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# **Moral luck and moral performance<sup>i</sup>**

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## **ABSTRACT**

The aims of this paper are fourfold. The first aim is to characterize two distinct forms of circumstantial moral luck and illustrate how they are implicitly recognized in pre-theoretical moral thought. The second aim is to identify a significant difference between the ways in which these two kinds of circumstantial luck are morally relevant. The third aim is to show how the acceptance of circumstantial moral luck relates to the acceptance of resultant moral luck. The fourth aim is to defuse a legitimate concern about accepting the existence of circumstantial moral luck, namely the fact that its existence implies substantial moral risks.

## **KEY WORDS**

Agency; Duty; Luck; Regret; Responsibility

## *1. Locating the issue*

The aims of this paper are fourfold. The first aim is to characterize two distinct forms of circumstantial moral luck and illustrate how they are implicitly recognized in pre-theoretical moral thought. The second aim is to identify a significant difference between the ways in which these two kinds of circumstantial luck are morally relevant. The two kinds of circumstantial moral luck are morally relevant in different ways insofar as in one case the luck in question is a ‘choice-dependent’ aspect of moral assessment and in the other a ‘choice-independent’ aspect of moral assessment. The third aim is to show how the acceptance of circumstantial moral luck is relevant to the acceptance of the more widely discussed case of resultant moral luck. The case for accepting circumstantial moral luck is relevant to the case for accepting resultant moral luck because it serves to mitigate one theoretical cost of accepting the existence of resultant moral luck. The theoretical cost in question is the need to substantially qualify the claim that coherent moral assessments are constrained by features of an agent’s situation that are within that agent’s control. The fourth aim is to defuse one legitimate concern about the existence of circumstantial moral luck. It is argued that this concern arises from wrongly inferring from the plausible claim that the recognition of circumstantial moral luck carries with it substantial moral risks the implausible claim that those risks are such as to militate against its recognition.

Cases of circumstantial moral luck form a subset of a wider class of cases in which the moral assessment of agents depends on factors beyond their control. What is distinctive about cases of circumstantial moral luck is that the factors in question involve contingent aspects of their situation that are external to themselves and the (prior or posterior) causal operations of their

agency.<sup>ii</sup> The aspects in question include actually being presented with a situation that morally calls for a response, where that situation is in no interesting sense of the agent's own making. Typical examples include cases where someone finds themselves 'thrown' into a situation in which they are presented with vulnerability or risk facing a morally significant other (e.g. when witnessing a life-threatening emergency). They also include cases where for contingent historical reasons an agent's otherwise admirable dispositions are deemed to be 'out of place' (e.g. when exhibiting consistently distrusting behaviour in an environment characterized by trust, or vice versa).<sup>iii</sup>

The examples of circumstantial moral luck discussed in this paper include comparatively simple cases where an agent is able to manifest a morally admirable disposition and thereby act either rightly or well. (Responding to a situation of acute vulnerability or risk by offering assistance would be one example of manifesting an admirable moral disposition in this way.) Yet some of the examples discussed involve agents for whom it is much less clear that there is any way for them to successfully manifest an admirable disposition and thereby act rightly or well in a given situation. For such agents, the problem is that there is no accessible way for them to overcome their (bad) circumstantial moral luck. (Being faced with a 'tragic' situation in which any display of one's disposition of trustworthiness would be 'out of place' would be one example of being a victim of bad circumstantial moral luck in this way.)<sup>iv</sup> Although it is not the aim of this paper to conclusively establish the existence of either kind of circumstantial moral luck, their implicit recognition in pre-theoretical moral thought is of sufficient interest to be worthy of more theoretical attention than they have tended to receive.<sup>v</sup> There is also a pressing need to get clear about the case for the existence of circumstantial moral luck in a socio-political environment in which arguments are sometimes given for legal, institutional or cultural changes that either invite or imply the differential

moral assessment of individuals based purely on their membership of different demographic groups.<sup>vi</sup>

In focusing on *circumstantial* moral luck, I shall take the discussion of moral luck in a somewhat different direction than what has often been common in recent discussions of moral luck (e.g. the issue of how luck affects what Bernard Williams called ‘agent regret’ (see e.g. Williams 1981; Enoch 2012)). The line of thought I pursue here is therefore orthogonal to the concerns of many philosophers who have recently made important contributions to the literature on this topic. The main focus in this literature has often been on how we should think about cases where prior acts of individual volition are already in play (e.g. in Williams’s case of ‘Gauguin’, who leaves his family behind in order to take the uncertain path of pursuing his own artistic ambitions (see e.g. Slote 1994; Zagzebski 1996; Domsky 2004; Athanassoulis 2005; Raz 2012; Hwang 2013)).<sup>vii</sup> In contrast to most of these discussions, the primary focus in this paper will be on the moral relevance of facts of about a situation in which someone *already finds themselves*, as opposed to facts about that situation that would result from *how they subsequently go on* to act in that situation. I shall, however, make an explicit connection between the discussion of circumstantial luck in this paper and previous discussions of resultant luck in Section 4 below.

It is a working assumption of the discussion that follows that it makes sense to interpret moral assessments that imply the existence of circumstantial moral luck by taking those assessments at ‘face value’. In other words, it is a working assumption of these arguments that the apparent commitment to circumstantial luck that is present in pre-theoretical moral thought is a commitment to *just that*, and not a commitment to something else in disguise (or something

else misleadingly expressed). Although I shall briefly discuss the alternative in passing, I shall make no attempt to independently justify this working assumption in this paper.

