Moral Luck Defended

NATHAN HANNA

Drexel University

"Life is full of precluded possibilities." —Bill Watterson[1]

Introduction

Moral luck occurs when someone's moral standing is affected by factors beyond her control, i.e., "luck." Many philosophers reject moral luck. I don't. I think there's lots of it.[2] Here, I'll defend a particular kind of it: circumstantial luck. Circumstantial luck is luck in one's circumstances that affects one's moral standing, e.g., luck involving one's choices and opportunities. I'll criticize the standard argument against circumstantial luck. Most philosophers I'll discuss restrict their anti-moral luck claims to claims about responsibility, insisting that degrees of praiseworthiness, blameworthiness, laudability, and culpability can't be affected by luck in circumstances. So I'll focus on these properties.[3]

Rejection of moral luck is motivated by the Control Principle. Dana Nelkin (2008) puts it like this.

> CP   We are morally assessable only to the extent that what we are assessed for depends on factors under our control.

She also says that CP has a corollary that puts control's significance in comparative terms.

> CP$_c$ Two people ought not to be morally assessed differently if the differences between them are due only to factors beyond their control.

Many find CP and CP_c intuitively obvious—so much so that these principles are rarely argued for. For example, David Enoch and Andrei Marmor assume both claims. They only explicitly state CP, but they take it to have the same implications for responsibility that CP_c has. Charitably, we can take them as either thinking that CP entails CP_c or as assuming that similar considerations support both claims.[4] They assume these principles because "the condition of control has enough intuitive support and philosophical credentials that one would need very strong reasons to discard it," reasons that "proponents of moral luck have not provided" (Enoch and Marmor 2007: 407–8; cf. Nagel 1979: 25–27, Zimmerman 2002: 559).

The standard way of maintaining CP and CP_c against apparent circumstantial luck is to claim that counterfactuals about what agents would do in different circumstances affect their degree of responsibility. Call this strategy the counterfactual gambit. I reject the gambit. If the gambit is necessary to preserve the conjunction of CP and CP_c—and, for reasons I'll get to, it seems to be—then we should reject the conjunction. There are several reasons why.

First, there are good reasons to think that the gambit is false, that agents aren't responsible in virtue of the relevant counterfactuals. Second, we don't obviously need the conjunction to capture control's significance. I reject CP_c. CP doesn't entail CP_c and CP captures much that's important about control. Third, the only argument typically given for the conjunction—a fairness based argument—isn't compelling. Its superficial attractiveness explains the conjunction's intuitive appeal. Its shortcomings discredit the supporting intuitions. All this makes for a compelling case against the conjunction.

I begin by outlining the gambit. I note that it's well motivated by the conjunction. But I argue that we should reject the conjunction for the reasons mentioned. I discuss them in turn and conclude by briefly exploring the implications my discussion has for other kinds of moral luck.

1. The Counterfactual Gambit

Michael Zimmerman (2002: 565) compares two assassins, George and Georg, who are alike save for the following. George shoots and kills his target. Georg can't take the shot because a truck blocks his line of sight. Zimmerman holds that this difference doesn't affect Georg's comparative degree of responsibility. He claims that George and Georg are equally culpable and that they're both as culpable as we typically take murderers to be, even though Georg didn't murder anyone. Zimmerman says that Georg is that culpable because "he would have freely killed [his target]" had circumstances cooperated.

Enoch and Marmor (2007: 420–25) say the same thing about a similar case. They acknowledge that we don't usually say this about agents like these. We may, they grant, even hesitate to do so when considering idealized hypothetical cases. But they say that this is only because our epistemic limitations make it hard to know the relevant counterfactuals.

Among others, Norvin Richards (1986) and Judith Jarvis Thomson (1989) also endorse this strategy, which is attractive for a simple reason. Nothing else seems like a compelling basis for rejecting commonsense comparative judgments on the basis of CP and CP_c *while* maintaining that people are responsible to varying degrees in virtue of what they do. I'll elaborate.

CP and CP_c entail that George and Georg are equally culpable. That's consistent with the claim that neither is as culpable as we typically take murderers to be (cf. Zimmerman 1988: 135–6). Since, prima facie, those who don't commit murder or help to bring about a murder aren't that culpable, there's a reason to think that Georg isn't that culpable. If he isn't, and if he and George are equally culpable, George isn't that culpable either. This argument can be generalized in an obvious way to entail the conclusion that no one is responsible to any degree in virtue of what they do (since for any act an agent performs there's a counterpart of hers who doesn't perform it because of lucky circumstances). If you think George and Georg are equally culpable *and* that they're both as culpable as we typically take murderers to be, you must appeal to more than CP and CP_c. You must point to some fact about Georg in virtue of which he's that culpable. The counterfactual looks like your only option.[5]

The need for such appeals is especially clear when the actual and counterfactual circumstances differ radically. Take a standard case. Someone who would have collaborated with the Nazis leads a relatively blameless life because she emigrated for business reasons before the Nazis took power. Her moral record is radically different from what it would have been. There are no actions or intentions we can point to to justify the claim that she and her counterpart are equally culpable. The only candidates are the facts about her that ground the counterfactual. These include her susceptibility to manipulation and coercion and her tendency to defer to authority. I take it such characteristics don't make one as culpable as a Nazi collaborator. They may reflect badly on one, but not *that* badly. One can have character traits or desires and not act on them. Not acting on them typically affects one's degree of responsibility. Prima facie, those who have bad character traits but don't act on them aren't as culpable as otherwise identical people who do. And even if one does act on them, not all enactments obviously have the same effect on one's degree of responsibility.[6]

