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## What Makes Circumstantial Luck Different and Why it Matters

**Abstract:** In this article, I explore an important difference between circumstantial luck on the one side and resultant and constitutive luck on the other. In section 1, I argue that, in circumstantial luck, the object of luck and the object of moral judgment are different even though, in resultant and constitutive luck, they are the same. In section 2, I explain that this difference (1) has the potential to undermine the regress argument for moral luck; (2) makes viable the “selective moral luck” argument strategy (affirming some species of moral luck but denying others); and (3) has implications for the heritability of luck.

**Keywords:** circumstantial luck; moral luck; indirect luck; luck; heritability of luck; selective moral luck; regress argument for moral luck

## Introduction

In this article, I explore an important difference between circumstantial luck on the one side and resultant and constitutive luck on the other.

In section 1, I argue that, in circumstantial luck, the object of luck and the object of moral judgment are different, even though, in resultant and constitutive luck, they are the same. I begin my argument with a discussion of Nagel’s (now conventional) taxonomy of moral luck, focusing on resultant luck, constitutive luck, and circumstantial luck. I show that moral judgments and luck judgments converge on the same object in the two dominant species of resultant luck, retrospective luck and consequence luck. I then, briefly, introduce constitutive luck before turning to circumstantial luck. Following a common thread in the literature, I distinguish between two species of circumstantial luck, synchronic circumstantial luck and diachronic, or developmental, circumstantial luck. I argue that, in both, the object of the luck judgment (that which is taken to be un/lucky) is different from the object of the moral judgment (that which is taken to be im/moral in one way or another). This leads me to a brief discussion of the difference between constitutive luck and developmental circumstantial luck. From there, I turn to a second, more speculative argument. I note the relative dearth of attention to circumstantial luck in the moral luck literature, as compared to constitutive luck and resultant luck. I suggest, with various qualifications, that one explanation for this might be precisely the fact that circumstantial luck differs from constitutive luck and resultant luck in the way I have argued.

In section 2, I explore the implications of this difference. More specifically, I explain that this difference (1) has the potential to undermine the regress argument for moral luck; (2) makes viable the “selective moral luck” position (i.e., the argumentative position of affirming some species of moral luck but denying others); and (3) has implications for the heritability of luck.

To this end, section 2 is divided into three subsections. I begin, in subsection 2.1, by introducing the regress argument for moral luck. I note Rescher’s attempt to appeal to constitution as a regress stopper (his famous “identity precedes luck” thesis) as well as some of the weaknesses with this attempt. I then argue that, if circumstantial luck differs from resultant luck in the way that I maintain—if, in circumstantial luck, but not in resultant luck, the object of the luck judgment is different from the object of the moral judgment—then the regress can be stopped in the move from resultant luck to circumstantial luck, avoiding some of the weaknesses associated with Rescher’s approach.

In subsection 2.2, I examine a recent articulation of a selective moral luck position, Rivera-López’ attempt to defend circumstantial luck while nonetheless rejecting resultant luck. I argue that this particular attempt does not work. However, I nonetheless defend the general coherence of selective moral luck positions from those, like Hartman, who argue that such selectivity is unstable.

In subsection 2.3, I turn to the heritability of luck. I reproduce one of Lackey’s famous examples, and I analyze what is at stake in the literature. I connect the heritability of luck with my discussion of circumstantial luck, and I suggest how this should play out in the literature before I wrap up with a concluding section.

## Section 1      The Difference Between Circumstantial Luck and Resultant and Constitutive Luck

In his seminal article on moral luck, Nagel distinguishes between resultant luck, constitutive luck, circumstantial luck, and causal luck.<sup>1</sup>

Resultant luck is “luck in the way one’s actions and projects turn out.”<sup>2</sup> Lang uses the following example to illustrate:

**TWO BUTTONS:** There are two agents, Akira and Dylan, and there is a devilish machine, with two buttons. Pressing Button 1 will cause ten innocent strangers to be killed. Pressing Button 2 will cause an eleventh innocent stranger to have her arm broken, but to leave the ten unharmed. The buttons do not carry this precise information. Both Button 1 and Button 2 are adorned with the same sign, in large lettering: ‘DO NOT PRESS! OTHER PEOPLE, PERHAPS SEVERAL OF THEM, WILL BE KILLED OR SEVERELY HARMED’. Neither Akira nor Dylan is forced to press either button, but each of them is disposed to do so, because each of them has the malicious aim of causing some degree of harm to others. Dylan presses Button 1, and Akira presses Button 2.<sup>3</sup>

According to Lang, it is a matter of luck that Dylan causes 10 people to die rather than one person to have her arm broken, and conversely for Akira. If Dylan is more blameworthy than Akira, then this is an instance of resultant luck.

There is debate among moral luck affirmers about how to understand Dylan’s increased blameworthiness. Lang, following Williams, thinks that the worse consequences of Dylan’s actions are constitutive of a morally worse inner state.<sup>4</sup> Hartman thinks that the consequences Dylan is responsible for are morally worse than the consequences for which Akira is responsible but that Dylan’s and Akira’s inner states are equally blameworthy.<sup>5</sup> As species of resultant luck, the former account of blameworthiness is sometimes called retrospective luck; the latter is sometimes called consequence luck.<sup>6</sup>

To put this another way: in retrospective luck, the un/lucky consequences of the agent’s action are conceptually tied to her inner moral worth (which is given an externalist interpretation), and those consequences are a matter of luck. In consequence luck, by way of contrast, the un/lucky consequences of the agent’s action determine her praise- or blameworthiness because she is responsible for those consequences. From this it may be seen that, despite their differences, in both of the most prevalent species of resultant luck, retrospective luck and consequence luck, the object of luck and the object of moral assessment are the same.

