

ACCEPTING MORAL LUCK<sup>1</sup>

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*Abstract:* I argue for the view that certain kinds of luck in results, circumstances, and constitutive properties can partially determine an agent's praiseworthiness and blameworthiness. To make this view clearer, consider some examples. Two agents drive recklessly, and one but not the other kills a pedestrian. Two corrupt judges would freely take a bribe if one were offered. But only one judge is offered a bribe, and so only one judge takes a bribe. Put in terms of these examples, I argue that the killer driver and bribe taker are more blameworthy than their counterparts. I offer three arguments for that view, and, in doing so, I exemplify a general way to advance the debate. First, I argue against an account of moral responsibility that implies that the judges are equally blameworthy. Second, I argue that the killer driver is more blameworthy than the merely reckless driver. Third, I present an alternative sense in which the agents in each case pair are morally on par.

**Introduction**

One way to frame the problem of moral luck is as a skeptical argument that rules out our being morally responsible agents. That is, no one is morally responsible for anything, because luck affects us in ways that universally preclude satisfying the control condition on moral responsibility. Another way to understand the problem of moral luck is as a contradiction in our commonsense ideas about moral responsibility. I take up the latter formulation.

In one strand of our thinking, we believe that a person can become more blameworthy by luck—that is, by factors beyond her control. Consider some examples to make that idea concrete. Two identical agents drive recklessly around a curb, and one but not the other kills a pedestrian. (Nagel 1979: 29). Two identical corrupt judges would freely take a bribe if one were offered. By luck of the courthouse draw, only one judge is offered a bribe, and so only one judge takes a bribe (Thomson 1989: 214). Luck is the salient difference between the agents in each case pair. The location of the pedestrian is outside of each driver's control, and being offered a bribe is outside of

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<sup>1</sup> This article is based on my book *In Defense of Moral Luck: Why Luck Often Affects Praiseworthiness and Blameworthiness* (Routledge, 2017).

each judge's control. But we blame the killer driver more than the merely reckless driver, and we blame the bribe taker more than the mere would-be bribe taker. This is because we believe that the killer driver and bribe taker are more blameworthy—that is, the killer driver and the bribe taker deserve more blame—than their counterparts.

Nevertheless, the idea that luck affects desert of praise and blame contradicts another feature of our thinking: We are praiseworthy and blameworthy for only what is within our control, and factors outside of our control cannot affect the praise and blame we deserve. After all, fairness requires that moral judgment is about the person and not what happens to her (Nagel 1979: 25). As Bernard Williams (1985: 194) writes, “There is pressure within it [our ordinary conception of morality] to require a voluntariness that will be total and will cut through character and psychological or social determination, and allocate blame and responsibility on the ultimately fair basis of the agent's own contribution, no more and no less” (cf. Williams 1981: 21-2; Williams 1993: 251). Thus, according to this second strand of our commonsense ideas about moral responsibility, the drivers are equally blameworthy, because the salient difference between them is something outside of their control. The same is true for the judges.

To put the contradiction in terms of these examples, our ordinary thinking about moral responsibility implies that the drivers are and are not equally blameworthy. It also implies that the judges are and are not equally blameworthy.

My aim is to make progress in resolving this contradiction. I argue that certain kinds of luck can partially determine a person's praiseworthiness and blameworthiness, and so argue that the killer driver and bribe taker are more blameworthy than their counterparts.

## Definitions and Dialectic

In terminology that is standard in the moral luck debate, I argue that various kinds of moral luck exist. *Moral luck* occurs when factors beyond an agent's control partially determine her positive praiseworthiness or blameworthiness (Hartman 2017: 2; cf. Nagel 1979: 26).

Two clarifications are in order about this standard account of moral luck. First, the term 'positive' is introduced to rule out the idea that moral luck is responsibility-undermining luck. Second, the conception of luck implicit in that definition of moral luck is the lack of control conception. I recognize that the lack of control conception fails to capture at least some of our intuitions about which events are lucky or not lucky, and that this failure has led some philosophers to reject the standard account of moral luck (cf. Driver 2012; Hales 2015; Latus 2003; Levy 2011; Peels 2015; Pritchard 2005; Rescher 1995; Whittington 2014). For example, Andrew Latus (2003: 476) argues that lack of control cannot be a sufficient condition for an event to be lucky. After all, the lack of control view implies that it is lucky for me that the sun rose today, since it is outside of my control that it rose. Intuitively, however, it is not lucky for me that the sun rose today, and so the lack of control definition founders. Nevertheless, I argue in Hartman (2017: 23-31) that these philosophers miss what is important in an account of moral luck, because the moral luck debate is not about luck per se but about a contradiction in our ideas about moral responsibility. Here is a simple way to see the point. Even if an account of luck other than the lack of control account best captures our ordinary usage of the term 'luck' or even if there is no good account of the way we use the word 'luck,' the puzzle to which Joel Feinberg (1962), Thomas Nagel (1979), and Williams (1981) point us remains, because ubiquitous lack of control continues to be in tension with the control condition that is part of our conception of morality (see also Anderson forthcoming; Statman this volume). (Of course, it may still be interesting to investigate alternative accounts of moral luck for one reason or another. Some of

these alternative accounts may employ a different account of luck, or may investigate a different moral feature of our lives such as moral obligation or moral virtue, or both.)