## 2. *The problem of moral luck*

According to one canonical formulation, the problem of moral luck arises from the allegedly i) *questionable legitimacy*, of ii) *genuinely moral assessments*, of iii) *individual agents*, in cases where, iv) *significant aspects of what the agents are assessed for* depend on v) *factors beyond their individual control* (Nelkin 2014; my italics). In what follows, I shall interpret the problem of moral luck as arising from the conflict between two moral principles. According to the first principle, coherent moral assessments of agents are constrained by features of the situation of those agents that are within their control. (Compare, for example, the case of a morally innocent bystander who is coercively used as an innocent shield by a group of murderous villains.) This is the so-called ‘control condition’ on moral assessment. According to the second principle, some coherent moral assessment of agents depend on features of their situation that are beyond their control. (Consider, for example, a competent driver who accidentally runs over and kills a pedestrian.) Let’s call this the ‘luck sensitivity’ of moral assessment. The problem of moral luck is whether (and if so, how) the conflict between the ‘control condition’ and ‘luck sensitivity’ can be resolved.<sup>viii</sup> To be clear from the start, I shall take it as given that the first principle on which the conflict depends does genuinely express a deep moral insight. The insight in question is that the degree of control exercised by an agent is always a morally significant factor in a situation. Hence, it is a genuine moral ‘difference maker’. Hence, the absence of control in a given situation does give grounds for morally assessing people differently than one otherwise would (e.g. by

mitigation or excuse). My primary interest is not in the question whether the presence of control should make a difference to the moral assessment of agents, but rather *how much* (or *what kind of*) difference it should make.

### *3. Taking circumstantial moral luck seriously*

The different ways in which agents can be thought of as vulnerable to circumstantial moral luck can be divided into two kinds. I shall label these ‘redemption’ cases and ‘non-redemption’ cases, respectively. In what follows, I give a schematic description of the distinguishing features of each kind and illustrate their moral significance by means of examples.

#### 3.a. Redemption cases

In some European countries, failure to respond to acute vulnerability or risk involving morally significant others is proscribed by law, in the form of so-called ‘Good Samaritan legislation’. Elsewhere, legislators have historically been more reluctant to engage in this kind of legal ‘enforcement of altruism’ (Feldbrugge 1965). Yet whatever the legal situation is, the following two thoughts are widely recognized. The first is that actively responding to acute vulnerability or risk (whether by providing assistance or at least reporting it) is a ‘good’, ‘admirable’ or ‘virtuous’ thing to do. The second thought is that responding to acute vulnerability or risk with indifference or hostility is ‘bad’, ‘vicious’, ‘wrong’, or

‘impermissible’ (see e.g. Lillehammer 2014). Hence it is widely thought that when faced with a situation involving acute vulnerability or risk to morally significant others a morally responsible agent will respond favourably to said vulnerability or risk. Of course, it is often hard to tell what the best way to address the vulnerability or risk in question is (e.g. who, if anyone, should be responsible for taking the initiative to address it; how the responsibilities to address it can be most effectively exercised; how the responsibility to address it is best distributed; whether enough is already being done by others to address it, and so on). Yet however uncertain people may be about the best way to respond to such situations, there is a widely recognized commitment to norms and principles that make substantial demands with respect to what a morally responsible way to respond rules out (e.g. what not to do when observing an accident on the motorway; when witnessing a medical emergency on the underground; or when faced with a ‘crisis’ involving refugees or migrants, and so on).

These kinds of moral assessment frequently involve an element of circumstantial luck (c.f. Nagel 1979; Zimmerman 1987; Urban Walker 1991; Silcox 2006; Hanna 2014). Here I shall consider two examples of this kind of luck. Each example involves an individual who is faced with some actual or possible situation involving acute vulnerability or risk on the part of morally significant others. In each example, the situation in question is one that is not of their making. Consider first the case of Citizen A, who would offer protection or help to an endangered other; who is confronted with an endangered other; and who does offer protection or help. Consider next the case of Citizen B, who would offer protection or help to an endangered other; who is not confronted with an endangered other; and who therefore does not offer protection or help. The way things actually go for Citizens A and B, Citizen A is someone who others may subsequently come to hold in particularly high esteem. Yet the only relevant difference between A and B is that Citizen A (but not B) was actually faced with an



extreme situation in a way that was beyond their control. In other words, Citizen A had the ‘fortune’ (if that is the word) of being able to display their admirable disposition to respond the way the situation called for, whereas Citizen B did not. Yet holding Citizen A in comparatively higher esteem than Citizen B is not thereby ‘unfair’ to B, given the difference between what A and B actually did. Of course, there is another respect in which Citizens A and B are morally on a par: they both exemplify a morally admirable disposition. Yet there is a further respect in which they are importantly different: only one of them (i.e. Citizen A) actually responded to the acute vulnerability and risk of a morally significant other. What makes the difference in this case is essentially a matter of what actually happened, not of what possibly could have happened. This is one respect in which some coherent moral assessments are affected by circumstantial luck.<sup>ix</sup>

