

Higher-Order Control: An Argument for Moral Luck

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In this paper, we give a new argument for the existence of moral luck. The argument is based on a manipulation case in which two agents both lack second-order control over their actions, but one of them has first-order control. Our argument is, we argue, in several respects stronger than standard arguments for moral luck. Five possible objections to the argument are considered, and its general significance for the debate on moral luck is briefly discussed.

Keywords: Moral luck; control; higher-order control; moral responsibility; blameworthiness; manipulation

1. Introduction

In this paper, we shall put forward a novel argument for moral luck—that is, for the existence of cases in which an agent’s degree of moral blameworthiness or praiseworthiness is affected by factors beyond their control. Our argument is based on a case in which two agents, due to a third agent’s manipulation, lack second-order control—that is, control over the extent to which they have control over their respective actions.

The paper is organized as follows. In section 2, we introduce our argument, and highlight some of its advantages over other, more familiar arguments for moral luck. In section 3, we address a number of possible objections to our argument. Section 4 concludes.

2. The Argument

Consider the following case:

Psychology Transfer. Celia can transfer one person’s mental states to another person, without affecting the former person’s psychology. She is about to practice her skills on Alf and Bo, who are normal adult persons, generally having sufficient control over their actions to be morally responsible. Celia decides to flip a coin. If the coin lands heads, she will from now on transfer Alf’s mental states to Bo moment by moment. If it lands tails, she will do the opposite

¹ The authors have contributed equally to the content of the paper.

transfer. The coin lands heads, and Celia accordingly starts transferring Alf's states to Bo. After the start of the experiment, Alf performs a number of morally objectionable actions. Bo, who is continuously getting her psychology replaced by a copy of Alf's, performs very similar actions, with very similar and equally bad results.

Intuitively, Alf is blameworthy for his post-coin flip actions, whereas Bo is not blameworthy, or at least much less so, for hers.² In particular, deniers of moral luck are likely to make this judgment. They believe that blameworthiness is closely tied to control, and this focus on control seems to explain why Alf is more blameworthy than Bo. Alf, who is not affected by the transfer, has the same degree of control over his actions as before. Bo, on the other hand, is completely manipulated by Celia, and therefore lacks control over her post-coin flip actions.³ Thus, the difference in blameworthiness appears to track a difference in control.⁴

On a closer look, however, *Psychology Transfer* is problematic for deniers of moral luck. The fact that Alf has first-order control of his post-coin flip actions is, and has always been, beyond his second-order control. After all, Celia could just as well have transferred Bo's mental states to Alf. Indeed, she *would* have done so, had the coin landed tails. In that case, Alf would have lacked first-order control over his post-coin flip actions. Analogously, the fact that Bo *lacks* first-order control over her post-coin flip actions is, and has always been, beyond her second-order control. Had the coin landed tails, she would have retained first-order control over her actions. Thus, if Alf's and Bo's degree of blameworthiness depends on their degree of first-order control, it depends on something beyond their control. And to acknowledge that an agent's degree of blameworthiness depends on a factor beyond their control is to affirm the existence of moral luck. The denier of moral luck must therefore claim either that Alf and Bo are equally blameworthy, or that the difference in blameworthiness depends, not on their different degrees of control, but on something over which they have, or once had, control. Neither option seems plausible.

This argument relies on the assumption that Alf has first-order control of his post-coin flip actions, whereas Bo lacks such control, or at least has significantly less control over hers. We

2 We use the terms 'morally responsible' and 'blameworthy' as synonyms. This is a simplification in two respects. First, an agent can plausibly also be non-morally (e.g., epistemically) blameworthy. Second, on most accounts, moral praiseworthiness, too, implies moral responsibility. We shall not discuss cases involving praiseworthiness, but unless there is some relevant asymmetry between blameworthiness and praiseworthiness, our discussion extends to cases of praiseworthiness, too.

3 Some 'ahistorical' accounts of moral responsibility allow that manipulated agents are morally responsible and, thus, that such agents have the kind of control necessary for moral responsibility. (For a recent contribution to the debate over whether, and to what extent, constitutive history matters for moral responsibility, see Cyr 2020.) In *Psychology Transfer*, however, Celia's manipulation of Bo occurs moment by moment. We take it that if an account of moral responsibility implies that Bo nevertheless has the kind of control necessary for moral responsibility, then this constitutes a problem for that account rather than for our assumption that Bo lacks control over her post-coin flip actions.