That is, in a case of resultant luck, the following two things are true: (1) the results of an agent’s action are a matter of luck; and (2) the results of an agent’s action are a matter of moral judgment. Different species of resultant luck tie these moral judgments to the agent in different ways—either via ideas about responsibility

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<sup>1</sup> (Nagel, 1979).

<sup>2</sup> (Nagel, 1979, 28).

<sup>3</sup> (Lang, 2021, 52). Perhaps the best known example of resultant luck is Williams’ original discussion of Gaugin (Williams, 1982, chapter 2). However, one of the reasons it is so well-known is that it is contentious (Levi, 1993; Athanassoulis, 2005, 10-14). Because of that, I think it is better to illustrate the concept with Lang’s example.

<sup>4</sup> (Lang, 2021, 52); (Williams, 1982, chapter 2).

<sup>5</sup> (Hartman, 2017).

<sup>6</sup> (Kahn, 2021).

(consequence luck) or via ideas about inner states (retrospective luck)—but, for present purposes, the point is that, in resultant luck in general, it is the selfsame thing (namely: the results of the agent’s action) that are, on the one side, un/lucky and, on the other, subject to moral appraisal. For ease of exposition, I shall capture this by saying that resultant luck is *direct*.

Constitutive luck is moral luck having to do with an agent’s “inclinations, capacities, and temperament.”<sup>7</sup> For example, if an agent is, as a matter of luck, naturally courageous, and if courage is a moral virtue, then this is an instance of constitutive luck. Further, it may be seen that this is an instance of direct moral luck: the courage is both the object of luck and the object of moral assessment.

I shall have more to say about constitutive luck momentarily. For now, I turn to circumstantial luck: moral luck with regard to “the kind of problems and situations one faces.”<sup>8</sup> There are two main species of circumstantial luck. The first is synchronic. Thomson illustrates this species of circumstantial luck with a thought experiment about a judge.<sup>9</sup> Suppose that judge Actual is, as a matter of luck, offered a bribe, whereas her counterpart, judge Counterfactual, is not. Suppose, further, that judge Actual takes the bribe and that judge Counterfactual would have taken the bribe if it was offered. If judge Actual is more blameworthy than judge Counterfactual, then this is an instance of synchronic circumstantial luck.

As with resultant luck, the blameworthiness here can be understood in two different ways. If judge Actual is a morally worse agent, with worse inner states, than judge Counterfactual (i.e., if we take an externalist interpretation of inner states), this is the circumstantial version of retrospective luck.<sup>10</sup> If, by way of contrast, judge Actual and judge Counterfactual have morally equivalent inner states, but judge Actual is responsible for more bad actions than judge Counterfactual, this is the circumstantial version of consequence luck.

In either case, however—i.e., in either the circumstantial version of retrospective luck, or in the circumstantial version of consequence luck—the object of luck and the object of moral assessment are different. That is, in synchronic circumstantial luck, regardless of how the moral judgement is imputed, the agent’s circumstances (and, thus, the actions she has to choose from) are what is a matter of luck. But, the moral judgment is based on how the agent acts in those circumstances. If, as some in the moral luck debate suppose, lack of control is necessary for luck, then the object of moral assessment in synchronic circumstantial luck (namely: the agent’s action) is a paradigmatic instance of a non-lucky event (agents generally are taken to have control over their actions). Thus, with synchronic circumstantial luck, we might say that an agent is un/lucky to have the opportunity to distinguish herself morally, as a hero or as a scoundrel, but she is not lucky actually to do so—i.e., she is un/lucky to be in the circumstances in which she finds herself, but she is not un/lucky to act as she does: the moral luck is *indirect*.

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<sup>7</sup> (Nagel, 1979, 28).

<sup>8</sup> (Nagel, 1979, 28).

<sup>9</sup> (Thomson, 1989).

<sup>10</sup> According to Enoch and Marmor, “[a] character-based theory of blame and responsibility straightforwardly entails that there is neither [resultant] nor circumstantial moral luck” (Enoch and Marmor, 2007, 431). They argue for this on the grounds that, “in the relevant examples it is conceded from the start that, say, Arnold and Brian, or the Nazi-collaborator and the would-be Nazi-collaborator are alike as far as their morally relevant character-traits are concerned” (Enoch and Marmor, 2007, 431). But, this argument does not work, and the reason why it does not work is that Enoch and Marmor have failed to consider externalism.

That is, according to Enoch and Marmor, character-based theories of morality are immune to circumstantial and resultant luck because, in cases of circumstantial and resultant luck, “from the start,” agents have identical morally relevant character traits; it is either their circumstances or the results of their actions that are then subject to luck.

However, on an externalist interpretation of character, the action that an agent performs is interpreted as a manifestation of her character. For example, on an externalist interpretation of circumstantial luck, judge Actual has a worse moral character than judge Counterfactual. But, this is precisely and solely because judge Actual takes the bribe whereas judge Counterfactual does not: the two judges are alike, as far as their morally relevant character traits are concerned, prior to this action.

Enoch and Marmor might reject an externalist interpretation of character (see the paragraph to which note 26 below is appended). But, they provide no argument to this effect, and the fact that such an interpretation is logically possible suffices to contradict their claim that a character-based theory of morality “entails” that there is neither resultant nor circumstantial luck. Similar things could be said about retrospective luck.

The other species of circumstantial luck is diachronic.<sup>11</sup> It is sometimes called developmental luck because it concerns the circumstances in which an agent develops.<sup>12</sup> It can be illustrated with the real-life case of Oskar Stöhr and Jack Yufe.<sup>13</sup> Stöhr and Yufe were identical twins born in Trinidad in 1933. Their parents separated shortly after their birth. Stöhr's mother took him to Germany. He was raised Catholic and joined the *Hitlerjugend*. Yufe's father remained in Trinidad. Yufe was raised Jewish and later served in the Israeli Navy.