Now consider two further cases of people with respect to actual or possible situations involving the acute vulnerability or risk to morally significant others. Once more, in each case the situations in question are not of their making. Consider first the ‘cold-hearted’ Citizen C, who would not offer protection or help to an endangered other; who is confronted with an endangered other; and who does not offer protection or help. Consider next the case of Citizen D, who would not offer protection or help to an endangered other; who is not confronted with an endangered other; and who does not offer protection or help. Given the way things actually go for C and D, Citizen C is someone who others may subsequently come to hold in particularly low esteem. Yet the only relevant difference between C and D is that Citizen C (but not D) was actually faced with an extreme situation in a way that was beyond their control. Citizen C therefore had the ‘misfortune’ (if that is the word) of being able to display their non-admirable disposition not to respond in the way the situation called for. Citizen D was spared that ‘misfortune’. Yet holding Citizen C in comparatively lower esteem

than Citizen D is not thereby ‘unfair’ to C, given the difference between what C and D actually did. Of course, there is another respect in which Citizens C and D are morally on a par: they both exemplify a morally questionable disposition. Yet there is a further respect in which they are importantly different: only one of them (i.e. Citizen C) actually failed to respond to the acute vulnerability and risk of a morally significant other. Once more, what makes the difference in this case is a matter of what actually happens, not merely of what possibly could have happened.<sup>x</sup> Once more, this is one respect in which some coherent moral assessments are affected by circumstantial luck.<sup>xi</sup>

Citizens A, B, C and D can be compared along two separate dimensions of assessment. The first dimension concerns whether or not the agents display some admirable disposition. The second dimension concerns how the agents in question actually act (or do not act). Along the first dimension, Citizen B is morally on a par with A. Along the second dimension, Citizen B is morally on a par with C and D. Yet Citizen B is not thereby morally on a par with C and D all things considered. For example, it would be surprising to be told that Citizen B is a suitable object of censure in the way that C is. After all, C’s cold-hearted disposition actually prevents him from acting in the way the situation calls for when confronted with an extreme situation in a way that is not true of Citizen B. Nor is Citizen B a suitable object of censure in just the same way that D is, even if D, just like B, has the ‘fortune’ of not actually having the moral quality of his disposition put to the test. If so, an overall judgement of the schematically described cases of A, B, C and D allows us to make sense of a comparative moral assessment of these agents as follows: B is held in lower esteem than A; C is held in lower esteem than D; and D is held in lower esteem than B. This is the case even though none of B, C or D actually responded to the acute vulnerability or risk of a morally significant other. If coherent moral assessments excluded all elements of circumstantial luck, this

comparative assessment of the intrinsic merits of A, B, C and D's behaviour would make no intrinsic sense.<sup>xii</sup> And yet (or so it would seem) it does.<sup>xiii</sup>

### 3.b. Non-redemption cases

So far I have been focusing on cases of circumstantial luck in which the agents involved are in principle able to exemplify a virtuous disposition by acting rightly or well. I have labelled these cases 'redemption cases'. Not all cases of circumstantial luck belong in this class. In other cases, the circumstances in which agents find themselves are such as to make even the otherwise most admirable set of dispositions either 'misfire' or otherwise fail to manifest themselves in the right way. In such cases, a range of otherwise achievable moral excellences will be contingently out of reach, at least in the short or medium term. I label such cases 'non-redemption' cases.<sup>xiv</sup>

We are all familiar with otherwise admirably motivated forms of behaviour which, given the particular social context of their manifestation, are deemed to be either 'out of place' or otherwise inappropriate. (Consider, for example, a friend from 'the province' whose displays of openness or intimacy are considered inappropriate in 'cosmopolitan' company.) In some cases, the problem is a *synchronic* one about the persons displaying said behaviour finding themselves in circumstances hostile to the morally admirable display of their natural or cultivated abilities. Consider Citizen E, who has an impeccable disposition never to speak out of turn. In a cultural context where never speaking out of turn is a mark of acceptable conversational behaviour, Citizen E may be hailed as a paradigm of virtue. Yet, against a

different social background, so may Citizen F, who has an unfailing disposition to interrupt every conversation in order to get their point across in a context where constant interruptions are a recognized part of the natural flow of respectful conversation. If a person like Citizen E (let's call them Citizen G) were to be suddenly dropped into the company of Citizen F, or a person like Citizen F (let's call them Citizen H) were to be suddenly dropped into the company of Citizen E, the chances are that their ability to cope with the socially operative norms of good conversation would at best require a process of concerted adjustment. In their new environment, Citizen G might be considered ineffectual, weak, or someone not to depend on when things get tough (e.g. when standing up for people in an emergency). Citizen H, however, might be considered aggressive, rude, and a kind of person it is better to avoid (e.g. when deciding who to converse with about serious issues). At worst, Citizens G and H would be permanently compromised by the dispositions they may have ever so carefully cultivated in their original environment (whether on trivial matters of 'etiquette', or on basic matters of survival). In either case, their ability to display the kind of social behaviour their interlocutors would qualify as virtuous or admirable would be (at least initially) compromised. Yet with respect to the dispositions they have been able to cultivate, Citizens E and G (or F and H) could be perfectly on a par with respect to the morally relevant aspects of their situation that are within their control.<sup>xv</sup>

