Moral Luck and Libertarianism

by

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I. Identifying the Issue

This is a study on moral luck. The main concerns will be how much moral luck there is, what kinds of moral luck there are, and what, if anything, our moral profile amounts to. Before we can begin, however, we need to know the meaning of terms like “moral luck” and “moral profile,” and we need to know how this topic has been approached in the past and what exactly the relevant issues are. This introductory chapter is devoted to these goals.

1. What is Moral Luck?

The expression “moral luck” was first coined by Bernard Williams and Thomas Nagel in a philosophical exchange in the Proceedings of the Aristotelian Society in 1976, an exchange which culminated in their separate seminal papers on the topic (Nagel 1979 and Williams 1981). Both authors rely heavily on examples to develop the concept of moral luck, but only Nagel offers a definition, while Williams opts instead to “use the notion of ‘luck’ generously, undefinedly, but, I think, comprehensibly” (1981, 22).

Nagel defines the concept in the following way:

Where a significant aspect of what someone does depends on factors beyond his control, yet we continue to treat him in that respect as an object of moral judgment, it can be called moral luck. (1979, 26)

He then proceeds to give a wide variety of examples of what he believes to be moral luck: a truck driver fails to check his brakes regularly and hits a child who (as luck would have it) runs out into the street (29), a drunk driver gets home safely when (as luck would have it) there are no pedestrians in his way (29), a would-be murderer harms no one when (as luck would have it) a bird intercepts his bullet (29), a German who would have been a Nazi officer ends up leading a harmless life when (as luck would have it) he emigrates to Argentina for business reasons before
the war breaks out (26), a person is condemned for vices such as envy or conceit when (as luck would have it) he developed them due to “constitutive bad fortune” (33), etc. In all these cases, Nagel claims, our moral evaluation of the agents involved will hinge on factors beyond their control.

What makes the notion of moral luck surprising is that it seems to fly in the face of a widely and strongly held intuition that the correct moral evaluation of agents will appeal only to factors within their control— that when we evaluate agents, we should protect our assessment from factors beyond their control. This intuition—what Nagel refers to as “the condition of control”—was famously upheld by Immanuel Kant in his *Fundamental Principles of the Metaphysics of Morals*:

> A good will is good not because of what it performs or effects, not by its aptness for the attainment of some proposed end, but simply by virtue of the volition….Even if it should happen that, owing to special disfavor of fortune, or the niggardly provision of a stepmotherly nature, this will should wholly lack power to accomplish its purpose, if with its greatest efforts it should yet achieve nothing, and there should remain only the good will (not, to be sure, a mere wish, but the summoning of all means in our power), then, like a jewel, it would still shine by its own light, as a thing which has its whole value in itself. (12)

But what Nagel argues in his classic paper is that, despite the strong intuitive appeal of what Kant says here, we nevertheless do evaluate agents morally on the basis of the products of the will, not just the good will itself, and further that what we will is itself the product of factors beyond our control. And so we are left with a puzzle— we must determine what to make of these cases where luck (factors beyond our control) tends to influence our moral judgments, while at
the same time determining what to make of our strongly held belief that moral evaluation of agents ought to be confined to factors within their control. This is, roughly, the puzzle that this study will address, although I will say more to clarify it in later sections.

It should be mentioned, however, that this is not obviously the same problem that Williams addressed. Unlike Nagel, Williams confines his discussion to a small handful of examples, the most famous of which involves a fictionalized version of the painter Paul Gauguin. Gauguin, on Williams’ story, must decide whether or not to abandon his family in the pursuit of a career as a painter, and his decision to leave will be morally justified just in case he actually produces fine paintings—and he cannot know at the point of decision whether he has the requisite skill to do so (1981, 23). According to Williams, Gauguin is faced with a kind of moral gamble. While Williams does not quite define what kind of luck is involved in this gamble, there is some reason to think that he is using “luck” to mean something like “chanciness”—for, arguably, whether or not Gauguin succeeds as a painter is something he controls. As Williams puts it:

It is not merely luck that he is such a man, but luck relative to the deliberations that went into his decision, that he turns out to be such a man: he might (epistemically) not have been. That is what sets the problem. (25)

Here, the luck in Gauguin’s case is presented as epistemic chanciness, even where the ultimate outcome of the gamble might be, in some sense, up to him.

So, while Nagel and Williams use the same expression, it appears that they are using subtly different concepts—Nagel is interested in a problem of moral “out-of-control-hood,” and Williams is interested, at least at some points, in a problem of moral chanciness. The two concepts overlap, but they are not identical, and the difference between them is not entirely innocent. The two kinds of luck obviously come apart with respect to factors that are not chancy
but are beyond one’s control--for instance, one’s essential properties. And while there is a
temptation to claim that chanciness entails out-of-control-ness,\(^1\) the Gauguin case putatively
shows that something within one’s control may yet be a matter of (at least epistemic) chance.

There has been some debate in the literature concerning what the “correct” definition of
the term “luck” is. Some have objected to Nagel’s use of the term, observing, say, that it has the
surprising consequence that the sun’s rising this morning was a matter of luck, which seems not
to correspond to our ordinary use of the term.\(^2\) I intend to sidestep this debate altogether by
simply stipulating that, in the context of this study, the expression “luck” means out-of-control-
ness, and leave the debate concerning whether there is a “correct” definition to others. I do this
in part because this is the standard usage of the term in the moral luck literature.\(^3\) More
importantly, though, I make this stipulation because I am interested in particular in the problem
that Nagel identifies. Readers are welcome to substitute “out-of-control-ness” for “luck” if they
wish.

There is often a natural concern with developing concepts “on the cheap” through
stipulation. If I can stipulate one concept of luck, then nothing prevents anyone else from
stipulating another one, and so on, until we have an intolerable proliferation of concepts of luck
and their corresponding problems of moral luck. This is a concern that Susan Hurley identifies
and attempts to solve by dissolving the problem of moral luck altogether. Her method: to let the

\(^1\) Susan Hurley is one of those who makes this claim, explaining that “[i]f the outcome of a lottery is a matter of luck
for someone, he does not control that outcome. If he does control it, there is cheating going on; the outcome is not a
matter of luck” (2002, 81).

\(^2\) Pritchard (2006, 3) offers “counterexamples” like this, taking them as definitive reasons for rejecting Nagel’s
usage. Lackey offers more elaborate examples (2008, 258-59), but with the same general aim.

\(^3\) Among the long list of authors who use the term “luck” as “out-of-control-ness” are Adler (1987), Andre (1983),
(1993) is a notable exception.
term “luck” simply mean “the inverse correlate of responsibility,” so that X is a matter of luck for one just in case one is not morally responsible concerning X. So, as a “frank piece of conceptual legislation,” Hurley suggests that we tackle issues of responsibility first, and only after drawing our verdicts state what is and what is not a matter of luck (2002, 84-85). This proposal would allow us to avoid the morass of multiple concepts of luck.

Of course, the trouble with this method is that the judgments about responsibility that Hurley needs will themselves be sensitive to concerns regarding what the agent controls. For instance, in the very same article, Hurley claims that we are not responsible for our essential properties (90). While there is no wording justifying this assertion which uses the term “luck,” it is clear that the reason we are not responsible for our essential properties (and the reason Hurley is tacitly relying upon) is that we have no control over them. This shows two things: (1) while we can modify our language in the way Hurley suggests, we will still need at least some of the concepts that the term “luck” has been used to name; and (2) the concept of out-of-control-hood in particular is very hard to dispense with in this context. As a consequence, it seems that stipulating a Nagel-friendly meaning for the term “luck” should be harmless, and doing so will allow us to discuss a problem that should have considerable interest to moral philosophers.

2. Refining Nagel’s Presentation of the Problem

The notion that there should be such a thing as moral luck has struck many as a bit surprising, perhaps even scandalous. But some clarification is needed concerning what the scandal is all about. As it is, two features of Nagel’s presentation of the problem tend to obscure just how thorny a problem it is.

2.1. Actual Moral Judgments vs. Correct Moral Judgments

The first feature involves the wording of Nagel’s definition of moral luck:
Where a significant aspect of what someone does depends on factors beyond his control, yet *we continue to treat him* in that respect as an object of moral judgment, it can be called moral luck. (1979, 26, my emphasis)

This language suggests that the problem is all about our moral sentiments or how we in fact tend to go about judging agents morally. Presenting the problem in this way grants the interlocutor at least two ways to respond: (1) she may deny that the cases Nagel identifies are cases where we really do judge the agent morally, and insist that when our sentiments are influenced by luck, they are directed to other features, such as the effects of the act or the act itself; or (2) she may grant that our moral judgment of agents is sometimes influenced by luck, but nevertheless claim that such judgments are in error, while insisting that the *correct* moral judgment of any agent will not be influenced by luck. These two replies are related--and which option the interlocutor chooses will likely be influenced by her general view on the moral evaluation of agents. If, for instance, she adopts the view of Peter Strawson that our “reactive attitudes” are constitutive of moral responsibility, then the second option will likely be unavailable to her, and she will have to settle for the first reply. But if she rejects the Strawsonian view, then she may pursue the second response, accepting that our judgments are sometimes susceptible to luck while denying that such judgments are accurate.

But then, the second alternative threatens to render the existence of moral luck (as Nagel defines it) a trivial affair. We can imagine the interlocutor saying something like the following: “So what if there is moral luck? Sure, our moral judgments of others are influenced by luck, but then, we make a lot of bad judgments. What matters is that the correct moral evaluation of agents is never influenced by luck. The ‘fact’ that there’s a lot of putative
moral luck, or the fact that we often make judgments that imply its existence, doesn’t show any different.”

This response suggests that existence of moral luck does not provide any direct challenge to the highly intuitive view that agents are only correctly morally evaluable in terms of facts within their control. Of course, this sort of response is too flippant—for even if (contra Strawson) our ordinary moral judgments are not constitutive of responsibility, it would be surprising if they provided no evidence concerning responsibility, and so moral luck (even as defined by Nagel) cannot just be shrugged off. The more important point to note, though, is that Nagel certainly intended the existence of moral luck to provide a direct challenge to the condition of control. His point was that if there is moral luck, then we are left with a very disturbing puzzle concerning how the condition of control can possibly be true.4

We can pre-empt the sort of response mentioned above, while preserving the general thrust of Nagel’s challenge, by providing the following simple revision to Nagel’s definition:

Where a significant aspect of what someone does depends on factors beyond her control, yet she is nevertheless in that respect an object of correct moral judgment, then this is an instance of moral luck.

Defining moral luck in this way renders it more problematic, for its existence appears directly inconsistent with the condition of control. If the interlocutor wishes to protect that condition, then she will need to deny moral luck. That appears to conform to what Nagel intended, and it conforms to the general use of the expression “moral luck” adopted in the literature.

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4 He does not flat out reject the condition of control. “Why not conclude, then, that the condition of control is false?” he asks rhetorically, and answers: “The condition of control does not suggest itself merely as a generalization from certain clear cases. It seems correct in the further cases to which it is extended beyond the original set” (26). Since we cannot responsibly jettison the condition of control, and since (he holds) we cannot responsibly deny moral luck, we are left with a problem without any real solution (37).
It should be noted that this revision does not beg any questions regarding whether or not Strawson’s view that responsibility is constituted by our reactive attitudes is correct. If it is correct, then the revision reduces to the original.

2.2. Unrestricted Control vs. Comparative Moral Judgments

A more vexing concern about Nagel’s presentation of the problem has to do with what he takes the condition of control to be. It appears that he embraces a very strong version of it. For instance, consider the following passage:

If the condition of control is consistently applied, it threatens to erode most of the moral assessments we find it natural to make. The things for which people are morally judged are determined in more ways than we at first realize by what is beyond their control….Ultimately, nothing or almost nothing about what a person does seems to be under his control. (26)

And again:

The area of genuine agency, and therefore of legitimate moral judgment, seems to shrink under this scrutiny to an extensionless point. Everything seems to result from the combined influence of factors, antecedent and posterior to action, that are not within the agent’s control. Since he cannot be responsible for them, he cannot be responsible for their results. (35, my emphasis)

But what must control amount to such that we control nothing of what we do, and so are responsible for nothing at all?

The italicized sentence in the above quote suggests that Nagel demands that the sort of control necessary for proper moral evaluation of agents is a very strong kind of control--what Hurley refers to as “regressive control” (2002, 82), or what Zimmerman calls “unrestricted
control” (1987, 377). The idea seems to be that, to have the requisite control over some event E, then one has to have some sort of basic control over E (in Zimmerman’s case, this is articulated as being able to bring E about and being able to prevent E’s occurring) and over all the further facts on which E is contingent. I am not responsible for my birth. But since I am not responsible for my birth, I am not responsible for events which are contingent upon it, such as, say, my robbing the local convenience store last night. I may have had some sort of basic control over my robbing the convenience store, but I certainly never exercised basic control over my birth, and that’s a fact on which my robbing the store is contingent.

We can see how the condition of control, using this remarkably strong kind of control, would apply to Nagel’s examples. The truck driver who hits the child exercised basic control over whether he checked his brakes. However, he did not exercise any control over whether the child jumps out into the street. Since this event is something on which his hitting the child is contingent, he does not exercise unrestricted control over his hitting the child. The would-be murderer exercised basic control over whether he pulled the trigger, but not over whether or not the bird intercepts his bullet, and so he does not have unrestricted control over whether or not he is a murderer. The German émigré to Argentina exercised basic control over his harmless behavior there, and maybe over his decision to emigrate. But he certainly exercised no control over the political events that transformed Germany, but not Argentina, into a fascist regime, and (as the story is told) these are events on which his harmless behavior is contingent. So he does not exercise unrestricted control over whether or not he behaves as a sadistic Nazi. And so on. In each case, the very strong version of the condition of control is supposed to undermine moral evaluation of the agent in terms of the events over which the agent has no unrestricted control. But because surely the agents are morally evaluable in terms of those events (Nagel insists), we
are saddled with moral luck and left with a very disturbing problem. At any rate, that seems to be the interpretation of Nagel that the above passages point to.

That interpretation gets some further support from Nagel’s comments on freedom in his opus *The View from Nowhere*. There, Nagel writes that, when it comes to our ambitions for control, we intuitively hold that

to be really free we would have to act from a standpoint completely outside ourselves, choosing everything about ourselves, including all our principles of choice—creating ourselves from nothing, so to speak. (1986, 118)

And he adds later that

[w]hat we hope for is not only to do what we want given the circumstances, but also to be as we want to be, to as deep a level as possible, and to find ourselves faced with the choices we want to be faced with, in a world that we can want to live in….It is the attack on inner barriers that leads to the development of ethics, for it means that we hope to be able to will that our character and motives should be as they are, and not feel simply stuck with them when viewing ourselves objectively. (136)

Of course, he also readily observes that freedom, so construed, is inaccessible to us, and so we cannot possibly have the unrestricted control that he claims that we want. But the strong claim he embraces here, and seems to be embracing in his paper on moral luck, is that such unrestricted control is what is necessary for moral responsibility.

He is not alone. Galen Strawson, for one, seems to embrace the same view (1994), which he claims to be an echo of Nietzsche (15). Perhaps this extraordinary view is right. But when we ordinarily speak of the highly intuitive view that the correct moral evaluation of agents will be confined to factors within their control, it is not at all obvious that *this* is what we have in
mind. It is not immediately obvious that since I didn’t control whether I was born, or whether there was a convenience store available for robbing last night, that I am not responsible for my decision to rob it last night. On the contrary, by Strawson’s own admission, such a view is usually dismissed by philosophers “as wrong, or irrelevant, or fatuous, or too rapid, or an expression of metaphysical megalomania” (8). And so we can easily imagine our interlocutor responding to Nagel in the following way:

“Sure, there’s a lot of moral luck. Often the correct moral evaluation of agents will hinge on factors beyond their control, such as whether they were born, or whether there are any other morally considerable beings in the world, etc. But any view that these sorts of factors are inimical to moral responsibility is quite thoroughly misguided to begin with. Since the condition of control that you offer is so radical, I don’t see anything problematic about rejecting it wholesale while accepting moral luck.”

And so, once again, the particular framing of the problem that Nagel presents seems to threaten its importance.

However, the examples that Nagel provides encourage another way of framing the problem. Often, when presenting his examples, he invites his reader to consider a pair of cases. For instance:

However jewel-like the good will may be in its own right, there is a morally significant difference between rescuing someone from a burning building and dropping him from a twelfth-story window while trying to rescue him. Similarly, there is a morally significant difference between reckless driving and manslaughter. But whether a reckless driver hits

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5 Margaret Urban Walker gives something akin to this response to Nagel (1991, 22-26).
a pedestrian depends on the presence of the pedestrian at the point where he recklessly passes a red light. (1979, 25)

Further, when introducing the negligent truck driver who hits a child, Nagel writes:

And what makes this an example of moral luck is that he would have to blame himself only slightly for the negligence itself if no situation arose which required him to brake suddenly and violently to avoid hitting a child. Yet the negligence is the same in both cases, and the driver has no control over whether a child will run into his path. (29)

In these passages, and others like them, Nagel is not considering agents in isolation, but is inviting us to consider pairs of cases, where there is a putatively significant moral difference which is influenced by factors beyond the control of either agent.

These passages are suggestive of an alternative condition of control which is usually implicit in some form in the literature, but has been developed explicitly by Michael Zimmerman (1987 and 2002) and John Greco (1998)--both of whom express dissatisfaction with the stronger condition of control mentioned above. Here is how Zimmerman expresses it (using his notion of degrees of moral responsibility):

[I]f (a) someone’s being \( F \) (where ‘\( F \)’ designates some complex property comprising both epistemic and metaphysical components) is sufficient for that person’s being morally responsible to some degree \( x \), then, if (b) it is true of \( S \) at some time that he or she would be \( F \) if \( p \) were true, and (c) \( p \)’s being true is not in \( S \)’s control at that time, then (d) \( S \) is morally responsible to degree \( x \). (2002, note 33)

And here is Greco’s simpler presentation (using his notion of moral worth):
If there is no difference between persons S1 and S2 with respect to an event X, except for factors which are outside of both persons’ control, then S1 and S2 are equal with respect to moral worth in virtue of X’s occurring. (1998, 90)

Minor differences aside, the upshot of these two claims is roughly the same. The gist is that, while it may well be that an agent is properly morally evaluable in virtue of something which is contingent on facts outside of her control, whether or not those facts obtain shouldn’t change whether she’s properly morally evaluable in that respect. The negligent truck driver described by Nagel who hits a child may well be properly morally evaluable with respect to the events described. But then--according to the comparative condition of control embraced by Zimmerman and Greco--the negligent truck driver who does not hit the child is equally morally evaluable in that respect. The child’s running out into the street does not change the driver’s moral standing.