Similar claims seem to hold for cases where the actual and counterfactual circumstances are more alike. The preparations Georg made and the desires, intentions, and character traits he exhibited reflect badly on him. But they don't seem to make him as culpable as George. Just as one might not enact a character trait, one can make preparations or form intentions and not follow through. George is as culpable as he is because he murdered someone. Georg didn't. Prima facie, such differences affect one's degree of responsibility. Moral luck's opponents resort to the counterfactual gambit to defend the

claim that such differences don't affect one's degree of responsibility when those differences are due to luck in circumstances.

In the following sections, I'll present some counterexamples to the gambit and explore some of its problematic implications.

2. Problem Cases

Provisionally, let's take the gambit to endorse this claim.

> G   If an agent would freely perform action φ if she were in circumstances C, then her degree of responsibility is the same as it would have been if she had freely φ-ed in C.

I'll offer a counterexample to G. Then I'll consider the objection that the gambit doesn't have to endorse G. I'll show that this objection fails. Then I'll consider ways of trying to defend G against my argument. Here's the counterexample. Jimmy promised his spouse to stop eating at the local Mc-Donald's. But he knows that the following is true.

> M   If Jimmy were driving by the local McDonald's while it is open, he would succumb to temptation and break his promise.

Jimmy is intent on not breaking his promise and he exploits his knowledge of M towards this end. He regularly avoids driving by the McDonald's while it's open. Call these circumstances c.

Does M make Jimmy culpable to some degree? If so, to what degree?[7] To the first question, I say no because Jimmy deliberately avoids c to avoid breaking his promise. Granted, M is true because of certain failings like Jimmy's susceptibility to temptation. But it's not obvious that how those failings would manifest themselves in c makes him culpable. To me at least, it seems inappropriate to take him to be culpable on the basis of M, partly because of his intentions and behavior with respect to c. (I'll offer support for this intuition below.) Notice that we often behave like Jimmy. We often modify our behavior in such ways in light of beliefs about what we would do. And we take this to affect our degree of responsibility (cf. Schlossberger 1992: 132).

Even if my claim that M doesn't make Jimmy culpable to some degree were false, though, this wouldn't entail anything specific about how culpable M makes him. I'd still deny that M makes him as culpable as a promise-breaker. In fact, I think M has no effect on his degree of responsibility that the facts that ground M don't already have. Maybe those facts make him culpable to some degree. But to me at least, M and these facts don't seem to reflect any more poorly on him than those facts already do. And those facts don't make him as culpable as a promise-breaker.

But one might object that the Jimmy case is irrelevant because the gambit doesn't have to endorse G. One might insist that a counterfactual like M affects an agent's degree of responsibility only if she lacks control over whether she's in the counterfactual circumstances. That is, one might deny G and endorse this claim.

G*   If an agent would freely perform some action φ if she were in circumstances C *and she lacks control over whether she is in C*, then her degree of responsibility is the same as it would have been if she had freely φ-ed in C.

G entails G*. The gambit's advocates definitely endorse G*. But they're not clear about whether they endorse G. Zimmerman endorses G* but doesn't explicitly deny G (1987: 381). Enoch and Marmor don't explicitly deny G either.

So there are at least two ways to take the gambit: as endorsing G and G* or as denying G and endorsing G*.[8] The objection endorses the second view. But this view is problematic. For one thing, it has bad implications. If the McDonald's closes, Jimmy will suddenly be as culpable as a promise-breaker, even though he wasn't beforehand.[9] That's absurd. It's also a self-defeating result, since it's moral luck for Jimmy's degree of responsibility to be affected by the McDonald's closure in this way.

Moreover, the second view doesn't preserve CP_c, which is the point of the gambit. We've seen that Jimmy's having control over whether he's in c is hostage to luck. It depends on things like whether the McDonald's is open. Suppose again that Jimmy can avoid c and does. Consider a counterpart of Jimmy's who's just like Jimmy except that he lacks this control because of unlucky factors that put him in c. Road construction forces him to drive by the McDonald's while it's open and he breaks his promise. The difference between the agents is lucky. It's only luck that the same thing didn't happen to Jimmy. He would have broken his promise if it had. CP_c entails that Jimmy and his counterpart are equally culpable. But the second view can't explain why. Because Jimmy has control over whether he's in c, G* and M don't entail that he's as culpable as his counterpart. G and M do. This argument generalizes. Every agent like Jimmy has a counterpart like Jimmy's counterpart. So the gambit's advocates must endorse G.

But maybe Jimmy doesn't really pose a problem for the gambit, so construed. One might endorse G and deny that Jimmy's case is a counterexample. One might grant that Jimmy's avoiding c affects his degree of responsibility. But one might think that it doesn't have the effect I think and that its effect is modest and easily accommodated by the gambit. All we have to do, one might say, is consider *more* counterfactuals about Jimmy, ones that include information about his control over his circumstances and how he would exercise it. Consider these.