In other cases, the problem is a *diachronic* one about the persons displaying said behaviour finding themselves in circumstances where the moral assessment of said behaviour is subject to historical change (e.g. because the occasion for its display is judged to be 'out of date', or 'too late').<sup>xvi</sup> Consider Citizen I, who is generally able to control their (explicit or implicit) biases in their dealings with some 'out-group', while carrying out their professional activities in a public institution in early 20th Century Western Europe. Compare Citizen I to Citizen K,

who in exactly the same social circumstances is either unable or unwilling to make any attempt to address or control the biases in question. In a cultural context where discrimination and prejudice directed at the relevant ‘out-groups’ is either considered normal or is even widely applauded, one might reasonably single out Citizen I out as an exemplar of virtue, at least with reference to the comparison class that includes Citizen K. (The History books include enough examples of this kind for the case to be widely recognizable.) Of course, this is not to say that one would thereby judge the behaviour of citizens who fail to display Citizen I’s degree of self-control as being morally beyond reproach.<sup>xvii</sup> Now consider Citizen J, who is generally able to control their (explicit or implicit) biases in the context of handling some social ‘out-group’ while carrying out their professional activities in a public institution in early 21st Century Western Europe. Compare Citizen J to Citizen L, who in exactly the same social circumstances is either unable or unwilling to make any attempt to control the biases in question. In a cultural context where discrimination and prejudice directed at the relevant ‘out-groups’ have generally come to be considered unacceptable and is widely censured, it would not be reasonable to single out Citizen J as an exemplar of virtue, even with reference to the comparison class that includes Citizen L.<sup>xviii</sup> On the contrary, the way Citizen J’s moral achievement of controlling their biases is morally assessed will be sensitive to an historically contingent and specific reference class. The choice of this reference class will be sensitive to what other morally competent people judge they can reasonably expect of each other. This, in turn, will be sensitive to what other people say and do in the specific historical circumstances in which the individuals being morally assessed happen to find themselves. Given that these circumstances are relevantly different with respect to the common expectations made of public officials in the early 20<sup>th</sup> and the early 21<sup>st</sup> Century, for example, it is only reasonable to expect that the moral assessments made of otherwise identical behaviour across these contexts will correspondingly differ.

The line of thought in the previous paragraph can be further motivated by asking what a colleague might say to Citizens I and J respectively if the question were to come up of whether it would be appropriate to single them out for some special kind of moral praise or reward. In the case of Citizen I there is a reasonable case for claiming that they are deserving of some kind of special moral praise or reward. In the case of Citizen J that case is at least weaker. Indeed, it would not be entirely surprising to hear someone addressing Citizen J by refusing to consider them for any significant moral praise or reward, on the grounds that it is ‘too late’ for that now, however much one might otherwise recognize their personal effort or diligence.<sup>xix</sup> Indeed, in some cases the perceived moral valence of otherwise admirable behaviour can actually be observed to switch over time. These include examples where certain behaviours or forms of address that have traditionally been regarded as expressive of respect or reverence have come to be regarded as patronizing, antiquated, or as signs of disrespect (e.g. being addressed as ‘ladies and gentlemen’, or men consistently holding doors open for women at restaurants, and so on (c.f. Oshana 2006)).<sup>xx</sup>

As presented above, the case for assessing Citizens I and J differently should not be understood as a refusal to appreciate the moral significance the control-based aspects of their moral performance. We can agree that their ability to control their biases is a morally significant achievement both for Citizen I and Citizen J. We can also agree that this ability is no more or less within their personal control in one case than in the other. Finally, we can agree that any actual display of bias, discrimination or prejudice would be wrong, no less in Citizen I’s circumstances than in J’s. In this one respect, we can agree that Citizens I and J are morally on a par. Yet it does not follow that Citizens I and J are exactly on a par with

respect to the overall moral assessment of their performance. They will not be exactly on a par with respect to the moral assessment of their performance insofar as the overall moral significance of their performance is further sensitive to the social and historical context in which that performance takes place. For example, the overall assessment of their performance is likely to be sensitive to what the locally accessible terms are in which that performance can be interpreted, and what the agents in question could reasonably be expected to make of it as a result.

#### *4. Interpretations and implications*

##### 4.a. Choice-dependence versus choice-independence

There is more than one way to understand the claim that the moral assessments of agents can be affected by features of their situation beyond their control. Here I consider two. On the first interpretation, ‘being affected by’ implies that some feature of an agent’s situation makes a difference to the moral assessment of that agent in the sense that it is one among a larger set of facts that make it possible (or not) for the agent’s behaviour to acquire some moral quality, *depending on how the agent goes on to act*. To this extent it is a ‘choice-sensitive’ aspect of moral assessment. It is in this sense that the moral assessment of agents can be hostage to circumstantial moral luck in the case of someone who actually is (or is not) presented with a case of acute vulnerability or risk to some morally significant other. It is also therefore circumstantial luck in this ‘choice-sensitive’ sense that is the distinguishing feature of the ‘redemption’ cases discussed in the previous section.

On the second interpretation, ‘being affected by’ implies that some feature of an agent’s situation makes a difference to the moral assessment of that agent in the sense that it is one among a larger set of facts that make it possible (or not) for the agent’s behaviour to acquire some moral quality, *regardless of how the agent goes on to act*. To this extent it is a ‘choice-independent’ aspect of moral assessment. It is in this sense that the moral assessment of agents can be hostage to circumstantial moral luck in the case of someone whose moral performance in a certain situation is ‘tainted’ or otherwise affected by the actions of others. It is therefore circumstantial luck in this ‘choice-independent’ sense that is the distinguishing feature of the ‘non-redemption’ cases discussed in the previous section.