The difference between the strong absolute condition of control that appears to be embraced by Nagel and Strawson and the comparative condition of control embraced by Zimmerman and Greco is subtle, but important. The absolute condition of control provides a short and swift path to the conclusion that no one is properly morally evaluable for anything. There is nothing, after all, over which one exercises unrestricted control. The comparative condition of control does not provide such a short and swift path, and in fact its main proponents deny that it provides even a long and circuitous path to that conclusion (although whether they are right remains to be seen). So long as we can properly evaluate an agent morally in virtue of something, the comparative condition of control simply insists that we evaluate certain others--agents whose differences from the first agent are in virtue of facts beyond their control--the same way.
If the comparative condition of control is what we have in view, then we need a further corresponding change to our notion of moral luck, to preserve Nagel’s attempt to articulate a challenge to the condition of control. Here is a third pass at the definition:

Where a significant difference between what two (actual or possible) agents do depends on factors beyond their control, yet they are nevertheless in that respect objects of correct but different moral judgments, then this is an instance of moral luck.6

And of course, Nagel gives reason in his classic essay to believe that there is moral luck in this sense. According to Nagel, we cannot suppress our belief that the truck driver who hits the child is morally worse than the equally negligent driver who does not hit the child--and we cannot responsibly jettison that irrepressible belief as somehow off-the-mark. The result is that it seems that there is moral luck (in this new sense), and that, as a consequence, we are left with a disturbing problem concerning how the comparative condition of control can possibly be true.

At any rate, it is a disturbing problem if the comparative condition of control is itself a highly intuitive notion. Is it? Well, it is certainly more intuitively plausible than the strong absolute condition of control that we examined earlier. And Nagel himself appears to muster support for it:

From the point of view which makes responsibility dependent on control, all this seems absurd. How is it possible to be more or less culpable depending on whether a child gets into the path of one’s car, or a bird into the path of one’s bullet? (31)

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6 There may be ways of capturing a notion of moral luck that corresponds to the comparative condition of control by making reference to only one agent--perhaps in terms of counterfactuals which describe how a single agent would be properly morally evaluable had factors beyond her control not obtained. However, there are reasons for not pursuing that tack--foremost among them being that such a definition would hamstring discussion on moral luck in situations where an agent’s essential properties may be alleged to influence her moral profile. Since both Zimmerman and Greco articulate a condition of control that allows comparison between two agents, and since freedom to make such comparisons will be important in subsequent chapters, the current definition is phrased comparatively.
And at least when confined to certain cases, this intuitive reaction is quite common and quite strong. It is commonplace to hear some variant of the comparative condition of control being vociferously defended against the challenge of moral luck.\(^7\) Even more telling, those who are neutral and even those who end up opposing the comparative condition of control nevertheless often admit to its pre-reflective plausibility.\(^8\) This testimony is enough, I think, to vindicate the claim that there is a very strong intuitive pull to it—or at least to some variant of it—even if it turns out to be false.

But the particular version of the comparative condition of control that is expressed by Zimmerman and Greco is quite strong. With the sort of case just cited—where a child jumps into the street in front of a truck, or a bird intercepts the bullet of a would-be murderer—opposition to moral luck is quite common, and there is a strong urge to claim that both the lucky and the unlucky agent in each pair of cases are morally on a par. But the version of the comparative condition of control that Zimmerman and Greco embrace has implications that are not as often endorsed. It would require that, say, Nagel’s harmless Argentine—who would have been a ruthless Nazi had he lived in Germany—is properly morally evaluable with respect to the Holocaust in the same way as the actual Nazi.\(^9\) While many laymen may have that intuition, and

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\(^7\) Aside from Zimmerman and Greco, the list includes Enoch and Marmor (2006), Jensen (1984), Richards (1986), Rosebury (1995), Sverdlik (1988), and Thomson (1989). Domsky goes so far as to encourage us to “finally toss the rotten thing out,” the “rotten thing” being the problem of moral luck (2005, 532). Wolf, who takes a more measured tone, nevertheless calls a version of the comparative condition of control the “rationalist position” and the belief in moral luck the “irrationalist position” (2003).

\(^8\) For instance, see Andre (1983), Brogaard (2003), Feinberg (1970), Moore (1997), and Statman (1991). Coyne (1985), who seems to operate with (and oppose) the absolute condition of control, nevertheless notes that “some of us may be astonished at the very idea” of moral luck (319).

\(^9\) This consequence may be more obvious on Zimmerman’s wording of the condition than on Greco’s, but Greco embraces this consequence explicitly (91-92).
while at least some professional philosophers do, it is doubtful that it is a particularly widespread or deeply held conviction.

What this reveals is that identifying a complete specification of the true condition of control (assuming there is one) is bound to be a controversial affair. While Zimmerman and Greco each repudiate moral luck in the case of the harmless Argentine, and so uphold their version of the comparative condition of control, many others would embrace moral luck in this case, and so would be relegated, at best, to a muted variant of the condition. While it seems clear that some comparative, and not absolute, condition of control is what is at stake in the debate over moral luck, it is less clear what, exactly, the correct condition is supposed to be. In fact, this problem is precisely what the problem of moral luck is all about, and it is the main focus of this study.

3. Denying Moral Luck

3.1. Kinds of Moral Luck

In his famous essay, Nagel distinguishes between four kinds of moral luck: (1) consequential (or resultant) luck, which concerns how one’s actions turn out; (2) circumstantial luck, or luck in the situations that one faces; (3) constitutive luck, which involves what kind of a person one is; and (4) causal luck, or luck in how one’s actions are brought about by prior causes. This classification of kinds of luck has equipped scholars with the language to adopt a “middle-of-the-road” position on moral luck, denying some kinds of moral luck while embracing others. For instance, some scholars will deny consequential moral luck while accepting moral luck of other kinds, while others might deny consequential and circumstantial moral luck while accepting constitutive and causal moral luck. Some caution, however, is advisable when relying upon
Nagel’s classification. Nagel describes his own classification as a rough one (1979, 28), and its roughness is apparent in a few ways.

The sharpest distinction to be drawn is between resultant luck and the other three kinds. Resultant luck concerns what happens after the act of the will, while the other three kinds pertain to what happens prior to it and influences it. Nagel’s examples of the truck driver who hits a child and the would-be murderer who shoots a bird instead of his intended target are alleged to be cases of resultant moral luck. In both cases, the luck occurs after the action—or, at any rate, after the agent’s involvement in the action has already been completed.\footnote{Some scholars will individuate actions in part by their consequences, and so will deny that the two drivers or the two shooters have performed the same action. However, there still seems to be a sharp distinction to be drawn between events prior to the driving or shooting and events subsequent to it.}

Two drivers are already guilty of negligent driving when the child jumps into the street in one scenario and not in the other, and two would-be murderers have already pulled the trigger when one bullet hits its target and the other hits the bird. And resultant moral luck in particular seems to have attracted more attention in the literature than the other kinds. It is this kind of luck that Kant so famously opposes in his *Fundamental Principles of the Metaphysic of Morals*, denying that the will can be justly evaluated in terms of what it produces. Perhaps not unsurprisingly, then, scholars who address moral luck have often confined their attention to resultant moral luck in particular.\footnote{For instance, Jensen (1984), Sverdlik (1988), and Wolf (2003) do not explicitly acknowledge the other kinds of luck in their articles. Rosebury (1995) and Domsky (2004) do, but they think the primary locus of debate concerns resultant luck.}

When we turn our attention to luck that is antecedent to the agent’s act of the will, the distinctions become less clear. One question that arises concerns what the constitutive properties of the agent are supposed to include, and so what kinds of luck are properly classified as constitutive. It seems clear that Nagel extends this class beyond the agent’s essential properties.
For instance, his discussion of constitutive luck mentions virtues and vices as constitutive properties, which are surely not essential ones. Most scholars typically fall in line with Nagel and treat character traits as constitutive properties. Zimmerman, for one, also includes physical traits and capabilities as constitutive, giving deafness as an example (2002, 565). Of course, many of these properties may be gained or lost over time--one may become deaf, or one may develop some virtue through hard work, or slip into vice by bad habits. It may be tempting, given this precedent, simply to say that constitutive luck concerns luck in features--mental, physical, or whatever--that are internal to the agent, and relegate luck in features that are external to the agent to circumstantial luck.

But this approach won’t do, for many intrinsic properties of an agent are only held quite briefly and do not seem like constitutive properties at all--e.g., having exactly a certain number of skin cells, or having various hairs out of place, or having a feeling of tiredness in the arms, or being momentarily irritated. It is more natural to say that the agent is in circumstances where her hair is messed up or her arms are tired than it is to say that she is the sort of person who has messed-up hair or tired arms. A natural remedy is to say that constitutive properties include features that are internal to the agent and which are more or less stable over time. But this remedy, relying as it does on degrees of stability over time, comes at the price of a sharp distinction between constitutive and circumstantial luck. There will inevitably be some gray area. If a drug is forced down your throat that will induce extreme belligerence for one year before gradually phasing out over time, we will likely be at a loss over whether to chalk up your subsequent belligerence to constitutive or circumstantial luck. For that matter, even Nagel’s paradigm instance of putatively circumstantial luck--the case of the harmless Argentine who would have obeyed Nazi orders had he lived in Germany--is tricky to classify. Had the agent
been faced with different circumstances—had he been in Germany—he would have behaved differently. But perhaps this is because, had he been in Germany, he would have had a different character—he would have been a ruthless Nazi.\textsuperscript{12}

A further puzzle with Nagel’s classification involves the role of causal luck. As he defines it, causal luck is “luck in how one is determined by antecedent circumstances” (28), and he later equates the problem of causal luck with the problem of free will (35). But thus stated, causal luck seems to include both circumstantial and constitutive luck, since both one’s circumstances and one’s constitution can serve as nodes on a causal chain that has one’s behavior as an effect. For that matter, I suspect that the notion of causal luck is conceptually redundant. Once all the facts concerning one’s circumstances and one’s constitution have been taken into consideration, what else is there for the term “causal luck” to refer to? Perhaps the deterministic or indeterministic nature of the laws that govern those facts concerning one’s circumstances or one’s constitution? But the nature of the laws that govern the facts about one’s circumstances or one’s constitution seems to be a further fact about one’s circumstances or one’s constitution.

In the literature on moral luck, causal luck is usually cordoned off from the other kinds of luck identified by Nagel, and in fact, Nagel himself only directs a few words toward the topic in his paper. The purpose for doing this is to avoid being drawn into the classic debate concerning freedom and determinism. However, if the notion of causal luck really is conceptually

\textsuperscript{12} Given the relative looseness of the way I’m inclined to speak of constitutive properties, it should be clear that I will not commit myself to any interesting metaphysical implications simply by labeling some property as constitutive. Not all constitutive properties need be essential (although interesting essential properties will often be constitutive). And the idea that we have some constitutive properties (intrinsic properties that are more or less stable over time) seems compatible with most any view of the metaphysics of persons. (One shouldn’t, for instance, confuse my discussion of constitutive properties with the way Baker speaks of constitution when developing the metaphysical thesis that she calls the “constitution view” (2000).)
redundant, it would be surprising if a thorough treatment of moral luck avoided any implications for the free will debate. Indeed, much of this study is devoted to the task of exposing what those implications are.

Because there are puzzles concerning the boundaries between these three kinds of luck (circumstantial, constitutive, and causal), there will be times when it is expedient simply to treat them as a group. We may do so by speaking of the luck involved in an agent’s being in a set of circumstances C, where C includes all of the relevant facts describing the state of the world at a given time and the laws of nature. Thus described, C will include all of the relevant circumstantial, constitutive, and causal facts, and so all those facts that are a matter of luck for the agent. We may, following Zimmerman, refer to this general kind of luck that involves factors prior to the act of the will as situational luck—luck, that is, in the complete situational make-up (our circumstances, our constitution, whatever) that we inherit when we act.

But some philosophers—especially some of those who prefer to take a “middle-of-the-road” position on moral luck—have resisted speaking of situational luck in this way, preferring to treat circumstantial and constitutive luck separately. One reason for this is that resultant, circumstantial, and constitutive luck appear to mark a sort of natural progression from luck in factors that are external to the agent to factors that are internal to the agent, a progression which is obscured by lumping circumstantial and constitutive luck together. Resultant luck concerns factors that obtain after the exercise of agency has already occurred, and so has no direct influence over the agent herself. Circumstantial luck does exercise influence over the agent by influencing what sorts of actions are available and desirable for her. And constitutive luck not only exercises influence over the agent’s behavior, but influences just what kind of person the agent is.
This progression seems to be given expression by both Feinberg (1970, 34-37) and Moore (1997, 234-39) in terms of the chronological sequence of events leading to the upshot of some action. Feinberg tells a story of a man named Hotspur who, reacting to an insult, angrily slaps a hemophiliac named Hemo, who subsequently dies when his mouth bleeds. He then asks us to consider a doppelganger, Witwood, who in different scenarios (1) slaps Hemo, but luckily doesn’t open a cut on Hemo’s mouth; and (2) is distracted by a loud noise before his anger has time to manifest an intention to slap Hemo. We can also add another scenario, where Witwood (3) is conditioned prior to Hemo’s insult to be slow to anger and even slower to violence, and so controls his emotions. The lucky factors that obtain get progressively earlier chronologically as we move from resultant to circumstantial to constitutive luck. They also get progressively internal to the agent.

This sort of natural ordering has been suggestive to some writers that there is a corresponding natural ordering in terms of how problematic the kinds of moral luck are. Resultant moral luck receives widespread rejection. Circumstantial moral luck, while it has received greater acceptance than resultant moral luck, is still denied by others. But some of those who deny circumstantial moral luck still embrace constitutive moral luck. The implication seems to be that resultant luck is the most problematic of the three kinds, while constitutive is the least problematic. This idea will be tested in later chapters.

3.2. What is a Moral Profile?

I have said so far that there is an intuitive idea that the correct moral evaluation of an agent is not susceptible to luck. At other times, I have talked about an agent’s moral responsibility being immune to luck. And when adopting Nagel’s terminology for our definition of moral luck, I

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13 In particular, see Richards (1986) and Thomson (1989), who ground an agent’s moral profile in her character.
have spoken of agents being in some respect an object of correct moral judgment. It is time to tidy up this language a bit. And the way forward is to consider first the language that has already been used in the literature by opponents of moral luck.

Consider first resultant luck. Two truck drivers are negligent in failing to get their brakes checked, but one driver inadvertently kills a child as a consequence while another (luckily) does not. Opponents of resultant moral luck insist on treating these two agents as on a par in some sense--but in what sense exactly? Recall our current definition of moral luck:

Where a significant difference between what two (actual or possible) agents do depends on factors beyond their control, yet they are nevertheless in that respect objects of correct but different moral judgments, then this is an instance of moral luck.

This definition suggests that to deny moral luck in the truck driver case is to claim that the correct moral judgment of each agent will be the same. But something here is not quite right--for the unlucky truck driver can be correctly morally judged as guilty of manslaughter, while surely the other truck driver cannot, since no one died in his case. This much seems uncontroversial. But then, it seems that the correct moral judgments of the agents will differ, and uncontroversially so. And despite this, there are many strong opponents of resultant moral luck who will insist that the two agents are somehow morally on a par. But in what moral respect, exactly, are they supposedly on a par?

A standard answer is that they are the same in terms of “desert” (e.g., Richards 1986), or “blameworthiness” (e.g., Domsky 2004, Jensen 1984, Sverdlik 1988, Wolf 2003), or “moral responsibility” (e.g., Rosebury 1995, Zimmerman 1987 and 2002). Often, two or more of these
expressions are used interchangeably. Yet all of these terms come with pitfalls that the opponent of moral luck is forced to tiptoe around.

For instance, the claim that the two truck drivers are equal in terms of desert or blameworthiness suggests that an injustice would be done if one receives a stronger punishment than the other or if one is blamed more harshly than the other. But in fact we do these all the time. We punish those guilty of manslaughter fairly severely, but we rarely inflict the same degree of punishment to those who are equally negligent but by luck avoid killing anyone. And we seem to have a consistent tendency to blame someone much more harshly after a tragedy occurs than when no tragedy occurs. And so opponents of moral luck who claim that both drivers are equally blameworthy or are equal in terms of desert must--and do--take up the challenge of explaining away the apparent inconsistency between their view and our typical practice of blaming and punishment.

They may, for instance, claim that some appearances are deceiving. We don’t really blame the unlucky truck driver more harshly than the lucky driver. Rather, we are horrified by the tragedy itself, and so we have a perfectly natural aversion toward him in the same way that we have an aversion to anything (inanimate objects included) that is causally related to the tragedy (e.g., Richards 1986, 208). Or they may argue that, even if there is an injustice committed in punishing the unlucky driver more harshly than the lucky driver, this kind of injustice is often inevitable, since the lucky driver’s negligence will surely fly under the radar and be protected from the searching eyes of the enforcer. What makes the lucky driver lucky is that he gets away with it, not that he is less deserving of punishment (e.g., Rescher 1993, 156).

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14 Rosebury slides between responsibility and desert, while Sverdlik slides between responsibility and blameworthiness. Enoch and Marmor are quite explicit about treating blameworthiness as “solely a function of moral responsibility” (2007, 412).
Or they may deny that any injustice is committed, and argue that there is a difference between being blameworthy and being properly subject to blame. In order to prevent us from becoming “moral busybodies” who terrorize people with demands of moral perfectionism, we should conserve our blaming practices to cases where harm is done--and so the lucky truck driver is equally blameworthy, but not properly subject to blame (e.g., Jensen 1984, 328). Or they may say something else--but they must say something along these lines to explain how the two drivers may be equally blameworthy despite our apparent tendency to blame them differently.

Another problem with claiming that the two drivers are equal in terms of blameworthiness is expressed by Statman. “[I]t makes no sense to speak of blameworthiness simpliciter,” he writes, “since blameworthiness is always attributed for some negative state of affairs, or negative behavior” (2005, 423). But when we start identifying what the drivers are blameworthy for, there seems to be a difference. While the unlucky driver is blameworthy for the death of a child, the lucky driver surely is not, since no one died in his case. The same sort of criticism applies to speaking of moral responsibility generally. It may seem irresistible, when discussing an agent’s moral responsibility, to discuss what the agent is responsible for. And even when we are confined to resultant luck in particular, there seems to be a difference in what lucky and unlucky agents are responsible for. So how can opponents of resultant moral luck consistently say that both agents are on a par in terms of moral responsibility?

One solution (which appears to invoke the spirit of Kant) is simply to dismiss the idea that we are ever really morally responsible for the results of our actions. For instance, here is Sverdlik:
Talk of responsibility for results or states of affairs is merely a *façon de parler*.

Whenever there is talk of responsibility for, e.g., a death, what there is really responsibility for is the act which caused the death. (1988, 83)

The solution is efficient: there isn’t *really* any responsibility for results of actions, but only for the actions themselves. So the two truck drivers are equally responsible for their negligence, but whatever results *from* those actions is not relevant so far as moral responsibility is concerned. So, the fact that a child dies in one scenario and not in the other has no bearing on moral responsibility and cannot drive a wedge between the two drivers.

But this response has its limitations. One concern is that it gives the appearance of absolving the unlucky agent of any obligations toward those harmed by her actions. If the unlucky driver is not responsible for the death of the child, then it might appear as though he may turn to the family and say, “Yes, I killed your child, but I’m no more responsible than the other guys with my company--or with any trucking company, for that matter!--who didn’t check their brakes. So, I don’t see why I should repay you.” This sort of reaction would seem inadequate (if not monstrous) to most of us, and in fact, some philosophers have embraced moral luck with the primary goal of pre-empting this sort of behavior.\(^\text{15}\) Opponents of resultant moral luck may have a response to this concern, perhaps by distinguishing between two senses of “responsibility”—one which concerns obligations (as in “Jones is responsible for taking the trash out on Mondays and Wednesdays”) and one which concerns what Zimmerman would call “hypological judgments” (2006, 585), the sorts of judgments we make when assigning praise or blame (as in “Jones is responsible for the deaths he caused”). Perhaps the incurring of

\(^\text{15}\) In particular, this seems to be the thrust of Walker’s defense of what she calls “impure agency” (1991). Wolf—who ultimately opposes resultant moral luck—treats this problem as the primary hurdle to overcome when resisting moral luck (2003).
obligations may be susceptible to luck--and so the unlucky truck driver under an obligation to make reparations--even when the sort of moral responsibility in view in a discussion of moral luck is not (see Andre 1983, 205-06).