Nagel's (1979: 28) taxonomy distinguishes between four kinds of moral luck—namely, resultant, circumstantial, constitutive, and casual moral luck. These kinds of moral luck are distinguished primarily by the type of factor that is beyond the agent's control. *Resultant moral luck* occurs when the consequence of an agent's action is beyond her control, and the consequence partially determines her positive praiseworthiness or blameworthiness. *Circumstantial moral luck* occurs when an agent faces a morally significant challenge that is outside of her control, and it affects her positive praiseworthiness or blameworthiness. *Constitutive moral luck* occurs when an agent's dispositions or capacities are not voluntarily acquired, and they affect her positive praiseworthiness or blameworthiness for a trait or an action. *Casual moral luck* occurs when the laws of nature and past states of affairs outside of a person's control causally determine her actions, and the laws and past affect her praiseworthiness or blameworthiness for her action. The question of whether causal moral luck could exist is the same question as whether an action's having been causally determined is compatible with being morally responsible for that action, which is a standard topic in the free will literature.<sup>2</sup>

Let the *Moral Luck View* be the position that instances of resultant, circumstantial, and constitutive moral luck exist. It is noteworthy that the Moral Luck View is consistent with both compatibilism and incompatibilism about an action's having been causally determined and being morally responsible for that action.<sup>3</sup>

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<sup>2</sup> Paul Russell (forthcoming) interestingly argues that the problem of moral luck supplies the best lens from which to view the free will debate.

<sup>3</sup> It does not follow, however, that there is no interesting relationship between the Moral Luck View and compatibilism. I think that the Moral Luck View provides defeasible evidence for compatibilism, because if luck in results, circumstance, and constitution can positively affect moral responsibility, then there is at least some reason to think that luck in casual determination can also positively affect moral responsibility.

Before I make a case for accepting the Moral Luck View, it is important to take stock of two general considerations. First, I cannot advance the debate on behalf of the Moral Luck View by offering arguments that bottom out in standard pro-moral luck intuitions such as the intuition that the killer driver is more blameworthy, because the problem of moral luck is fundamentally a clash of intuitions. So, I will not rely on *standard pro-moral luck* intuitions even though I do appeal to intuitions at various places. Second, a systematic case for the Moral Luck View should include three kinds of arguments. It should include *indirect* arguments—namely, the kind of argument that renders implausible the denial of extant moral luck. It should include *direct* arguments—that is, the kind of argument that makes plausible the existence of moral luck. It should also include an *error theory* for the luck-free intuition; it should explain why we erroneously intuit that the drivers are equally blameworthy and that the judges are equally blameworthy.

My argument for the Moral Luck View will exemplify both methods to highlight a promising way to advance the debate. Given spatial limitations, however, I argue only for part of the Moral Luck View—namely, for extant circumstantial and resultant moral luck.<sup>4</sup> Along the way, I introduce four ways to resolve the contradiction in our thinking about moral responsibility that are opposed to the Moral Luck View to various degrees. I proceed as follows. First, I argue against one prominent way of denying that circumstantial moral luck exists. Second, I offer some evidence that resultant moral luck exists. Third, I explain why the errant luck-free intuition is widespread.

### **Against a Denial of Circumstantial Moral Luck**

The denial of circumstantial moral luck amounts to the claim that the morally significant challenges a person actually faces outside of her control cannot affect her positive praiseworthiness and blameworthiness. For example, if there is no circumstantial moral luck in the judge case, then the

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<sup>4</sup> Elsewhere, I argue for the existence of constitutive moral luck. See Hartman (2017, Ch. 3-6; forthcoming).

judges must be equally blameworthy, because which of their possible circumstances are actual do not affect their overall degree of blameworthiness. There are three prominent approaches to the problem of moral luck that imply the denial of all or many cases of circumstantial moral luck.

The *Skeptical View* is the position that luck undermines moral responsibility (cf. Levy 2011; Strawson 1994; Waller 2011). If the Skeptical View is correct, neither judge is blameworthy for anything, because luck affects them both and luck undermines moral responsibility. So, because their circumstantial luck cannot positively affect their blameworthiness, no circumstantial *moral luck* exists in this case.