Both ‘choice-dependent’ and ‘choice-independent’ aspects of moral assessment imply the existence of circumstantial constraints on the kind of moral performance that individuals can hope to achieve. Yet they do so in different ways. In the former case, the moral assessment of an agent’s performance depends on features of their situation they themselves can affect by acting a certain way if the opportunity arises. In the latter case, the moral assessment of the agent’s performance is constrained by the features of their situation in such a way that the relevant moral qualities attributable to that performance will obtain regardless of how they go on to act. In the former case, we are dealing with a situation in which some given moral quality or status (such as having acted beyond the call of duty) is in principle available depending on what the agent does. In the latter case, we are dealing with a situation in which some given moral quality or status (such as having acted beyond the call of duty) is simply not available (or is at least not available in the same way).



It is possible to accept the existence of one of these kinds of circumstantial moral luck while rejecting the existence of the other. In particular, it might seem less theoretically costly to accept only the existence of ‘choice dependent’ moral luck insofar as the ‘redemptive’ aspect of choice dependence offers at least some limited solace to those who feel a strong commitment to the ‘control condition’ on moral assessment. There would seem to be nothing of comparable theoretical gain in accepting only the existence of ‘choice-independent’ moral luck. To this extent, the case for ‘choice-dependent’ moral luck is the less theoretically problematic of the two. Given that the case for the existence of circumstantial moral luck would survive the rejection of either one or the other of ‘choice-dependent’ or ‘choice-independent’ moral luck (but not both), this tentative conclusion would suffice to establish the main conclusions of the present paper. Having said that, the downstream costs of rejecting the existence of ‘choice-independent’ moral luck should not be underestimated. The rhetorical force of moral assessments that are specifically moderated by ‘non-redemptive’ aspects of the socio-political moral circumstances of their targets have arguably played an important historical role in the criticism and reform of undesirable practices and institutions, from the ethics of professional address to the unfairness of ‘old boys networks’.<sup>xxi</sup> To reject the existence of ‘choice-independent’ moral luck would therefore arguably require a significant reconfiguration of the theoretical basis of such assessments and the progressive politics of which they form a part.<sup>xxii</sup>

#### 4.b. Circumstantial versus resultant luck

If what has been said in the previous section goes any way to mitigate against skepticism about the existence of circumstantial moral luck, then it arguably goes even further to

mitigate against skepticism about the existence of ‘resultant’ moral luck. After all, in cases of resultant luck, the putative luck in question stands in a non-trivial and (downstream) causal relation to ends the agent has actually set herself and her diligence in taking due account of the risks and contingent obstacles that stand in the way of their realization (e.g. in the case of a driver who accidentally runs over and kills a pedestrian). In such cases, any resultant moral luck will be located within a domain of circumstantial factors that is constitutively constrained by facts about the *prior agency* of *that very* individual. Although the existence of resultant moral luck is inconsistent with a strict reading of the ‘control condition’ on moral assessment, it conflicts with that condition only within a restricted event horizon (or causal ‘cone’) that is fixed by how the target of moral assessment has previously exercised their agency (over which they are assumed to have had some control). In contrast, the luck that is operative in cases of circumstantial moral luck need not bear any interesting relation to how the target of moral assessment has previously exercised their agency at all. Thus, in both the ‘redemption’ and ‘non-redemption’ cases discussed in the previous section, the fortuitous circumstantial features of the situation that affect the moral assessment of the agent could in each case be located entirely outside the restricted event horizon (or causal ‘cone’) that is fixed by how the subject of moral assessment has previously exercised their agency (over which they are assumed to have had some control).<sup>xxiii</sup> If the obstacle to admitting the existence of moral luck is that it fails to cohere with the ‘control condition’ of moral assessment, then the admission of resultant moral luck is therefore a lesser departure from a strict reading of that condition than is the admission of circumstantial moral luck. To this extent, the acceptance of resultant moral luck comes at a significantly lower theoretical cost than the acceptance of circumstantial moral luck.<sup>xxiv</sup> It follows that if there is no conclusive case for denying the possibility of coherent moral assessment in the case of circumstantial luck, there is no conclusive case for denying it in the case of resultant luck either, *all-else-being-equal*.

### 5. *Two problems, no solution?*

There are several sources of reasonable suspicion about the kinds of circumstantial moral luck described in this paper. Here I shall mention two. The first source of suspicion is that the moral assessments made of agents in these cases fail to connect with the ‘real’ problem of moral luck, which is one about whether we can coherently assess someone morally for something that is beyond their control, and not a problem of whether we can coherently assess someone morally for how they *go on to respond* to something that is beyond their control.<sup>xxv</sup> If so, the classification of the cases described in this paper as examples of circumstantial moral luck is based on a simple confusion.