Now, consider the following three suppositions: (1) it is merely a matter of luck which twin went with which parent; (2) had Stöhr gone with his father, he would have developed much as Yufe did and conversely; and (3) we make legitimate moral assessments of Stöhr and Yufe based on who they have become. These three suppositions can be made plausible in various ways. For example, we can make (1) plausible by stipulating that the parents decided on custody using a coin toss (that is not what actually happened, but it is not outside the realm of possibility). The fact that the boys are twins lends credence to (2). And the fact that right-minded people make negative moral assessments of Nazis but not of members of the Israeli Navy supports (3). If these three suppositions are granted, then we have an instance of diachronic circumstantial luck.<sup>14</sup>

But my goal is not to show that diachronic circumstantial moral luck exists. My goal is more modest. My goal is to show that, if there is diachronic circumstantial luck, it is an indirect kind of moral luck. And hopefully that much is clear at this point: what is subject to luck in the Stöhr-Yufe case are the circumstances in which each twin develops over time, or, more specifically, which twin goes to Germany, and which twin remains in Trinidad—whereas what is subject to moral assessment is the individual that develops in these circumstances (the Nazi, and the one who serves in the Israeli Navy).

Some might wonder at this point how diachronic circumstantial luck differs from constitutive luck. The difference is subtle but important. In order to understand this difference, we need to distinguish between an agent's essential character traits and an agent's non-essential character traits.

In practice it might be very difficult to distinguish essential from non-essential character traits. But, that is unimportant for present purposes: the distinction is conceptual. The idea is that an agent's essential character traits are those traits that are requisite for claims about identity—they are genetic, in some wide (not necessarily biological) sense, intrinsic, or identity-determining.

This distinction does not require the existence of essences that are in some way apart from or prior to the agent. The distinction is really just about what character traits are shared by all of an agent's counterparts. And, with this distinction in hand, we can say that, strictly speaking, constitutive luck is moral luck regarding essential character traits, whereas diachronic circumstantial luck is moral luck regarding non-essential character traits.

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<sup>11</sup> (Lillehammer, 2020).

<sup>12</sup> (Athanasoulis, 2019).

<sup>13</sup> (Holden, 1987) and (Hales, 2016, 54-55).

<sup>14</sup> Hales considers a similar case and argues that it shows that control, chanciness, and modal fragility come apart:

Their lack of control did not mean that it was improbable that they were born at a time of great anti-Semitism, or modally fragile that they were split up by their parents. The specific circumstances of their births and childhoods were not chancy. It was extraordinarily likely that a boy raised under the immense pressure of the Nazis would join the nationalist cause, just as it was for a Jewish boy growing up in a British colony during World War II to endorse his heritage. To the extent that their characters and life paths were governed by their circumstances, they were not a matter of chance. (Hales, 2019, 55)

Hales takes this to be significant because, if correct, it would show that there can be high probability, low control, lucky events, which has implications for philosophical accounts of luck.

I do not want to enter into debate about the nature of luck here. I note merely that Hales misses his intended target. The question is not whether someone raised in Nazi Germany will be an antiSemite; whether someone growing up in a British colony will endorse his heritage; whether the boys were born at a time of great anti-Semitism; or whether they were split up by their parents. Although I suspect that Hales' grounds for his assertions about at least some of these issues are shaky, that is irrelevant, for the question is merely about which boy goes in which direction.

That is, in a case of constitutive luck, some aspect of an agent's constitution, an essential character trait, is, on the one side, subject to luck and, on the other, subject to moral assessment. By way of contrast, in a case of diachronic circumstantial luck (developmental luck), a character trait that is developed over time and that is pathway dependent (and, therefore, non-essential—the agent still exists in other possible worlds in which she does not develop along the same path) is subject to moral assessment even though the developmental pathway that an agent follows (the circumstances in which she finds herself over time) is a matter of luck (she could have followed a different path, the path she followed is out of her control, etc.).<sup>15</sup>

If the foregoing analysis is correct, then, in circumstantial luck, unlike resultant luck and constitutive luck, the object of luck and the object of moral assessment are different. Or, to use the terminology I introduced above, circumstantial luck, whether synchronic or diachronic, is indirect, whereas resultant and constitutive luck are direct.<sup>16</sup>

Thus far I have argued for this thesis on the basis of analysis: I have analyzed the definitions of these terms and the paradigmatic examples that are used to illustrate them. Now I want to argue for it on the basis of more sociological considerations. This next argument is more speculative than the previous. But, it will help to advance us toward the next section of this article, in which I explain why this difference between circumstantial luck on the one side, and resultant luck and constitutive luck on the other, is important.

As noted at the outset of this section, in Nagel's original article, he distinguishes four species of moral luck. In addition to circumstantial, resultant, and constitutive luck, there is causal luck. Causal luck concerns "how one is determined by antecedent circumstances."<sup>17</sup> Of these four, resultant luck and constitutive luck are discussed most frequently. According to Sartorio, resultant luck "is regarded as *the* most problematic" species of moral luck.<sup>18</sup> But, even if this is correct, constitutive luck is a close second. As Hales points out, constitutive luck is a focus of political philosophy and distributive justice.<sup>19</sup> By way of contrast, there is a relative dearth of literature on circumstantial and causal luck. What is the best explanation of this contrast?

Causal luck, like circumstantial luck, is an indirect form of moral luck. In causal luck, the moral assessment is of the agent or her actions or willings, whereas it is the antecedent determinants of these that are subject to luck. As Nagel puts it, causal luck concerns whether one is responsible "for the stripped-down acts of

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<sup>15</sup> Some might not accept the argument I just made about the distinction between diachronic circumstantial luck and constitutive luck. They might argue, for example, that diachronic circumstantial luck is, properly speaking, a species of constitutive luck, not a species of circumstantial luck.