The *Character View* is the position that we are fundamentally praiseworthy and blameworthy for only our character traits (cf. Peels 2015; Rescher 1990; Richards 1986; Thomson 1989). Because the judges have the same corrupt character, they are thereby equally blameworthy even though only one of them takes a bribe. Thus, luck in actual opportunity cannot make a difference to their comparative blameworthiness, and no circumstantial moral luck exists in this case.<sup>5</sup>

The *Counterfactual View* is the position that restricts the sphere of praiseworthiness and blameworthiness to actual and subjunctive exercises of agency, and so agents are praiseworthy and blameworthy not only *for* their actual free actions but also *in virtue of* what they would freely do in non-actual circumstances (Zimmerman 2002: 564-5; cf. Enoch and Marmor 2007: 420-5). On this view, the mere would-be bribe taker is blameworthy “tout court” or simpliciter in virtue of the fact that she would freely take the bribe if she were offered one (Zimmerman 2002: 564-565). Thus, on the Counterfactual View, the judges deserve the same degree of blame even though only the actual bribe taker is blameworthy *for* something in the actual world. The Counterfactual View, however,

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<sup>5</sup> In Hartman (manuscript-a), I argue against the Character View.

differs in part from the Character View, because a person's being praiseworthy or blameworthy in virtue of what she would freely do is not reducible to character evaluation. On Zimmerman's view, a person might be blameworthy for what she would freely do in a counterfactual circumstance in which she has *different* character traits.

My indirect argument for the Moral Luck View is an argument against the Counterfactual View's denial of circumstantial moral luck. It proceeds by way of the communicative function of blame. Angela Smith (2013: 41-2; cf. Macnamara 2015: 222-32) contends that moral protest is the function of blame.<sup>6</sup> What blame protests is the moral commitment implicit in the wrongdoer's behavior. Suppose that Paul gossips about Jennifer, and she finds out about it. When Jennifer reacts toward Paul with resentment or indignation, she challenges the moral presupposition implicit in Paul's behavior—namely, that it is acceptable to treat her in that way. This communicates to Paul that at least one person views his behavior as morally unacceptable, and it creates an opportunity for him to see himself through her eyes, which may elicit guilt, remorse, or regret. It may also be a catalyst for reconciliation.

The communicative function of blame reveals absurdities in the Counterfactual View's denial of circumstantial moral luck. Suppose that although Charles enjoys gambling, he has never been reckless. Suppose also that Charles loses his job in a non-actual circumstance in which he could easily have been but that he does not actually lose his job. He would be devastated if he were to find himself in that non-actual circumstance, because his self-worth is bound up in that job. In fact, if he were in that circumstance, he would freely distract himself from his newfound emptiness by heading to the closest casino, and he would freely make a series of reckless bets and lose his life savings.

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<sup>6</sup> Many philosophers take seriously the communicative function of blame. Michael McKenna (2012), for example, has a book length account of blame modeled on communication.

Suppose that this kind of action is out of character for Charles and that Jan, Charles's wife, knows what Charles would freely do. It is revealed to her by God or by an angel. In any case, she actually blames Charles because of what he would freely do in a non-actual circumstance.

Has Jan done something wrong? By hypothesis, if she has done something wrong, it is not the case that she is blaming someone who is not blameworthy. After all, the Counterfactual View implies that Charles is blameworthy in virtue of its being true that he would freely risk the family savings. It appears in the right circumstances that the Counterfactual View implies the permissibility of *counterfactual-blaming*—that is, actually blaming someone because of what he would freely do in a circumstance that never becomes actual.

The difficulty for the Counterfactual View is that this case of counterfactual-blame lacks communicative value in a particular way. In blaming Charles, Jan protests the moral presupposition that gambling away the family's savings is an acceptable way to cope with loss, but Charles is neither theoretically nor practically committed to that presupposition. He is not theoretically committed to the presupposition, because he views the action of gambling his life savings as morally repugnant. That is, he believes that gambling one's life savings is morally wrong and ought not to be done. He is also not practically committed to the presupposition. For he performs no actual action that commits him to it, and he does not even form a distal intention to gamble his life savings in the case that he loses his job. We may even suppose that Charles's counterfactual reckless gambling is *out of character* to show that there is nothing in Charles's actual psychology to protest. It is only when Charles's slightly fragile dispositions, which he may or may not be morally responsible for depending on how we fill in the details of the case, are coupled with a certain kind of non-actual emotional turmoil that there would be an exercise of agency to protest.