This source of suspicion is misguided in the present context.<sup>xxvi</sup> The point at issue in the present paper is not whether someone is morally assessable for how they conduct themselves once they find themselves in a given situation. The issue is whether the moral assessment of that someone is sensitive to the mere fact they find themselves in that situation, where the fact that they find themselves in that situation is a matter beyond their control. How we deal with that point is a question that could obviously have serious implications for how it makes sense to morally assess the agent for how they go on to conduct themselves in that situation. Yet it is also an answer it must be possible to arrive at in some sense ‘prior’ to that assessment.<sup>xxvii</sup>

A more troubling source of suspicion derives from the undeniable fact that the existence of circumstantial moral luck implies the further existence of a number of substantial moral risks. For example, it might be objected that accepting the existence of circumstantial luck leaves the moral assessment of individuals unfairly hostage to the moral failings of others. Of course we can morally assess an agent for what she does in response to a situation in which she finds herself as a result of events beyond her control. Yet there is clearly something problematic about letting that assessment be affected by the mere fact that she finds herself in that situation if she does so only as a result of another person's previous morally unacceptable behaviour (e.g. where the person who invited you to lunch mischievously leaves you with the bill).

This worry about being unacceptably 'imposed upon' is a reasonable (and sometimes decisive) moral concern (see e.g. Kamm 2007). Indeed, to make oneself hostage to the morally bad behaviour of others in a morally imperfect world is a potential cause of absurd moral responsibility proliferation (e.g. because the less well other people behave, the further your moral responsibilities would extend). Even aside from the obvious co-ordination problems involved, the universal adoption of unrestricted moral responsibility cultivation and the negative self-appraisals this would entail is a recipe for: *misunderstanding* (e.g. 'No, it is really not your business', as objected by a victim of a moral 'busybody'); *despondency* (e.g. 'I never seem to be able to do enough', as lamented by a compulsive 'supererogator'); *moralistic arms-races* (e.g. 'Nothing short of the extraordinary is enough', as argued by a moral perfectionist); *undesirable side-effects* (e.g. 'How dare you even smile when...', uttered as an accusation by someone unable to let go of some morally serious issue); or *moral free-riding* (e.g. 'This one (and that one, and that one...) falls on you.', as manipulatively asserted by a moralising egoist).<sup>xxviii</sup>

There is a plethora of ways in which the acceptance of circumstantial moral luck is liable to badly distort moral thinking unless it is moderated by other morally relevant concerns. Yet the mere fact that moral thought is vulnerable to distortion in these and other ways does not rule out that the moral assessment of agents who are victims of circumstantial moral luck is a reflectively coherent possibility. In any case, the presence of some previous moral wrongdoing on the part of others in a certain situation does not normally cancel out every aspect of our own responsibility in that situation, even if it normally does alter some of it (e.g. when, having been left by others with all the mess, you decide to clean up some of it, but not all).<sup>xxix</sup> Furthermore, the fact that prior to the responsibility for a certain situation being accepted *by someone* there is no determinate answer to the question *on whom* some burden should fall (or how) does not imply that there is no responsibility to distribute in the first place (e.g. when everyone faced with an unforeseen emergency accepts a responsibility to ensure that the burdens of rescue are distributed effectively among themselves).<sup>xxx</sup> Finally, not all situations which morally call for a response are caused by the morally unacceptable behaviour of other people or, indeed, by the actions of anyone at all (e.g. in the case of a natural catastrophe, or a pandemic). To infer from the substantial moral risks that flow from accepting the existence of circumstantial moral luck that the very idea of such luck is either incoherent or misguided is to fall into the trap of making an impossible moral ‘ideal’ the enemy of ‘the actual’, or ‘real’.

## 6. Concluding remarks

Some parts of pre-theoretical moral thought contain a commitment to the existence of circumstantial moral luck. Some of this luck plays the role of a choice-dependent aspect of the moral assessment of agents. Some of it plays the role of a choice-independent aspect of such assessment. To recognize the existence of either kind of circumstantial moral luck involves the recognition of a range of substantial moral risks. It also involves a commitment to a conception of moral thought that is potentially in tension with the idea that the domain of ‘morality’ can be exhaustively accounted for in terms of an ideal of autonomous and independent individual agency. For some moral theorists of a strongly individualist persuasion, the fact of this tension presents a strong incentive to either deny the existence of circumstantial moral luck altogether or to explain away its existence in other terms. It has not been my aim in this paper to show that no theoretical strategy along these lines could possibly succeed. What I do claim to have shown is that the pursuit of such a strategy will struggle to make sense of the lived experience of moral thought.

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<sup>i</sup> Parts of this material have been previously presented at a Birkbeck Guilt Colloquium in 2014; an Ethics at the Intersection of Philosophy and Anthropology workshop on ‘Rethinking Responsibility’ at Birkbeck, in 2015; a CRASSH conference on ‘Hierarchy, Egalitarianism and Responsibility’ at Cambridge in 2016; a colloquium on ‘Modalities of the Good’, organized by the Czech Academy of Sciences and Charles University, Prague in 2016; and at departmental colloquia in Essex and Leeds, also in 2016. I am grateful to members of the audience on each of these occasions for their comments on the material presented there, and to James Laidlaw for his deep and insightful observations over many years on the topics of agency and responsibility.

<sup>ii</sup> In saying this, I do not mean to imply that the distinction between circumstantial and other kinds of moral luck (e.g. causal, constitutive, resultant) need always be sharp. Nor do I mean to imply that no case of moral luck could ever fall into more than one of these categories.

<sup>iii</sup> Examples may also include cases where someone benefits non-voluntarily from a past harm done by a third party to another (e.g. as a result of historical injustice or oppression). Although highly relevant to the main argument of the paper, such cases will not play a substantial role in the discussion that follows. I am grateful to Neil Carrier for helpful discussion of this topic.