> If Jimmy were able to avoid c, he would avoid it and would not break his promise.

> If Jimmy were unable to avoid c and found himself in c, he would break his promise.

The gambit's advocates might claim that both these counterfactuals affect Jimmy's degree of responsibility and that evaluating him on the basis of both is necessary to assess him accurately. On the proposed view, maybe he's as culpable as someone who breaks a promise without premeditation.

First, this proposal strikes me as less plausible if laudability is at issue. Suppose Jimmy would perform a laudable action in circumstances c′. Suppose further that he avoids c′ because of this and does so for morally despicable reasons. To me at least, it seems like he's not laudable at all.[10] The proposal must deny this, since if he was unable to avoid c′ and found himself in c′, he would do something laudable.

Even setting this worry aside, I'd still be dubious. One reason the gambit may seem like a good way to deal with Georg is that he's bent on killing. He's trying to get himself into the right circumstances so that he can kill. Luck doesn't just befall him. It *interferes* with him, with his plans and intentions.[11] Not so for Jimmy and not so for the emigrant who would have collaborated. The emigrant has no intentions with respect to collaborating. Jimmy has intentions with respect to promise breaking, but his intent is to avoid it. These facts make the gambit's claims about the emigrant and Jimmy seem implausible, at least to me. Whatever intuitive unease I have about the claim that George and Georg aren't equally culpable isn't *just* due to the fact that Georg got lucky. It stems from the fact that he got lucky despite his plans and intentions. Even if we grant that counterfactuals like M can affect one's degree of responsibility, then, there might be reason to think they can do so only if certain conditions hold.

Another case can emphasize this. Jenny lives in a stable, idyllic, isolated utopian society. Consequently, she hasn't developed to a sufficient degree all the traits that would dispose her to resist tyranny. Unfortunately, for these reasons and for many of the same reasons the emigrant and others would collaborate, Jenny would collaborate if she were in Nazi-Germany-like conditions. Is she as culpable as a Nazi collaborator? I say no. The circumstances just seem too unlikely, too far removed from her actual circumstances to make her that culpable.

If the gambit's advocates have different intuitions about Jenny and Jimmy, they might want to dismiss my intuitions on the basis of theirs. Part of my response will come later, via a critique of what I take to be a significant basis of anti-moral-luck intuitions: concerns with fairness. But I think there's also a way to lend my intuitions some positive support.

I take it there's a firm link between responsibility and reasons. Laudability and culpability for actions, for example, is rooted in responsiveness to

reasons.[12] If I'm culpable for φ-ing, there were compelling reasons for me not to φ, reasons I wasn't sufficiently responsive to. If I'm right about the nature of responsibility and the gambit's right, something similar should hold when an agent is culpable in virtue of a counterfactual like M. There seem to be two options here. Either such agents are culpable because they would be insufficiently responsive to certain reasons in some circumstances. Or they're culpable because, in being this way, they're insufficiently responsive to reasons.

Jimmy poses problems for the first option. The fact that someone would be insufficiently responsive to certain reasons in some circumstances seems too tenuous a basis for culpability, especially for someone like Jimmy. He recognizes that he would be insufficiently responsive in c and avoids c because of this. In so behaving, he exhibits sufficient responsiveness to the relevant reasons and acts to maintain that level of responsiveness. To say that he's as culpable as a promise breaker because he would be insufficiently responsive in c seems particularly implausible in light of this.

If the first option's bad, the gambit's advocates should look to the second.[13] Recall that this option says that one may be insufficiently responsive to reasons—and so culpable—in virtue of being such that one would be insufficiently responsive to reasons. Jenny creates problems here. Maybe Jimmy has strong reasons to not be such that M is true. He could easily wind up in c through forgetfulness or bad luck. Knowing this, maybe he's insufficiently responsive to reasons if he doesn't take steps to change his disposition. But an analogous claim about Jenny seems false. The relevant circumstances are too unlikely, too far removed from her actual circumstances to generate such reasons. We just don't have reason to worry about how we would behave in every conceivable situation. At any rate, Jenny doesn't have reasons to worry about how she'd behave in Nazi Germany-like conditions that are *strong enough* to support the claim that she's as culpable as a Nazi collaborator.

I think Jimmy and Jenny give us compelling reasons to reject the gambit. The conjunction of CP and CP_c seems to commit one to the gambit. Since there's reason to reject the gambit, there's reason to reject the conjunction. Later, I'll argue that we should reject CP_c. First, though, I want to consider another objection to the gambit.

3. Another Objection

I've been talking as if counterfactuals like M can be true. But many deny this, e.g., some libertarians about free will.[14] I like the dissident view, but won't press it. I just want to consider whether the gambit can be reformulated to avoid the worry altogether. Zimmerman thinks it can be. He says that even if counterfactuals like M can't be true, similar ones can be, e.g., about what people would probably do. He says such claims suffice for the rejection of circumstantial luck—or at least a great deal of it.

> Suppose that there is a probability of .99 that Georg would have freely killed [his target]. ... Then one of two things follows: either Georg is 99% as responsible as George, or there is a 99% chance that Georg is as responsible as George. It is not clear to me which we should say, although I lean toward the latter. (Zimmerman 2002: 573)

This strategy won't secure Zimmerman's conclusion here.