I contend, however, that Jan's actual blame would be a communicative failure, because anyone in Charles's position—namely, the position in which he is unaware of what he would freely do—would find being blamed bewildering and unintelligible. As a result, her blame cannot intelligibly function to invite Charles to feel remorse, repent, or make amends, which provides evidence that Charles is not blameworthy (cf. Watson 2004, p. 230). Jan also satisfies often-cited preconditions for having good standing to blame: (i) she knows that Charles is blameworthy, (ii) blaming Charles is not hypocritical, and (iii) she is relationally close to Charles. She also would have been harmed personally by the financial loss. If a person who possesses good standing to counterfactual-blame cannot meaningfully blame the blameworthy person, in what sense is this person worthy of blame at all? In other words, given Jan's good position to blame, the absurdity of her counterfactual-blaming Charles lends evidence that Charles is not blameworthy.<sup>7</sup> But then, Charles is both blameworthy and not blameworthy. Contradiction! Our initial assumption that the Counterfactual View is true turns out to be false, and so the way in which the Counterfactual View implies that denial of circumstantial moral luck is implausible.

For the sake of argument, we could even suppose that Charles is at least a little blameworthy for his dispositions that bind his self-worth to his job performance, but is *not* as blameworthy as he would have been if he had lost his job and gambled away his life savings. Importantly, even this supposition is incompatible with the Counterfactual View, because the Counterfactual View implies that Charles is *as blameworthy as* someone who freely gambles away their life savings. Thus, even in the case that Charles is only a little blameworthy, there exists at least some circumstantial moral luck.

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<sup>7</sup> Of course, there is a gap between the permissibility of blame and blameworthiness. So, it might be the case that it is not permissible for Jan to blame Charles even though Charles is blameworthy. Even so, that it is impermissible for Jan to blame Charles provides a defeasible reason to think that Charles is not blameworthy. I thank Dana Nelkin for pointing out the need for this footnote.

He is lucky to find himself in his actual circumstance instead of the circumstance in which he loses his job, and it affects his degree of blameworthiness.

If this argument against the Counterfactual View's denial of circumstantial moral luck is successful, it would support the claim that circumstantial moral luck exists, but it would not demonstrate that circumstantial moral luck exists. The same is true for other arguments against the Counterfactual View's denial of circumstantial moral luck (cf. Anderson 2011: 379; Brogaard 2003: 353-4; Hanna 2014; Hartman 2014: 83; Hartman 2017: 62-86; Hartman manuscript-b; Rivera-López 2016: 419; Rosell 2015; Zagzebski 1994: 407).<sup>8</sup> The reason is that the Counterfactual View is not the only view that implies the denial circumstantial moral luck. There are also the Skeptical and Character Views. For this reason, a complete indirect argument for extant circumstantial moral luck should target the Character, Counterfactual, *and* Skeptical Views.

### **For Resultant Moral Luck**

The claim that circumstantial moral luck exists supports not only the Moral Luck View but also the *Asymmetry View*—namely, the view that we are fundamentally praiseworthy and blameworthy for only our actions (and omissions). On the Asymmetry View, circumstantial and constitutive moral luck exist but resultant moral luck does not (cf. Rivera-López 2016). To put it in concrete terms, the Asymmetry View implies that the bribe taker is more blameworthy than the mere would-be bribe taker and that the reckless drivers are equally blameworthy. Thus, the Asymmetry View implies that there is a morally significant difference between the kind of luck that *rules out* two agents performing the same kind of action and the sort of luck that operates *after* two agents perform the same kind of action.<sup>9</sup> The Asymmetry View is the most popular response to the problem of moral luck (cf.

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<sup>8</sup> For replies to some of these objections, see Peels (2015) and Zimmerman (2015).

<sup>9</sup> Both the Asymmetry and Character Views imply that resultant moral luck does *not* exist and that constitutive moral luck *does* exist. But only the Character View implies that *many* instances of circumstantial moral luck do *not* exist.

Hartman 2017: 129-30; MacKenzie 2017, p. 96). In this section, I contend that we have reason to prefer the Moral Luck View over the Asymmetry View by arguing for the existence of resultant moral luck.

Michael S. Moore (1997: 233-46) offers an argument for resultant moral luck that appeals in part to the following *non-existence relation* between certain kinds of moral luck: If resultant moral luck does not exist, then circumstantial or constitutive moral luck do not exist either (cf. Zimmerman 2006: 605). Nevertheless, at least circumstantial or constitutive moral luck exists, which is a claim that a proponent of the Asymmetry View grants. Therefore, in the current argumentative context, it follows that resultant moral luck exists.