<sup>iv</sup> There is a close connection between the sense of ‘tragedy’ at work here and the notion of tragedy that has been with us at least since the Greeks. To trace those connections falls outside the remit of this paper. For further discussion of the issue, see e.g. Nussbaum 1986.

<sup>v</sup> A comprehensive treatment of this issue would require a discussion of the difference between someone being prevented by their circumstances from realizing *some* moral excellences *rather than others* and someone being prevented by their circumstances from realizing moral excellence *tout court*. It would also require a discussion of the meta-ethical implications of this distinction. For a recent discussion of the significance of this topic in the context of catastrophic historical events, see Freyenhagen 2013.

<sup>vi</sup> Among obvious examples of issues falling under this heading can be counted class relations; gender politics; inter-racial relations; post-colonial ‘privilege’ and the management of ‘diversity’. (See Section 3.b. below.)

<sup>vii</sup> In his (1995), Williams moderates his discussion in Williams (1981), when he writes: ‘morality does try to resist luck... but not every ethical outlook is equally devoted to doing so. I entirely agree that an Aristotelian emphasis in ethics, for instance, need not run into the same difficulties’ (Williams 1995, p. 241). Explicating Williams’s distinction between Aristotelian ‘ethics’ and what he calls ‘the morality system’ would take the discussion too far afield here. The omission to consider this (or some analogous) distinction arguably subtracts from the otherwise compelling approach to this issue in Urban Walker 1991. On the relationship between luck on the one hand, and different dimensions of moral assessment on the other (e.g. deontic versus teleological), see e.g. Andre 1983; Smith 1983; Adams 1985; Nussbaum 1986; Rosebury 1995; Margalit 2002; Scanlon 2008; Fricker 2016.

<sup>viii</sup> To this extent, the discussion in this paper does partial justice to the claim in Nagel (1979) that we are dealing with a ‘paradox’. There is another respect in which the discussion in this paper does not do justice to Nagel’s claim; namely that it puts pressure on the idea that the apparent ‘paradox’ in question is a real one. (See e.g. the section on ‘redemption’ cases below, which bears directly on some of the cases discussed in Nagel’s seminal paper.) On one possible reading, the sense of paradox elicited by Nagel’s discussion is the result of a temptation to draw an exhaustive distinction between an agent’s subjective point of view and

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some entirely de-personalized point of view from which the agent is conceived of as no more than an arbitrary unit in an impersonal chain of events. Getting to the bottom of this issue would require much more discussion than I can give it here. For further discussion, see e.g. Nagel 1986.

<sup>ix</sup> It may also be a reason why some Christian philosophers, such as Kant, have been so suspicious of moral luck. Imagine the difference between A and B being admitted to Heaven or not being decided on this contingent and fortuitous basis. (See Kant 1785/1981.) For a different view of Kant on (resultant) moral luck, see Hartman 2019b.

<sup>x</sup> C.f. Hannah Arendt, who writes: ‘No matter through what accidents of exterior or interior circumstances you were pushed onto the road of becoming a criminal, there is an abyss between the actuality of what you did and the potentiality of what others might have done.’ (Arendt 1963, p. 278; quoted in Young 2011, p. 77.) To Arendt’s ‘others’, one might add: ‘you yourself’.

<sup>xi</sup> Once more, it may also be a reason why some Christian philosophers, such as Kant, have been so suspicious of moral luck. Imagine the difference between C and D being condemned to Hell or not being decided on this contingent and fortuitous basis. (See Kant 1785/1981.) Once more, see Hartman 2019b for a different view of Kant on (resultant) luck.

<sup>xii</sup> Analogous cases where practical assessment is sensitive to actual performance include the frustration of the perfectly trained but non-employed rescue-team; the unused substitute of a champion-winning sporting side; or the well-positioned player who never receives the pass to score the winning goal. Pursuing these analogies further would take the discussion too far afield.

<sup>xiii</sup> The argument in the preceding paragraphs is consistent with the independently plausible claim that we should be reluctant to attribute a disposition to someone if that disposition (or some developmental predecessor of that disposition) is *never* actually manifested at all (e.g. on a minimal, but non-trivial, number of occasions). I shall take this qualification as read in what follows.

<sup>xiv</sup> The ‘flipside’ of the phenomenon considered in the main text would be cases where an agent is favoured by circumstantial luck in such a way as to render their moral performance ‘non-redemptively’ admirable in some moral respect. Doing justice to such cases would require much more attention than I am able to give it on this occasion.

<sup>xv</sup> The case made in this paragraph could be extended to include a range of comparable practices of ‘waiting one’s turn’, or the lack thereof, as one makes the journey from one cultural context to another. For further discussion of the role of relevant reactive attitudes (such as shame and guilt; pride and blame) in the context of the kind of moral appraisals at issue here, see e.g. Strawson 1962; Smith 1983; Adams 1985; Scanlon 2008; Fricker 2016.

<sup>xvi</sup> Or: too early. For reasons of space, I do not consider such future-directed cases in this paper. Nor, therefore, do I consider the additional complexities that future uncertainty and other distinguishing features of such cases would introduce.

<sup>xvii</sup> The historical testimonies of people like Citizen I sometimes involve precisely the claim that there was nothing special or supererogatory about their own behaviour. (See e.g. some of the testimonies in Johnson & Reuband 2005.)

