Moral Luck and the Condition of Control

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When we reflect on our lives, we realize that in almost everything, including who we are and what we do, there are factors involved that are due to luck. But there is a problem in how luck applies to moral judgment of actions. On the one hand, it appeals to our natural sense of justice to think that a person should not be judged based on what was not under her control. On the other hand, we find that we very often do judge people, for better or for worse, based on what actually flows from their actions, even if we recognize that luck was involved. This conflict is what philosophers call the problem of moral luck and was famously introduced by Thomas Nagel.[1]

One way to deal with this paradox is to suggest that the problem of moral luck is not a genuine *moral* problem, but merely a result of a failure to make rational judgments. Darren Domsky, Edward Royzman and Rahul Kumar have suggested that the solution to the problem involves recognizing (and correcting) the cognitive biases involved in making judgments of relative blameworthiness and praiseworthiness. They seem to imply that if we were more careful in monitoring the process of making the assessments we do, there would be no moral difference between a lucky agent and an unlucky agent, other things being equal; everyone would be judged only for what truly was within her control.

As moral agents, we have a significant stake in understanding the ways in which the luck we experience can affect the moral assessments (of blame or praise) that we are due, but recognizing cognitive biases is not bringing us closer to understanding or solving the problem of moral luck. I begin by presenting a critique of the cognitive bias approach as developed by David Enoch and Ehud Guttel. They raise several worries which pertain to the particular cognitive biases Domsky and others discuss (e.g., worries about the inconsistency of the cognitive biases and their limited application to cases of outcome luck). Enoch and Guttel are further concerned about the overall philosophical significance of cognitive biases in illuminating a solution to the problem of moral luck. I will respond to some of Enoch and Guttel's concerns and argue that the best way forward involves a serious re-examination and revision of Nagel's condition of control.

Nagel holds that moral luck involves a conflict between two claims.

The first is that "prior to reflection it is intuitively plausible that people cannot be morally assessed for what is not their fault, or for what is due to factors beyond their control" (Nagel, 1979, p. 25). Nagel thinks this *control condition* conflicts with everyday moral judgments. A person then experiences moral luck when she is praised or blamed for certain things, even though we recognize that there were significant factors involved that were beyond her control.

To illustrate this, Nagel asks us to imagine that a truck driver fails to have his brakes checked and drives with faulty brakes. Consequently, he is unable to stop in time when a child darts out in front of the truck, and his truck hits the child, who dies. Had the child not been there, then the driver would not have been involved in an accident, and we would thus judge him less harshly, "yet the *negligence* is the same in both cases, and the driver has no control over whether a child will run into his path" (Nagel, 1979, p. 29). In the event that the driver does not hit a child, he is deemed morally lucky; if he does hit a child, he is morally unlucky.[2] The problem of moral luck is that the relative assessments of blame differ based on the different outcomes, and yet the difference is due to a factor beyond the control of the driver(s).

Some people—for instance, Domsky and others—take the view that luck should not affect the amount of blame or praise an agent deserves. Were we to be perfectly rational and unbiased in our judgments, we would make the same judgments of both the lucky and unlucky negligent drivers. We could blame the lucky driver as harshly as we blame the unlucky driver for the negligently caused death, or we might say that we should blame the unlucky driver no more harshly than we normally blame the lucky driver for mere negligence. For those who believe that the two drivers should be judged the same, there is no such thing as moral luck. For those who think that our responses to the drivers *should* be different, however, the difficulty identified by Nagel arises, namely, that our judgment of a negligent driver depends on factors beyond his control, although we also believe that factors beyond a person's control should not affect our moral judgments. In other words, judgments of particular cases conflict with a general principle we reflectively endorse, i.e., the control condition.