I disagree with this, but I do not want to get bogged down in a verbal dispute. The point I want to make now is that this *is* merely a verbal dispute. What should be clear from the main text above is that there are some cases of moral luck, even paradigmatic cases from the moral luck literature, such as judges Actual and Counterfactual and the Stöhr-Yufe twins, in which the object of the luck judgment and the object of the moral judgment are distinct. Say that such cases are category X cases. For my purposes, it is less important whether category X is equal to the category of circumstantial luck, or whether X also includes some constitutive luck. Either way, category X will serve to make the arguments I make in section 2 of this article, that (1) the regress argument can be stopped without appeal to Rescher's claims about identity; (2) the selective luck strategy is legitimate; and (3) debates about the heritability thesis should be informed by (and in turn inform) debates about indirect luck.

<sup>16</sup> It is perhaps worth noting that there is a species of indirect constitutive luck. As Enoch and Marmor point out, "character traits may causally affect actions or, at the least, the propensity to perform certain actions which may be morally significant" (Enoch and Marmor, 2007, p. 426). Enoch and Marmor suggest that, when these character traits are subject to luck, this is an instance of indirect constitutive luck, for the actions that are performed are a step removed from the luck judgment. I have omitted this from my discussion above because I do not think that indirect constitutive luck is widely discussed. However, I would like to make two points about this. First, precisely the fact that this category of constitutive luck is not widely discussed lends evidence to, and, thus, strengthens, the speculative argument I make in the second half of this section of the article. Second, if indirect constitutive luck is accepted as non-spurious, this also strengthens my position in the next section of this article inasmuch as it would (1) add additional regress stoppers to the arsenal of the opponents of the regress argument; (2) strengthen the selective moral luck position; and (3) add connections to the heritability thesis.

<sup>17</sup> (Nagel, 1979, 28).

<sup>18</sup> (Sartorio, 2015, 153).

<sup>19</sup> (Hales, 2015).

the will itself, [even] if *they* are the product of [un/lucky] antecedent circumstances.”<sup>20</sup> So, one explanation of this contrast (namely: burgeoning literature on resultant and constitutive luck, dearth of literature on circumstantial and causal luck) is that causal and circumstantial luck are indirect whereas resultant and constitutive luck are direct.

However, I do not think that this is the best explanation. I think that the reason for the relative neglect of causal luck is that, after introducing it, Nagel suggests that the problem of causal luck can be reduced to another frequently discussed problem: the problem of free will.<sup>21</sup> Many have followed him in this. For example, Levy says that “I strongly suspect that the problem of causal luck is misnamed—it is simply the question whether free will is compatible with causal determinism, and has nothing especially to do with luck.”<sup>22</sup> Similarly, Statman maintains that “freedom of the will is...denied...[by] causal luck.”<sup>23</sup> Finally, Enoch and Marmor excuse themselves from discussing causal luck on the grounds that it would take them into free will territory:

As is now common in the literature on moral luck, we will try to abstract from the larger issues concerning freedom of the will, which is why we will not discuss Nagel’s fourth category, concerning luck in how one’s will is caused.<sup>24</sup>

So, it seems to me that the best explanation of the relative neglect of causal luck in the moral luck literature is that many think that discussion of causal luck would duplicate an already existing (and prodigious and prodigiously complicated) literature.<sup>25</sup>

But, the neglect of circumstantial luck still requires explanation. And I want to suggest that one explanation, and perhaps the best explanation, of this neglect is the fact that circumstantial luck is indirect.

The reason I think that the indirectness of circumstantial luck can explain its relative neglect is that, intuitively, there seems to be a difference between indirect and direct moral luck: direct moral luck seems, *prima facie*, more problematic than indirect moral luck, perhaps precisely because, in cases of indirect moral luck, an agent has control over that for which she is held responsible. However, some qualification is needed here.

Recall the circumstantial analog of retrospective luck, the version of circumstantial luck in which an agent who has the opportunity to distinguish herself morally is said to have better (or worse) inner states than an agent who does not have the corresponding opportunity. This kind of circumstantial luck is widely rejected. Indeed, this was arguably part of the point of Milgram’s famous experiments on obedience to authority. In the wake of the moral outcry against the Nazis who, at the Nuremberg trials, claimed merely to have been following orders from above, Milgram made a plea for humility on the grounds that, as his experiments showed, most of us are disposed to follow authority even when doing so requires us to transgress moral boundaries. The basic point is that disposition is not equivalent to action, and, so, moral assessment of the latter should not be confused with moral

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<sup>20</sup> (Nagel, 1979, 35).

<sup>21</sup> (Nagel, 1979, 35).

<sup>22</sup> (Levy, 2019, 61).

<sup>23</sup> (Statman, 1993, 11).

<sup>24</sup> (Enoch and Marmor, 2007, 406). As the quotation to which this note is appended indicates, the assimilation of causal luck with the problem of free will is common in the literature on moral luck; the three articles I cite in order to substantiate this are not intended to constitute an exhaustive list.