But why think that the non-existence relation is true? Moore (1997: 237) justifies it by appealing to this consideration: “luck is luck, and to the extent that causal fortuitousness is morally irrelevant anywhere it is morally irrelevant everywhere.” The problem, however, with this justificatory claim is that it is not obviously true (cf. Coffman 2015: 110-111), and it appears merely to restate the claim that it is supposed to justify. In fact, whether the non-existence relation is true is exactly what is at stake between proponents of the Asymmetry and Moral Luck Views! So, unless there is a good argument for the non-existence relation—and it is not clear to me what it might be—Moore’s argument does not make progress in showing that resultant moral luck exists. There is room, then, to explore a new argument in the same neighborhood.

I propose that extant circumstantial moral luck provides analogical evidence for the existence of resultant moral luck.<sup>10</sup> I begin with a set of concrete examples involving three assassins,

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<sup>10</sup> My argument, then, will differ from Moore’s at least in two ways. First, my argument is an inductive argument. Second, I think that extant circumstantial moral luck provides the best case for the existence of resultant moral luck, whereas Moore appears to think, for example, that extant constitutive or causal moral luck offers just as powerful a case for resultant moral luck.

Sneezy, Off-Target, and Bullseye, and, subsequently, I argue for resultant moral luck in terms of those examples.

Sneezy, the first assassin, 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. If, however, Sneezy were to have found herself in the same circumstance except that her allergies fail to be triggered, she would have freely taken the shot. Off-Target, the second assassin, has allergies just the same as Sneezy, but her allergies are not triggered. As a result, she has an opportunity and takes the shot. She, however, is off-target, because a bird catches the bullet. The comparative case of Sneezy and Off-Target is a standard example of circumstantial luck. They each would freely perform the same kind of morally significant action if they were in the same circumstance, but they do not have the same opportunities. Bullseye, the third assassin, has typical luck. Her aim is not obstructed by an allergic reaction, and nothing blocks the path of the bullet. 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 kind of action but with different results.

The case of Sneezy and Off-Target is analogous to the case of Off-Target and Bullseye in at least three ways. First, the agents in both case pairs have identical agency in some sense and are distinguished at least partially by luck. Sneezy and Off-Target have *subjunctively* identical agency, because Sneezy would have freely taken the shot just as Off-Target does if she had been in Off-Target's circumstance. And Off-Target and Bullseye have *actually* identical agency, because they both actually freely take the shot in the same circumstance. Second, the actual mental states of Sneezy and Off-Target greatly resemble the actual mental states of Off-Target and Bullseye. All three assassins form the distal intention to kill the target, and they each carefully execute their meticulous assassination plan. Their actual mental states differ only by a moment, because only Off-Target and

Bullseye have the final opportunity to sustain their intentions into overt actions. Third, the event of taking the shot and the event of killing the mark both depend on the agency of the relevant person. In the case of Sneezzy and Off-Target, the unsuccessful attempt depends on Off-Target's voluntarily choice, and, in the case of Off-Target and Bullseye, the successful assassination depends on Bullseye's voluntary choice. Plausibly, it is structural similarities of these kinds that lead David Enoch and Ehud Guttel (2010: 376) to assert 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" (cf. Pritchard 2005: 261).

Furthermore, Off-Target is more blameworthy than Sneezzy in a way that is partially determined by luck. For the sake of argument, we may assume that circumstantial moral luck exists, because the proponent of the Asymmetry View grants that assumption. Even outside of this dialectical context, however, there are good arguments for extant circumstantial moral luck. I mentioned one in the last section and provided references to others. So, because circumstantial moral luck plausibly exists, it is plausible that the difference in the morally significant challenges faced by Sneezzy and Off-Target outside of their control can make a difference in their degree of blameworthiness. And since Off-Target sustains her distal intention into a bona fide assassination attempt and Sneezzy does not, Off-Target is plausibly more blameworthy than Sneezzy.

Here, then, is the *Parallelism Argument*. There are three important respects in which the case of Sneezzy and Off-Target is analogous to the case of Off-Target and Bullseye—namely, the agents in both case pairs (i) have identical agency in some sense and are saliently distinguished by luck, (ii) have very similar actual mental states, and (iii) bring about morally significant events that depend on their voluntary actions. Additionally, Off-Target is more blameworthy than Sneezzy in a way that is partially determined by luck, because only Off-Target actually executes her intention. But then,

based on those similarities and on that difference in blameworthiness, we have good analogical evidence that Bullseye is more blameworthy than Off-Target in a way that is partially determined by luck. In other words, the fact that the sneezing fit makes a difference in blameworthiness between Sneezy and Off-Target provides good analogical evidence that the path of the bird makes a difference in blameworthiness between Off-Target and Bullseye.

How might one object to the Parallelism Argument? A minimally adequate response should identify a *relevant difference* between the cases of circumstantial and resultant luck such that the existence of circumstantial moral luck provides no evidence, or negligible evidence, for extant resultant moral luck.