But there is another concern about adopting this solution, and the concern, for our purposes, is ineradicable. The solution just offered--which involves preserving moral responsibility for actions, but not their results--seems to be specifically designed for addressing resultant luck in particular. Opponents of situational moral luck won’t be satisfied with this language. Consider a famous example of circumstantial luck that Thomson gives. Judge Actual and Judge Counterfactual would each accept a bribe if offered, but only Judge Actual is offered (and accepts). Judge Counterfactual, since he is never offered a bribe, never accepts one (1989, 214). Since whether or not they are offered a bribe is out of both agents’ control, opponents of circumstantial moral luck must say that the two judges are morally on a par in some sense. But it seems they are not on a par with respect to moral responsibility for actions. Judge Actual certainly seems responsible for taking a bribe, but Judge Counterfactual is not, since he did not take a bribe in the first place. It appears we are back to the drawing board. In what moral respect, exactly, are the two judges supposed to be on a par?

The answer that Thomson herself prefers, and one that seems to have attracted favor, is that the judges--and, for that matter, the two truck drivers--are on a par in terms of character.16 It is natural to slide into this sort of language. Nagel diagnoses the resistance to moral luck to be stimulated by our deeply-felt belief that “[m]oral judgment of a person is judgment not of what

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16 The general view that character is the main object of moral evaluation of agents is widespread. In the moral luck literature, an appeal to character is explicitly endorsed by Richards (1986) and Thomson (1989), and seems also to receive support from Andre (1983, 205). Curiously, Greco, who embraces a control principle which appears to be inconsistent with this sort of move, appears to make it himself later in the same article: “Another way to put this last point is to say that we have made moral worth a matter of character rather than of actual choices and actions” (1995, 92). And he is more explicit about endorsing the character view in a later article (2006, 23-26).
happens to him, but of him” (1979, 36). So, it is unsurprising that, when identifying the luck-resistant moral feature of the agents in these cases, opponents of moral luck should specify something that picks out the agent herself as opposed to the events related to her, and so should specify her character.

Yet we cannot adopt this language either, and for an obvious reason. An agent’s character traits, after all, are Nagel’s paradigm examples of constitutive properties, and opponents of constitutive luck will want to say that two agents with different character traits can still be on a par in some sense.17 Suppose Jones and Smith are both very good people, but Jones (and not Smith) is kidnapped and subjected to a personality reconditioning program, only to emerge as a moral monster. Jones is now vicious, Smith is virtuous, and the difference between them is due to luck. And opponents of constitutive moral luck will claim that, in some important sense, they are on a par. Of course, their claim won’t make much sense to people like Thomson:

Suppose David has the following features: he is arrogant, a bully, a coward, devious, full of envy, and so on down through the alphabet of vices….Surely it would be crazy to say, “I can quite see that David is arrogant, a bully, a coward, and all the rest, but I wonder whether there’s any reason at all to think him a bad person.” (1989, 216)

Of course, it would be crazy to think David is not a bad person. But what opponents of constitutive moral luck will say is that whether a person is good or bad is not the only thing—or indeed, the most important thing—in morally assessing him.

But now we are stretched to the limit. The goal is to adopt language that will allow us to engage the topic of moral luck without begging any questions about what kinds of moral luck

17 A further problem with this response is that it threatens to upset the previous anti-resultant luck position. The two truck drivers, for instance, might not be morally on a par, if the negligence is indicative of one driver’s character but not of the other’s.
exist. But the standard candidates in the literature appear to frustrate this goal. If we adopt the
language of moral responsibility or blameworthiness for actions, we concede the existence of
situational moral luck. If we adopt the language of character, we concede the existence of
constitutive moral luck in particular. What’s left? We could, I suppose, adopt Zimmerman’s
idiosyncratic expression “moral responsibility tout court” (2002), but this alternative appears
problematic as well. Zimmerman’s meaning for this expression is closely tied to his particular
solution to the problem, which involves a denial of all kinds of moral luck—and so adopting his
language would threaten to beg the question in the other direction, by invoking a premature
denial of situational moral luck.

The recurring problem with the foregoing candidates is that they are too specific. Once
we identify a specific feature (responsibility for actions, character, or whatever) that is alleged to
be immune to some kind of luck, and we make that feature the focus of the debate on moral luck,
we will incur unwanted commitments for other parts of the moral luck problem. If we wish to
avoid these commitments at the outset, then, the way forward is to make our language more
general. The goal is to capture a core basic idea that runs through the moral luck literature, even
if it is not always expressed explicitly, which is itself the locus of debate and so not something
which carries obvious commitments.

There is, I think, just such a core idea, which sometimes spills out in the form of a
poignant heuristic. When mustering the reader’s support for her view that Judge Actual and
Judge Counterfactual are somehow on a par, Thomson says:

Would you have God throw Actual into a deeper circle of hell than Counterfactual? That
would be rank injustice in Him, even if there is chance in nature and He did not cause the
courthouse draw to come out as it did. (1989, 215)
And when articulating his notion of “true moral responsibility,” Galen Strawson explains:

As I understand it, true moral responsibility is responsibility of such a kind that, if we have it, then it makes sense, at least, to suppose that it could be just to punish some of us with (eternal) torment in hell and reward others with (eternal) bliss in heaven. (1994, 9, his emphasis)

Of course, neither Thomson nor Strawson claim to be committing themselves to theism with these remarks, let alone the Judeo-Christian notion of post-mortem judgment. Rather, they naturally find themselves appealing to the old story of divine judgment of persons in order to give voice to some general idea.

What is it about this story that it can attract even atheists in a discussion of moral luck? At least three features stand out. A first crucial feature of the story is that God is judging the agent herself, without any concerns about reasons for or against judgment that are extrinsic to the agent. He is not, for instance, worried about whether punishing the agent will be useful for deterring future bad behavior from others, or whether punishment would be effective or deleterious for rehabilitating the agent, or whether it would be an efficient use of time to judge the agent in light of certain minute details, or what have you. His judgment is confined simply to the agent herself, to giving her whatever justice (and not other things) demands that she receives. Secondly, the story presupposes God’s omniscience. God therefore has access to all of the relevant facts concerning the agent’s case—how she was influenced by prior causes, what she intended by her acts, how the results were influenced by other factors, how she would have behaved in other circumstances (assuming there are such facts)—and makes a reasoned judgment in light of all of them. It is as if God is faced with the question, “In light of everything, how does the agent herself stand morally?” and gives a determinate answer.
There is a third important feature of the story: the story itself does not tell us how God _would_ make this judgment. It is not surprising that there has been considerable disagreement in the theological community over this issue, as is clear by the classic debates on predestination and foreknowledge and on soteriology in general. Further, it seems that there is, in an indirect sort of way, a corresponding disagreement in the moral luck literature on how God would make this judgment. Thomson, apparently, thinks that God would cast his judgment in terms of the agent’s character. Strawson clearly holds that there is nothing at all in virtue of which God can make a sensible judgment of persons. And we can extrapolate competing answers from the writings of others. Zimmerman, it seems, would say that God would judge agents in terms of “responsibility tout court.” And friends of moral luck, like Adler (1987), would apparently claim that God would have no qualms about judging agents in terms of consequences of their actions, even when they are outside their control. The point here is that the heuristic just offered begs no questions on the moral luck issue.

There is, however, one distracting feature of the story that needs to be bracketed. According to the traditional story, God is the one who brought about those features that are outside of agents’ control in the first place. This fact may influence one’s verdict on how God may justifiably judge us, but it is an influence which seems to have no relevance to the moral luck debate simpliciter—the moral luck problem concerns moral properties of _us_, not the justice of God’s behavior, per se. This distracting feature of the traditional story has led some to

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18 As an example, Vatican II stoked the debate concerning whether salvation is possible for those outside of the church who exemplify certain Godly dispositions. This roughly corresponds to the question of circumstantial luck—given that people _would_ be members of the church given different circumstances, is that enough for salvation?

19 To do otherwise, Adler suggests, and to require judgment of agents to be luck-neutral, would result in “that flattening effect that we recognize as at least a natural tendency in the phrase ‘to understand is to excuse’” (249). Assuming that God would not be susceptible to that effect, God would not give a luck-neutral judgment.
dismiss the value of the story altogether, but the feature is easily enough ignored. Thomson, it will be recalled, claims that it would be unjust of God to treat the two judges differently, even if he exercised no control over the different circumstances that led to their different behavior.

The idea that the heuristic points to is the idea of how an agent stacks up morally, in light of everything. The term I have adopted to express this idea is “moral profile.” In the old story of divine judgment, it is the moral profile that God judges. And Thomson’s claim that it would be “rank injustice” of God to toss the judges into different circles of hell may be translated into my language by saying that the fact that Actual, but not Counterfactual, takes the bribe makes no difference to their respective moral profiles.

Ultimately, the debate over moral luck concerns what kinds of luck may influence an agent’s moral profile. This is left an open question. Full-blown friends of moral luck feel at liberty to claim that an agent’s moral profile may be influenced by the consequences of her actions, in addition to other things. Opponents of resultant moral luck will deny this. Some of these may claim that an agent’s moral profile is simply determined by the actions for which she is morally responsible; if so, they will deny resultant moral luck but embrace situational moral luck. Those like Thomson will claim that agents’ moral profiles are determined by their character, and so deny resultant and circumstantial moral luck, while embracing constitutive moral luck. And full-blown enemies of moral luck, like Zimmerman, might identify another property which determines an agent’s moral profile—e.g., responsibility tout court. The debate throughout concerns how susceptible our moral profiles are to luck—that is, how much luck influences how we stack up morally, all things considered.

20 Arpaly, for instance, claims that an appeal to the story of divine judgment of evil doers has nothing to do with the moral luck problem, but “the problem of evil invoked at one remove,” since God is the one who creates the perpetrator (2006, 37).
We are now, at long last, in position for a final definition of moral luck:

Moral luck =df Any case in which two (actual or possible) agents’ moral profiles differ due to facts beyond their control.

The main questions before us concern how much moral luck there is, what kinds of moral luck there are, and what, if anything, our moral profiles amount to.

3.3. On Denying Moral Luck Per Se

I said at the end of section 2.2 that the problem of moral luck is all about what the correct condition of control is. But I just got through saying (at the end of section 3.2) that the crucial questions in the debate are about how much and what kinds of moral luck exist and about what our moral profiles are supposed to be. Of course, the problem is really about both of these things, for the two sets of questions are very closely related. The control principle that one adopts will determine what kinds of moral luck exist and will put constraints on what can constitute one’s moral profile. And one’s view about what kinds of moral luck exist will put considerable constraints on the conditions of control that one may consistently adopt. Closely related as they are, the two sets of questions should be treated together.

Strange things can happen when they are treated in isolation. For instance, it is possible to deny some--or perhaps even most--moral luck without taking an anti-luck position. Suppose someone holds the view that an agent’s moral profile is determined by the sign of the zodiac at her birth. Since no agent exercises any control whatsoever over the circumstances of her birth, this view entails that no agent exercises any control whatsoever over her moral profile, and so is flatly inconsistent with any condition of control that is worthy of the name. But at the same time, this view entails that there is very little moral luck. There would be no resultant moral luck, for the consequences of one’s actions have no relevance to the sign of the zodiac at one’s birth, and
so (on this view) have no relevance to one’s moral profile. But neither do one’s actions have any relevance to the timing of one’s birth, and so the situational luck that influences one’s actions would not influence one’s moral profile. And so there would be no circumstantial moral luck, and there would be precious little constitutive moral luck. The only luck that could influence one’s moral profile would be the luck concerning when one is born--so there would be just a small bit of constitutive moral luck.\(^{21}\)

Suppose we were to ask the proponent of this view to explain why she denies resultant and circumstantial moral luck. She might say something like,

“Well, it’s simply absurd to say that one’s moral profile can fluctuate depending on whether a child runs out into the street or one is offered a bribe. These sorts of things aren’t the sort of things that matter morally--all that really matters morally is the sign of the zodiac at one’s birth.”

But she would not say something like,

“Well, it’s simply absurd to say that one’s moral profile can fluctuate depending on whether a child runs out into the street or one is offered a bribe. These are things that we have absolutely no control over, so how can they influence our moral profile?”

She would not say the latter because she would not care about the relation between control and the agent’s moral profile at all. She does not take an anti-luck stance.

What this example shows is that we cannot determine the strength or weakness of someone’s opposition to moral luck simply by reading off the kinds of moral luck that she denies. It is possible to deny many kinds of moral luck without denying moral luck \textit{per se}--that

\(^{21}\) I’m treating one’s astrological sign as a constitutive property, but perhaps it could just as easily be treated as a circumstantial one. The difference is immaterial.
is, without any qualms whatsoever about one’s moral profile being subject to factors beyond one’s control. To determine the strength or weakness of someone’s opposition to moral luck, we also need to keep an eye on the strength or weakness of the control principle asserted by or available to her.

4. Where We Are Heading

The territory on resultant moral luck has already been thoroughly explored. Probably the most popular view is that there isn’t any, and that appearances to the contrary are misleading. But this view naturally encourages further questions. If resultant luck is so problematic, what should we say about situational luck? How far down the slippery slope of moral luck opposition should we go? In the end, what is there left to evaluate that could plausibly be said to constitute our moral profile?

I intend to focus in particular on these further questions. In what follows, I will simply assume an anti-luck stance with respect to resultant moral luck. That is, I will assume that there is no resultant moral luck for the reason that is usually given--that we in fact exercise more control over our moral profile than we would if there were such moral luck. I will then see where this assumption leads us, focusing on the three most frequently offered (putatively) anti-luck positions concerning what our moral profile amounts to: (a) our character, (b) our actual behavior, and (c) both our actual and counterfactual behavior. What will emerge is an intriguing, perhaps unsurprising, but surprisingly underappreciated connection between the moral luck issue and the free will issue. In particular, it will be seen that the only satisfactory anti-luck positions on the table will be ones that are committed to libertarian free will.

We will begin with compatibilist-friendly views. In chapter 2, I will examine the character view and argue that, whatever its other merits, and despite the protests of some of its
proponents, it is not an anti-luck position at all. Ironically, some of the examples that are used to motivate the character view--examples of circumstantial luck that are alleged to be problematic--would be better handled by simply being accepted as instances of genuine moral luck. One may do this in a compatibilist-friendly way by adopting the view that our moral profiles are simply determined by our actual behavior. This view, I argue, gives the agent more control over her moral profile than the character view.

However, I argue in chapter 3 that a compatibilist-friendly version of this view will also ultimately be unacceptable as an anti-luck position. The reason is largely due to the nature of compatibilism itself--compatibilists are forced to make essential reference to the states of the agent, in just the sort of way that chapter 2 reveals is inconsistent with the denial of resultant moral luck. This will be shown to be true not only for the kind of view that grounds our moral profiles in our actual acts, but also for views that appeal to our counterfactual acts as well. The result is that, while opponents of moral luck might opt to take either the actual acts view or the actual and counterfactual acts view, they may only do so by adopting specifically libertarian versions of these views. Opposition to moral luck, then, will involve a commitment to the libertarian perspective on free will.

So, chapter 3 will leave us with two libertarian views on the table. Chapter 4 will provide an evaluation of these two views from the perspective of moral luck. Neither approach will be declared to be the winner, in part because the difference in strategy will be too strong to admit one. In particular, the difference will center on different approaches to the notion of control. The simple acts view will be shown to be saddled with some situational moral luck. The counterfactual acts view will show some promise for avoiding situational moral luck, but only at the price of a deviant notion of control. Nevertheless, the opponent of moral luck will be forced
to choose between them--and in particular, between libertarian variants of them. Since opposition to resultant moral luck is quite popular, and since libertarianism is decidedly less so, something has to give.
II. Compatibilist-Friendly Views

In this chapter, I will begin with the most pervasive of anti-luck positions--the view that there is no resultant moral luck. This view will be the assumption from which the rest of the study will build. Our first question will concern what control principles are available to the opponent of resultant moral luck to motivate this assumption. Then, I will apply these principles to two positions concerning what our moral profile amounts to: (a) that our moral profile is constituted by our character, and (b) that it is constituted by our free actions. On their face, neither of these positions is committed to any particular position on the free will issue, so I refer to them as compatibilist-friendly views. (I will, however, develop a libertarian-specific version of (b) in the following chapter.) I will argue that the character view is impugned by even the most modest control principle which motivates the anti-resultant moral luck position. The second alternative--the free acts view--will not be directly impugned by it. The character view, then, will be discarded; while my treatment of it will not demonstrate that it is false, it will demonstrate that it is not an anti-luck position. Rather, I will uphold the free acts view as a better anti-luck option, and I will develop it from a compatibilist-friendly perspective.

1. The Anti-Luck Assumption

Let’s begin with our assumption that there is no resultant moral luck. If this assumption is correct, then one’s moral profile isn’t determined by how one’s actions turn out. If two truck drivers are equally negligent (with the same intentions, same character, same actions, etc.), but one hits a child who runs into the street while the other does not (because, luckily, no child runs into the street in his case), that difference does not mark a difference in their moral profile. And if two men attempt murder by gunfire (with the same intentions, etc.), where one attempt succeeds and the other fails due to the (lucky) interference of a passing bird, their moral profiles
are nevertheless the same—at least with respect to the events described. This is a widespread view. ¹

But why, exactly, is it so widespread? There are two ways one might go about rejecting resultant moral luck. One method is to begin with a particular view on an agent’s moral profile. With such a view in hand, it is easy to determine whether one will be committed to the existence or non-existence of resultant moral luck—and some such views will preclude its existence. As explained in section 3.3 of the last chapter, however, it is possible to deny resultant moral luck without taking an anti-luck position. If, say, one begins with the view that an agent’s moral profile is fully constituted by the sign of the zodiac at her birth, one will deny resultant moral luck while still claiming that an agent’s moral profile is entirely determined by luck. So, this particular method of denying resultant moral luck does not guarantee that one will adopt an anti-luck position. As it turns out, few opponents of resultant moral luck in the literature take this approach.² Rather, they begin with the intuition that there is something wrong about one’s moral profile being subject to factors beyond her control, and from there develop a view on the agent’s moral profile.³ This method will, if consistently applied, result in an anti-luck position. Since I am interested in an anti-luck assumption that there is no resultant moral luck, it is this second method—by far the most common—that will be investigated here.


² One exception is Rosebury, who begins with a general theory of responsibility and applies it to the moral luck question (1995).