First, a technical point. Zimmerman doesn't formulate the new counterfactual correctly in the above quote. There are two ways to formulate it (which he shifts between in his 2002 discussion). Only one formulation avoids the worry at issue, but that formulation doesn't entail his conclusion. The word *probably* can have wide scope:

W It is probably the case that Georg would have killed his target.

Or it can have narrow scope:

N Georg would probably have killed his target.[15]

Only N avoids the worry. W says that the disputed counterfactual may be true. That doesn't avoid the worry.

Zimmerman's conclusion doesn't follow from CP, CP_c, and N. Recall CP and CP_c.

CP We are morally assessable only to the extent that what we are assessed for depends on factors under our control.

CP_c Two people ought not to be morally assessed differently if the differences between them are due only to factors beyond their control.

Suppose CP, CP_c, and N are true and that the degree of probability is 99%. You can still deny Zimmerman's conclusion. Given N, it's not true that the difference between George and Georg is due *only* to factors beyond their control. Circumstances made it impossible for Georg to kill his target, but he might not have done so anyway. So, even assuming CP and CP_c, there's no obvious reason to think that there's a 99% chance that Georg is as responsible as George or that Georg is 99% as responsible as George. What follows is this: Georg would probably have been as responsible as George—to a 99% degree of probability. But that's consistent with the claim that Georg is a beneficiary of circumstantial luck.

The switch from W to N makes it clear that the left disjunct in Zimmerman's conclusion—that there's a 99% chance that Georg is as responsible as George—doesn't follow. But some may not find it so obvious that the right disjunct—that Georg is 99% as responsible as George—doesn't

follow. So here's an argument why it doesn't.[16] Suppose Georg winds up in the counterfactual circumstances and doesn't shoot. I take it to be obvious that he isn't 99% as responsible as George. But if the right disjunct follows from CP, CP_c, and N, he is. The only way advocates of CP and CP_c can deny this is by saying that N is false if he chose not to shoot. But this is wrong. N is still true. That Georg chose not to shoot doesn't entail that it's false that he would probably shoot. So this is a counterexample to the argument.

In response, one might modify the argument to say that the conclusion follows only if the difference between the agents isn't due to an exercise of control by one of them. There's a problem with this new argument. It entails that in my counterexample case Georg was 99% as culpable as George before choosing not to shoot. Advocates of this argument are committed to the claim that we can be culpable in virtue of what we would probably do, but then absolve ourselves by not doing it. That strikes me as absurd—and especially so when the probabilities are low.

I conclude that the gambit's advocates can't simply avoid the worry at issue. The objection that counterfactuals like M aren't true is a potentially very serious objection to the gambit, though a controversial one.[17]

If my discussion so far has been on the mark, then the gambit comes at a price. Given the problems I've raised, the price looks very high. It's not obvious that the conjunction of CP and CP_c is worth it. The gambit's advocates rarely ask whether it is. The claim that it isn't will be more plausible if there are reasons to think that the conjunction isn't needed to capture control's significance. I think that it isn't. I think we should reject CP_c. First, I'll argue that CP doesn't entail CP_c. Then I'll criticize the only argument typically given for CP_c.

4. CP Doesn't Entail CP_c

Recall CP and CP_c.

CP   We are morally assessable only to the extent that what we are assessed for depends on factors under our control.

CP_c Two people ought not to be morally assessed differently if the differences between them are due only to factors beyond their control.

Nelkin says that CP_c is a corollary of CP. Enoch and Marmor aren't clear on what the connection is, but I said one might take them that way (I'll discuss the other way in the next section).[18] But CP doesn't entail CP_c—or so I'll argue. What some take to be (and what one might take to be) an important reason to believe CP_c isn't. By itself, CP still captures much that's significant about control. Of course, the fact that CP is compatible with circumstantial luck may suggest it doesn't capture everything that's significant about control.

Maybe we need CP_c to capture what CP doesn't. I doubt this, though, for reasons I'll give in the next section.

Consider what CP tells us about George and Georg. CP states a necessary condition on moral assessment: we're assessable only for things that depend on factors under our control. This is consistent with the claim that George and Georg should be assessed differently. George is assessable for murdering someone. The murder depended on factors under his control. Georg isn't assessable for murdering someone, since he didn't murder anyone. Instead, he's assessable for things like his intentions and plans to murder someone. These depended on factors under his control. You can consistently endorse CP and hold that such agents should be assessed differently on the following grounds. They're not assessable for the same things—since one murdered someone and the other didn't—and the things for which they're assessable don't justify equal assessments.

Notice I said that Georg isn't assessable for murdering someone, since he didn't murder anyone. The way I've put this is important. I'm not claiming that Georg is assessable for not murdering his target. That claim mischaracterizes his behavior. It takes him to be responsible for an omission. Philosophers sometimes seem to mistakenly take the pro-moral luck position this way. Zimmerman says that someone like Georg "should not pat himself on the back just because he luckily avoided" murdering his target (2011: 142). Joel Feinberg says "it is not to the credit of the one that he performed no criminal act if it was only an accident that he was never brought across the criminal threshold" (1974: 176). I don't claim that it is to Georg's credit that he didn't murder anyone. I say that he's not as culpable as we typically take murderers to be because there's nothing to his discredit that makes him so. The latter claim doesn't entail the former.