If the paradox about moral luck involves an inconsistency between a principle we endorse and our judgmental dispositions, then we might reasonably wonder whether the psychological study of such endorsements or dispositions can help us solve the problem. Domsky, Royzman and Kumar have argued that cognitive biases account for and explain away the paradox. They cite three biases to explain the perception of a problem. Domsky mainly focuses on what he calls the *selfish bias* and the *optimistic*

bias; Royzman and Kumar discuss the *hindsight* or *outcome bias.*

The selfish bias is the idea that we "have a strong, measurable tendency to select and uphold moral theories and beliefs according to how they stand to benefit us personally" (Domsky, 2004, p. 455). The optimistic bias involves "feel[ing] uniquely invulnerable to bad luck, to believe that your own personal risk is lower than the risk faced by others, even when situations are identical" (Domsky, 2004, p. 457). Domsky thinks that the conjunction of these biases leads us to assign different amounts of blame to equally negligent agents, because we optimistically believe that we will be the lucky ones, and "we subconsciously believe that blaming the morally unlucky much more than the morally lucky privileges us at the expense of others by making us less blameworthy than we would otherwise be and by making them more" (Domsky, 2004, p. 462). Domsky argues that we should recognize and overcome these cognitive biases, adhere to the condition of control and blame the lucky and unlucky equally (for their equal negligence), thereby eliminating the problem of moral luck.

Royzman and Kumar argue that it is hindsight or outcome bias that leads us to evaluate lucky and unlucky negligent drivers differently. They cite empirical studies which measured people's perceptions about risky actions and the likelihood that a certain outcome would occur. The studies found that once people know that a negligent driver has caused harm, they will think that his negligence was greater than that of the driver whose negligence in fact was the same but who, due to luck, did not cause harm. The undesirable outcome is not just evidence that makes salient to us the desert that the driver was due all along (evidence that we just don't have about the lucky driver).[3] Rather, outcome bias leads us to see the unlucky driver as having been more blameworthy (e.g., grossly negligent or reckless) to begin with. The problem of moral luck then goes away because it is the purported difference in blameworthy behavior—not luck—that accounts for the different judgments that we assign to the lucky and unlucky driver.

If we follow this line of reasoning, we are sheltered from the metaphysical anxiety that we lack control over our moral standing. We *are* responsible only for what is in our control and that's the end of it; those who are inclined to view us as more or less blameworthy due to the luck that we experience are simply misguided (through cognitive biases) in their judgments. And yet, this solution does not hold up to certain kinds of criticism.

Enoch and Guttel raise several concerns about the cognitive bias explanations. Four of their criticisms are "internal worries" which relate to the particular biases that Royzman, Kumar and Domsky analyze. Enoch and Guttel then hypothesize that even if all these internal worries were

eliminated, there still would be a general and perhaps deeper "external worry" about the explanatory value of cognitive biases in advancing the debate about moral luck. I do not have space to summarize and respond to all of Enoch and Guttel's objections[4], so I will address two internal worries and the one external worry, as I think they point to a need to revisit the *control condition* that so many people find intuitively plausible.

One worry that Enoch and Guttel raise is about the (in)consistency between the two explanations about cognitive biases that have been offered thus far. They argue that because the analyses of the different biases are both supported by empirical data and yet are inconsistent with one another, then we should doubt the explanatory value of both. In particular, Enoch and Guttel point out that although Royzman and Kumar's explanation about hindsight bias is compatible with upholding the condition of control[5], the biases that Domsky discusses involve a rejection of the condition of control.[6] If the explanations are inconsistent (with respect to the condition of control) and yet purport to explain the same moral luck intuition, that does give good reason to think that at least one of the explanations is misguided, but it is not—yet—reason to discard both. Why expect that two theories about erroneous judgment making should be jointly consistent?

A second internal worry relates to the scope of the cognitive bias explanations. Enoch and Guttel say that the focus on outcome luck is "entirely ad hoc" (Enoch and Guttel, 2010, p. 376) and that "the problem of moral luck seems to be the very same problem whether it is luck in consequences or in circumstances, and is typically so treated in the literature" (Enoch and Guttel, 2010, p. 377). I agree that this is how cases of different kinds of moral luck are treated in the literature, but I don't think that the problem is exactly the same, regardless of what kind of moral luck is being discussed.