<sup>xviii</sup> This is not to say that there is no reason to appreciate the genuine achievement of J in controlling their biases. Indeed, it would be part of any sensible moral education (or ‘training’) to generate an aspiration to control one’s biases, e.g. by means of suitably managed praise and encouragement and the like.

<sup>xix</sup> There is a potential analogy between the kind of moral luck at issue here and the issue of ‘artistic’ luck exemplified in controversies about the value of creativity and originality in the

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arts. To pursue this analogy here would take the discussion too far afield. For a discussion relevant to the artistic case, see e.g. Davies 2004.

<sup>xx</sup> There is an extreme view, associated with Theodor Adorno, according to which if the behaviour displayed by some human beings towards others crosses a limit of moral extremity, the result is that all forms of (positive) moral assessment are subsequently rendered inappropriate (see e.g. Freyenhagen 2013). This is not the view being considered here.

<sup>xxi</sup> Examples of the kind include objections to be called ‘hen’, ‘love’ or ‘darling’, as well as reforms of working patterns that favor one gender over another (e.g. the practice of having major decisions made in traditionally ‘male’ environments, such as the pub or over a ‘wet’ lunch). At the risk of repeating the obvious, none of these practices need imply either ill will or conspiratorial intent on the part of their average participants.

<sup>xxii</sup> There are two principal ways in which such a reconfiguration might go. The first is to reject the basis of the moral assessments in question and so deny their legitimacy outright. The second is to accept the practical legitimacy of the moral assessments in question but explain that legitimacy in terms that do not presuppose the existence of circumstantial moral luck ‘strictly speaking’ (e.g. a pragmatic justification on ‘fictionalist’ terms). Although I am doubtful about the explanatory prospects of each of these options, I shall not elaborate on my reasons for that skepticism here. As noted at the outset, for the purposes of this paper I am working on the assumption that the legitimacy of moral assessments involving circumstantial moral luck is a topic that is appropriately addressed by taking such assessments at their ‘face value’.

<sup>xxiii</sup> To this extent, the cases of circumstantial luck discussed in this paper may also differ from standard cases of ‘constitutive’ and ‘causal’ luck discussed in the literature. I do not propose to pursue these comparisons further here.

<sup>xxiv</sup> It is a potential corollary of the argument in this section that if not all coherent moral assessments seem really ‘fair’ to the persons at which they are directed, that is because not all moral assessments of persons are exhausted by considerations of individual fairness. In other words, there could be more to ‘morality’ than comparatively narrow considerations of fairness in this sense. (I say ‘narrow’ considerations of fairness because at a higher level of abstraction, all legitimate targets of moral assessments could still in principle be treated ‘the same’, and so be thought to be treated ‘fairly’ in some sense. The question at issue is where to draw the boundaries of morally probative ‘sameness’.) For extended discussion of the ‘unfairness’ of morality with specific reference to the issue of moral luck, see Hartman (2019a).

<sup>xxv</sup> The latter response is clearly something that could in principle be within their control, at least in ‘redemption cases’.

<sup>xxvi</sup> One issue arising here is the relationship between moral assessments in general and attributions of moral responsibility in particular. For further discussion of the intrinsically plausible idea that someone could have a *moral duty to take responsibility* for something for which they are not *antecedently morally responsible*, see Enoch 2012. See also Dworkin 1986, p.196ff; and Young 2011 for earlier elaborations of a similar idea in the language of obligation.

<sup>xxvii</sup> Discussions of moral luck are often formulated in the language of moral responsibility. Say that *someone, A, is responsible for something, S, in circumstances, C, in virtue of some morally relevant feature of those circumstances, fC*. Those who deny the existence of moral luck hold that the range of *fC* is restricted by facts about *A*’s agency broadly understood, in particular by which aspects of *C* are within *A*’s control. Those who affirm the existence of moral luck hold that the range of *fC* includes, but is not restricted by, aspects of *C* within *A*’s

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control. Thus understood, there is no interesting question whether there is a definable concept of moral responsibility that is able to capture the account of circumstantial moral luck in the previous sections of this paper. What we have instead is an interesting (and morally substantial) question of what the admissible range of *fC* is.

<sup>xxviii</sup> A very different kind of moral risk consists in agents making spurious appeals to moral luck precisely in order to *evade* responsibility for morally problematic aspects of the situation over which they actually *do* exercise (or have exercised) individual control. Accepting the coherence of moral assessments involving circumstantial moral luck does not preclude alertness to this distinctive source of moral danger.

<sup>xxix</sup> Of course, some cases that do involve the morally unacceptable behaviour of others also involve previous behaviour on our own part that shows that we really had it coming (e.g. when someone walks away from the bill to expose me for having plotted to do the same myself).

<sup>xxx</sup> For a treatment of moral luck that is in many ways sympathetic to the one developed in the main text, see Urban Walker 1991, who writes that ‘the match between choice and action on the one hand, and accountability and desert on the other is... mediated by complex social understandings which... agents are expected to appreciate and... share’ (Urban Walker 1991, p. 22). For a discussion of the contestable relationship between moral responsibility and the operative question in any given context of who ‘we’ are (e.g. in the sense of someone with a certain biography, or a morally salient ‘social self’), see e.g. Dan-Cohen 1992.