<sup>25</sup> There is some oversimplification here. Kleszyk maintains that causal luck “is really a mix of circumstantial luck and constitutive luck” (Kleszyk, 2011). Similarly, Latus asserts that “causal luck...is redundant because circumstantial and constitutive luck seem to cover the same territory” (Latus, n.d., section 2.b.iii). From this it may be seen that, although Kleszyk and Latus think that the neglect of causal luck is warranted, they do not think the warrant is the one Nagel suggests. That is, Kleszyk and Latus think that, even if the problem of causal luck cannot be reduced to the problem of free will, it nonetheless can be reduced to the problem of circumstantial and constitutive luck (i.e., causal luck is still redundant according to Kleszyk and Latus, but it is so for a different reason). I note in passing that I suspect that all of these redundancy claims are false. That is, I do not think that causal luck can be reduced to the problem of free will, nor do I think that causal luck can be reduced to the conjunction of constitutive and circumstantial luck. However, nothing rests on this for present purposes.

assessment of the former. Thus (the argument goes), the circumstantial analog of retrospective luck should be rejected: we should (according to Milgram) be more muted in our condemnation of the Nazis, because, had we been in the same circumstances, we might have acted in the same way—or, to put the point differently, we can, on Milgram’s account, accept that the Nazis’ actions were morally heinous while nonetheless also accepting that their underlying dispositions, at least in some cases, might not be far, or might not have started far, morally speaking, from our own, and, for this reason, we should refrain from moral grandstanding. From this it may be seen that this version of circumstantial luck (the circumstantial analog of retrospective luck) is controversial (and, indeed, seems to have a literature of its own).<sup>26</sup>

But now recall the circumstantial analog of consequence luck, the version of circumstantial luck in which an agent who has the opportunity to distinguish herself morally might have inner states that are morally equivalent to an agent who does not have the corresponding opportunity, but the former agent is nonetheless responsible for more praise- or blameworthy actions manifesting these inner states than the latter. The *denial* of this kind of circumstantial luck has seemed to many to be incoherent, for it requires either that we deny that agents are responsible for their actions, or that we say that agents are responsible for actions that they do not perform. Thus, as we shall see in the next section of this article, some (like Rivera-López) accept this kind of moral luck while nonetheless rejecting others. Similarly, Zimmerman’s concept of responsibility *tout court*, which he introduces in order to make sense of his rejection of this version of circumstantial luck (that is, to make sense of the idea that an agent might be as praise- or blameworthy as another agent even though she does not perform the action on the basis of which the other agent is praised or blamed), is often rejected as incomprehensible.<sup>27</sup>

However, if I am right about this (that is, if the relative neglect of the circumstantial analog of consequence luck is due to its being less controversial on account of its indirectness), then it calls into question the legitimacy of circumstantial luck as a category of moral luck. In other words: the very fact that, in the circumstantial analog of consequence luck, the object of luck and the object of moral assessment are different might be used by some to deny that this kind of circumstantial luck deserves the name. And with this (admittedly speculative argument) by way of preview, we now can advance to an explanation of why it matters that circumstantial luck is indirect rather than direct.

## **Section 2      Why it Matters that Circumstantial Luck is Indirect Rather than Direct**

In the previous section of this article, I made two different kinds of argument for the thesis that circumstantial luck is indirect rather than direct. The first argument analyzed definitions and paradigmatic examples of the different kinds of moral luck. The second (speculative) argument used an inference to the best explanation, where the explanandum was the relative dearth of attention to circumstantial luck in the moral luck literature (relative to resultant and constitutive luck) and the explanans was the difference between these kinds of moral luck. In this section, I am going to explain why it is important that circumstantial luck, unlike resultant and constitutive luck, is indirect rather than direct. I shall do so in three contexts: (1) the regress argument for moral luck; (2) the viability of affirming one species of moral luck while denying another; and (3) the heritability of luck.

### *Subsection 2.1      The Regress Argument for Moral Luck*

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<sup>26</sup> However, it is notable that the controversy seems to be in regard to the externalist interpretation of inner states, exactly what makes retrospective (resultant) luck controversial. If this is correct, it lends support to my argument above, that the dearth of interest in circumstantial luck is due to the fact that it is indirect. That is, if the only form of circumstantial luck that is discussed is so not because, or at least not primarily because, it is a species of moral luck, but because it presupposes an externalist interpretation of inner states, this confirms my claim that indirect moral luck is intuitively less problematic than direct moral luck.

<sup>27</sup> Zimmerman advocates this kind of responsibility in (Zimmerman, 1993). It is rejected as incomprehensible in (Peels, 2015, 76).

The regress argument for moral luck is perhaps the single most popular argument for the existence of moral luck.<sup>28</sup> To understand this argument, we begin with resultant luck. The moral luck affirmer argues that the results of our actions are subject to luck, and yet these results often inform legitimate moral assessments. If a moral luck denier asserts that these moral assessments are illegitimate, perhaps because actions, not results, are the proper locus of moral assessment, then the moral luck affirmer regresses to synchronic circumstantial luck: the circumstances in which we act are subject to luck, and yet the actions we perform often inform legitimate moral assessments. If a moral luck denier asserts that these moral assessments are illegitimate, perhaps because dispositions, not actions, are the proper locus of moral assessment, then the moral luck affirmer regresses to diachronic circumstantial luck: the circumstances in which some of these dispositions are developed are subject to luck, and yet (pathway dependent) dispositions often inform legitimate moral assessments. If a moral luck denier asserts that these moral assessments are illegitimate, perhaps because essential dispositions, not learned dispositions, are the proper locus of moral assessment (i.e., properly speaking, morality assesses only dispositions that are not pathway dependent), then the moral luck affirmer regresses to constitutive luck: these essential dispositions are themselves subject to luck, and yet they often inform legitimate moral assessments.<sup>29</sup> If the moral luck denier once again denies the legitimacy of these assessments, then the moral luck affirmer can regress further to causal luck—or she might argue that the moral luck denier’s position has become untenable. In Nagel’s words, “[t]he area of genuine agency, and therefore of legitimate moral judgment, seems to shrink under this scrutiny to an extensionless point.”<sup>30</sup>

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<sup>28</sup> For a representative cross-section of the literature that appeals to the regress argument, see: (Feinberg, 1962, section III), (Nagel, 1979, 35), (Greco, 1995, 87-89), (Hartman, 2017, chapter 1 section 3), (Latus, 2000, section III), (Latus, 2003, 461-462), (Enoch, 2010, 45), (Rosell, 2015), and (Latus, 2019, III).