Nevertheless, one might still object that assessing George and Georg differently is inconsistent with CP. One might defend this claim by pointing out that it's only because of factors beyond their control that they're not assessable for the same things. But CP simply says nothing about the implications of this fact. CP is consistent with the following claim. We're assessable for what we do with the control we have, not for what we would do if things were different. On this view, those who φ can be assessed differently than otherwise identical people who can't φ but would if they could.

But one might object that I've ignored something crucial. CP explicitly links our assessability for things to our degree of control over them. Doesn't this suggest that the difference between the agents shouldn't make for a difference in their degree of responsibility, since the difference is due only to luck? No. The things they're assessable for depended on factors under their control, and they both had the same degree of control over those things. Granted, they lack some control over their circumstances. But lack of control over one's circumstances doesn't entail lack of control over the things one has done in those circumstances. It entails lack of control over

what options one has, but not which of the available options one takes. For all CP says, someone who doesn't murder because he wasn't presented with the requisite opportunities can be assessed differently from a murderer.

CP gives us no obvious reason to believe CP_c. And it's consistent with claims that are inconsistent with CP_c. So CP doesn't entail CP_c. CP also captures much that's significant about control. But CP_c might be plausible for reasons other than CP. I'll explore this possibility in the next section.

5. Fairness

Many endorse CP and CP_c out of a concern with fairness. They worry that moral luck would be unfair. There's something initially attractive about this idea. Aside from direct intuition, it's the only reason typically given for the conjunction and for the denial of all moral luck. I'm dubious about the claim that moral luck would be unfair, though. I'll argue that a fairness rationale for CP_c isn't compelling.

Zimmerman asks why anyone would deny that the noncollaborator isn't as culpable as the collaborator.

> The answer, presumably, would be that it is *unfair* to blame the collaborator more than the noncollaborator, since what distinguishes them is something over which they had no control. (1988: 136)[19]

Many acknowledge that concerns with fairness are one reason control seems morally significant.[20] I'll assume that concerns with fairness explain why so many philosophers find the conjunction of CP and CP_c intuitively attractive. Maybe there are other reasons, but fairness is a crucial one. If it turns out to be a bad one, the conjunction will lose an important source of support. I'll consider several ways of articulating the fairness rationale and criticize each of them.

One might complain that standards of assessment that rated the collaborator and noncollaborator differently would treat them unfairly.[21] This complaint is implausible. I take it unfair treatment here would involve assessment on the basis of irrelevant factors or arbitrary application of different standards. A standard that allows circumstantial luck needn't be unfair in either way. The claim that our degree of responsibility depends on what we freely do and not on what we would freely do is a single standard that doesn't appeal to irrelevant factors. Of course, one might object that this standard is unfair because it *ignores* a relevant factor: what we would do. But it's not obvious why such a standard is unfair. The Jimmy and Jenny cases suggest that it isn't.

Here's a suggestion, though. One might complain that the noncollaborator's being less culpable than the collaborator would be unfair in the same way it's unfair when equally deserving people are not equally well off. This

complaint is at best highly contentious. Lack of culpability isn't obviously a way of being better off. If opponents of moral luck think it is, and if they want to defend CP_c on the basis of such claims, they owe us a defense of it. Lack of culpability isn't obviously something that can be deserved or distributed fairly.[22] It isn't obviously subject to the demands of fairness and desert so much as a basis of such demands. Depending on how culpable I am, I may or may not deserve certain things. And it may be fair or unfair for me to get those things. But my being culpable to some degree isn't obviously the sort of thing fairness is about. Again, opponents of moral luck who think otherwise need to defend their view. Ditto for laudability. Given how controversial such a view is, and how strong the intuitions for CP and CP_c are claimed to be, I'm inclined to think that the former can't vindicate the latter.

Maybe I'm missing the real worry here, though. Maybe the idea behind the fairness rationale is this. It's unfair that some people have morally significant opportunities that others don't have. Zimmerman endorses a surprisingly strong form of this view.

> There is [a] sort of unfairness...which seems to me to rest in the fact that an unfree object (whether animate or not) never has the opportunity to distinguish itself (or to disgrace itself) in such a way as to deserve praise (or blame). In this sense, the world is unjust. (Zimmerman 1987: 383, n25)

Maybe an argument like the following appeals to you. If our degree of responsibility turns on luck of this sort, morality is unfair. It isn't, so there's no moral luck. One might reach a similar conclusion by considering fair treatment. The reasoning might go like this. Assuming someone's degree of responsibility affects how we should treat her, there isn't moral luck. If there is, morality licenses unfair treatment. But it doesn't.

Neither argument is compelling. To the second, a Nozickean reply seems apt (cf. Nozick 1974: 225). Why think the factors that determine the propriety of forms of treatment like praise, blame, reward and punishment must be fair "all the way down"? Maybe it's not fair that the collaborator and noncollaborator found themselves in different circumstances and were faced with different choices. But that doesn't obviously make treating them differently on the basis of what they freely did in their respective circumstances unfair.

