temperament from moral character for the simple reason that a person's moral character can only be cultivated from the given foundation of his innate temperament. Joan's cultivated kindness is, after all, rooted in her natural empathy. Since a person does not control his innate temperament, he does not fully control his moral character. So to judge that character as virtuous or vicious is to subject him to constitutive moral luck.

¹²⁸ Aristotle NE, 1144b13-1145a7.

¹²⁹ I'm doubtful that complex emotional responses like empathy could be innate, but I've not yet reviewed the psychological literature on the subject.

¹³⁰ Aristotle NE, 1114a22-9. Aristotle's discussion of "natural excellence" versus "excellence in the strict sense is also relevant (1144b1-17).

However, that a person's moral character might grow out of his innate temperament does not render that character beyond a person's control or immune from moral judgment. As discussed in relation to circumstantial moral luck, a person is properly judged for what he voluntarily does or not in the context of the given circumstances of his life, particularly in light of his available alternatives. Since a person's innate temperament would be one such given circumstance, he is properly judged for what he does control, namely what he voluntarily does or fails to do with that innate temperament. In practice, however, a person's innate temperament would seem to matter little to his ultimate moral character. A person can become kind whether naturally empathetic or not because he can cultivate feelings of empathy while also cultivating his practical judgment of the rational requirements of genuine kindness. Moreover, the ordinary range of innate temperament would not seem to offer any significant advantages or disadvantages in the cultivation of moral virtues or vices: the particular moral struggles would merely differ from one individual to another. In contrast, a person with serious mental illness like depression or bi-polarity may struggle more than most to live well. The common practice of praising and admiring such people more for overcoming extraordinary obstacles (or partially excusing them for failing to do so) exemplifies the proper practice of judgment in the context of given circumstances, particularly of taking account of an unchosen moral disadvantage.

Second, a person's moral responsibility for qualities of character rooted in childhood experience and instruction is based on the fact that a person gradually gains the requisite knowledge of and control over his character as he matures into an adult. A person cannot be morally praised or blamed for his dispositions cultivated in childhood per se. Even if the child is old enough to act voluntarily, the resulting character trait is not plausibly voluntary because children are not sufficiently adept at introspection to understand or monitor the ways in which

their actions shape their character. For better or worse, children are subject to luck in their own character development.

However, that luck does not preclude moral responsibility by an adult for character traits rooted in childhood, as the advocate of constitutive moral luck claims. A person assumes responsibility for his childhood dispositions as he matures into an adult because then he becomes capable of shaping his own moral character. Except in cases of barbarically abusive upbringing that damage the capacity of the person to think and choose, an adult is not bound to his childhood. As he matures and forges his own life, he has ample time, opportunity, and capacity to reflect on and change his dispositions. The most basic action required to alter dispositions is simply to act in some new way, i.e., contrary to rather than consistent with his established dispositions. That's always possible, so long as a person can act voluntarily.¹³¹ So when an adult chooses to act in accordance with his childhood dispositions, he is not subject to constitutive moral luck. He is properly understood as endorsing those character traits, as well as further entrenching them, by his voluntary actions. Notably, the years-long process of shaping one's own moral character is one reason why people in their teens and twenties usually are not blamed so severely for character flaws as their older counterparts.

Third, the accidental circumstances of a person's life would seem to influence the development of that person's character, not just because circumstances shape actions and actions shape character but also because a person might draw explicit moral lessons from the particular events, institutions, and people around him. Undoubtedly, a person's character, personality, habits, and style are shaped to some degree by such accidental forces—although a person does also choose his own influences. Yet that does not undermine a person's responsibility for his

¹³¹ Contrary to Hume, existing dispositions, no matter how well-entrenched, do not preclude acting out of character (Moody-Adams 1990, pp. 118-20). The honest person is capable of lying, for example, but chooses not to do so.

own character, as actions in circumstances are still voluntary, as seen in the analysis of circumstantial moral luck. Whatever the circumstances, the person who acts voluntarily has the capacity to act other than he does. Moreover, a person has the capacity to undo the effect of any action on his character by deciding that his action was wrong and acting differently in the future.