³ This is the way Domsky, Enoch and Marmor, Greco, Jensen, Richards, Sverdlik, Thomson, Wolf, and Zimmerman approach the topic. Rescher uses a different concept of luck, but takes an analogous approach himself.
While those who adopt this method don’t always (or even usually) explicitly identify the control principle from which they are arguing, there should nevertheless be *some* control principle that supports the conclusion that there is no resultant moral luck. In fact, there are *many* such principles. For instance, take the rather strong control principle embraced by Zimmerman and mentioned in section 2.2 of the previous chapter:

[I]f (a) someone’s being $F$ (where ‘$F$’ designates some complex property comprising both epistemic and metaphysical components) is sufficient for that person’s being morally responsible to some degree $x$, then, if (b) it is true of $S$ at some time that he or she would be $F$ if $p$ were true, and (c) $p$’s being true is not in $S$’s control at that time, then (d) $S$ is morally responsible to degree $x$. (2002, note 33)

This principle will certainly support the claim that there is no resultant moral luck. The lucky truck driver would have hit the child had she run into the street, and the driver has no control over whether the child runs into the street. The result is that the lucky truck driver is morally responsible to the same degree as the unlucky one; or, using my language, there is no difference in their moral profiles in virtue of the events described. But then again, as mentioned previously, while this control principle may sound quite intuitive, it is rather strong, and it has consequences that many would not accept.

Take, by contrast, the following principle:

Necessarily, for any two agents, if their moral profiles differ, that difference is not due to facts beyond their control concerning the results of their actions.

This principle is quite weak. It, too, supports the anti-resultant luck position. But that’s because it just *is* the anti-resultant luck position. The trouble here is that the principle makes a restriction to resultant luck in particular; it is not a principle that deals with luck *per se*. As a consequence,
this principle is consistent with the position that your moral profile is directly constituted by the sign of the zodiac at your birth. While it is just strong enough to entail the anti-resultant luck position (since it just *is* that position), it is too weak to be an anti-luck principle.

What we need is a control principle that is just strong enough to render the anti-resultant luck verdict (and no stronger than necessary to give that verdict), consistently with being a genuine anti-luck principle that cuts against moral luck *per se*. Ideally, this principle will be weaker than the one that Zimmerman provides. But it is surprisingly difficult to identify a suitable candidate. At first glance, the following might seem just right:

**CP1.** Necessarily, for any two agents, if they differ in moral profile, then it is not the case that that difference is due entirely to facts beyond either agent's control.

This principle makes no ad hoc restrictions to particular kinds of luck, as it targets luck *per se*. (Note that it is inconsistent with the view that your moral profile is determined by the sign of the zodiac at your birth—at any rate, given the possibility of agents being born at different times.) And at first glance, it also appears strong enough to grant the anti-resultant luck verdict. After all, neither truck driver controls whether or not a child runs into the street, and neither shooter controls whether or not a bird flies into the path of his bullet. But at first glance, it seems that if there *were* to be a difference between the two drivers or the two shooters, that difference would be due entirely to the presence or absence of a child or a bird. Since neither agent controls these factors, then by (CP1), it seems that there is no difference in their moral profile—there is no resultant moral luck.

But this first glance may be deceptive. Granted, neither shooter controls whether a bird is in the vicinity, but the one who actually kills his victim doesn’t go on trial for the absence of a bird. He goes on trial for murder. The jury will not likely be persuaded by him if he says, “In
fact I did kill my victim, but I didn’t control this fact—after all, I didn’t control whether a bird got in the way!” There seems to be something horribly fishy about this line, and not only due to the strong intuition that the killer is still guilty for pulling the trigger, whatever the upshot. There is an intuitive pull to say that the killer simply speaks falsely when he denies controlling the fact that he has killed.4 If that is right, then it seems we can embrace at least some resultant moral luck and (CP1) at the same time. For we can say that the two shooters’ moral profiles differ, due to the fact that the murderer has killed (which is something he controls), while the unsuccessful shooter has not. The difference would not be due entirely to facts beyond either agent’s control.

Something important—and perhaps a bit surprising—has just happened here, and we need to take note of it. It is not uncommon in the literature for authors to speak in a way which invites the assumption that acceptance of resultant moral luck would butt up against principles like (CP1). At one point in his classic article, Nagel expresses the putatively scandalous nature of moral luck in the following way:

From the point of view which makes responsibility dependent upon control, all of this seems absurd. How is it possible to be more or less culpable depending on whether a child gets into the path of one’s car, or a bird into the path of one’s bullet? (1979, 31)

And Sverdlik gives emphasis to this idea when attacking what he calls the “non-equivalence theory”, that is, the view that there is resultant moral luck:

Finally, I have a confession to make: I assert that the cases I consider tend to show that the non-equivalence theory is untenable because of its absurd consequences. But I admit that these consequences may be no more absurd than the thesis that the unforeseeable

4 It’s worth noting that Thomson, herself an opponent of resultant moral luck, would certainly say so. “If I shoot a man in the head, there is no luck at all in its being the case that my shooting him causes his death, so that I have thereby killed him” (1989, 206).
flight of a bird between me and my victim will affect my moral responsibility. And this thesis is explicitly affirmed by the non-equivalence theorists. (1988, 80)

In each passage, the most salient difference between the two shooters’ cases--the presence or absence of a bird--is given center stage, and the reader is invited to assume that the difference between them is entirely due to that fact. Obviously enough, neither shooter has any control over whether the bird is present. The upshot is that--if we grant that assumption--it certainly appears that (CP1) precludes resultant moral luck.

So, we have a curious puzzle in front of us. What generates the puzzle is that there are two ways of describing the difference between the cases. One way is whether or not the agent kills his victim. The other is whether or not a bird intercepts a bullet. On one way of describing the difference, it seems that there is something at least one of the agents controls that accounts for it. On the other, the difference seems entirely beyond each of them. But it is not as though, by multiplying descriptions, we get to pick and choose which ones of them apply to the case. Barring some principled reason for rejecting one or the other of them, they all do. So, it is true that a difference between the cases is that a bird is present in one and absent in another. And it is true that a difference is that one agent kills and the other does not. This second fact is what prevents us from using (CP1) as our control principle--for so long as we are willing to grant that one of the agents controls the fact that he kills, it seems that we must concede that (CP1) does not rule out resultant moral luck in this case.

Is there a reason for rejecting the claim that the successful killer controls the fact that he kills? We might think so. For whether or not he kills is contingent upon the presence or absence of the bird, and clearly the shooter has no control over that. And we might think that, in order to control X, one must control everything on which X is contingent. But this is the notion of
control that we dismissed in section 2.2 of the previous chapter, and I do not intend to resuscitate it now.

But there is another point of similarity that I neglected to mention in the last chapter and which deserves to be mentioned here. The idea that, if one has no control over something (e.g., whether a bird is present), then one does not have control over its upshot (e.g., whether the target survives) has been famously defended in arguments for incompatibilism—in particular, van Inwagen’s consequence argument (1986). For van Inwagen, if the initial conditions and the laws of nature determine our present acts, then we have no control over our present acts (or at least not the sort of control necessary for moral responsibility). His basic reason: we have no control over the initial conditions and the laws of nature, so we can have no control over their upshot.

Of course, there are differences between what van Inwagen is up to and the claim that the successful killer doesn’t control the fact that he has killed. (It is not as though the absence of the bird determines the death of the victim by itself; the shooter’s squeezing of the trigger is another indispensable causal component.) But the similarity is strong enough to deserve mention. For suppose I change the example in the following way. In one case, the flight of the bird puts into motion a series of deterministic causes that culminates in some future immoral action, whereas in the other case, the absence of a bird puts into motion a series of deterministic causes that culminates in an absence of future immoral actions. Now, the question is put forward whether there will be a difference in terms of their moral responsibility for those future actions. Read Sverdlik’s passage again:

But I admit that these consequences may be no more absurd than the thesis that the unforeseeable flight of a bird between me and my victim will affect my moral
responsibility. And this thesis is explicitly affirmed by the non-equivalence theorists.

(1988, 80)

Change the surrounding context in the way I just described, and what we have left is not an attack on resultant moral luck, but what may be construed as a van Inwagen-esque attack on compatibilism—an attack which pinpoints non-controlled factors prior to the action (in this case, the flight of the bird) and insists that such an event can’t determine responsibility. And so even now, right out of the gates, it seems that, at least for some scholars, opposition to resultant moral luck (even when only resultant moral luck is on the table, as it is in Sverdlik’s case) might emerge from intuitions that resonate with incompatibilism.

I do not want to make much of this, however, for I do not want to impute to the opponent of resultant moral luck the claim that the killer does not control the fact that he has killed. Surely not all opponents of resultant moral luck would say so (see note 4), and it is, I think, a surprising and counter-intuitive view. It could only emerge naturally from the belief that no one ever controls the effects of one’s actions. While there may be something to be said for this idea, it certainly does not conform to our ordinary use of the term “control.” If I announce in mixed company that, while I can control whether or not I attempt to prevent the flow of my urine, I do not control whether or not the urine actually flows into my pants, I will not be taken to be expositing some obvious philosophical truth, but to be confessing to incontinence. On our ordinary use of the term “control,” we control effects all the time (and our failure to control effects isn’t always taken as a banal truth, but is sometimes taken to be remarkable). So, if ordinary use is our guide, the killer controls the fact that he kills. And if that is true, (CP1) does not rule out resultant moral luck in this case; we will need something stronger.
But how are we to strengthen it, aside from Zimmerman’s strong control principle? Two possibilities stand out. One option is to point out that, while the killer may very well control the fact that he has killed, the other shooter doesn’t control the fact that he has *not* killed. (CP1) articulates the main point of concern for opponents of moral luck—there has to be at least *some* difference in terms of what agents control when they have different moral profiles. That is the anti-luck intuition at its most basic. However, (CP1) doesn’t require that *both* agents exercise control over the difference, and perhaps that laxity is what prevents it from rendering the anti-resultant luck verdict. So, perhaps we can strengthen our control principle in the following way:

**CP2.** Necessarily, for any two agents, if they differ in moral profile, then for each agent, there is some fact which that agent controls and which at least partly accounts for that difference.

If (CP2) were true, then in order to embrace resultant moral luck, we would need to do more than merely point out that the killer controls the fact that he has killed. We would need to show that the unsuccessful shooter also controls something that accounts for the difference in moral profile between them. Opponents of resultant moral luck might hope that this is a demand that cannot be satisfied.

There is something to be said for this idea. As we noticed earlier, it might seem outrageous for the killer to turn to the jury and say, “Yes, I killed, but I didn’t *control* the fact that I killed, since I didn’t control the absence of the bird.” But opponents of resultant moral luck will think it equally outrageous for the lucky shooter to turn to the jury and say, “Yes, I pulled the trigger, and with murderous intent. But I didn’t kill my target, and that makes all the difference.” And one reason these anti-luck scholars might think this sort of response is
outrageous is that, in some very important sense, the lucky shooter does not control the fact that he isn’t a killer.5

But in what sense, exactly, does the lucky shooter fail to control the fact that he has not killed? Perhaps there is a sense in which he does control this fact. After all, he freely performed an action which (due to the flight of the bird) was bound not to result in any person’s death. Suppose we say that the reason the killer controlled his killing is that he freely performed an act which had the death as a consequence. Then of course we would have to say that the lucky shooter controlled the fact that he failed to kill—for he freely performed an act which had no death as a consequence. To get the right result, we would need a more sophisticated account of control of effects.

Perhaps we may say that the reason the lucky shooter failed to control the fact that he didn’t kill is that, after all, he intended to kill his target and his intentions were frustrated by the bird. This reasoning appears to rely on the general view that an agent has control over some effect X only if X was the agent’s intended upshot. But this view seems wrong. If I’m a general deciding whether or not to bomb some military target, I might freely opt to proceed with the bombing, intending to take out only military equipment and personnel. But should some civilians die in the blast, it might not seem right for me to say, “Well, I didn’t intend for these civilians to die, and so I had no control over their deaths.” For it seems I did have control over their deaths—I could have prevented them by opting to forego the bombing. (This would be so regardless of what you say about the doctrine of double effect. Double effect isn’t a claim about

5 There is a tendency for some proponents of moral luck to interpret opposition to moral luck as advocating the innocence of those who unluckily bring about bad effects. (See especially Walker (1991).) Strictly speaking, this isn’t correct—the thrust of opposition to moral luck is equivalence, not innocence. Indeed, Domsky (2004) argues (perhaps implausibly) that the only reason that anyone is attracted to the notion of moral luck is that the lucky (those of us who have not brought about bad effects) selfishly would like to think themselves morally better off than the unlucky—when in fact, we’re just as guilty as the unlucky.
control.) Similarly, one might argue, the lucky shooter did have control over the prolonged life of his target—he could have prevented it by lobbing a hand grenade instead of firing a bullet.

Then again, in the case of the general, the possibility of “collateral damage” was surely foreseen, and the bird was not foreseen in the shooter case. Perhaps this makes the difference: an agent has control over some effect X only if X was the foreseen result of the agent’s free action. But on its face, this does not seem right either. If, through some extraordinary dietary ignorance, I opt to eat nothing but ice cream for the next three years without foreseeing its probable result, and I freely do so, it would seem wrong for me to deny controlling my subsequent weight gain. This is not to say, of course, that I don’t have an excuse. Perhaps I do. (Perhaps Aristotle is right, and ignorance may be an excusing condition.) But the control still seems to be there.

Perhaps one might say that, in the weight gain case, the effect of my eating ice cream was not foreseen, but it was clearly foreseeable, and that an effect’s foreseeability, not its being foreseen, is a necessary condition for control. Of course, in the shooter case, the sudden interception of the bird was not foreseeable. Or was it? Suppose it was. Suppose a bystander could see all along that the bird was heading right into the path of fire, and that if the shooter had just stopped to look, he would have seen that shooting wouldn’t have worked, and so lobbed a hand grenade instead. But in his haste to kill his victim, he didn’t look, and he pulled the trigger. Should we say that now the killer controlled the fact that he didn’t kill his victim, and so in this case his moral profile might well differ from the successful killer’s? Surely opponents of resultant moral luck would not say so.

I suspect that when we think that there is something outrageous about the lucky shooter’s defense (“I pulled the trigger, but I didn’t kill my target, and that makes all the difference”), what
we have in mind is something like the following: “Granted, you didn’t kill your target, but you
would have but for the bird! And you didn’t control that!” Now, if this reaction is supposed to
show that the lucky shooter does not control the fact that he hasn’t killed, it looks suspiciously as
though it is relying upon that strong notion of control that we have already dismissed--the idea
that, to control X (e.g., the shooter’s not killing anyone), one must control everything on which
X is contingent (e.g., the flight of the bird). Again, this is not a view on control I intend to
resuscitate.

But perhaps this reaction isn’t supposed to show that the lucky shooter doesn’t control the
fact that he hasn’t killed--or at least, not directly. Perhaps it is relying upon something like
Zimmerman’s control principle. We are inclined, after all, to say that the killer’s moral profile
takes a turn for the worse in the story. And with the above reaction, we seem to impute the same
turn for the worse to the lucky shooter, on the grounds that, had there been no bird (which is a
factor over which the shooter has no control), there would have been no further difference
between the two cases. This idea has at least some preliminary intuitive appeal, and as I
confessed at the end of the last chapter, I find it to be attractive. But the goal of this section is to
identify a weaker principle that will deliver the anti-resultant luck verdict.

There may still be some way of vindicating (CP2) and showing that it does preclude
resultant moral luck. But doing so is likely to require considerable legwork in controversial
issues surrounding control over effects. In any event, it is not clear that (CP2) is what opponents
of resultant moral luck have in mind anyway. When we look at the literature, a different
principle seems to emerge.

Right at the outset of her paper on moral luck, when giving a brief description of what
moral luck is supposed to be, Susan Wolf writes:
Whether we are naturally sociable or irritable, whether we find ourselves faced with particularly explicit or burdensome moral challenges, whether the arrows of our actions hit their targets—all constitute ways in which things we cannot control affect the moral quality of our lives. All, then, serve as examples of moral luck… (2003, 113, my emphasis)

It is that italicized expression—“whether the arrows of our actions hit their targets”—that is supposed to be identifying resultant luck. As it is, it seems a bit too narrow, applying to cases where the agent actually has a target in mind. This will apply straightforwardly to the shooters case, but not obviously to the negligent drivers case—in that scenario, neither driver is targeting the death of the child (perhaps they are targeting something else, such as getting home safely). Nevertheless, there is something in that expression that deserves attention.

Henning Jensen develops this notion a bit more fully, albeit in a passage where he has different aims:

A second way in which the control condition relates to our blaming expressions concerns the kind of case in which an agent’s faulty action creates a risk of harm within those possible results of his action which are causally related not only to his act but to the respect in which it is faulty. But whether one or the other of these results actually occurs is beyond his control.

And again:

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6 His aim is to point to a distinction between the kinds of cases that Nagel provides and cases where some salient upshot occurs, but which is not explained by the morally relevant features of the act. These latter cases are what Jensen (perhaps misleadingly) refers to when he discusses scenarios that describe “actual results which are in every sense beyond the control of the agent.” One example of this might involve a violent hater of trucks killing himself upon seeing the negligent truck driver passing by. Here, the negligent driving has caused a death, but the death is not explained by the negligence. This, Jensen thinks, is different from a case like the one Nagel provides, where the negligence explains the death of the child who runs into the street.
Nagel’s conception of moral luck requires the employment of two main distinctions which I have made and to which Nagel has given insufficient attention. These are...(2) the distinction between actual results which are in every sense beyond the control of the agent and actual results which are within the risk created by the faulty character of the agent’s act, but are beyond his control in the qualified sense that, among the results within the risk, whether one result occurs rather than some other is beyond his control.

(1984, 326-327, my emphasis)

Again, with Jensen, we get this idea--expressed also by Wolf--that the results of our actions are beyond our control in the sense that, once we have acted, we don’t exercise any further control over whether some result or a different result obtains.

Now, there may seem something strange about this. Here I have the barrel of my loaded gun pressed to your temple. There is no one else to save you. You’re unconscious and utterly defenseless. Surely I control whether, when all is said and done, I leave behind a living body or a corpse--and this despite the fact that it’s conceivable that, after pulling the trigger, the bullet spontaneously turns into a soft feather.

We may apply Jensen’s line of thought to this case in the following way. When I pull the trigger, I am engaging in some “faulty action” which “creates a risk of harm.” That might seem to be putting it mildly, but the basic idea is plausible. It is not as though my pulling the trigger entails your death, since the bullet might spontaneously turn into a feather. Of course, combined with other factors (e.g., the laws of nature, the physical conditions of the gun and the bullet, the absence of countervailing causes, etc.), my action might entail your death, but those other factors are the domain of luck--their variations are what makes Nagel’s examples possible. My own contribution to the course of events is thus limited. I can influence the probabilities significantly,
but I can’t—simply by my own behavior—determine their upshot. This remains true even if I have infallible knowledge in advance of what the upshot is going to be. My direct contribution to the sequence of events is my pulling the trigger, not the further events or factors surrounding my doing so. Suppose I pull the trigger and you die. Have I controlled the fact that you are now dead? Yes—but in an indirect sense. What I directly controlled was my squeezing the trigger.