Consider the following difference between the two case pairs: Sneezy and Off-Target do not actually perform the same kind of free action, but Off-Target and Bullseye do actually perform the same kind of free action. One might think that this difference between the two case pairs is a *relevant difference*, because one might think that praiseworthiness and blameworthiness supervene on actual free actions such that there can be no difference in degree of praiseworthiness and blameworthiness for two agents who perform qualitatively identical free actions. This *supervenience principle* implies that there can be no difference between the blameworthiness of Off-Target and Bullseye, because they perform qualitatively identical free actions. In other words, the supervenience principle implies that Off-Target and Bullseye are equally blameworthy with respect to their assassination escapades. Of course, the supervenience principle is compatible with there being a difference in the blameworthiness between Sneezy and Off-Target, because they do not actually perform qualitatively identical free actions. So, even if circumstantial luck can partially determine that Sneezy and Off-Target are blameworthy to different degrees, this fact does not provide evidence that resultant luck can partially determine that Off-Target and Bullseye are blameworthy to different degrees.

Unless the proponent of the Asymmetry View has a good reason to think that the supervenience principle is true, this objection begs the question against the proponent of the Parallelism Argument. In other words, we have no reason to think that a difference between the actual free actions of the agents in both case pairs is a *relevant* difference unless there is a reason for believing that the degree of praiseworthiness and blameworthiness supervenes on actual free actions. In view of the dialectical context, however, a proponent of the Asymmetry View cannot appeal merely to her intuition that the supervenience principle is true as a good reason for thinking that this difference is a relevant difference. After all, that kind of argument does not move past the basic conflict of intuitions between proponents of the Moral Luck and Asymmetry Views. And since I have provided the Parallelism Argument as an argument that does *not* bottom out in standard pro-Moral Luck View intuitions, no adequate reply to the Parallelism Argument can appeal merely to the basic intuition that motivates the Asymmetry View.

Are there other arguments for the supervenience principle? Perhaps there are, but it is not obvious to me what they might be. So, I leave the proponent of the Asymmetry View with a challenge to provide the argument. As it stands, however, we have good analogical evidence for extant resultant moral luck.

### **Error Theory for the Luck-Free Intuition**

Suppose that we have before us a good cumulative case for the Moral Luck View—that is, for the claim that resultant, circumstantial, and constitutive moral luck exist and are everywhere. In that case, why is there a contradiction in our ordinary thinking about moral responsibility in the first place? Why do we mistakenly intuit that the drivers are equally blameworthy and that the judges are equally blameworthy? Let us refer to intuitions such as the drivers are equally blameworthy and the judges are equally blameworthy as the *luck-free intuition*. A good explanation for the widespread but

errant luck-free intuition would reinforce the plausibility of the Moral Luck View. In this section, I offer such an explanation.

There are two broad ways to explain the prevalence of the luck-free intuition. On the one hand, one might attempt to explain it in a way that eliminates its moral value. For example, one might attribute the ubiquity of that intuition to the operation of a widespread cognitive bias. Let us refer to this kind of explanation as an *elimination error theory*. On the other hand, one might attempt to explain the luck-free intuition in a way that preserves a kernel of moral truth. For example, one might discover something insightful about the luck-free intuition and integrate it into moral evaluation. Call this kind of explanation an *integration error theory*.

Offering an integration error theory for a widely shared moral intuition is better than supplying an elimination error theory for two reasons. First, integration explanations are more charitable; they attribute at least a kernel of truth to the errant intuition. Second, widely shared moral intuitions very often provide at least some insight into morality. For these reasons, I maintain that we can satisfactorily explain the luck-free intuition with an elimination error theory only if no integration error theory can plausibly do so. There are at least three attempts by advocates of moral luck to integrate the luck-free intuition into moral evaluation (Brogaard 2003; Greco 1995; Otsuka 2009). In Hartman (2017: 119-27), I argue that John Greco's (1995) explanation for the luck-free intuition is superior to the others, and further develop Greco's explanation to increase its plausibility.<sup>11</sup>

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<sup>11</sup> It is worth pointing out that proponents of the Skeptical, Character, Counterfactual, and Asymmetry Views have error theories for the intuition that the killer driver is more blameworthy than the merely reckless driver. For example, Zimmerman (2002: 560) contends that the killer driver is responsible for more things but that the killer driver is not more responsible—or more blameworthy. Richard Swinburne (1989: 42), R. Jay Wallace (1994: 128), and Brian Rosebury (1995: 521-4) suggest that the resultant moral luck intuition is the result of conflating legality and morality. The error comes from inferring from the claim that the killer driver merits greater legal punishment to the claim that she is more blameworthy. Richard Parker (1984: 271-3) offers the explanation that people confusedly equate causing greater harm with meriting greater blame. Henning Jensen (1984: 327) and Rosebury (1995: 513-4) submit that people