4 For other discussions of manipulation and moral luck, see, e.g., Cyr 2020, Hartman 2023, and Mickelson 2015. *Psychology Transfer* is in some respects similar to Alfred Mele's widely discussed case of Ann and Beth (Mele 1995).

find this assumption very plausible. Granted, there may be notions of control on which Bo has equal first-order control as Alf. But we take it that almost all moral luck deniers would deny that an agent like Bo, who is entirely manipulated by another agent, has the kind of control deemed necessary for moral responsibility—or that they would, at the very least, deny that she has sufficient control to make her equally morally responsible as Alf. In any case, the argument is aimed at those who accept the claim that Alf has more first-order control than Bo.

Our argument seems to have several important advantages over other arguments that have been given for the existence of moral luck. To see why, we may compare *Psychology Transfer* to the following representative and much-discussed cases of putative moral luck (originally sketched in Nagel 1979/2012):

Assassins. A hired assassin, Killer, shoots and kills her victim. Another hired assassin, Birdy, shoots at her intended victim in circumstances very similar to Killer's. In particular, Birdy's motives and intentions are identical to Killer's. However, a passing bird happens to intercept Birdy's bullet before it hits the victim.

Employees. Collaborator and Expatriate work for a German firm in the early 1930s. In 1932, Expatriate is relocated to the firm's Argentinian branch, while Collaborator stays in Germany. Collaborator becomes more and more influenced by Nazi propaganda, and this eventually leads her to perform morally very objectionable actions. Expatriate, on the other hand, leads a morally unobjectionable life in Argentina. Had he not been transferred to Argentina, however, he would have succumbed to Nazi propaganda, and acted just as badly as Collaborator.

If Killer is more blameworthy than Birdy and Collaborator is more blameworthy than Expatriate, *Assassins* and *Employees* are cases of moral luck, assuming that neither Killer nor Birdy has control over whether a bird intercepts their bullet, and that neither Collaborator nor Expatriate has control over the firm's relocation decisions.

A first advantage of our argument is that deniers of moral luck cannot try to rebut it by appealing to *unfairness*. Moral luck deniers often contend that it would be unfair to judge two agents blameworthy to different degrees on account of factors over which they have no control (for example, Browne 1992: 349; Swenson 2022; Thomson 1989: 215; Zimmerman 1987: 382, 2015: 158). While this point might apply to *Assassins* and *Employees*, it does not apply to *Psychology Transfer*. It may reasonably be thought unfair to judge Killer more blameworthy than Birdy, and to judge Collaborator more blameworthy than Expatriate. In contrast, there seems to be nothing unfair in judging Alf more blameworthy than Bo. On the contrary, it seems unfair to judge that Bo is as blameworthy as Alf.

Second, as already indicated, the claim that Alf is more blameworthy than Bo is not only intuitively compelling, but also in one way particularly congenial to the denial of moral luck. Since Alf has more control over the actions that he performs than Bo has over the actions that she performs, and since deniers of moral luck take control to be essential to blameworthiness, it should be especially natural for them to regard Alf as more blameworthy than Bo. Nothing corresponding holds for *Assassins* or *Employees*, or other standard cases of putative moral luck.

Third, our argument seems to be invulnerable to certain attempts in the literature to undercut the force of pro-moral luck intuitions. According to these 'debunking' arguments, the intuition that the relevant agents, in standard putative moral luck scenarios, are blameworthy to different degrees is due to a conflation with some other factor. Many proposed candidates of

such factors are due to a difference between the agents with regard to intention, action, or outcome. It has been suggested, for instance, that we conflate a difference in blameworthiness with a difference in moral obligations arising from the agents' respective actions or from the outcomes thereof (for example, Sverdlik 1988: 84–85); with our having different degrees of evidence of the agents' blameworthiness (for example, Rescher 1993: 154–55; Richards 1986: 199; Rosebury 1995: 520–21); and with our, or the law's, obligation to treat the agents differently (for example, Enoch and Marmor 2007: 414; Swinburne 1989: 42–43).