To the first argument, I say this. Not all morally significant luck in circumstances is obviously unfair. It's not obviously unfair if you happen to walk by a drowning baby, thereby having a chance to be a hero, and I never have such a chance. Nor is it obviously unfair if you get a chance to do some bad thing I never have a chance to do (stand by and watch a baby drown, say). Perhaps such differences aren't fair, but *not being fair* isn't the same as being *unfair*. As David Estlund points out, fairness seems to be "an

occasional value" (2008: 67–8). Unfairness occurs when things should be fair and aren't. I see no reason to assume that opportunities to distinguish or disgrace ourselves morally should be distributed fairly and that unequal distributions of such opportunities are unfair.

None of this suggests that control is irrelevant to responsibility. What it suggests—assuming the conjunction of CP and CP_c is motivated by the fairness rationale—is that the conjunction misrepresents control's relevance. But then how is it relevant? I have no comprehensive theory. My view is just that one's degree of responsibility is a function of various factors, including one's exercises of will and perhaps one's character. These factors can be affected by luck in circumstances, but my view obviously gives control some relevance here. The first factor does so because exercises of will, as I understand them, just are exercises of control. And I take it we have at least some indirect control over our characters. So the view seems consistent with CP.[23]

The fairness rationale for CP_c isn't compelling. To the extent intuitions in favor of CP_c are motivated by it, they've been put into doubt. I take the rationale to be a major force behind intuitions in favor of CP_c. CP_c also commits us to the counterfactual gambit, with all its problems. None of this means that control is irrelevant to responsibility, though. Even if CP_c is false, control may still be relevant in many of the ways we take it to be. CP may still be true.

I think my discussion makes a compelling case against CP_c. If I'm right, we have reason to accept circumstantial luck. At the very least, I think I've shown that the case against circumstantial luck isn't as strong as its opponents think. I'll conclude by briefly exploring the implications my discussion has for other kinds of moral luck.

6. Other Kinds of Moral Luck

Two other kinds of moral luck figure prominently in the literature: resultant luck and constitutive luck. Resultant luck involves luck with respect to the consequences of one's actions.[24] Constitutive luck involves luck with respect to what one is like.[25] Whether my discussion gives us reason to accept them depends on what grounds there are for rejecting them. If CP_c or the gambit is needed to reject them, my discussion supports them too. I think this is true of constitutive luck, but I'm less confident about resultant luck. I'll discuss each in turn.

Constitutive luck has two potential sources (cf. Enoch and Marmor 2007: 426). There may be facts about me that directly affect my degree of responsibility. Certain desires, attitudes, beliefs, or other characteristics may, in and of themselves, make me laudable or culpable. And there may be facts about me that affect my degree of responsibility indirectly, say by affecting my actions. Being able to swim, say, makes it possible for me to save the drowning baby. If I can't swim, I won't save the baby.

The gambit seems necessary to eliminate indirect constitutive luck. There don't seem to be any relevant differences here between circumstances and characteristics. Both are often lucky and both can make for morally significant differences in our actions. Zimmerman recognizes this and deploys the gambit against indirect constitutive luck.[26] If my criticisms of the gambit are compelling and the gambit is needed to eliminate indirect constitutive luck, then we have grounds for accepting it.

I'm less certain about direct constitutive luck. Zimmerman, Enoch and Marmor all acknowledge that we can be morally evaluated in certain ways on the basis of lucky characteristics. But they insist that this is consistent with their positions. Zimmerman claims that there are two types of moral worth, only one of which concerns responsibility. The worth having to do with responsibility is a matter of culpability and laudability. The other is a matter of admirability and reprehensibility. He says that luck can affect the second kind of worth, but not the first (1988: 113–19; cf. 2002: 557–58). Enoch and Marmor say something similar. They say that there are different kinds of moral evaluation and that luck shouldn't affect "moral judgments that are closely tied to agency, judgments of responsibility, culpability, blame or praiseworthiness" (2007: 427). But they say that there's "still room for the kind of evaluation that does not relate directly to agency" (2007: 431). They say that such evaluations can turn on luck.

All I'll say is this. If my arguments work, they undermine much of the motivation for denying that direct constitutive luck can affect one's degree of responsibility. This is because they suggest that one's degree of responsibility can be affected by luck.

Turning to resultant luck, consider George and Georg again. Suppose Georg can take the shot and does, but that he misses because a bird flies into his bullet's path. Many insist—particularly strenuously here—that this sort of thing can't affect Georg's comparative degree of responsibility. If their position has to appeal to the same strategies and intuitions deployed against circumstantial luck, my discussion threatens it. But one might reject resultant luck on the basis of principles that are consistent with circumstantial and constitutive luck (cf. Zimmerman 1987: 381, 1988: 133). Perhaps such principles can be motivated in ways I haven't considered. If so, my criticisms won't apply.

I'm skeptical, though. I think that our degree of responsibility and our moral standing more generally depend partly on the effect that we have on the world. I don't think luck with respect to these effects can make the difference between being morally good and bad or laudable and culpable (I think that's determined by things like our responsiveness to reasons). But I think it can affect how morally good or bad and how laudable or culpable we are. If we abandon the claim that there is no moral luck, I see no reason to deny this. But I could be wrong. Maybe there's something special about such effects. I'm not sure what that might be, though. I'm inclined to think

that circumstantial luck, constitutive luck, and resultant luck stand or fall together.