Greco (1995: 82-83) distinguishes between two commonsense kinds of moral evaluation. *Moral record evaluation* pertains to being praiseworthy or blameworthy for an actual state of affairs such as a trait, action, or consequence, and *moral worth evaluation* pertains to being a good or bad person (Greco 1995: 90-91).<sup>12</sup> An agent's moral worth is a function of the voluntary actions that she actually performs as well as the voluntary actions that she would perform in a broad range of non-actual circumstances (Greco 1995: 91).<sup>13</sup>

These kinds of evaluation differ in the way that luck affects them. On the one hand, praiseworthiness and blameworthiness for states of affairs that we bring about in the world can be affected by certain kinds of luck. The only difference between the two drivers and the salient difference between the two judges is a matter of luck, and yet the killer driver and bribe taker are more blameworthy for a state of affairs than their counterparts. On the other hand, moral worth is luck-free in various respects. Since the drivers freely perform the same type of action and the judges would freely perform the same kind of action, the moral worth of the agents in each case pair is the same with respect to these events. That is, the killer driver's hitting the pedestrian reflects no worse on her as a person than the merely reckless driver's action, and the judge's actually taking a bribe reflects no worse on him as a person than its being true that the other judge would freely take a bribe in the same circumstance. Their actual and counterfactual free actions have the same impact

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mistakenly associate a greater negative emotional response to the killer driver with that driver's being more blameworthy. And Norvin Richards (1986: 201) suggests that people confuse greater evidence of an agent's blameworthiness with that agent's being more blameworthy. After all, the killer driver's recklessness is more evident to others than the merely reckless driver's recklessness. The list goes on (Cholbi 2014: 326-332; Domskey 2004: 446; Enoch 2012: 100-3; Jensen 1984: 325-8; Levy 2016; Martin and Cushman 2016; Royzman and Kumar 2004: 338-9; Scanlon 2015: 105; Thomson 1989: 208-10; Wolf 2001: 10-13). I do not assess any of these error theories, because error theories typically diminish the plausibility of a view only when we have independent reasons—that is, direct and indirect arguments—to think that the view is false. For this reason, I offer my error theory *after* my indirect and direct arguments for the Moral Luck View.

<sup>12</sup> Greco's distinction roughly tracks the distinction between attributability and accountability moral responsibility. See Shoemaker (2015) and Watson (1996) for expositions of these purported kinds of moral responsibility.

<sup>13</sup> In Hartman (2017: 133-5), I argue that whether compatibilism or libertarianism is correct, some or other suitable kind of counterfactual of freedom is true that fills out this account of moral worth.

on their moral worth. So, because moral worth is protected from luck in results and circumstances in these ways, this kind of moral evaluation preserves a kernel of truth from the luck-free intuition.

How, then, does the faulty luck-free intuition arise? It results from a conflation of these kinds of moral evaluation. We mistakenly infer *from* the claim that each reckless driver is no worse of a person than the other *to* the claim that each reckless driver is no more blameworthy than the other. And we errantly conclude *from* the claim that each corrupt judge is no worse of a person than the other *to* the claim that each corrupt judge is no more blameworthy than the other. But these inferences are mistaken precisely because being a good or bad person is not wholly determined by states of affairs for which one is praiseworthy and blameworthy. Greco, thus, solves the puzzle by adequately separating these two kinds of evaluation that we tend to conflate. And this explanation is compelling precisely because it appeals to modes of evaluation that are found in common sense, which explains why there is a contradiction in our commonsense ideas about moral responsibility.

One might worry, however, that Greco's solution is not plausible, because moral worth is not protected from all kinds of luck. An agent's non-voluntarily acquired character traits still significantly influence what she freely does and what she would freely do in a broad range of counterfactual circumstances. And so an agent is likely to have a better or worse moral worth depending on the non-voluntarily acquired dispositions with which she begins the moral life or non-voluntarily acquires sometime thereafter.<sup>14</sup> The worry, then, is that because moral worth is conditioned by constitutive luck, the scope of the error theory does not adequately explain the luck-free intuition.

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<sup>14</sup> Daniel Dennett (2015: 103-4) does not see a problem here, because he appears to think that constitutive luck averages out over the long run. It seems to me that Dennett's claim is implausible. As Bruce Waller (2011: 118) nicely recognizes, "The initial advantage [of good constitutive luck] is much more likely to be cumulative, rather than [to be] offset by subsequent bad breaks."