This account has spilled into action theory, and perhaps there is something controversial about it. But it seems clearly to be what Wolf and Jensen have in mind. Perhaps more importantly, it seems to be at least roughly what Kant had in mind. For Kant, what matters for moral evaluation is our will or volition—and when this will is good, it is the “jewel” which, for Kant, “would still shine by its own light, as a thing which has its whole value in itself” (1949, 12). What does not matter—not for moral evaluation, at any rate—is what follows from it. Kant does not deny that we have control over the effects of our actions. What he denies is that control over effects is what matters. What does matter is the volition by which we act. So, when the lucky shooter says, “I pulled the trigger with murderous intent, but I didn’t kill, and that makes all the difference,” Kantians respond by stating that the harmless upshot makes no difference, and that when it comes to what matters—the volition—the two shooters are exactly on a par.

To capture this line of thought, I suggest we draw a distinction between what we may call direct control and indirect control. I have direct control over my actions; I have only indirect control over their effects. This way of speaking, of course, requires that we do not individuate actions in terms of their consequences. It also leaves open certain questions about what, exactly, I have direct control over. We might include, say, all of my mental and physical movements which culminate in the squeezing of the trigger. Or we might (in the spirit of Kant) include only the mental volition itself, treating the physical movements as themselves effects of this stripped
down movement of the will. These are questions I will be happy to sidestep for now. However opponents of resultant luck wish to distinguish between acts and their results, the same distinction may carry over to the distinction between direct and indirect control.\(^7\)

Armed with this distinction, we are now prepared to offer another control principle which supports the anti-resultant luck position:

**CP3.** Necessarily, for any two agents, if they differ in moral profile, then it is not the case that that difference is due entirely to facts beyond either agent’s direct control.

This principle differs from (CP1) only in that it is direct control in particular that is needed for a change in moral profile. This makes (CP3) a stronger principle, but one that seems to be motivated by the basic concerns of opponents of resultant moral luck in the literature. There is also a sense in which (CP3) is weaker than (CP2). (CP2) requires that both agents control something in virtue of which their moral profiles might differ. (CP3), like (CP1), requires only that one agent exercises control, although it needs to be direct control. In this way, it reverts to the basic anti-luck intuition that, for there to be a difference in moral profile, there has to be some difference in terms of what the agents control, without specifying who controls what. There may be an attractive analogue of (CP2) that is expressed in terms of direct control, but there is no need to strengthen (CP3) in this way to deliver the anti-resultant luck verdict—-for (CP3) delivers that verdict already. Take any case where two agents perform the same action, but with different results. If their moral profiles were to differ with respect to the events described in the case, that difference would only be due to the differing results. But the differing results are not within

\(^7\) It is worth noting that this distinction also appears in one of Zimmerman’s early arguments against resultant moral luck (1988, 54-55). His point here is that we are not “substantially appraisable” for anything with respect to which we are only “indirectly free.” Since we are only indirectly free with respect to the consequences of our actions, our appraisability for them is “empty.” We can only be “substantially appraisable,” he argues, with respect to something over which one is “directly free,” such as our acts or volitions.
either agent’s direct control (although they may be within at least one agent’s indirect control).
So, according to (CP3), their moral profiles do not differ. If (CP3) is true, there is no resultant moral luck.

Now (CP3) has been specially crafted with the opponents of resultant moral luck in mind. That might lead one to think that it makes an ad hoc restriction to resultant luck--that it does not cut against moral luck *per se*. A second glance should be enough to dispel this concern. For if (CP3) is true, then (unlike our earlier example of an ad hoc control principle) we can rule out the claim that, say, one’s moral profile is determined by the sign of the zodiac at your birth. This is because no agent exercises any direct control over the circumstances of her birth. Indeed, since (CP3) is simply a strengthening of (CP1), and since (CP1) is strong enough to cut against moral luck *per se*, (CP3) is as well.

Are there ways of weakening (CP3) without sacrificing the anti-resultant luck verdict? I doubt it. We may weaken (CP3) by removing the modal term “necessarily,” or by replacing it with “possibly.” We may also replace the universal quantifier “for any two agents” with the existential quantifier “for some two agents.” The sentential component following the quantifier already appears to be about as weak as it can get, with the exception of the fact that it refers to direct control in particular, as opposed to control in general--and we have already seen that we need the reference to direct control. After all, it’s simply saying that, for there to be a difference in moral profile, there’s *something* that *one* of the agents (directly) controls that at least *partially* accounts for that difference. It is hard to get much weaker than that.

The necessity operator and universal quantifier (or logically equivalent expressions) are required for the anti-resultant luck verdict. Opponents of resultant moral luck are not in the business of saying that with only *some* agents, there is no resultant moral luck. And they are not
in the business of saying that *as it turns out*, there is no resultant moral luck but that there could have been. The very process of providing examples (many--perhaps most--of which are not true stories) shows that they are after something stronger than an empirical claim about some agents. They are after a necessary claim about all agents. We need, then, to retain the necessity operator and the universal quantifier.

I submit that (CP3) is an attractive candidate for the kind of control principle we are looking for: a principle which is just strong enough to deliver the verdict that there is no resultant moral luck (and no stronger than is necessary to deliver that verdict), and which targets moral luck per se.

2. Why We Must Dismiss the Character View

2.1. *What the Character View Is*

We are now in a position to discuss our first compatibilist-friendly view on moral luck--the view that our moral profile is determined by our character. Our first task is to understand what this view states.

There is, of course, a great deal that is morally interesting about character, but not all of it will be relevant to the current study. Moral interest in character extends at least as far back as Plato and Aristotle and naturally remains the focus of modern aretaic philosophers. However, the issue we have in view does not directly concern normative moral theory. Certainly those who embrace non-aretaic normative moral theories may claim, and indeed have claimed, that one’s moral profile is grounded in one’s character. Further, the virtue-ethical approach to morality does not entail that an agent’s moral profile is grounded in her character. For it is perfectly coherent to accept the aretaic position on normative moral theory while denying (in the way of Galen Strawson) that anyone has a moral profile (as I’ve defined it) at all. Alternatively,
one might try combining an aretaic normative ethic with an act-based view of moral profiles. While this move might seem hard to motivate, it appears at least coherent.

The more particular idea regarding character at issue here is associated as much with Hume as with Aristotle. While “actions themselves may be blameable,” Hume writes, the person is not answerable for them; and as they proceeded from nothing in him, that is durable and constant, and leave nothing of that nature behind them, it is impossible he can, upon their account, become the object of punishment or vengeance.

On the contrary,

[t]he only proper object of hatred or vengeance, is a person or creature, endowed with thought and consciousness; and when any criminal or injurious actions excite that passion, it is only by their relation to the person, or connexion with him. (1999, 161)

Hume appears here to express an intuition alluded to in the previous chapter--that proper moral evaluation of an agent concerns factors that are internal to her, that (to recall Nagel’s line) “[m]oral judgment of a person is judgment not of what happens to him, but of him” (1979, 36).

While we may judge an action according to some external standard, in light of whatever normative moral theory one has in view, when it comes to judging an agent, we will want to evaluate more than merely what she does, but something longer lasting and more central to who she is “deep down.” And it is tempting to say that nothing is more internal to the agent than her

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8 Since Aristotle held that we have some control over the formation of our characters (Nicomachean Ethics III.5), such a view might pinpoint acts concerning character formation in particular as forming the basis of our moral profile. This and related ideas will be discussed in what follows.
character, and so to take this Humean turn—as indeed several scholars do, quite independently of the question of moral luck.9

It is unsurprising, then, to see an appeal to character when philosophers turn toward the moral luck issue.10 However, the idea that moral evaluation of agents is tightly connected to character leaves open the question of what exactly is receiving moral evaluation. Is it the agent’s acts to the extent that they reveal her character? Or is it the agent’s character, regardless of whether it is enacted?11 The language in the literature is sometimes indeterminate, but there is at least one apparent anti-luck advantage to taking the latter option. If we state that the agent’s moral profile is constituted by her character regardless of whether it is enacted, then we will have a position that is resistant not only to resultant moral luck, but to (at least much) circumstantial moral luck as well. Judge Actual and Judge Counterfactual, as Thomson describes them (1989, 214), are both greedy and unscrupulous individuals who would take a bribe if offered—but only Judge Actual is offered, and so only Judge Actual accepts. Their actions differ—for Judge Counterfactual never gets the opportunity to enact his greed and lack of scruples—but their

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9 See, for instance, Bayles (1982) and Brandt (1969). Peter Strawson, like Hume, grounds his notion of moral responsibility in our natural moral sentiments and arguably reaches a similar conclusion concerning the role of character, asserting that our reactive attitudes are reactions to the good or ill will that others have toward us (1963). Arpaly rejects the Strawsonian view that reactive attitudes constitute moral responsibility, but preserves Strawson’s notion that responsibility is intertwined with good or ill will (2006, 9-31), and only later in the passage concedes that her position might require that she embrace constitutive moral luck (32). This concession shows that Arpaly connects good or ill will with character.

10 Richards (1986) and Thomson (1989) are the most explicit about this. Greco (1995, 2006) interprets his own counterfactual position as making a reference to character, as will be seen. Another common theme is for authors to make the (often tacit) assumption that the character view is the default anti-luck position in the academy. For example, Davison adopts this assumption when applying the moral luck issue to the debate concerning the principle of alternative possibilities (1999, 248), and Statman appears to hold that the character view is the most natural anti-luck position when discussing the topic of prepunishment (1997, 133).

11 Some philosophers have denied there is such a distinction. For instance, Richards claims that “the idea of unenacted character is a mistaken one” (1986, 205), holding that vices and virtues are always played out in some way or another. Ultimately, for Richards, moral responsibility for acts will always be derivative from character, so that character takes priority of place—it is character itself that he is interested in.
character is the same. On the view that what matters is character *itself*, we can get the result that Thomson wants—that the two judges are morally on a par. This result is denied to those who ground moral profiles in character-exemplifying acts. The favored anti-luck move for those of Thomson’s ilk, then, is to target character itself.

Thus interpreted, the character view of an agent’s moral profile will be resistant to most of the examples of luck that the literature provides—it appears to rule out resultant moral luck (since character, and not the results of our actions, is what matters), and at least much circumstantial moral luck (as we’ve seen from Thomson’s famous example). One thing that makes the character view resistant to these standard kinds of cases is the relative constancy of character over time. It is easier to draw up cases of luck where there are minor fluctuations of details that one would expect to involve unpredictability or chance, such as the presence or absence of a child in the street, or the flight path of a bird, or the opportunity to take a bribe. But whether or not one is an irascible jerk is not the sort of thing that fluctuates easily, and so cases that involve luck in one’s character are likely to be more awkward. Character, then, appears to be less subject to the vicissitudes of chance than other morally interesting things (e.g., acts or their consequences), and so it is no surprise that proponents of the character view should occasionally cite the stability of character over time as a virtue of their position.12 And indeed, they would be clearly right to do so if we were dealing with the problem of moral chanciness. But since we are dealing with a problem of moral out-of-control-hood, it is less obvious that the constancy of character over time helps proponents of the character view resist moral luck *per se*.

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12 See, for example, Richards (1986, 200). The appeal of the constancy of character is not confined to those in the moral luck dispute, of course, as evidenced by the quote from Hume above.
The more central concern to the problem of moral luck, as I have described it, is the degree to which we control our character. But that in turn will hinge on what exactly the term “character” is supposed to pick out. If, for instance, my character is supposed to be simply the sum total of all the things I’ve done and all the things I will do in the future, then I have a fair degree of control over my character--since I am changing my character all the time. But then, the character view would simply collapse into an alternative view--that our moral profile is determined by what we freely do--and at least one of the presumed advantages of the character view would disappear, for Judge Counterfactual (who has not and--we can imagine--will not take a bribe) would no longer have the same moral profile as Judge Actual (who has). In general, this (so-called) character view would leave our moral profiles vulnerable to all forms of situational luck.

Indeed, the way Thomson introduces her example suggests an alternative. Perhaps “character” may be taken to refer to an agent’s set of dispositions, where those dispositions are in turn analyzed in terms of her counterfactual behavior. Then, since Judge Counterfactual would take a bribe if offered, his bribe-taking disposition is no better than Judge Actual’s, and so their moral profiles would be on a par with respect to the events described. So, this counterfactual analysis of character gets the desired result in Thomson’s scenario and in similar cases. While it’s not clear that Thomson herself would promote this analysis, it has at least some support in the moral luck literature. John Greco, for instance, presents it in a roundabout way, claiming that our moral profiles are determined by our actual and counterfactual behavior, and then informing us that “[a]nother way to put this last point is to say that we have made moral worth a matter of character rather than of actual choices and actions” (1995, 92; see also 2006, 23-36). This might be taken to assert that counterfactual behavior and character amount to the same thing.
But there are reasons for eschewing this analysis of character. One problem is that--

depending upon the semantics for subjunctive conditionals--it seems to entail that no one can
ever act out of character. Suppose that my actually doing A in C entails the truth of the
conditional “If Mark were in C, Mark would do A.” Then there will be a true conditional

 correspondig to any action I perform, and since these subjunctive conditionals supposedly

constitute my character, any action I perform would be within my character. It would be

impossible for any of my behavior to be uncharacteristic. But this result would be a surprise to

many defenders of the character view. Hume (1999, 161-64), Brandt (1969), and Bayles (1982),

for instance, are all interested in a theory of excuses, and they claim that wrongdoers have an

excuse precisely when their behavior is uncharacteristic. The proposed analysis of character

would appear to undercut their theory.

Perhaps the force of this criticism could be muted by modifying the counterfactual

analysis of character. Perhaps “character” doesn’t pick out what I would do in just any

circumstances, but only in a particular subset of all the circumstances it is possible for me to

inherit. If so, then perhaps some of my actual behavior will be in circumstances that are not

included in the subset (say, my angry four-letter word tirade when my life was endangered by an

acquaintance playing a stupid prank on a sweltering day in Phoenix), and so needn’t be

considered characteristic--and I can have my excuse after all.

But this move would only serve to point to a deeper problem with the analysis. Of

course, something like this move will be needed anyway, if the analysis is supposed to deal with

the concept of character. Surely we wouldn’t want to include my counterfactual behavior in

possible circumstances where I have developed the motivational set of a serial killer. For

(whatever we want to say about my moral profile) surely we wish to have the result that I do not
have the same character as a serial killer. But then, on what grounds do we exclude possible circumstances—such as my being subjected to mortal danger by a stupid prank on a hot day, or my having the desires of a serial killer—from the relevant subset?

We could try ruling out circumstances that are simply unlikely, given the way things currently are. Given the way things currently are, it’s unlikely that I’ll want to kill lots of people, and it’s unlikely that I’ll be put in mortal danger by an acquaintance playing a stupid prank at a time when the temperature is greater than 110 degrees Fahrenheit. But this approach doesn’t look very promising, and not only because the likelihood of these circumstances will change over time. For we often seem to think that character judgments warrant beliefs about how people would behave in unlikely scenarios. For instance, if certain stereotypes are accurate, we can assert that if hostile aliens landed on Earth with the aim of global conquest, the English would fight, and the French would surrender. It would seem strange to rule out this counterfactual behavior simply on the grounds that it is unlikely that we will be invaded by aliens. More importantly for our purposes, this move would undercut the putative advantages of the character view. Suppose that it was always going to be unlikely that Judge Counterfactual would be offered a bribe, but that Judge Actual’s offer was not unlikely at all. Doubtless Thomson’s intuition about the case would remain unchanged, and she would still deny a difference in the moral profile between the two judges. But the character view (on the current modified analysis of character) would now be unable to support that intuition, for we would have no evidence that the two judges have the same bribe-taking disposition—despite the truth of the claim that, were Judge Counterfactual offered a bribe, he would happily accept.

13 For the record, I have no desire to kill anyone.
A much more promising line would be to exclude possible circumstances where one’s desires or motivational set are different from what they normally are. Since I do not have the desires of a serial killer, we can exclude from my character analysis what I would do in circumstances where I did have such twisted desires. And perhaps, since I do not normally have the motivational set that I momentarily had when I was threatened by a stupid prank in oppressive weather, we can rule out my behavior there as uncharacteristic. But this leads to a further question. Why the focus on desires and motivational sets (or belief structures, or what have you)? If the focus can be motivated at all, it seems that it can be motivated only by an antecedent assumption that that is what character amounts to. But since we are trying to provide a counterfactual analysis of character, that antecedent assumption would unravel our efforts.

The moral of the story is that the counterfactual analysis appears to invert the proper order of explanation. We think that people would act in a certain way in certain situations because of the sorts of character that they have. But the counterfactual analysis would invite the opposite explanation: that the reason that people have the characters they have is that they would behave in certain ways in certain situations. But once we ask what situations we’re talking about, the best answer seems to be: possible situations where they have their actual character traits, or situations where their character traits are operative, or some such. And that gives the game away. It appears that character, whatever it is, is something that explains our actual and counterfactual behavior, not the other way around.

This, of course, leaves a lot unsaid about what exactly our character is supposed to be. I have talked about desires and motivational sets. Perhaps we could talk about beliefs, or dispositions (so long as these are not given a Rylian analysis), or tendencies, or attitudes, all with the rider that we are interested only in the relatively stable instances of these. We could talk of
these things, but we don’t need to. What matters for our purposes is that character, whatever it is, is a state (or a set of states) of the agent that can play a causal role in producing action and can explain why the action occurred—or can explain why an action would occur under certain circumstances.\footnote{I add the point about explanation because the causal relation alone isn’t discriminating enough. As Moore points out (1997, 572-73), a character trait such as greed can cause many things that are not properly described as greedy actions.} Smith, we can imagine, is a greedy and unscrupulous man. When presented with the opportunity, his greed and lack of scruples lead him to rob Jones. Why did he rob Jones? Because he is greedy and unscrupulous. Why should we avoid dark alleys in Smith’s neighborhood? Because Smith would surely rob us if presented with the opportunity. And why would he rob us? Because he is greedy and unscrupulous.

At any rate, this appears to be the approach to character that is adopted by proponents of the character view, Greco notwithstanding. I will return to discussing the moral significance of counterfactual behavior in later chapters. But character, on the character view of moral profiles, is not something we do; it is something we have, or perhaps something we are. This is precisely what makes it problematic.

2.2. The Inadequacy of the Character View as an Anti-Luck Position

It should now be a simple matter to show how the character view fails as an anti-luck position. Since character is not something that the agent does, but a set of traits that she has, it is not the sort of thing over which she has direct control. Recall from section 1 the control principle that was just strong enough to render the anti-resultant luck verdict:

\begin{equation}
\text{CP3. Necessarily, for any two agents, if they differ in moral profile, then it is not the case that that difference is due entirely to facts beyond either agent's direct control.}
\end{equation}
But the claim that one’s moral profile is a function of one’s character will run afoul of this principle.

Imagine the following story:

*Baseball:* Two farmers with a strong work ethic (Smith and Jones) have qualitatively identical histories before t1. But at t1, Smith (and not Jones) is hit in the head by a baseball, scrambling his brain in such a way that he now has the sneering ruthlessness of a mafia Don.

On the character view, we are saddled with the conclusion that Smith and Jones have different moral profiles, for Jones ends up with a virtuous character, and Smith ends up with a vicious one. Since the character view targets character *itself*, without making any essential reference to action, this difference in character is enough to give them different profiles. But the difference between them is not due to any factors within either agent’s direct control. And while the scenario described is implausible, it is not absurd. So, the character view and (CP3) are incompatible—and the character view should be discarded by opponents of moral luck.