Nagel discusses four kinds of luck that can affect moral assessments. They are: causal, constitutive, circumstantial and outcome.[7] I think that examples of luck in outcome and luck in the preceding conditions (whether in circumstances or character) are different enough that separate arguments are needed about whether and how such luck should have an effect, if any, on the moral assessment of the agents involved.

Consider Nagel's example of circumstantial luck: imagine that there are two men living in Germany, one who emigrates to Argentina for business reasons in 1930, and one who stays in Germany. The one who doesn't move is coerced by the Third Reich and is subject to moral challenges that the expatriate in Argentina does not face. The man in Germany we imagine carries out certain atrocities in obedience to the commanding authority

at the time, while the man in Argentina leads a quiet life, without killing anyone. Neither one was blameworthy in choosing to live where he did, and yet the German citizen is judged harshly (for what he does), and the expatriate is not.

This circumstantial luck case is different from cases of outcome luck with negligent driving in which luck intervenes *after* a person is already performing some risky action. Perhaps the negligent assumption of risk grounds a belief that a person can be judged extra harshly if and when, due to luck, the risk results in harm. With a case of circumstantial luck, in contrast, the agents in question are not assuming a risk or acting in an otherwise blameworthy manner, so one who endorses Nagel's condition of control could say that the unequal assessment based on circumstantial luck is not justifiable, absent some further argument.[8] Consequently, I do not think, as Enoch and Guttel and others seem to, that we should necessarily look for "a *unified* explanation of the relevant intuitions, or a unified solution to the problem of moral luck." (Enoch and Guttel, 2010, p. 377) The upshot is that the fact that Domsky, Royzman and Kumar's analyses only pertain to outcome luck (and not circumstantial luck) is not necessarily a weakness of their explanations.

Enoch and Guttel say that even if criticisms about how the particular cognitive biases Domsky, Royzman and Kumar raise were adequately dealt with, there would still be an external worry about the philosophical significance of cognitive biases to understanding or solving the problem of moral luck. Although Royzman, Kumar and Domsky offer reasons for debunking the moral luck intuition, Enoch and Guttel rightly point out that people on both sides of the moral luck debate can try to appeal to cognitive biases to show the error on the opposing side (Enoch and Guttel, 2010, p. 384). If the moral luck proponent and critic both give debunking explanations, then the task is to prove which explanation is stronger. Even if one side is found to have a stronger error theory about the cognitive biases that lead the opposing side astray, Enoch and Guttel are clear that such empirical research cannot replace the work that philosophers must do to examine how reasonable are the *principles* each side advances for the stance that luck either should or shouldn't affect the moral assessments that are made.

In particular, I think more attention needs to be given to the condition of control.[9] Nagel says that "people cannot be morally assessed for what is not their fault, or for what is due to factors beyond their control" (Nagel, 1979, p. 25). He is worried that a consistent application of this condition of control will yield the result that there is virtually nothing that a person may be morally assessed for, when we recognize all the different ways that luck can intervene in a person's life (in outcomes, circumstances, and

character). We could revise Nagel's condition of control to reflect the fact that the way in which a person experienced luck is relevant to the moral assessment she deserves. My preferred description would be: "it seems intuitively plausible that people cannot be morally assessed for what is beyond their control. They may, however, be morally assessed for the results of the combined influence of factors within and beyond their control, if they could and should have acted differently in light of the foreseeable harms (or benefits) posed by the factors not under their control." We frequently act in circumstances and under conditions over which we have no control, and we are responsible to be reasonably aware of those circumstances and conditions and to act in light of them with reasonable care.