It is plausible that these factors are present in *Assassins* and *Employees*, as the agents in these cases differ with regard to intention, action, or outcome. However, it is much less plausible that these factors are present in *Psychology Transfer*, as Alf and Bo do not differ with regard to intention, action, or outcome. It is far from clear, for instance, that there is any difference in moral obligations arising from (the outcomes of) Alf's and Bo's respective actions. Because Alf and Bo have performed very similar actions, with very similar and equally bad results, it may well be that both of them ought to apologize, make amends, and so on. Of course, one possible view is that Bo has less stringent moral obligations than Alf, since she is being manipulated. But it would be strange to combine this view with the claim that Bo, despite being manipulated, is just as blameworthy as Alf.

Fourth, some putative cases of moral luck have been rejected on the grounds that moral luck requires not only that a factor beyond the agent's control affects their degree of blameworthiness, but also that this factor could easily have failed to occur (Peels 2015: 79–80). This strategy cannot be used against *Psychology Transfer*, since the factor at play—Celia's manipulating Bo, rather than Alf—fulfills both conditions. In particular, Celia's coin could easily have landed tails instead of heads. (This strategy can hardly be used against *Assassins*, either. Whether it can be used against *Employees* seems to depend on whether Collaborator could easily have been relocated instead of Expatriate.)

3. Objections and Replies

3.1. First Objection: The Argument Presupposes an Inadequate Definition of Moral Luck

Objection. 'The argument presupposes a faulty definition of moral luck. According to an adequate definition, moral luck occurs if and only if an agent lacks control over the fact *in virtue of which* they are blameworthy to a particular degree. That Alf has first-order control over his actions is not a fact in virtue of which he is blameworthy to a particular degree. Similarly, that Bo lacks first-order control over her actions is not a fact in virtue of which she is not blameworthy (or is blameworthy to a lower degree than Alf). Although an agent's having first-order control is necessary for them to be blameworthy, it is a background condition, rather than a factor in virtue of which they are blameworthy to a particular degree. The same holds for facts such as the agent's having been born, or there being individuals with mental states. While facts like these can obviously be necessary conditions for moral responsibility, our lack of control over them does not show that moral luck occurs.'⁵

First Reply. The critic's proposed definition of moral luck is too demanding. In *Assassins*, it is perfectly possible that Killer, as well as Birdy, has control over the fact in virtue of which she

⁵ See Nyman (forthcoming) for critical discussion of this line of reasoning.

is blameworthy to a particular degree. Suppose that Killer is blameworthy to degree 10, and that this is true in virtue of the fact that she commits murder. Suppose also that Birdy is blameworthy to degree 7, and that this is true in virtue of the fact that she attempts to commit murder. Assuming that Killer and Birdy, respectively, have control over committing murder and attempting to commit murder,⁶ the proposed definition would then falsely imply that *Assassins* is not a case of moral luck.

Objection Continued. ‘The fact in virtue of which Birdy is blameworthy to degree 7 cannot be that she attempts to commit murder. If it were, Killer would also be blameworthy to degree 7, since she also attempts (in her case successfully) to commit murder. And Killer cannot be blameworthy to degree 10 in virtue of committing murder, and *also* blameworthy to degree 7 in virtue of attempting to commit murder. This would make her blameworthy to degree 17, which, we have assumed, she is not. Hence, the fact in virtue of which Birdy is blameworthy to degree 7 must be that she commits a murder attempt that *fails*. And this fact is not in Birdy’s control. Hence, *Assassins* does not show that the proposed definition undergenerates moral luck.’

First Reply Continued. This rejoinder goes astray in assuming that if Killer is blameworthy to degree 10 in virtue of committing murder, and also blameworthy to degree 7 in virtue of attempting to commit murder, it follows that she is blameworthy to degree 17 (or, at least, to some degree greater than 10). The assumption that the two degrees of blameworthiness should be added is implausible, since committing murder *entails* attempting to commit murder. The murder attempt is, in a sense, a ‘part’ of the murder. Adding the degree of blameworthiness due to a part of a whole to the degree due to the whole involves double-counting. This is clear if we consider an explicitly conjunctive action. Suppose that Dennis insults both Eve and Frank, and that he is blameworthy to degree 4 in virtue of doing so. This is surely compatible with his being blameworthy to degree 2 in virtue of insulting Eve. The claim that Dennis cannot be blameworthy to both these degrees, since he would then be blameworthy to degree 6, is obviously wrong.