<sup>29</sup> It is perhaps worth pausing here to point out, although it bears only tangentially on the argument in the main text of the article, that Enoch and Marmor reject character-based theories of morality on the following grounds:

A character-based theory of blame and responsibility [says] that you are responsible for your morally relevant character traits just in case they reflect badly on your morally relevant character traits, which they trivially always do. On this view, in other words, you are responsible for all your morally relevant character traits, regardless of whether they are or ever have been in any interesting way under your control.[n31] So proponents of such a view must accept constitutive moral luck. (Enoch and Marmor, 2007, 431)

In the footnote appended to the penultimate sentence in this excerpt, Enoch and Marmor make the following remark:

On a different understanding of “reflecting” ...it is never true to say of a morally relevant character trait that it reflects badly on itself or on the character of the relevant agent. If so, we are responsible for none of our character traits, regardless of whether or not they are under our control. And this result too is, it seems to us, utterly unacceptable. (Enoch and Marmor, 2007, 431n31)

That is, according to Enoch and Marmor, either morally relevant character traits always reflect on an agent, or they never reflect on an agent. If they always reflect on an agent, then a character-based theory of morality must accept constitutive moral luck, for some of these character traits will not be under the agent’s control. Enoch and Marmor evidently take this to be unacceptable. If, by way of contrast, morally relevant character traits never reflect on an agent, then, on a character-based theory of morality, “we are responsible for none of our character traits,” and Enoch and Marmor take this, also, to be unacceptable. Thus, they conclude, character-based theories of morality must be rejected.

However, this argument is fallacious: it rests on a false dilemma. One easy way to see this is suggested in the text to which this note is appended. That is, a character-based theory of morality might say: an agent is responsible for her morally relevant character traits just in case (and to the extent that) they reflect on her essential morally relevant character traits. On such a view, an agent is not going to be fully responsible for all of her morally relevant character traits, nor will she be responsible for none of them. So, Enoch and Marmor’s attempted reductio of character-based theories of morality fails.

Whether there is a successful reductio of character-based theories of morality is not relevant for present purposes; the point I want to make in this note is merely that (1) the non/essential disposition distinction, appealed to in the sentence to which this note is appended, is sometimes disregarded in the moral luck literature (as in Enoch and Marmor’s attempted reductio of character-based theories of morality), and, (2) when it is so, this disregard can be fatal (as it is to Enoch and Marmor’s attempted reductio).

<sup>30</sup> (Nagel, 1979, 35).

Now, one popular reply to the regress argument on the part of luck deniers, famously championed by Rescher and recently called into question by Latus, is that “identity must precede luck.”<sup>31</sup> The idea behind this reply is that an agent’s essential properties cannot be a matter of luck, and, therefore, constitutive luck is incoherent.

For example, suppose we subscribe to a modal account of luck, according to which X is a matter of luck only if X is modally fragile. Because, by definition, no agent exists in any possible world in which she does not have her essential properties, constitutive luck must be illusory (to be clear: the moral assessments might be legitimate; the idea is that there is no luck). But, if constitutive luck is illusory, then the luck denier has a regress-stopper with which to defang the regress argument—and, thus, one of the main weapons in the moral luck affirmer’s arsenal has been neutralized.

However, if the only way to neutralize the regress argument is by denying constitutive luck, then the moral luck denier has a big bullet to bite: as noted above, she must accept that morality is really only about essential character traits, and, thus, she must explain why it seems like we are able to make legitimate moral assessments of actions, consequences, and non-essential character traits.

The problem for Rescher is that, if we find moral luck counterintuitive and are seeking reflective equilibrium, it is at least not obvious that this strategy (i.e., the strategy of asserting that legitimate moral assessments must all, ultimately, be about essential character traits) is going to involve less cognitive dissonance than accepting moral luck. And it is at precisely this juncture that the fact that circumstantial luck is indirect becomes important: a moral luck denier might, on reflection, accept circumstantial luck precisely because it is different in kind from other forms of luck, and she might appeal to this difference in order to argue that the regress argument does not work. That is, the move in the regress argument from circumstantial luck to constitutive luck breaks down because the former involves indirect moral luck whereas the latter involves direct moral luck: the former might be accepted (and, indeed, as suggested in the previous section of this article, not only might seem less threatening to the moral luck denier but also might seem impossible to deny, at least if its denial requires accepting a contested concept like responsibility *tout court*) even while the latter is denied. And this leads directly into the next topic, where the strategy of accepting circumstantial luck while denying constitutive luck will be explained further.

### *Subsection 2.2 The Selective Moral Luck Argument Strategy*

Consider those who try to admit the reality of one species of moral luck while denying another. For example, Rivera-López admits circumstantial luck but denies resultant luck on the grounds that the former is necessary for moral responsibility but the latter is not:

The idea is that we accept moral luck when (and only when) it is necessary for making the practice of attributing responsibility possible. Circumstances are necessary factors in making people responsible for their actions because they create the possibilities within which agents perform certain actions with specific purposes (or even negligently). On the contrary, events that directly affect the outcome of the agent’s actions (or attempts) are not necessary to make the practice of responsibility possible. Even the anti-Kantian [i.e., the proponent of moral luck] accepts that there is responsibility regardless of how things turn out. We do not need this kind of moral luck to make people responsible for their deeds.<sup>32</sup>

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<sup>31</sup> (Rescher, 1993, 155; see also his 1995, 30 and 156-157). For Latus’ reply, see (Latus, 2003). Interestingly, when constitutive luck is contested, as Rescher does, it is generally on the grounds that the luck judgment is mistaken rather than that the moral assessment is so. By way of contrast, resultant luck is generally contested on the grounds that the moral assessment, rather than the luck judgment, is mistaken. But see (Lockhart and Lockhart, 2017).