I think this is enough to settle the issue. But since the character view is popular enough among opponents of moral luck, and since the example is, after all, rather contrived, perhaps a bit more should be said. After all, while it is easy to revolt at the luck involved in *Baseball*, the following example, which tells a much more plausible story, might not evoke the same response:

*Different Childhoods:* Jones grows up among corn farmers in rural Illinois and strives to emulate his parents’ strong work ethic. Through painstaking discipline, he crafts wholesome work habits which form the backbone of his character. Meanwhile, Smith grows up among the New York mafia and strives to emulate the character of his mentors. Through effort, he develops the sneering ruthlessness of a mafia Don.
There is luck involved in this scenario as well, since neither Smith nor Jones exercises much control over the circumstances of his childhood. We might even stipulate that Smith would have developed a noble work ethic had he enjoyed the sort of childhood that Jones had and that Jones would have become ruthless had he grown up among the mafia. Now, some scholars (Zimmerman comes to mind) would, in light of this stipulation, wish to claim that Jones and Smith are morally on a par in *Different Childhoods* as well. But many—and, I think, many who would hold that Smith and Jones are on a par in *Baseball*—would change their minds when confronted with this newer case, and claim that, luck notwithstanding, the two agents have different moral profiles in *Different Childhoods*. What accounts for this difference?

The most obvious difference between the two examples is that, in *Baseball*, the histories of the agents are qualitatively identical up until the moment of the divergence in character. In *Different Childhoods*, by contrast, there is a divergence of history right from the start, which influences the agents’ character by degrees. In particular, there is a divergence in the behavior of the agents as their characters are developing. Jones acts in such a way as to develop his noble work ethic, while Smith acts in such a way as to cultivate sneering ruthlessness. And this suggests where the salient moral difference lies: Jones and Smith have each contributed to their own characters in *Different Childhoods* by their different behavior; that’s not so in *Baseball*, where each agent’s behavior is identical, and the difference in their character appears not to be of their own making.

Norvin Richards, for one, is sensitive to cases like *Baseball* in his defense of the character view as an anti-luck position. He is nevertheless non-plussed:

This argument succeeds, I think, if one’s character is *to no extent* one’s own artefact. But if the individual makes any contribution whatever to the sort of person he is, that
contribution can be the basis for his deserving praise or blame for what he does….It could be that although one’s character is only “largely” one’s good or bad fortune, and partly also one’s own doing, in assigning deserts we take the wrong part seriously. For example, it could be that two individuals who had the same character, one through no fault of his own and the other far more as the result of his own contributions, would be taken to deserve the same response for enacting this character. But, in fact, where we do see such differences we do not take the deserts to be the same--because we do not allow luck to affect deserts. Where we do not see such differences, we do take the deserts to be the same. (1986, 202-03, his emphasis)

His reaction, then, seems to be that our moral profiles are not a function of character per se, but rather a function of our character to the extent that it is of our own making. This revised character view supposedly gets the desired result in the two examples provided. Smith’s moral profile doesn’t take a negative turn due to his nasty character in Baseball, but it does take a negative turn in Different Childhoods, since in the latter case (but not the former) it is of his own making.

The revised character view appears to echo an idea found in Aristotle and elsewhere. We can blame a drunkard for his binge, Aristotle says, since he had the power to “take care” and avoid drink.

But perhaps a man is the kind of man not to take care. Still they are themselves by their slack lives responsible for becoming men of that kind, and men are themselves responsible for being unjust or self-indulgent, in that they cheat or spend their time in drinking bouts and the like; for it is activities exercised on particular objects that make the corresponding character….Just as when you have let a stone go it is too late to
recover it; but yet it was in your power to throw it, since the moving principle was in you.

So, too, to the unjust and to the self-indulgent man it was open at the beginning not to become men of this kind, and so they are such voluntarily; but now that they have become so it is not possible for them not to be so. (Nicomachean Ethics III.5)

For Aristotle, it makes sense to speak of responsibility for character, since character is very much within one’s control; it is what results when our behavior ossifies into the skeleton that makes up who we are.

Perhaps there is something beautiful about this idea. Consider the following passage from the opening pages of Hugo’s novel Les Miserables, which are devoted to painting a portrait of a virtuous man:

According to accounts of his youth and early manhood, Monseigneur Bienvenu had formerly been a passionate, even violent man. His universal tenderness was less an instinct of nature than the result of a strong conviction filtered through life into his heart, slowly dropping into him, thought by thought; for a character, as well as a rock, may have holes worn into it by drops of water. Such marks are ineffaceable; such formations are indestructible. (52)

Any reader of the novel will feel compelled to claim that Bishop Myriel (here called Monseigneur Bienvenu) has a good (perhaps saintly) moral profile if anyone does. And it is tempting to attribute that reaction to his saintly character--a character, Hugo informs us, which is the culmination of years of putting into daily practice the conviction of his heart.

As beautiful as this idea sounds, however, it only points the way to its own undoing as an anti-luck position. Is it the bishop’s saintliness that determines his moral profile, or the actions that went into forming it? Is it the drunkard’s tendency toward drinking that matters, or the self-
indulgent behavior that led to that tendency? Richards’ concession that character matters only to
the extent that it is of one’s own making suggests that the *real* action isn’t in the character, but in
the actions that form it.

We can tease this out by considering two more examples side by side. Take first an
embellishment of the original *Baseball* case:

*Baseball2:* Two adolescent farmers in rural Illinois (Smith and Jones) go out into the
fields to work, with a secondary goal of developing a noble work ethic. At t1, Jones goes
down the row tasseling the corn without incident. At t1, Smith goes down the row
tasseling the corn, and thereby puts his head in the path of an onrushing baseball. The
impact scrambles his brain in such a way that he now has the sneering ruthlessness of a
mafia Don.

Now we can run the example in reverse:

*Baseball3:* Two adolescent mafia boys (Smith and Jones) head out to assist in an
assassination attempt, with a secondary goal of developing the ruthlessness of the Don.
At t1, Smith walks down the alley towards his target without interruption. At t1, Jones
walks down the alley towards his target, thereby putting his head in the path of an
onrushing baseball. The impact scrambles his brain in such a way that he now has the
noble work ethic of a rural Illinois farmer.

We are now confronted with two cases that, for all their reference to character, look like
instances of resultant luck. If we are going to be good opponents of resultant moral luck, we’ll
have to say that Smith and Jones are morally on a par in each of these examples, so far as they
are described. Further, so long as we massage the details of *Different Childhoods* a bit, we’ll have to say that Smith from *Different Childhoods* is no worse than Jones from *Baseball3*, and Jones from *Different Childhoods* is no better than Smith from *Baseball2*--all this despite the fact that in each case, Smith and Jones have characters that are about as different as they can get.

What has gone wrong here?

The trouble arises from the fact that the revised character view pins agents’ moral profiles on how (certain of their) actions turn out. According to this view, we can read the moral profiles of Bishop Myriel, Aristotle’s self-indulgent man, and the two agents from *Different Childhoods* off of their character, since in each of these cases the agent has controlled the fact that he has developed his character by his prior actions. But this move simply amounts to shifting the determinants of agents’ moral profiles to the consequences of their actions, which is bound to be a non-starter for opponents of resultant moral luck. The fact that the revised character view makes this shift is what makes cases like *Baseball2* and *Baseball3* possible, and it would be a simple matter to cook up analogues to the examples provided by Aristotle and Hugo.

This is not to say that the agents in the straightforward cases (*Different Childhoods*, etc.) don’t control their character. Surely they *do* control their character in these cases in some sense, and perhaps they are morally responsible for their character, in the same way that the malevolent shooter is responsible for the death she has caused. However, for that matter, it is at least a bit difficult to show how it is that the agents in the *deviant* cases don’t control their character as well. Both Smith from *Baseball2* and Jones from *Baseball3* do perform acts which have character-forming consequences, and these are acts that they freely engage in--and the fact that

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15 This leaves open the question of what to say once their different characters lead them to perform different actions. I will pick up this question again in the following chapter.
the consequences were not intended or foreseeable doesn’t obviously undermine control. The clearest way to explain our anti-luck intuitions in the *Baseball* cases—and the way forward we’ve already plotted in section 1—is to appeal to direct control. And *none* of the agents in *any* of the above cases (including *Different Childhoods*) has direct control over his or her character. The character view—whether or not it receives the modification that Richards recommends—is simply incompatible with (CP3), and should be discarded by opponents of resultant moral luck.

This result may seem surprising, since the character view does protect the agent’s moral profile from most of the examples of luck presented in the literature. However, we cannot just read off the strength of an anti-luck position from the kinds of luck it protects against, as we saw in section 3.3 of the previous chapter. Of course, there might be very good reasons for adopting the character view, quite apart from the issue of moral luck. Prompted with the question of why it is that she denies resultant and circumstantial luck, the defender of the character view might respond with something like:

“*It is simply absurd to say that one’s moral profile can fluctuate depending on whether a child runs out into the street or one is offered a bribe. These events aren’t the sort of things that matter morally—all that really matters morally is one’s character.*”\(^{16}\)

There is nothing incoherent about this response, and perhaps much can be said for it. But it is enough for our purposes that she could *not* say something like the following:

“*Well, it’s simply absurd to say that one’s moral profile can fluctuate depending on whether a child runs out into the street or one is offered a bribe. These are things that we have absolutely no control over, so how can they influence our moral profile?*”

\(^{16}\) It is possible that Thomson, who embraces the character view, would be content with this kind of response (1989). Richards would want something further.
This response is inaccessible to her, because the character view does not link one’s moral profile with control in a particularly meaningful way. Whatever its other merits, the character view is simply not an anti-luck position.

3. The Acts View

The foregoing discussion has already suggested an alternative to the character view, which, on its face, appears to be compatibilist-friendly. We have seen that, in contrast to the *Baseball* cases, there is a temptation to claim that Smith and Jones have different moral profiles in *Different Childhoods*. What can account for this difference? If it isn’t their different characters, the most obvious alternative is their different acts. The same can be said for Aristotle’s self-indulgent man and Hugo’s Bishop Myriel. Further, grounding an agent’s moral profile in her acts would also explain the intuition that Smith and Jones are morally on a par in each of the *Baseball* cases.

Of course, there is a great deal to say about what *exactly* the acts view will assert—in particular, what the acts in question are. I will be happy to sidestep most of these questions for now, except for three points. First, in order to make the position sufficiently general, I take the formation of intentions to be acts. Second, for the view to have bite as an anti-luck position, the acts that ground the agent’s moral profile must have whatever freedom is necessary for moral responsibility. Third, acts must be something over which we have direct control, so that one’s views on each of these two topics (concerning acts and direct control) must correspond. Thus described, there will be multiple species of the acts view. On one version, only the formation of intentions will matter, whereas others will put emphasis on the act of the will even after the intention is formed, or perhaps the act of the will combined with bodily movements. Further, while the acts in question will be free, different versions of the view will provide different accounts of what freedom amounts to—some will be libertarian in nature while others will be
compatibilist. Since the general acts view does not on its face make any essential commitment on this score, I am calling it a compatibilist-friendly position. I will leave until the next chapter my reasons for preferring libertarian to compatibilist versions of the acts view.

By requiring that the acts in question be free, the acts view does what the character view fails to do: it connects the agent’s moral profile with control. Not only is it consistent with (CP3); it entails (CP3). Take any possible two agents who differ in moral profile. If the acts view is correct, then the difference in moral profile will be in virtue of a difference in the agents’ free behavior. But one’s free behavior is within one’s direct control. So, the difference will be in virtue of facts over which at least one of the agents has direct control. Therefore:

CP3. Necessarily, for any two agents, if they differ in moral profile, then it is not the case that that difference is due entirely to facts beyond either agent's direct control.

Since it entails (CP3), it goes without saying that the acts view will rule out resultant moral luck. Nagel’s two shooters and his two negligent truck drivers will be on a par in virtue of the parity of their acts, despite the difference concerning their results. Further, since it entails (CP3), the acts view has greater anti-luck bite than the character view.

That is true despite the fact that the acts view threatens to render the agent’s moral profile susceptible to a greater amount of luck than the character view. One of the putative advantages of the character view is that it weeds out at least many cases of circumstantial moral luck. In the case of Thomson’s two judges, each of whom would take a bribe if offered, the character view puts them morally on a par. But not all versions of the acts view would do so, for Judge Actual takes the bribe while Judge Counterfactual does not--and taking a bribe is presumably worse than not taking a bribe, and so (since the acts are what is in question) creates a darker stain on Judge
Actual’s moral profile. So, the acts view appears to saddle the agent’s moral profile with cases of circumstantial moral luck to which the character view is immune.

Different versions of the acts view will have different prospects of successfully managing the problem posed by this and other cases—assuming there is a problem here at all. I will address some of these different versions in the next chapter. For now, it is enough to observe that, despite initial appearances, any version of the acts view (which meets the above constraints) will fare better with these cases than the character view. The character view purchases its immunity from circumstantial luck at the price of grounding the agent’s moral profile in something over which she exerts no direct control. With respect to control, this seems little better than avoiding circumstantial moral luck by claiming that one’s moral profile is directly constituted by the sign of the zodiac at one’s birth. On the acts view, things are different. Judge Actual may well have a worse moral profile than Judge Counterfactual, and so (contra Thomson) deserve to be tossed into a deeper circle of hell. But that’s because he freely took the bribe, something over which he has direct control. Indeed, any difference between agents’ moral profiles will be at least partially grounded in their direct control.

To my mind, the acts view provides the best way forward for any compatibilist who opposes moral luck per se. I have not yet fully argued for this claim, since there is at least one other candidate on the table that I will address in later chapters; however, this other position will quite clearly be seen to be inaccessible to the compatibilist. So, the compatibilist is best off

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17 This particular problem might not surface on a version of the acts view on which intention formation in particular is the locus of one’s moral profile, since both judges seem to have formed an intention to take a bribe; nevertheless, corresponding problem cases can be easily conjured up for that position as well. For instance, we can imagine that both Judge Actual2 and Judge Counterfactual2 would form the intention of taking a bribe if someone brought up the topic of bribe-taking in conversation, but the topic is only brought up in conversation with Judge Actual2, and not Judge Counterfactual2. On the other hand, there may be versions of the acts view (with libertarian commitments) on which the whole idea of presenting counterfactuals of what the agent would freely do in non-actual circumstances is absurd. We will pursue this line of thought in the next chapter.
holding to some version of the acts view. Whatever version that may be, it will be one on which two agents could differ in their free actions, and so in their moral profile, despite their actions being fully causally determined by prior conditions and the laws of nature. So, we could imagine that it was determined all along, not only that Judge Actual would receive the offer to take the bribe, but that he would choose to accept. But since, according to the compatibilist, direct control does not require indeterminism, this added fact would make no difference. The agent’s moral profile would still be grounded in facts over which she has direct control, and that direct control may be deterministic.

On the surface, there may not appear to be anything incongruous about this way of opposing moral luck. I do think it is the compatibilist’s best option. But a second glance may show that this option is unstable after all. That is what I will argue in the next chapter.
III. The Libertarian Turn

In the last chapter, I discarded the character view of moral profiles, and I offered the acts view as a more attractive alternative for opponents of moral luck--while conceding that the acts view renders the agent’s moral profile susceptible to more situational luck than the character view. In this chapter, I will examine more closely how different versions of the acts view handle the problem of situational luck, beginning with any version that is committed to a compatibilist account of free will. I will argue that the compatibilist acts view is inherently unstable as an anti-luck position, on the grounds that the structure of the free will problem forces compatibilists to do precisely what (according to the last chapter) opponents of moral luck cannot do consistently--i.e., appeal to character, or the states of the agent, as the determinants of our moral profile. This will leave alternative versions of an incompatibilist--or, more precisely, a libertarian--acts view available to opponents of moral luck. On some versions of the libertarian acts view, the standard examples of situational luck (such as Thomson’s example of the two judges, or Nagel’s example of the Argentinian who would have been a Nazi under other circumstances) will be structurally flawed, due to the positing of counterfactuals which cannot possibly have a truth-value. On other versions, the counterfactuals involved in such cases will (often) have a truth-value.

To the extent that these counterfactuals have a truth-value, the effect of situational luck may be thought to be muted by incorporating them into the agent’s moral profile. This would produce another general approach to the problem of moral luck: the view that our moral profiles are determined both by our actual acts and our counterfactual acts. I will argue that, on pain of intolerable consequences, any version of this view will require libertarianism. Since this is the last general approach to the problem of moral luck that I will consider (and the last general anti-
luck approach of which I am aware), this will complete my argument for the main thesis of this study--that opposition to moral luck (*per se*) requires libertarianism. I will leave until the final chapter my evaluation of which libertarian solution to the problem of moral luck is the most plausible.

1. Why We Must Dismiss the Compatibilist Acts View

1.1. Initial Premonitions

It is common in the moral luck literature for authors to adopt an acts view of moral profiles, although often this is done implicitly.\(^1\) It is rather less common for authors to do so with an eye toward the free will issue in particular. But Michael Moore, an unflinching compatibilist, explicitly adopts the acts view over the character view with the free will issue firmly in mind. Moore concedes that the character view is often adopted (quite apart from the moral luck issue) as a compatibilist defense against the threat of determinism. He responds:

> There is nothing wrong with the character-stop strategy….However, the character theorist overlooks the fact that the choice conception of responsibility has an answer just as good to the hard determinist: we are at least in part the agency that chooses whether to act or not; that agency’s choices can themselves exist *even if caused by factors external to the will*; it would make choice a very peculiar event if it has to be uncaused in order to exist; there is no persuasive argument showing that choices have this peculiar feature; and the fact that some people find such arguments persuasive can be explained in ways having nothing to do with the truth of the arguments in question. I and others have sought to draw this argument out in detail, and the conclusion--that compatibilism between choice

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\(^1\) Rosebury explicitly offers an argument for the acts view as opposed to the character view (1995, 507-12), which differs substantially from what I have offered in the previous chapter. Domsky (2004), Jensen (1984), Sverdlik (1988), Wolf (2003), and the early Zimmerman (1988) all appear to adopt it at least implicitly.
and causation is true—is so far from being problematic and worrisome within philosophy that it is now a kind of philosophical orthodoxy. (1997, 576, my emphasis)

He then proceeds to defend the acts (or “choice”) view as superior to the character view on grounds only tangentially related to the moral luck issue.

But it is worth noting that Moore is a friend of moral luck. By Moore’s lights, denying moral luck per se (in any of the forms identified by Nagel) will require the erosion of all moral evaluation of agents, a consequence which he cannot countenance (233-46). As a result, Moore will have a much greater tolerance for the moral influence of those “factors external to the will” than will the opponent of moral luck. Will the opponent of moral luck be as free to embrace the compatibilist acts view?