Second Reply. *Assassins* is a putative instance of *resultant* moral luck. The critic’s proposed definition also appears to undergenerate putative instances of *circumstantial* moral luck.⁷ *Employees* is a case in point. Collaborator is not blameworthy to a particular degree *in virtue of* not being transferred to Argentina, and Expatriate is not blameworthy to a particular degree (maybe zero) *in virtue of* being transferred. And nothing in the case suggests that they lack control of the facts, whatever they may be, in virtue of which they are blameworthy to their respective degrees. Thus, the proposed definition counterintuitively implies that, even if Collaborator is more blameworthy than Expatriate, *Employees* is not a case of moral luck.

3.2. Second Objection: It Is Not Clear That Alf Lacks Second-Order Control

Objection. ‘The claim that Alf lacks second-order control over his post-coin flip actions is unwarranted. Celia’s actions in no way affect Alf, either psychologically or physically. Nor do they affect the circumstances under which he acts. As far as Alf is concerned, everything is exactly as it would have been if Celia had not entered the stage. This shows that her actions make no

⁶ We find it plausible that Killer has control over whether he commits murder, although he lacks control over whether a bird intercepts his bullet. If control over a certain thing were to presuppose control over every necessary condition for that thing, we would hardly have control over anything. (Cf. Zimmerman 2002: 562, fn. 27.)

⁷ See, e.g., Nelkin 2021 for an explanation of these and other kinds of moral luck.

difference to Alf's degree of control, be it first-order or second-order. It is therefore quite possible that he has second-order as well as first-order control over his post-coin flip actions.'

Reply. This argument is not convincing. Since Celia's coin could just as well have landed tails, it is, at least for Alf, entirely a matter of chance that he retains first-order control over his actions. And if it is entirely a matter of chance, for a given person, that a certain fact obtains, this person cannot plausibly be said to have control over this fact.

Moreover, we do not need to assume that Alf lacks second-order control over his post-coin flip actions. It suffices for our argument that Bo lacks such control, which seems evident. Given that Bo lacks second-order control, the fact that she is not blameworthy (or at least less blameworthy than Alf) depends on a fact—namely, that she lacks first-order control—over which she lacks control. This means that she is subject to moral luck.

3.3. Third Objection: Alf Is Not Blameworthy

Objection. 'The argument requires that Alf is blameworthy for what he does during the experiment. If he is not, he is not more blameworthy than Bo, in which case *Psychology Transfer* fails to show that there is moral luck. But because Alf completely lacks second-order control (it is entirely up to Celia whether he has first-order control), he is not blameworthy for his actions.'

Reply. This objection relies on the assumption that an agent is morally responsible for something only if they have second-order control over that thing. There are cases in which the agent is typically taken to be morally responsible, however, even though they lack second-order control.

Consider 'Frankfurt-style' cases (Frankfurt 1969). Such cases feature an agent who is intuitively morally responsible despite lacking second-order control. Here is an example:

Robbery. Jones is deliberating about whether or not to rob a bank. Black can monitor and, if she so wishes, manipulate Jones's mental states through an implant in Jones's brain. Whichever decision Jones is about to make, Black can intervene and cause him to make the opposite decision. As it happens, Jones decides on his own to rob the bank and Black does not intervene. Had Jones been about to form the opposite decision, Black would have intervened, and caused Jones to decide to rob the bank.

Typically, Jones is taken to be morally responsible for what he does. If he is, the assumption on which the third objection relies is incorrect. Jones entirely lacks control over whether Black can manipulate his mental states, as well as over how Black decides to use her power. Black could have decided to intervene and in that case, Jones would not have had control over robbing the bank. Jones therefore lacks second-order control. Yet, given that Black did not intervene, this fact is typically not taken to imply that Jones is not morally responsible for his action. Unless one is willing to claim that all Frankfurt-style cases fail because the agent cannot be blameworthy since they lack second-order control, one cannot press this objection against our argument.