<sup>32</sup> (Rivera-López, 2016, 422).

As noted in the introduction to this article, I do not think that Rivera-López' argument works. The problem with Rivera-López' argument is that circumstances seem neither more nor less necessary for the practice of responsibility than results. Let me explain.

On the one hand, if we accept that circumstances are necessary factors in making people responsible for their actions, because these circumstances create the possibilities "*within which agents perform certain actions with specific purposes*" (as Rivera-López asserts above), then the same reasoning forces us to conclude that results are necessary factors in making people responsible for their actions, because these results create the possibilities "*within which agents perform certain actions with specific purposes.*" So, if we accept Rivera-López' argument that circumstances are necessary factors for the practice of responsibility, then we also should accept that results are necessary factors for the practice of responsibility.

On the other hand, if we accept that events that directly influence the outcome of the agent's actions (or attempts) are not necessary to make the practice of responsibility possible (as, again, Rivera-López asserts above), the same reasoning forces us to conclude that the circumstances that directly influence the specific dispositions and character traits of an agent that are manifested in actions are not necessary to make the practice of responsibility possible.<sup>33</sup> So, if we accept Rivera-López' argument that results are *not* necessary factors for the practice of responsibility, then we also should accept that circumstances are *not* necessary factors for the practice of responsibility.

From this I conclude that the concomitant acceptance of circumstantial luck and denial of resultant luck cannot be based on Rivera-López' argument: Rivera-López' argument does not withstand critical scrutiny. More specifically, the argument he gives for regarding circumstances as essential for responsibility generalizes to show that results are also essential for responsibility, and the argument he gives for showing that results are inessential for responsibility generalizes to show that circumstances are also inessential for responsibility.

However, I do not side with those who argue that such a position (i.e., a selective moral luck position, affirming some species of moral luck while denying others) is not viable. For example, Hartman argues, using examples, that denying resultant luck while accepting circumstantial luck is unstable because there are no relevant differences between them:

I begin my analogical argument from circumstantial to resultant moral luck with a set of concrete cases involving three assassins: Sneezy, Off-Target, and Bullseye... The first assassin, Sneezy, is hired for murder but has bad allergies. When the time comes to pull the trigger, she suffers a sneezing fit. The fit renders her incapable of taking the shot... The second assassin, Off-Target, has allergies just the same as Sneezy, but her allergies are not triggered... She, however, happens to be off-target, because a bird catches the bullet. The comparative case of Sneezy and Off-Target is a standard example of circumstantial luck... The third assassin, Bullseye, has typical luck... She has an opportunity, fires a shot, and kills her mark. The case of Off-Target and Bullseye is a standard example of resultant luck, because they freely perform the same action but with different results.<sup>34</sup>

The problem with Hartman's argument is that there seems to be a relevant difference between the two comparative cases here.

In comparing Sneezy and Off-Target, although neither Sneezy nor Off-Target is in control over whether their allergies are triggered, Off-Target is in control over whether she takes the shot. So, it might be argued, it makes sense to hold Off-Target responsible for firing at her mark, because this was under her control, but it does not make sense to hold Sneezy responsible for firing at her mark, because she does not do so. But, in comparing Off-Target and Bullseye, although both Off-Target and Bullseye are in control over whether they take the shot, neither is in control over whether they hit their marks. Indeed, that much is baked into the example: Hartman tells

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<sup>33</sup> Indeed, Zimmerman advances a counterfactual account of responsibility in exactly this vein (Zimmerman, 2002; 2006; and 2019).

<sup>34</sup> (Hartman, 2017, 106).

us that Off-Target has bad luck (a bird catches the bullet) whereas Bullseye has “typical luck” (note that Hartman subscribes to a lack of control account of moral luck).

Because moral luck deniers argue that agents cannot be held responsible for what they are not in (direct) control of, it follows that a moral luck denier has a consistent and coherent explanation of why Sneezy and Off-Target are *not* equally blameworthy even though Off-Target and Bullseye *are* equally blameworthy. And this is merely a manifestation of the more general difference between circumstantial and resultant luck argued for in the previous section of this article: the former is indirect, whereas the latter is direct.

To sum up: if the arguments in section 1 of this article withstand critical scrutiny and, thus, circumstantial luck is relevantly different from resultant and constitutive luck, then the denial of resultant and constitutive luck is consistent with the affirmation of circumstantial luck (*pace* Hartman) even though at least some strategies for grounding this position do not work (*pace* Rivera-López). Moreover (to return to the argument from the previous subsection of this article), this shows why the in/direct moral luck distinction is fatal to the regress argument: if there is a coherent way to deny resultant luck while accepting circumstantial luck, then the regress argument is defanged—the concession of indirect moral luck need not be regarded as problematic precisely because it does not suggest, much less entail, the acceptance of direct moral luck, and it is only the latter that is intuitively troubling.