The moral luck literature provides ample examples of what those causal “factors external to the will” might be, examples which are bound to give us pause. Consider the way Nagel brings up his famous example of the Nazi officer:

What we do is also limited by the opportunities and choices with which we are faced, and these are largely determined by factors beyond our control. Someone who was an officer in a concentration camp might have led a quiet and harmless life if the Nazis had never come to power in Germany. And someone who led a quiet and harmless life in Argentina might have become an officer in a concentration camp if he had not left Germany for business reasons in 1930. (1979, 25-26)

Nagel is not here denying that the officer or the businessman perform their actions freely. He is not denying Moore’s “philosophical orthodoxy” that “compatibilism between choice and causation is true.” He is pointing to the nature of certain elements in the causal story preceding action—in his case, whether some other group of people come to power, or whether one’s
business has led one to emigrate, or, in Thomson’s case, whether some other person has offered
one a bribe. These are features that seem to be quite morally insignificant on their own, as far as
the moral status of the agent is concerned. And yet, on at least some versions of the acts view--
including compatibilist ones--they play an enormous influence on the agent’s moral profile.
Intuitively, that seems very odd. Odd enough, in fact, that Thomson (whose intuitions regarding
luck are nothing like Moore’s) takes it as a *datum*, with no need for argument, that the two
judges in her scenario have the same moral profile in virtue of the events described (1989, 214-
15).²

So, a cursory glance at the compatibilist acts view appears to reveal some counterintuitive
results. But some work will be needed to explain *what*, exactly, is wrong with it.

1.2. *First Pass at the Argument*

We can begin by examining the following argument:

1. Opponents of resultant moral luck cannot consistently ground the agent’s moral
profile in her states. (from chapter 2, section 2.2)

2. To the extent that it is concerned with moral profiles, compatibilism grounds the
agent’s moral profile in her states.

3. The compatibilist acts view entails compatibilism and is concerned with moral
profiles. So,

4. The compatibilist acts view grounds the agent’s moral profile in her states. (2, 3) So,

² I mentioned in section 3 of the last chapter that there will be versions of the acts view on which the formation of
intentions, rather than the carrying out of those intentions, are the acts that influence one’s moral profile. The
examples that Nagel and Thomson use aren’t designed to target *that* kind of acts view, but, as mentioned in the last
chapter, it is an easy thing to cook up analogues to their examples that do target such a view. Since Nagel and
Thomson provide the famous examples in the literature, and since I find the language required to describe examples
that target intentions cumbersome, I will work with examples that involve actual bodily movements in what follows,
simply noting that analogous considerations will apply to versions of the acts view on which intention formation is
what matters.
5. Opponents of resultant moral luck cannot consistently adopt the compatibilist acts view. (1, 4)

Ultimately, this argument will need revision, but it is a good place to start.

Since (3) is obviously true, it is the other two premises that require our attention. In chapter 2, I argued that the agent’s moral profile is not constituted by her character--on the understanding that the term “character” picks out a set of states of the agent that may play a causal and explanatory role in producing action. I left unanswered the question of what states were included in the set. What mattered was that character is something that the agent has (or perhaps is), and not something that she does. So, the argument of chapter 2 has bite for more than just character (whatever that might be) in particular, but generalizes to any set of states of the agent. Therefore, (1).

But why (2)? After all, we have just observed one compatibilist (Moore) firmly claiming that the agent’s moral profile need not refer to her character in particular. Why should he (and others in his circle) be required to ground the agent’s moral profile in her states more generally?

The answer has less to do with the literature on moral luck than with the structure of the free will controversy regarding the problem of determinism. The basic incompatibilist intuition to which compatibilists have responded is the idea that, if everything is determined, then nothing I do is freely done, since there is an irrepressible causal chain that brings it about--whether or not that causal chain passes through me as an agent. Here is a classic presentation of the idea as presented by Baron d’Holbach, one of the Enlightenment’s most vociferous hard determinists:

There is, in point of fact, no difference between the man that is cast out of the window by another, and the man who throws himself out of it, except that the impulse in the first instance comes immediately from without whilst that which determines the fall in the
second case, springs from within his own peculiar machine, having its more remote cause also exterior. (2009, 387)

And again:

The virtuous Socrates submitted to the laws of his country, although they were unjust; and though the doors of his jail were left open to him, he would not save himself; but in this he did not act as a free agent. The invisible chains of opinion, the secret love of decorum, the inward respect for the laws, even when they were iniquitous, the fear of tarnishing his glory, kept him in prison; they were motives sufficiently powerful with this enthusiast for virtue, to induce him to wait death with tranquility; it was not in his power to save himself, because he could find no potential motive to bring him to depart, even for an instant, from those principles to which his mind was accustomed. (388)

For d’Holbach, determining factors are all as one when it comes to freedom. Given determinism, Socrates, with the psychological profile that he has, is no freer to leave his prison with the jail doors open than with them shut, and the man whose psychological state deterministically induces him to jump out of the window exercises no more freedom in doing so than he would have upon being thrown out. Given that one’s behavior is deterministically caused, it makes no difference how it is caused--it is unfree.

Against this basic intuition, compatibilists have urged that it makes a great deal of difference how the act is caused. As d’Holbach is perfectly willing to grant, the proximate cause of the man throwing himself out of the window is a set of features of his own psychological states, and the proximate cause of Socrates’ remaining in prison is his love of virtue. When the act is deterministically caused in these sorts of ways, says the compatibilist, it may be free. Compatibilist accounts will of course differ in terms of exactly what the features of free behavior
are, but they center on a nearly universal theme: free acts are those that are caused at least in part by certain psychological states of the agent. This much can be seen by taking a swift glance at the influential voices in the compatibilist literature:

a. Thomas Hobbes: “Liberty is the absence of all the impediments to action that are not contained in the nature and intrinsical quality of the agent” (1962, 270, my emphasis).

b. John Locke: “Liberty, on the other side, is the power a man has to do or forbear doing any particular action according as its doing or forbearance has the actual preference in the mind; which is the same thing as to say according as he himself wills it” (1965, 200, my emphasis).

c. G.E. Moore: “In other words, the suggestion is that we often use the phrase ‘I could’ simply and solely as a short way of saying ‘I should, if I had chosen’” (1965, 90, his emphasis). Moore’s point is that we have whatever “ability to do otherwise” that is relevant for moral responsibility so long as it is our choices, made on the basis of our own desires--and not external factors--that bring about the action.

d. W.T. Stace: “Acts freely done are those whose immediate causes are psychological states in the agent. Acts not freely done are those whose immediate causes are states of affairs external to the agent” (1952, 254-55).

e. Harry Frankfurt: “Now freedom of action is (roughly, at least) the freedom to do what one wants to do. Analogously, then, the statement that a person enjoys freedom of the will means (also roughly) that he is free to want what he wants to want” (1971, 15, my emphasis).
f. Gary Watson: “The possibility of unfree action consists in the fact that an agent’s valuational system and his motivational system may not completely coincide. Those systems harmonize to the extent that what determines the agent’s all-thing-considered judgements also determines his actions” (1975, 215, my emphasis).

g. Daniel Dennett: “A controls B if and only if the relation between A and B is such that A can drive B into whichever of B’s normal range of states A wants B to be in” (1984, 52, his emphasis). Dennett, like the others on this list, is putting emphasis on the desires of the agent.

h. John Martin Fischer: “[M]oral responsibility…simply requires guidance control….Guidance control should be understood in terms of two elements: the agent’s ‘ownership’ of the mechanism that actually issues in the relevant behavior, and the ‘reasons-responsiveness’ of that mechanism” (2000, 441). Fischer’s discussion of “ownership” parallels Watson’s notion of a valuational system, while the emphasis on reasons is again an appeal to the states of the agent.

And the list, of course, can be extended much further than this.

Some of these compatibilists are dealing with freedom in particular, while others are dealing directly with the concept of moral responsibility. None of these accounts are developed within the context of the moral luck issue. Nevertheless, incompatibilists with respect to both freedom and responsibility would surely think that determinism poses a threat to more than just freedom and responsibility, per se--but that it poses a threat to moral profiles, i.e., there being any sensible criterion by which a just God could judge us, or there being any way in which the agent stacks up morally in light of everything. So, compatibilism’s attempt to defend freedom and responsibility from determinism is also the avenue through which moral profiles may be
defended from the same threat. And the above examples reveal the nearly universal tendency to
do so by making crucial reference to the various states (desires, reasons, etc.) of the agent.

I said this is a nearly universal tendency. Can one consistently be a compatibilist and not
make an appeal to the states of the agent? It is hard to see how, without sacrificing any
legitimate claims to credibility. Since compatibilists have no trouble with determinism, they are
fine with the idea that every event of our lives is inevitable, in a certain sense. But since we
often take inevitability of events to undermine our responsibility for them, the compatibilist
needs to sift through these deterministic causes and discriminate between the kinds of causes that
undermine responsibility and the kinds that do not. The only plausible way of doing this is to
allow that some of the causes that involve psychological states of the agent are responsibility-
preserving--and to distinguish these kinds of causes from causes that do not contribute to (and
may in fact undermine) responsibility.

This leaves the question of why anyone who is a compatibilist would, like Michael
Moore, opt to junk the character view in favor of an acts view of moral profiles. If
compatibilism always makes recourse to character--or other states of the agent--in order to
establish that the agent acts freely, what motivates Moore to reject character as the determinant
of our moral profiles?

The answer in part has to do with his dissatisfaction with the very feature of character
that makes it attractive to some opponents of moral luck: its relative stability over time. If I
have a generally good character, but nevertheless uncharacteristically behave badly on rare
occasion, the character view would (counter-intuitively, by Moore’s lights) seem to get me off
the hook every time: “a generally good person can do no evil, so long as he does it infrequently
enough that such choosings are not in character for him” (1997, 241). This objection, of course,
requires the idea that we *can* freely act uncharacteristically. And Moore defends this idea (perfectly consistently with his compatibilist leanings, although not with *all* compatibilist views) in part by noting that character is supposed to be lasting or stable, but that we may (freely) act on “idiosyncratic, short-lived” desires, positing cases of weakness of the will (which he supposes to involve free acts) as evidence (582-83). But while these cases may be persuasive for Moore’s purposes, they do nothing to undermine (2)—for these putatively free acts would still derive from psychological states of the agent, even if those states are not long-lasting enough to be constitutive of the agent’s character.

But Moore pushes a bit further:

[M]y own reading of existential fiction like Gide’s *The Vatican Swindle* and Camus’s *The Stranger* is not that they depicted the psychologically impossible. Neither did it seem to me that Lafcadio or Mersault did not freely choose to push the old man out of the train, or shoot the Arab, respectively. They fully chose these wrongful acts, and did so as an *act gratui*, that is, for no further reason. (583)

Cases like these might lead one to doubt whether, on compatibilism, responsibility must *always* appeal to the prior states of the agent, since in cases like these, there is surprisingly little in the psyche of the agent to appeal to. I have my doubts about whether these cases really do serve as successful counterexamples to (2), but it is not worth expressing them here. For whatever we say about these examples, they will do nothing to touch the following simple amendment of our original argument:

1*. Opponents of resultant moral luck cannot consistently, for any agent, ground the agent’s moral profile in her states.
2*. To the extent that it is concerned with moral profiles, for many agents, compatibilism grounds the agent’s moral profile in her states.

3. The compatibilist acts view entails compatibilism and is concerned with moral profiles. So,

4*. For many agents, the compatibilist acts view grounds the agent’s moral profile in her states. (2*, 3) So,

5. Opponents of resultant moral luck cannot consistently adopt the compatibilist acts view. (1*, 4*)

Gide and Camus were surely providing us with the exception rather than the rule—surely there are many cases unlike those of Lafcadio and Mersault. So, in light of what has gone before, (2*) seems true. But our conclusion in chapter 2 was general, touching on all agents.³ So, (1*) is no less plausible than (1), and the revised argument is no less plausible than the original.

And yet, despite all this, the argument may still be found wanting. Imagine the following response from the compatibilist opponent of moral luck:

“I granted in chapter 2 that the agent’s states alone won’t get you her moral profile, since that’s not what’s involved with direct control. Rather, what matters is the agent’s states combined with her action, or rather action emerging out of her psychological states that matters, since that’s what direct control just is. I never agreed in chapter 2 that one’s moral profile needs to be fully cordoned off from character; I agreed only that it can’t simply be read off from character. I’ll grant the latter. But I won’t grant that character—or psychological states generally—is some sort of contaminating influence on all moral profile judgments.”

³ Recall my observation that no agent exercises direct control over her states.
The objector here is pressing the charge of equivocation on the expression “grounds the agent’s moral profile in her states.” In (1) and (1*) it means something like “reads off the agent’s moral profile from her states,” whereas in (2) and (2*) it means something more like “makes essential reference to her states when identifying her moral profile.” Thus interpreted, our compatibilist objector grants both premises, but denies both the validity of the argument and the conclusion.

This objection also points back to an ambiguity, briefly mentioned in section 2.1 of the previous chapter, in the way that character is often mentioned in the moral luck literature. Richards, for instance, writes that “when we are concerned with what a person deserves, we are interested in his behaviour as a display of character” (1986, 200, his emphasis). Is it the behavior that matters, or the character itself? Thomson plays up the ambiguity in her own way of expressing the point:

A person P is to greater or lesser blame for doing (or being) such and such, where his doing (or being) the such and such is unwelcome, just in case P’s doing (or being) the such and such is stronger or weaker reason to think P a bad person. (1989, 210)

Again, is it the “doing” or the “being” that matters?

I observed in the last chapter that, in order to secure the anti-luck conclusions that these authors wanted, we would have to focus on the “being” or the character itself. But now, having rejected the character view, we are faced with the ambiguity again--and the objector is asking that we take the other path. We are being asked to reject the character (states) view while embracing the acts-emerging-from-character (states) view. Is this combination credible as an anti-luck position?
1.3. Second Pass at the Argument

I suspect not. The presence of this ambiguity in the literature itself suggests that the two views (the character view and the acts-emerging-from-character view) are very close--and perhaps too close for the objector’s comfort. For instance, observe how Rosebury, himself a proponent of the acts view, responds to Nagel’s claim that we cannot help but blame people for their vicious character traits:

What in normal conditions of judgment we condemn under the name of a “vice” is not an unacted-on temperamental inclination (how could we know of this in the normal case?), but a pattern of actions that makes itself apparent and that it is natural to construe as the external correlative of a disposition that generates, and is perhaps reinforced by, the individual acts….People are assessed for what they are like, Nagel observes: but it might more exactly be said that they are assessed for what they show themselves to be like by their actions (including their manner, attitudes, etc.). (1995, 509, his emphasis)

Here, Rosebury is distinguishing his acts view from the character view, but his presentation in this paragraph raises red flags.

In particular, on a straightforward epistemic reading of “show themselves to be like,” it suggests (contra his main point) that what is really doing the work in our judgments of others’ actions is their character, which is usually hidden from us. In the action, the agent reveals to the world what she is really like deep down--the laundry, whether it is clean or dirty, is aired. But if character is doing the work, then the acts-emerging-from-character view appears to collapse into the character view. Or if it doesn’t collapse into the character view, then it resists collapse at the expense of a consequence that would be unattractive to opponents of moral luck. Suppose that what matters is not how we are, but how we reveal ourselves to be. Then, what matters for our
moral profile is how successful we are in trumpeting our virtues and in keeping our vices a secret. This would be quite a surprising departure from the way opponents of moral luck are accustomed to speaking. One of the standard anti-luck ways of explaining away our blaming practices that seem to hinge on luck is to show that, when the agent is “unlucky,” what she is unlucky in is simply that she has revealed the bad mark on her profile; the “lucky” agent has kept the bad mark hidden, but it is still an equally bad mark. On an epistemic interpretation of Rosebury, we’re encouraged to take the opposite line and to make the revelations (how people “show themselves to be like”) constitutive of the moral profile.

Alternatively, we can treat the “showings” not as revelations, but as manifestations of character (whether or not anyone ever observes them). There is buried, in each of us, certain lurking dispositions or inclinations which, when stimulated in a certain way (as luck would have it), are made manifest in action. Again, when Rosebury insists that what matters is how we show ourselves to be like (i.e., make manifest our characters), it appears he is suggesting that character is what is doing the work. And if it isn’t doing the work, and if it is the actions themselves that matter, then he seems to be putting a great deal of emphasis on the luck involved in the various triggers that put our characters into motion. After all, the standard cases of circumstantial luck in the literature show just how thoroughly subject to luck these manifestations are. Judge Counterfactual would have acted on his avarice through taking a bribe if given the opportunity, but he never gets the chance. As a result, on the compatibilist acts view, he is off the hook--despite having the same character (or states generally) as Judge Actual.

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4 This strategy is adopted by Enoch and Marmor (2007), Rescher (1990), and Richards (1989), among others.

5 On the compatibilist acts view, as I understand it, one’s moral profile cannot be read off from one’s character at all. For imagine a hybrid view on which both character and acts counted toward one’s profile. Such a view would be subject to the Baseball cases of section 2.2 of the last chapter, and with the same results.
states and their external circumstances determine the resultant behavior, and given that it is supposed to be distinct from the character view, the compatibilist acts view seems to be putting emphasis on the circumstances that the agent inherits. And that seems very much against the spirit of compatibilism, as revealed through citations (a) through (h) above.

Our original objection, then, was demanding that we can look not at the agents’ states themselves, but the actions that emerge from them. But on the compatibilist scheme, the only other components bringing about the actions seem to be the very things that compatibilists do not want to put emphasis on. This is what makes cases of circumstantial luck so awkward for the compatibilist acts view.

We can begin to make these musings more rigorous by refining our language a bit. I stated in section 3.1 of chapter 1 that we can speak of circumstances in a broad sense, so that, when an agent is in a set of circumstances C, C will include all the relevant facts describing the state of the world at a given time and the laws of nature. I said in chapter 1 that the boundaries between constitutive and circumstantial luck were not very sharp. Similarly, I have said (in section 2.1 of chapter 2) that there will be variation in the ways that scholars demarcate character from other things, and we have also seen (in the present chapter) that there are differences in the ways that compatibilists approach which of the agent’s states are relevant for determining what it is for which she has freedom and responsibility. As it is, we have flexibility to carve up C as we please. I suggest we do so in the following way. C includes whatever elements the compatibilist holds to contribute to freedom and responsibility, and whatever is left over. Of course, if determinism is true, the agent’s action will be fully determined by C, but it may, by compatibilist lights, still be free in virtue of the elements contained in the first category.
Compatibilists need to carve up C in this way—for otherwise, they would have no way of distinguishing free from unfree acts, or indeed, acts from non-acts. Not just any bodily motion of the agent is a free act. (My body’s blowing across the street due to the fierce winds of a hurricane surely isn’t.) The event needs to be caused in the right way—the compatibilist needs to appeal to certain elements of C that make freedom and responsibility (and one’s having a moral profile) possible. I have argued that compatibilists from Hobbes on out, when identifying the freedom- and responsibility-making elements of C, have targeted the states of the agent. So, I will refer to the items of this category under the heading “FR-relevant states.” And since, as I have observed, the considerations of freedom and responsibility will carry over to considerations of the agent’s moral profile, the compatibilist claim will not only be that FR-relevant states are freedom- and responsibility-making, but (to the extent that compatibilists are concerned with moral profiles at all) that they are moral-profile-making as well. The items of the other category will be labeled as “external circumstances”—external, that is, to the FR-relevant states, although not necessarily to the agent’s body.