Frankfurt-style cases are usually employed in order to show that having alternative possibilities is not necessary for moral responsibility. Jones is, it seems, morally responsible for robbing the bank although he could not refrain from doing so. However, some philosophers are unconvinced by Frankfurt-style cases, and insist that moral responsibility requires alternative possibilities. For our purposes, it does not matter whether these philosophers are right. Our claim is that moral responsibility does not require second-order control—not that it does not require alternative possibilities. We could hence modify *Robbery*, by assuming that Black, as a

matter of fact, would not have intervened even if Jones had been about to decide not to rob the bank. This makes the claim that Jones is morally responsible for the robbery less controversial than the corresponding claim in standard Frankfurt-style cases. Those who are unwilling to accept, on the basis of Frankfurt-style cases, that moral responsibility does not presuppose alternative possibilities can still accept, on the basis of the modified version of *Robbery*, that moral responsibility does not presuppose second-order control.

Of course, the objector could dig in their heels and insist that moral responsibility requires second-order control. But the typical denier of moral luck should, we think, resist this option. Besides having counterintuitive implications in particular cases, such as *Robbery* (especially the modified version), it risks leading to general skepticism about moral responsibility. If second-order control is necessary for moral responsibility, it would seem that n -th order control is necessary, for any n . It is hard to think of a good argument for why second-order control is necessary but third-order control is not (or why third-order control is necessary but fourth-order control is not; etc.). And it seems very unlikely that human agents ever have n -th order control over their actions, for n greater than 3 or 4, say. Thus, since most deniers of moral luck presumably want to avoid embracing moral responsibility skepticism, they should be wary of claiming that moral responsibility presupposes second-order control.

3.4. Fourth Objection: What Bo *Would* Do Determines Her Degree of Blameworthiness

Objection. 'An agent's degree of blameworthiness is determined by facts about what they *would* do in various counterfactual scenarios (cf. Zimmerman 2002, 2015). More specifically, whether Bo is less blameworthy than Alf depends on facts about how she would have acted if Celia had decided to transfer Bo's psychology to Alf rather than *vice versa*. Of course, the objection is not that Bo, in such a scenario, would have acted similarly to how Alf actually acts—and that she is, therefore, equally blameworthy as Alf. After all, unless Bo, before the experiment, possessed a set of character traits and dispositions that were as bad as Alf's, it is more realistic to suppose that she would have acted less objectionably than Alf actually does. Instead, the objection is that even if Bo is indeed less blameworthy than Alf, the explanation for this is not, as the argument would have it, that Celia manipulates Bo's psychology, or that Bo lacks first-order control over her actions. Rather, the explanation is that Bo would act less objectionably than Alf if she were in circumstances like his. Hence, even if Alf and Bo are indeed blameworthy to different degrees, it does not follow that *Psychology Transfer* is an instance of moral luck.'

Reply. The objector grants that Bo may be less blameworthy than Alf, but offers an explanation of this putative fact that is supposed not to imply that the case involves moral luck. To avoid this implication, however, the objector must assume that Bo has control over the fact that she would act less objectionably than Alf if she were in his circumstances. This assumption seems far from plausible. More generally, it is odd for a moral luck denier to press an objection that appeals to the claim that someone's degree of blameworthiness is determined by true counterfactuals about them. For whether some counterfactual about an agent is true is usually affected by factors beyond their control. For instance, whether Bo would do what Alf does depends on her character traits and dispositions—and these, in turn, depend on an upbringing and a genetic constitution that are beyond her control. Thus, since moral luck deniers dispute that factors beyond agents' control affect blameworthiness, it should not be an attractive option

for them to claim that our argument fails because Bo's degree of blameworthiness is determined by facts about what she would do if she were in Alf's circumstances.⁸

3.5 Fifth Objection: Bo Is Not a Moral Agent

Objection. 'Since Bo is completely manipulated by Celia, she is no longer an independent agent, but rather a kind of robot. At least, she is not a *moral* agent. It would be much more plausible to attribute moral responsibility for Bo's post-coin flip actions to Celia, than to Bo herself. And the fact that Alf is more blameworthy than someone who is not a moral agent does not render *Psychology Transfer* an instance of moral luck.'

Reply. We think that *Psychology Transfer* exemplifies moral luck, even if it is granted that Bo is not a moral agent during the time she is manipulated. Suppose that Celia eventually stops the experiment and Bo returns to her pre-coin flip self, as a full-fledged moral agent. We are now, after the end of Celia's experiment, to determine Alf's and Bo's respective degrees of blameworthiness for what they did during the experiment. We judge that Alf is much more blameworthy than Bo. Given that Bo is now, at the time of our judgment, a moral agent, it seems perfectly appropriate to describe this difference in blameworthiness as a matter of moral luck.