Conclusion

I've criticized the standard way of rejecting circumstantial luck and I've argued against a principle that plays a major role in the arguments against it: CP_c. If CP_c is false and the counterfactual gambit fails, there are compelling reasons to accept circumstantial luck—and perhaps other kinds of moral luck too.[27]

Notes

[1] *Calvin and Hobbes*, June 1, 1995.

[2] Since no one has control over things like being born, one might worry that moral luck's existence is trivial. I don't mean to construe the anti-moral luck position as trivially false. Take it to grant that luck can affect whether we are the sorts of things that can be morally assessed and to deny that luck can affect what assessments of us are correct.

[3] To clarify: they grant that luck can affect what one is responsible *for*, but not *how* responsible one *is*, i.e., how laudable, culpable, praiseworthy, or blameworthy. Michael Zimmerman says that claims of the former sort are claims about the *scope* of one's responsibility and that claims of the latter sort are claims about the *degree* of one's responsibility (2002: 560–61). He claims that scope and degree can come apart and that one can be responsible to some degree without being responsible for anything.

[4] Enoch and Zimmerman both suggested the latter in correspondence.

[5] Fritz McDonald suggested to me that advocates of CP and CP_c could just appeal to the claim that George is (and murderers in general are) as culpable as we typically take murderers to be to defend the claim that Georg is that culpable. One problem with this suggestion is that CP and CP_c give us no reason to prefer this argument to the one above. The claims about the culpability of murders and non-murders that these arguments appeal to seem equally plausible on their face. CP and CP_c give us no reason to prefer one of these claims to the other. Hence, the need to appeal to something else, e.g., the counterfactuals.

[6] For a brief discussion of moral luck and character based theories of responsibility see Enoch and Marmor 2007: 431–32. I won't discuss such theories at length for two reasons. For one, Enoch and Marmor note that such theories seem committed to certain kinds of moral luck. Eugene Schlossberger (1992: 128–33), for example, defends such a theory and accepts moral luck. Second, those who endorse such theories and reject circumstantial luck still endorse the gambit (e.g., Richards 1986 and Thomson 1989; Schlossberger endorses a version of the gambit but seems to accept some circumstantial luck).

[7] I'll focus on culpability, but everything will apply to blameworthiness too. Ditto for laudability and praiseworthiness when relevant.

[8] Obviously, one could also endorse G* and be noncommital about G. I'll show that the gambit must endorse G.

[9] Here's why. Jimmy would break his promise if he were to drive by the McDonald's *while it's open*. Since the McDonald's is closed, he lacks control over whether he's in these circumstances. Since M is true and Jimmy lacks this control, the second view entails that he's as culpable as a promise breaker.

[10] Here's a concrete case. Suppose that Jimmy is racist but that he also has a tendency to act benevolently when confronted with people seriously in need. If faced with someone of another race suffering and begging for help, Jimmy would spontaneously help out of sympathy and concern for the person's well being. But he avoids such situations out of racism. He hates

how his benevolence would manifest itself and sees this as a weakness. Thanks to Jules Holroyd for pressing me here.

[11] Recall Zimmerman's talk of circumstances cooperating and cf. Schlossberger 1992: 131–2.

[12] I don't mean to suggest that reasons-responsiveness is all that matters to responsibility. For all I say here, two people who are equally responsive (or unresponsive) may not be equally responsible. Indeed, I think this is true of George and Georg. However, I think that, in terms of their degree of responsibility, there's less of a difference between George and Georg than there is between Jimmy and his counterpart and between the emigrant and her counterpart.

[13] Zimmerman (2002: 564–5) seems to reject the second.

[14] Zimmerman (2002: 573, n46) cites examples.

[15] These claims are simplified. Here are more formal ways of putting them.

> (W) It is probably the case that: If Georg had had a clear shot, he would have killed his target.
>
> (N) If Georg had had a clear shot, he would probably have killed his target.

[16] Thanks to David Enoch and Michael Zimmerman for pressing me to clarify things here.

[17] A better version of the objection might just say that not all such counterfactuals are true (Thomson 1989: 206 seems sympathetic). To eliminate circumstantial luck, however, the gambit needs them all to be true. Suppose there's no fact of the matter about *what* I would do in C and that I'm not in C because of luck. It can still true that I would do *something* in C that would affect my degree of responsibility substantially. The circumstances can be such that all my options would have this sort of effect (e.g., in a simple drowning baby case, I would either save the baby and be laudable or let it die and be culpable). This is enough for circumstantial luck.

[18] Zimmerman (2002: 559) formulates the principles slightly differently and says only that (his version of) CP_c makes a more general point than CP makes, namely that luck is irrelevant to moral responsibility.

[19] At the time he leaned towards a 'life's unfair' response, though he confessed unease (1988: 137–8).

[20] Cf. Adams 1985: 14, Enoch 2010: 46, 51, Glover 1970: 70–3, Kane 2002: 697, Schlossberger 1992:128, Sher 2009: 56, Statman 1993: 2–3, and Williams 1981: 36, 1985: 195. Adam Smith (2002: part 2, section 3) repeatedly describes as an "equitable maxim" the claim that we're morally assessable for the intentions we act on and not the lucky results of our intentions.