Finally, Nagel's particular worry that a person might be condemned for uncontrollable moral emotions like envy, even though the person acts rightly, is misplaced. To make this kind of constitutive moral luck plausible, Nagel implicitly draws on Aristotelian intuitions about the importance of proper feelings as motivators of moral action. Aristotle, unlike Kant and Mill, requires the fully virtuous person to feel emotions appropriate to the circumstances at hand.¹³² Yet Nagel implicitly rejects the elements of Aristotle's moral psychology necessary for moral responsibility for character by then suggesting that moral dispositions and emotions lie "beyond control of the will."¹³³ If that were the case, then an Aristotelian approach would simply demand eliminating the practice of morally judging such states. Yet Nagel's proposed candidates for constitutive moral luck—dispositions such as greediness, envy, cowardice, coldness, stinginess, unkindness, vanity, and conceit—are not plausibly regarded as beyond a person's control.¹³⁴ A person is not suddenly or inexplicably stricken with such moral feelings, but must cultivate those emotional dispositions by repeated voluntary action. So Nagel's basic error is that of grafting the Aristotelian responsibility for cultivated dispositions onto an incompatible psychology of mysterious emotions running amok in a person's psyche.

In short, the influence of luck in the formation of character is not a genuine obstacle to moral responsibility for character because a person's character is ultimately forged by his voluntary actions as an adult.

¹³² Aristotle NE, 1106b16-24.

¹³³ Nagel 1993, p. 65.

¹³⁴ Nagel 1993, pp. 64-5.

The Dissertation

As this sketch of my main arguments hopefully shows, Nagel's problem of moral luck is neither easily solved nor intractable. However, the development and application of the broadly Aristotelian theory of moral responsibility I've outlined here promises to unravel and explain the various puzzling cases of moral luck in a way generally consistent with common sense moral judgments.

I plan to use the structure of the prospectus in the dissertation itself. At present, I imagine the following chapters:

- Chapter One: The Problem of Moral Luck: I will outline the general problem of moral luck and explain the threat it poses to our ordinary practices of moral judgment. I may also consider the support it lends to egalitarianism. I will sketch my proposed solution to the problem of moral luck.
- Chapter Two: Attempted Solutions: I will examine the most prominent global solutions to the problem of moral luck in the philosophic literature, exploring how and why they fail.
- Chapter Three: Faulty Foundations: I will argue that a theoretical re-examination of the foundations of moral responsibility is required, particularly in light of Nagel's operative ideal of noumenal agency.
- Chapter Four: Moral Judgment: I will examine the purposes served by and demands of normative judgments (in general) and moral judgments (in particular). Moral judgments, I will argue, must be limited to the voluntary aspects of a person. I will also survey the nature and epistemic grounds of various kinds of moral judgments, e.g., of actions, character, and products. I will develop a general account of the purposes and demands of moral redemption and atonement after wrongdoing.

- Chapter Five: Moral Responsibility: I will identify and defend the basic standards for moral responsibility for actions, i.e., the epistemic and control conditions. In the process, I will offer a basic account of human agency, particularly focusing on the nature and limits of human free will. I will consider the effect of voluntary ignorance and incapacity on claims of moral responsibility. I will examine the various meanings of “responsibility,” particularly whether any common features unify them.
- Chapter Six: Luck in Life: I will examine the nature of luck and its general role in human life, particularly in morality.
- Chapter Seven: Resultant Moral Luck: I will present the core cases of resultant luck (i.e., attempt, negligence, and uncertainty), then evaluate the common attempted solutions. I will explain and defend my conditions for moral responsibility for outcomes, then apply those conditions to the cases of resultant moral luck. I will also substantially expand on my account of moral redemption and atonement in relation to the cases of resultant moral luck.
- Chapter Eight: Circumstantial Moral Luck: I will present the core cases of circumstantial moral luck, i.e., actions in circumstances, moral tests and dilemmas, and interrupted intentions. I will consider the noteworthy attempts to solve this form of moral luck. I will show that actions in circumstances are voluntary and worthy of judgment. I will consider the various ways in which moral judgments must take account of circumstances to be just, including in hard cases like action under duress and moral dilemmas. I will also critically examine the skepticism about global character traits engendered by recent work in empirical psychology to determine whether that lends credible support to the case for circumstantial moral luck.

- Chapter Nine: Constitutive Moral Luck: I will present the basic forms of constitutive moral luck: entrenched moral feelings, genetic foundations of character, childhood influences on developing character, and accidental influences on adult character. Then, as before, I will consider noteworthy attempted solutions. I will argue that an adult is properly held responsible for his moral character so long as that that character is a voluntary product of his voluntary actions. I will then consider the particular complexities of each of the forms of constitutive moral luck to determine whether they undermine or limit moral responsibility for character. I will also consider the question of responsibility for emotions, including whether some emotions are properly considered part of a person's moral character.
- Chapter Ten: Further Applications: I will consider the further implications and applications of my theory of moral responsibility, such as the justice of the felony murder rule, the responsibility of parents for the actions of children, responsibility for long-past actions, etc.

Although I have touched on many of these topics in the prospectus, I will only be able to consider them in adequate depth in the dissertation.

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