Moreover, our argument can be recast in terms of an example that involves less extreme manipulation:

Occasional Manipulation. Cecil has the ability to manipulate a person's decision processes, so that she decides to perform any available action he wants her to perform. Cecil flips a coin about which one of Alf and Bo to occasionally manipulate in this way. The coin selects Bo, and Cecil accordingly starts to manipulate some of her decisions, in such a way that she decides to perform, and actually performs, a number of seemingly morally objectionable actions. Alf, who is not manipulated, performs very similar actions, with very similar and equally bad results.

Since the manipulation in this case is only occasional, it is clear that Bo retains her status as a moral agent. And the intuitions evoked by *Occasional Manipulation*, as regards blameworthiness and control seem to be the same as those evoked by *Psychology Transfer*. Thus, Alf appears much more blameworthy than Bo, and the obvious explanation of this difference is that Alf has first-order control over his actions, whereas Bo lacks first-order control over hers. Furthermore, just as in *Psychology Transfer*, Alf and Bo appear to lack second-order control over their actions.

4. Concluding Remarks

We have given an argument for moral luck. But moral luck of which kind? In some respects, it is natural to regard our main case, *Psychology Transfer*, as a case of circumstantial moral luck. It involves a factor—Celia's manipulation—that can naturally be described as a circumstance over which both agents equally lack control, and which affects their degree of blameworthiness. Note, however, that in standard putative cases of circumstantial moral luck, such as *Employees*, the two agents perform very different kinds of actions, only one of which

⁸ Michael Zimmerman denies moral luck while endorsing the claim that a person's degree of blameworthiness is determined by facts about what they would do in various counterfactual scenarios (Zimmerman 2002, 2015). We believe this reflects a problem with his view, rather than a weakness in our reply to the objection.

is morally objectionable. Alf and Bo, on the other hand, perform very similar actions. In this respect, *Psychology Transfer* is closer to putative resultant moral luck cases such as *Assassins*. In these cases, too, the agents perform exactly similar actions (although with different results).

We will not try to settle the question of what kind of moral luck our argument concerns. What significance the argument, if successful, has for the debate more broadly depends not on this issue, but on whether it is possible to separate *Psychology Transfer* from standard cases of putative moral luck. To maintain that the latter cases are not instances of moral luck while accepting that *Psychology Transfer* is, one must point to a relevant difference between those cases and *Psychology Transfer*. If no such relevant difference can be found, there is reason to suspect that agents are subject to moral luck of several different kinds.⁹ It is a significant feature of *Psychology Transfer*, then, that it is more similar than regular putative circumstantial moral luck cases to putative cases of resultant moral luck. This feature of *Psychology Transfer* makes the task of identifying a way in which putative resultant moral luck cases relevantly differ from *Psychology Transfer* harder. The argument thus constitutes an indirect challenge for the denial of resultant moral luck—by far the most common type of moral luck denial.

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⁹ Mihailis Diamantis argues against constitutive moral luck, by defending the claim that 'no constitutional trait can have a net expected effect on one's moral standing. Traits that incline one away from acting rightly reduce the chance that one will so act, but offer greater gains in terms of moral standing when one does. Traits that incline one toward moral acts increase that chance, but for lower gains' (Diamantis 2023: 1345). Philip Swenson gives a similar argument, and extends it to circumstantial moral luck (Swenson 2022). An anonymous referee asks how our argument relates to these rejections of certain kinds of moral luck. Although a thorough discussion of this cannot be undertaken here, we believe that *Psychology Transfer* is problematic for Diamantis' and Swenson's views. For the intuitive judgment that Alf is more blameworthy than Bo to be consistent with Diamantis' denial of constitutive moral luck, Alf's constitution must make him less likely than Bo to act in the morally bad way they both do. Given that Bo does not have a morally worse constitution than Alf before Celia's experiment starts, this is clearly not the case. Any plausible account of psychological constitution would imply that Bo's constitution during the experiment is either equally bad as, or better than Alf's. In the former case, Diamantis' view counterintuitively implies that Alf and Bo are equally blameworthy. In the latter case, it absurdly implies that Bo is more blameworthy than Alf.

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