### *Subsection 2.3 Heritability and the Analysis of Luck*

Debates about the heritability of luck arise from examples that Lackey deploys in order to undermine popular accounts of luck.<sup>35</sup> Thus, consider the following example, taken from Lackey:

DEMOLITION WORKER: Ramona is a demolition worker, about to press a button that will blow up an old abandoned warehouse, thereby completing a project that she and her co-workers have been working on for several weeks. Unbeknownst to her, however, a mouse had chewed through the relevant wires in the construction office an hour earlier, severing the connection between the button and the explosives. But as Ramona is about to press the button, her coworker hangs his jacket on a nail in the precise location of the severed wires, which radically deviates from his usual routine of hanging his clothes in the office closet. As it happens, the hanger on which the jacket is hanging is made of metal, and it enables the electrical current to pass through the damaged wires just as Ramona presses the button and demolishes the warehouse.<sup>36</sup>

DEMOLITION WORKER is aimed at so-called control accounts of luck, which say that, if X is within an agent’s control, then X is not lucky for that agent. Lackey argues that, although Ramona’s demolition of the warehouse is within her control, the fact that Ramona has this control in the first place is a matter of luck, and, therefore, the demolition itself is a matter of luck. If this is correct, then it is an instance of an event that is lucky even though it is within the agent’s control and, hence, it is a false negative for control accounts of luck.

Moreover, once we see how DEMOLITION WORKER works, it is easy to come up with similar examples. I control whether I am typing right now. But, suppose that, just before I sat down to work, my computer narrowly and luckily avoided destruction. (Perhaps my cat knocked over a glass of water, and it was merely a matter of luck that the computer was not doused.) Then, although I have control over whether I am typing right now, the fact that I have this control in the first place is a matter of luck, so I am lucky to be typing notwithstanding my control. That is, Lackey’s example is based on the idea that luck is heritable (i.e., if X is lucky and Y is a logical or causal descendent of X, then Y inherits the property of luckiness from X) whereas lack of control is not: luck in the lead-up to Ramona’s demolition is inherited by the demolition itself, whereas lack of control in the lead-up to the demolition is not inherited by the demolition itself, and this difference in heritability opens up the possibility for false negatives for control accounts.

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<sup>35</sup> (Lackey, 2008).

<sup>36</sup> (Lackey, 2008, 258).

Lackey deploys a similar example against modal fragility accounts of luck. That is, Lackey argues that, whereas luck is heritable, modal fragility is not and, thus, there can be events that are lucky even though they are not modally fragile, whence it may be concluded that modal fragility is not necessary for luck. Because control accounts of luck are popular in the moral luck literature, and because modal accounts of luck are popular in the epistemic luck literature, Lackey's examples garnered a lot of attention.

Many reject the heritability of luck. For example, according to Levy, "luck in the conditions that enable an exercise of control is not inherited by the exercise of control itself."<sup>37</sup> Others accept the heritability of luck and develop a new analysis of the concept. For example, Coffman distinguishes between luck *simpliciter* and strokes of luck. He argues that luck is heritable but that whether something is a stroke of luck is not heritable.<sup>38</sup>

So, why is this important now?

From the foregoing, it may be seen that, in circumstantial luck, the object of moral assessment is a "descendent" of the object of moral luck. Or, to put this another way, an instance of moral luck is indirect if, but only if, the object of the moral judgment is the descendent of (and not identical to) the object of the luck judgment. In synchronic circumstantial luck, the agent's actions, which are the object of moral assessment, are descendants of the un/lucky circumstances in which the agent finds herself. In diachronic circumstantial luck, the agent's character traits, which are the object of moral assessment, are descendants of the un/lucky developmental pathway (the diachronically extended circumstances) in which the agent found herself. Lackey need not have worked so hard to develop her counterexamples; she could have appealed to any standard example of circumstantial luck.<sup>39</sup>

Now, I do not want to take a stand on the heritability of luck here, nor, as I tried to emphasize above, do I want to defend the thesis that circumstantial luck should be accepted as a genuine phenomenon. However, I do want to point out that, if, as I maintain, indirect moral luck involves inherited luck, then it follows that, if the heritability of luck is rejected, then indirect luck also must be rejected—or, perhaps more perspicuously, if the heritability of luck is rejected, then circumstantial luck also must be so.

This is a significant result. Many within the moral luck debate, like Levy, deny the heritability thesis but nonetheless affirm moral luck. But, if I am right, then they ought to temper this affirmation. In denying the heritability of luck, they ought to reject indirect moral luck and, thus, they ought to reject circumstantial luck, at least in name (i.e., as a form of moral luck).

All of this seems to have gone unnoticed, perhaps precisely because, as noted in the (speculative) second argument made in section 1 of this article, resultant and constitutive luck get the lion's share of the attention in the moral luck literature.

## Conclusion

In this article I explored the difference between circumstantial luck and resultant and constitutive luck. In section 1, I argued that, whereas circumstantial luck is an indirect form of moral luck, resultant and constitutive luck are direct forms of moral luck. In section 2, I explored the implications of this difference. I argued that it bears on the regress argument for moral luck; on the viability of the position that accepts circumstantial luck but denies resultant luck; and on debates about the heritability of luck. In particular, I showed that the fact that circumstantial luck is indirect whereas resultant and constitutive luck are direct (1) foils the regress argument by opening up a regress-stopper that avoids some of the problems associated with the better-known, Rescher-ian "identity precedes luck" regress-stopper; (2) makes plausible a selective moral luck argument strategy, one which affirms

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<sup>37</sup> (Levy, 2009, 492).

<sup>38</sup> (Coffman, 2014 and 2015). As Coffman points out, this marks a shift from his earlier work, in which he disputes the heritability of luck (Coffman, 2009).

<sup>39</sup> This is not intended as a criticism of Lackey. Moreover, to be fair, appealing to standard examples of circumstantial luck might not have served her purpose: she is more interested in analysis of the concept of luck than in moral luck, so a discussion of circumstantial luck would have risked distracting from her main goal.

circumstantial luck but denies other kinds of moral luck; and (3) shows that those who deny the heritability thesis also ought to reject circumstantial luck, at least as a form of moral luck (which further bolsters (1) and (2)).

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