[21] Enoch (2010: 51) may have something like this in mind when he says that an analogy between morality and legal systems might provide reason to think that considerations of fairness support opposition to moral luck.

[22] Note the oddness of statements like "She deserves her x" and "She earned her x" when we substitute for x terms like *laudability* and *culpability* (in their moral as opposed to, say, their legal or quasi-legal senses). Moral luck's opponents often put things in terms of moral credit and discredit. Superficially, this avoids the oddness. But I'm not sure what these terms are supposed to mean if they're not just metaphorical ways of talking about laudability and culpability. Talk of credit misleadingly suggests that we—the moral assessors—can distribute these things and that we should do so fairly. We can't. We can distribute praise and blame, but not laudability and culpability.

[23] I actually think that CP is false because I think we can be responsible for and in virtue of things we have no control over (cf. Adams 1985, Sher 2009: 94). This view is compatible with the claim that control is relevant to responsibility, just not in the way that CP insists. I won't press it, though.

[24] See Sartorio (2012) for a recent discussion.

[25] Another kind is typically set aside because of complications involving free will: causal luck. Causal luck involves "how one is determined by antecedent circumstances" (Nagel 1979: 60). The tendency of philosophers who discuss moral luck to ignore or set aside causal luck is

unfortunate. Setting it aside obscures just how much potential support for moral luck there is. Compatibilists about free will may be straightforwardly committed to causal luck.

[26] Enoch and Marmor claim that if the direct variety "can be plausibly denied, the indirect version ceases to be a matter of concern" (2007: 427). They then use thought experiments to defend the claim that lucky facts about us can't directly affect our degree of responsibility (429–31). I don't see how indirect constitutive luck is automatically eliminated if this strategy works. Consider an analogy with circumstances. Circumstances beyond my control might not directly affect my degree of responsibility, but they could still indirectly affect it. The gambit seems necessary to eliminate indirect effects.

[27] Thanks to David Enoch, Jeremy Fischer, Jules Holroyd, Andrei Marmor, Fritz McDonald, Seth Shabo, and Michael Zimmerman for helpful comments. Thanks also to audiences at the 28th Annual International Social Philosophy Conference at Marquette University, the 2011 Northwest Philosophy Conference at Lewis & Clark College, and the 2012 Pacific Division Meeting of the American Philosophical Association. And special thanks to an anonymous reviewer of another paper of mine whose remarks on moral luck motivated me to write this paper.

References

Adams, R. M. (1985). "Involuntary Sins," *Philosophical Review*, 94: 3–31.

Enoch, D. and Marmor, A. (2007). "The Case Against Moral Luck," *Law and Philosophy*, 26: 405–36.

Enoch, D. (2010). "Moral Luck and the Law," *Philosophy Compass*, 5: 42–54.

Estlund, D. (2008). *Democratic Authority*, Princeton: Princeton University Press.

Feinberg, J. (1974). "Causing Voluntary Actions," in J. Feinberg, *Doing and Deserving*, Princeton: Princeton University Press.

Kane, R. (2002). "Responsibility, Reactive Attitudes and Free Will: Reflections on Wallace's Theory," *Philosophy and Phenomenological Research*, 64: 693–98.

Nagel, T. (1979). "Moral Luck," in his *Mortal Questions*, New York: Cambridge University Press.

Nelkin, D. (2008). "Moral Luck," in E.N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, http://plato.stanford.edu/entries/moral-luck.

Nozick, R. (1971). *Anarchy, State, and Utopia*, Basic Books.

Richards, N. (1986). "Luck and Desert," *Mind*, 65: 198–209.

Sartorio, C. (2012). "Resultant Luck," *Philosophy and Phenomenological Research*, 84: 63–86.

Schlossberger, E. (1992). *Moral Responsibility and Persons*, Philadelphia: Temple University Press.

Sher, G. (2009). *Who Knew? Responsibility Without Awareness*, New York: Oxford University Press.

Smith, A. (2002). *The Theory of Moral Sentiments*, Cambridge: Cambridge University Press.

Statman, D. (1993). "Introduction," in D. Statman, *Moral Luck*, Albany: SUNY Press.

Thomson, J. J. (1989). "Morality and Bad Luck," *Metaphilosophy*, 20: 203–21. Reprinted in D. Statman (ed.). *Moral Luck*, Albany: SUNY Press.

Williams, B. (1981). "Moral Luck," in his *Moral Luck*, Cambridge: Cambridge University Press. Reprinted in D. Statman (ed.). *Moral Luck*, Albany: SUNY Press.

———. (1985). *Ethics and the Limits of Philosophy*, Cambridge: Harvard University Press.

Zimmerman, M. (1987). "Luck and Moral Responsibility," *Ethics*, 97: 374: 86.

———. (1988). *An Essay on Moral Responsibility*, Towata, NJ: Rowman & Littlefield.

———. (2002). "Taking Luck Seriously," *Journal of Philosophy*, 99: 553–76.

———. (2011). *The Immorality of Punishment*, Peterborough, Ontario: Broadview Press.