One might point out that this new condition, because it relies on intuitions about what is reasonable to do in light of certain factors within and beyond one's control, may only create more disagreement about appropriate levels of blameworthiness, depending on what people find to be reasonable actions, what they consider to be acceptable levels of risk creation, and so on. I concede this, but I still think such a control condition better allows for the types of fine-grained judgments we should be making of agents who experience good or bad luck. In particular, the revised condition makes it possible to consider the way that a person experienced luck as being relevant to whether or not said luck should affect moral assessments. We will then not necessarily have a *unified* solution to moral luck, if by that we mean an argument for why *all* kinds of luck either should or shouldn't affect moral assessments, but with the revised control condition, we can still have a *consistent* way of explaining why not all luck or factors beyond a person's control should have the same effect on a person's moral assessment.

To sum up, the problem of moral luck is, most likely, more of a paradox than Domsky, Royzman and Kumar think, but not as frightening a paradox as Nagel suspected. We are, it seems, often correctly judged for what follows from factors beyond our control, but exactly when and how these factors should influence judgments is connected with the scope and strength of our agential control. Therefore, to move forward in the debate about moral luck, we ought to revise the control condition so that it reflects the complex relationship between moral assessment and the various ways that agents can lack control (over outcomes, circumstances, etc.). A theory about why psychological bias leads someone to make mistaken judgments about control and blameworthiness in particular cases, if provided, should just be icing on the cake.[10]

Notes

[1] Bernard Williams is often jointly credited with Nagel for having launched the recent debate on moral luck. Because the case examples and questions that Williams is interested in are arguably very different from Nagel's, and because those writing on cognitive biases (which I will discuss in this paper) use Nagel's example of outcome luck in driving, I will restrict my focus to Nagel's formulation and examples of the problem of moral luck.

[2] Of course, in the grand scheme of things, it is the child who is unlucky. When people refer to an "unlucky negligent driver," it is just in the sense that the driver is unlucky relative to an equally negligent driver who causes no accident.

[3] This is the answer that Norvin Richards offers for why a lucky and an unlucky negligent driver are treated differently. He says that the two are in fact equally morally blameworthy, but we have grounds for blaming the unlucky driver only because the bad outcome makes us aware that the driver was negligent. In the case of the lucky driver who does no harm, we are unaware (supposedly) of his negligence and thus do not have any grounds for assigning blame. Moral luck thus 'piggy backs' on epistemic luck.

[4] I have written about this elsewhere in Link (2011).

[5] The hindsight bias is consistent with the condition of control because it involves thinking that, for example, it is a driver's *extra* recklessness or blameworthiness that caused her to hit a child. The extra blameworthiness is what supposedly caused the tragic outcome, and furthermore it was behavior that was within the driver's control, so a driver is not being treated unfairly when she is judged harshly for the "unlucky" outcome.

[6] If you are optimistically and selfishly biased, then you reject the condition of control because you think that unlucky drivers can and should be blamed more than lucky drivers, even though you recognize that luck makes the relevant difference. You're okay with making judgments based on the bad luck agent's experience because you optimistically think that you won't be the unlucky one, and you selfishly want to see others taking the blame for unfortunate outcomes, while you are spared of any extra blame.

[7] Causal luck is luck in antecedent circumstances. Nagel does not give a concrete example of this, and it seems that the category can probably be collapsed into circumstantial luck, which is luck in the circumstances or state of affairs one finds oneself in e.g., being born into a certain good or bad family or country. Constitutive luck is luck in the kind of character one has or was born with—one's natural strengths, weaknesses, desires, etc. Outcome luck is luck in the way one's actions or projects turn out.

[8] At the end of the day, perhaps there are good reasons to treat the two Germans differently (or the same, depending on one's views about moral luck); my point is simply that a separate argument should be spelled out for this.

[9] Margaret Walker (1993, p. 237) writes, "From Nagel and Williams through Richards and Jensen… the control condition stands curiously undefended. Yet the principle is not self-evident… It expresses a substantive view about the condi-

tions under which we should see ourselves and others as responsible for actions and their outcomes." That was over twenty years ago, but it still seems that many writing on the problem of moral luck take Nagel's control condition for granted.

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