To circumvent this explanatory shortcoming, Greco (1995: 94) introduces a distinction between two kinds of moral worth. *Actual moral worth* is a function of a person's actual free actions as well as her counterfactual free actions continuous with her actual history. In contrast, *essential moral worth* is a function of a person's actual free actions as well as her counterfactual free actions continuous with her actual *and* counterfactual histories. So, the difference between them is that only essential moral worth allows for what an agent would freely do in counterfactual circumstances continuous with counterfactual histories to count toward her being a good or bad person. To illustrate this difference, consider an example. Suppose that Henry has been habituated to be timid. When Tim insults him, Henry timidly walks away. If, however, Henry had a more raucous formative experience and was non-voluntarily confrontational instead of timid, he would have freely assaulted Tim. By hypothesis, the salient difference between Henry's choices traces back to the way in which he was habituated. Only Henry's walking away counts toward his actual moral worth, but both his walking away and his assaulting Tim count toward his essential moral worth. Greco (1995: 94) asserts that it is essential moral worth that is protected from luck in a way that provides the best error theory for the widespread luck-free intuition. After all, the error theory that explains the luck-free intuition in a greater range of cases is to be preferred, all other things being equal.

But even essential moral worth may not be entirely luck-free. If there are *essential* constitutive properties and if different constitutive properties are essential for at least some persons, then it is impossible for everyone to be in all the same counterfactual circumstances, which suggests that some agents may have a better or worse moral worth owing partly to which constitutive properties they have essentially.

Nevertheless, this kind of vulnerability to luck is not problematic. After all, it is incoherent to evaluate Tim as a good or bad person with respect to what he would freely do with different

*essential* constitutive properties, because the object of evaluation would no longer be *Tim* (Greco 1995: 94-5). It would be someone else. Thus, the ambition to locate a moral self that is *entirely* luck-free is incoherent. Additionally, recall that our goal is to adequately explain the genesis and nature of a faulty intuition. One way in which an intuition might err is with respect to its scope. Given that the kind of agent evaluation that factors out *essential* constitutive luck is incoherent, it is plausible that the luck-free intuition is faulty at least with respect to its essential constitutive luck-free scope. Thus, we have a strong reason for thinking that the way in which essential constitutive luck shapes essential moral worth poses no difficulty for the error theory.<sup>15</sup>

Consider a different objection to the error theory. Essential moral worth is a counterintuitive standard by which to measure person-level goodness. More specifically, it is counterintuitive even partially to assess whether someone is a good or bad person by how she would freely act in a counterfactual circumstance with *contingent* constitutive properties that she *does not have* but *would have had* if she had a different history. In concrete terms, it is counterintuitive to think that what Henry would freely do given an alternative history in which he is non-voluntarily confrontational provides insight into whether he is a good or bad person.

The intuition behind this objection seems to me to be clearly right, and thus I think we should allow it to refine Greco's error theory. This intuition can help us to see that the essential moral worth error theory is a *hybrid* error theory; it is part *integration* error theory and part *elimination* error theory. To see which part is which, let us separate essential moral worth into three parts. Recall that essential moral worth is a function of an agent's

(i) actual free actions

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<sup>15</sup> Proponents on both sides of the moral luck debate including Zimmerman (2002: 575) agree that this aspiration is incoherent. At the very least, then, Greco's error theory does not face a *distinctive* difficulty due to the way in which essential moral worth is shaped by essential constitutive luck.

- (ii) counterfactual free actions in circumstances continuous with her actual history
- (iii) counterfactual free actions in circumstances continuous with various counterfactual histories.

I contend that parts (i) and (ii) exhaust the integration part of the error theory. In other words, it is only a person's actual moral worth, parts (i) and (ii) of her essential moral worth, that provides insight into whether she is a good or bad person. Part (iii) is a problematic extrapolation from parts (i) and (ii), because part (iii) lacks even a kernel of moral truth with respect to person-level evaluation (cf. McKenna 1998: 139-41).<sup>16</sup> Even so, part (iii) of the error theory should not be jettisoned, because there is more explanatory work to be done concerning cases of constitutive luck. The explanation with respect to part (iii), however, is that the luck-free intuition is purely erroneous.

### **Conclusion**

I have exemplified a general method that I take to be promising for advancing the moral luck debate—and in my case—for arguing that we should accept at least part of the Moral Luck View, which is the view that constitutive, circumstantial, and resultant moral luck exist. I offered an argument for circumstantial moral luck by arguing against the Counterfactual View. I also argued that we have good analogical evidence for resultant moral luck. Finally, I fortified these arguments by explaining away the intuitive appeal of the luck-free intuition as a confusion between moral record and moral worth evaluation.<sup>17</sup>

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<sup>16</sup> Not everyone agrees that part (iii) has no bearing on person-level evaluation (cf. Sorenson 2014: 309-10).

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