So, suppose S does A in C. The elements of C will include FR-relevant states: that S wanted to do A, that S is the sort of person who is generally inclined to do A, that S fully intended to do A, and so on. And then they will include the external circumstances: the fact that A is an act available to S, for one, but also a myriad of other things, such as the way the rays of the sun affect S’s vision, the quantity of S’s blood pumped per second, and (not unimportantly) the laws of nature. The FR-relevant states and the external circumstances exhaust the elements of C. There will be other facts of the case—such as that S in fact does A and that A was caused by the elements of C—but such facts will not be included in C itself. Also, this way of speaking of external circumstances may not perfectly match our ordinary language. (The quantity of
blood pumped per second is internal to S’s body, and ordinarily, we might resist the idea of calling laws of nature circumstantial.) But since we are interested in features of C that are external to the FR-relevant states in particular, these differences from ordinary language hardly matter in the current context.

What does matter is that, no matter how the compatibilist carves up C, the fact that there will be causal factors that are not FR-relevant will make examples of circumstantial luck possible. And it appears that the opponent of moral luck who adopts the compatibilist acts view will have a hard time managing them, as the following argument testifies:

1. Opponents of resultant moral luck cannot consistently read off the agent’s moral profile from her states. So,

6. Opponents of resultant moral luck cannot consistently read off the agent’s moral profile from her FR-relevant states. (1)

3. The compatibilist acts view entails compatibilism and is concerned with moral profiles.

7. To the extent that it is concerned with moral profiles, compatibilism precludes external circumstances being moral-profile-making.

8. The moral-profile-making features of an act are exhausted by the elements that bring it about.

9. Assume (for reductio): (a) the compatibilist acts view, (b) determinism, and (c) denial of resultant moral luck. So,

10. Acts are the deterministic products of the agent’s FR-relevant states and her external circumstances. (9b) So,

11. The agent’s external circumstances are moral-profile-making. (6, 8, 9c, 10)
12. The agent’s external circumstances are not moral-profile-making. (3, 7, 9a)

13. (9) is false--opponents of moral luck must deny either the compatibilist acts view or
determinism. (11, 12, discharging assumption in 9)

And, of course, if (13) is true, and if opponents of resultant moral luck can embrace the
compatibilist acts view only on the condition that determinism is false, then the view is not
properly a compatibilist anti-luck position.

The argument teases out the intuition that is revealed by the compatibilist act view’s
handling of cases of circumstantial luck. Roughly, the view simply requires that the
circumstances do too much work in determining the agent’s moral profile--work that
compatibilism prevents them from doing. But then, the thing that compatibilists want to do the
work--the FR-relevant states--are precisely what chapter 2 has already ruled out. As an anti-luck
position, the view appears to be inherently unstable.

I have already defended most of the steps of the above argument. (1) and (3) are no less
plausible here than in the previous version, and (6) follows a fortiori from (1). (7) emerges from
the simple observation that compatibilists need to distinguish between free acts and other events
involving the agent. I have already said that they will do so by appeal to FR-relevant states
(whatever they are) as opposed to external circumstances. Hence, (7)--and (12) will follow as a
clear consequence. Given my way of speaking, (10) obviously follows from the assumption of
determinism. And the inference to (11) is based on the fact that the FR-relevant states and the
external circumstances are the exhaustive elements of C. Given that only the elements of C can
be moral-profile-making (as (8), in conjunction with the assumption of determinism, is
claiming), and given that we can’t just read off the agent’s moral profile from her FR-relevant
states alone, we need to cast about among the causal antecedents looking for other moral-profile-making features. The only candidates available are external circumstances. Hence, (11).

The clear pressure point in the argument is (8)--and (8) will receive separate defense shortly. But it is important to mention now what (8) is not doing. (8) is not offering a kind of transfer principle that incompatibilists often use to argue that determinism undermines free will. An incompatibilist transfer principle will look something like this:

14. If you’re not free with respect to X, and X entails Y, then you’re not free with respect to Y.

With this principle in tow, incompatibilists often urge that, since I’m not free with respect to the laws of nature and the initial conditions of the universe, and since, on determinism, these entail all my actions, determinism undermines the freedom of all my actions. Of course, (8) doesn’t look quite like this, but it might be alleged to look closer to the following:

15. If X does not ground my moral profile, and X entails Y, then Y does not ground my moral profile.

Or, to put it contrapositively:

16. If Y grounds my moral profile, and X entails Y, then X grounds my moral profile.

(15) and (16), much like (14), are an incompatibilist’s playground. The state of the world at the time of the dinosaurs, combined with the laws of nature, do not ground my moral profile, but (on the determinist thesis) they entail every facet of my life; therefore (on determinism), nothing I am or do grounds my moral profile—I have no such thing. Clearly enough, no compatibilist would ever grant these principles. But in offering (8), might I be thought to be smuggling in the same idea? On the compatibilist acts view, my acts ground my moral profile, but they are the deterministic products of my FR-relevant states and external circumstances. And so, by insisting
that the moral-profile-making features of an act are exhausted by the elements that bring it about, doesn’t it seem that I am simply invoking the incompatibilist (16) in another form? If that is what I am up to, then no compatibilist will ever grant (8), and the argument will appear to be question-begging.

But a second glance should be enough to acquit me of the charge--for (8) identifies a strategy that compatibilists already employ. In evaluating whether an action is done freely, or is something for which the agent is responsible, the compatibilist always looks at the causal history of the act--not the whole causal history (whether a dinosaur’s sneeze was involved makes little difference), but the proximate causes. To justify the assertion that the agent is morally responsible for the act, the compatibilist appeals to the way the act was brought about--in particular, whether it was brought about by the FR-relevant states. The principle expressed in (8) is not that, since Y grounds my moral profile, and X entails Y, X grounds my moral profile. The principle, rather, is that if acts ground my moral profile, something in the causal history of those acts makes them relevant to my moral profile. This much is what compatibilists already insist upon.

Of course, (8) also says just a bit more--that the antecedent elements exhaust the moral-profile-making features of the act. And with this premise in the mix, it is no surprise that I am able to derive the deviant result expressed in (11). Return again to the way that Rosebury portrays the acts view in the passage quoted above.6 If our acts are to be morally appraised simply in virtue of how we “show ourselves to be like,” where it is only what we are like (our states) that is doing the work, then the acts view appears to collapse into the character (states)

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6 In fairness to Rosebury, I should mention that the rest of the article does not portray the acts view in this same light.
view. If the acts view is to resist that collapse, there must be some other moral-profile-making feature. Given (8), the only available candidates are external circumstances.

1.4. Final Evaluation

But return again to the way our compatibilist objector responded earlier:

“"I granted in chapter 2 that the agent’s states alone won’t get you her moral profile, since that’s not what’s involved with direct control. Rather, what matters is the agent’s states combined with her action, or rather action emerging out of her psychological states that matters, since that’s what direct control just is. I never agreed in chapter 2 that one’s moral profile needs to be fully cordoned off from character; I agreed only that it can’t simply be read off from character. I’ll grant the latter. But I won’t grant that character—or psychological states generally—is some sort of contaminating influence on all moral profile judgments.”

The revised argument responds to this objection by allowing the objector the license to appeal to the agent’s states, while insisting (as the objector is willing to grant) that she cannot appeal to those states alone. Then, it insists (with the help of (8)) that the only other thing to which the objector can appeal is precluded by compatibilism.

Two things deserve to be noted. First, nothing has been done to discredit the objector’s compatibilist account of direct control, since, after all, nothing has been done to discredit compatibilism per se. Recall the minimalist control principle from chapter 2:

CP3. Necessarily, for any two agents, if they differ in moral profile, then it is not the case that that difference is due entirely to facts beyond either agent’s direct control.

I said in chapter 2 that any version of the acts view (including any compatibilist ones) would entail this principle, and I have provided no reason in the present chapter to recant this claim.
So, when the objector insists that acts emerging from character are “what direct control just is,” she is within her rights to do so (as far as my argument is concerned). Considering moral luck alone brought about (CP3). The added concerns about the nature of the free will issue are motivating the argument against the compatibilist acts view’s credentials as an anti-luck position. If the argument is sound, we will clearly need a stronger control principle. I will postpone discussion of what that stronger control principle might be until I have canvassed other solutions to the problem of moral luck.

Second, and more importantly, the revised argument may be accused of missing the point of the objection. The objector insists that she is interested in “the agent’s states combined with her action, or rather action emerging out of her psychological states.” The revised argument responds by pointing out that the action is (on the determinist view) simply the product of the FR-relevant states and external circumstances, and so, if the action grounds the agent’s moral profile, and not simply in virtue of the states, then the external circumstances are moral-profile-making. This is the sort of inference that (8) will license. But to this move, our original objector might very well throw up her hands and say something like this:

“You clearly didn’t understand what I meant a moment ago. My claim wasn’t that the action matters in terms of its causal antecedents. My claim was that the action itself matters, over and above its causal antecedents. My whole point was that (8) is false!”

Indeed, regardless of whether this really was the objector’s original intention, this is the only move that is available to her. The revised argument reveals exactly what the compatibilist act view must be committed to if it is to survive as an anti-luck position—namely, that some moral-profile-making feature is involved in the act that is not already contained in its causal antecedents.
Consider the following extension of the *Baseball* story from the last chapter as a test case of this idea:

*BaseballE*: Smith and Jones have qualitatively identical histories up until t1, the time at which the impact of a baseball causes Smith to have the sneering ruthlessness of a mafia Don, while Jones continues to have the noble work ethic of a rural Illinois farmer. The behavior of each agent after t1 is morally neutral until t2. At t2, each agent is confronted by a neighbor in need. Their different FR-relevant states, combined with these (qualitatively identical) external circumstances, deterministically cause Smith to commit a murder and Jones to help fix his neighbor’s barn.

The compatibilist acts view, of course, is an alternative to the character view, and so it resists the idea that there is a difference in moral profile between the two agents prior to t2. However, since it is an acts view, the two agents do have different moral profiles at t2, in virtue of their different acts. (Since it is a compatibilist view, the determinism in the case does nothing to undermine the freedom of the acts.) However, unlike the examples provided by Nagel and Thomson, in this case, there is no difference in their external circumstances. Their characters are different, but they have been different since t1, with no change in moral profile until t2. Presumably, then, their different characters aren’t doing the work. So, if neither the circumstances nor the characters explain the difference in their moral profiles, what does? Answer: the acts themselves, which, so far as my argument is concerned, are free in virtue of being caused by the FR-relevant states.

This way of thinking might be called the *stark acts view*. If you are morally responsible for the act, then your moral profile is influenced accordingly, quite apart from whatever causal features made you morally responsible in the first place. On this line, (8) is false, and it is not
the case that the compatibilist is forced to identify the moral-profile-making features of the act in its causal history alone. On the Stark acts view, the fact that the agent acts is morally significant in and of itself, quite apart from the elements that bring it about.

Perhaps the Stark acts view might be motivated by appeal to the controversial notion of “prepunishment,” a topic that has gained at least some attention in philosophical circles.7 If the FR-relevant states are what matter morally, and the relevant states may exist well ahead of the act being assessed, why not punish before the act? (Why not punish Smith sometime in between t1 and t2?) Yet, this idea will seem counter-intuitive to many, including Michael Moore, our proponent of the compatibilist acts view.

If the character theory were correct, the answer given to Molière’s Robespierre (when the latter asks why he is being condemned to death) should not be jarring: you are being condemned, Robespierre is told, ‘because you lack grace’. Yet the answer is jarring precisely because no one deserves to be punished for being a poor specimen of humanity.

(1997, 585-86)

There is surely something highly plausible about Moore’s reaction to Molière’s story, as there would be to a similar reaction to punishing Smith sometime between t1 and t2. If we take a Stark acts view, perhaps we may preserve this intuition. Perhaps Smith’s FR-relevant states are all present at t1, but that’s not enough to influence his moral profile. What is needed is the act, which is significant quite apart from those states, and that is the proper object of moral evaluation.

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7 The topic made an appearance in a debate in Analysis between Christopher New (1992, 1995) and Saul Smilansky (1994). Statman (1997) weighed in on the debate, connecting the notion of prepunishment to the character view in particular.
And yet the stark acts view itself faces a stiff challenge. Surely, on compatibilism, the presence of an act alone, without the FR-relevant states, has no bearing on the agent’s moral profile. Without the FR-relevant states, the agent is not responsible, and where the agent is not responsible, no change is made to her moral profile. This is the nature of an excuse. But if the act alone has no bearing on the agent’s moral profile without the FR-relevant states, why does it have additional bearing, over and above the FR-relevant states, when the FR-relevant states are present? Suppose Smith robs a bank while under the effect of hypnosis or duress or whatever freedom-undermining influences you like. The compatibilist says, “Smith robbed a bank, but no matter--for his robbing was not caused in a responsibility-preserving way.” Suppose Smith robs a bank freely. The proponent of the stark acts view says, “Smith is responsible for robbing the bank, due to the presence of the FR-relevant states, and furthermore, he robbed the bank.” Why the last clause? The bank robbing itself has no moral significance (with respect to the correct evaluation of the agent) when the relevant causal antecedents are not present; why should it have additional moral significance (over and above the causal antecedents) when those antecedents are present?

Perhaps the stark acts view may try to respond to this challenge in the following way. When Smith freely robs the bank, we might more naturally say, “Smith is responsible, since he did it of his own free will.” What is the “it” to which we are referring? The bank robbing, we might say, just is the bodily motions brought about by the right psychological causes. The psychological causes, after all, are what make the bodily motions an act in the first place. So, when we blame Smith for his action, we blame him for this pairing of psychological states and bodily motions, since that is what the act is. And this fusion of the two is greater than the mere sum of the psychological states and the bodily motions in themselves. The psychological states
alone don’t matter (i.e., apart from the bodily motions), and the bodily motions alone don’t matter (i.e., apart from the psychological states)—what matters is their fusion in an act.⁸

As it stands, however, this response does not seem very convincing, and some revision is in order. After all, there are acts and there are acts. An act may be individuated in terms of both psychological causes and bodily motions. But it is not, simply in virtue of being an act, a free act—the sort which has some relevance for one’s moral profile. Return again to the natural expression we would use when blaming Smith: “Smith is responsible, since he did it of his own free will.” We do not say, “Smith is responsible, since he did it.” If we leave the expression there, we acknowledge that Smith has robbed the bank—that, perhaps, there was a set of bodily motions, brought about by certain psychological states. But that alone is not enough. What we need is the further attribution of certain features of the act—that it was brought about by the right psychological states in the right sort of way. Without these features, the fusion of states and motions (the act, broadly construed) has no bearing on the agent’s moral profile.

It seems that the response needs to individuate the act in a more specific way, so that the freedom or lack of freedom is itself part of the individuation of the act. Then, we can say, “Smith is responsible, since he did it,” where the “it” is not bank-robbing, but robbing-the-bank-freely. Now, this strikes me as being an unusual way of talking. It seems that there may be circumstances where everyone agrees about what act Smith has performed (that he has robbed the bank) while disagreeing about various features of the act (whether it was done freely). But perhaps this unusual way of talking might turn out to be the correct way (or, alternatively, just as correct as any more conventional way). Then, we may blame Smith for performing the act of robbing-the-bank-freely, an act which just is the fusion of a particular set of FR-relevant states

⁸ This possible response was introduced to me by Alan Sidelle.
that bring about certain bodily motions in just the right way. This fusion would not be just the sum of the FR-relevant states and the bodily motions—since, in isolation, neither of these can impact the agent’s moral profile—but something more.

There is, of course, something mysterious about the idea that bodily motions themselves—which are conceded to have no significance to our moral profile in isolation—suddenly gain additional significance over and above the FR-relevant states when fused with them. But maybe the compatibilist may appeal to analogous claims made in other domains. An arrangement of paint on a canvas would have absolutely no value if the paint just happened to splatter there by a chance accident (one might say), but the very same arrangement would have immense value (over and above the value of the artist’s intentions) if it were caused intentionally by the artist. The pleasure of friendship (arguably) might have absolutely no value if it is caused by a phone conversation where the bullies on the other end of the line (who are just pretending to be your friend) are making fun of you behind your back. But (one might say) that very same pleasure might have value over and above the value of the friendship itself when it is caused by a genuine friend.\footnote{Once again, I am indebted to Alan Sidelle for introducing me to similar examples.} Of course, neither of these examples is free of controversy. It is just as easy to retort that the value of an arrangement of paints has to do only with that arrangement alone, not its relation to something else—or that if it does require something else to have value at all, then that “something else” is what is doing all the work. And the same retort is available for the example that deals with pleasure and friendship. Nevertheless, no doubt some philosophers will want to defend a “fusion” model in the cases of artwork and of the pleasure of friendship, and perhaps the advocate of the stark acts view can seize upon this precedent (such as it is) in order to buttress her position.
This approach appears to be the only way out for the compatibilist acts view. It does not seem to be any more plausible than the analogous models offered regarding artwork and friendship. Further, given our context, it has an added disadvantage: it needs to be (and probably is not) palatable to the opponent of moral luck. Return to the tale told by *Baseball E*.

The opponent of moral luck says that there is absolutely no difference in moral profile between Smith and Jones prior to t2. Now, the compatibilist may well insist that, at t2, Smith and Jones each freely perform their different actions, in virtue of their bodily motions being caused by the FR-relevant states in the right way. But the FR-relevant states have been there *since t1*, with no change in moral profile. Are we supposed to believe that the opponent of moral luck, who has valiantly held both the saint and the villain to be on a par since t1, now capitulates at t2 in virtue of their different *bodily motions*, of all things? Saintly and villainous characters, considered in themselves, are morally interesting (even if they don’t directly constitute anyone’s moral profile), while bodily motions, considered in themselves, are not. And yet the stark acts view claims that the bodily motions suddenly gain moral significance (when fused with the FR-relevant states in the action) that the opponent of moral luck cannot consistently ascribe to character itself. The stark acts view, then, presents a hard sell to the opponent of moral luck.10

I suspect that the stark acts view is false, for the reasons given--and so I suspect that (8) is true. I suspect even more strongly that, regardless of whether the view is true or false, it is not

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10 I have been speaking here as though the acts that matter for the acts view involve bodily motions, although I noted--both in the last chapter and in note 2 of this chapter--that some versions of the act view will look at acts differently, focusing perhaps on the act of the will itself, or on the act of the will as it pertains to intention formation, or what have you. Analogous considerations will apply to those views. Suppose that what matters is the free formation of intentions. Then, the intention itself won’t matter--since intentions, after all, are just states of the agent, the sort of thing which may be brought about by impact with baseballs. And the act of forming the intention won’t matter, if it is not brought about in the right way (e.g., if it is done under hypnosis, duress, or what have you). Again, everything hinges on how the act was caused.
the sort of thing that an opponent of moral luck will wish to be committed to. And so, I hold that at least the following possible replacement for (8) is true:

8*. Either (a) the moral-profile-making features of an act are exhausted by the elements that bring it about, or (b) the compatibilist acts view is unlikely to be available to opponents of resultant moral luck.

As it is worded here, (8*) will not quite license the strong conclusion that we see in (13), but it will come close, since (8*b) just is that conclusion with a qualifier. It appears that the compatibilist acts view, however attractive it might be to friends of moral luck (e.g., Moore), is unlikely to be available to its opponents.

And yet the stark acts view points toward an intuition that seems deeply rooted. Isn’t there something to the idea that, in the act, something happens that is morally significant which is not exhausted by the agent’s states alone? Perhaps so, but it is up to the libertarian to tell us what that element is.

2. Libertarian Acts Views

There are different varieties of libertarianism, but all versions of the view are committed to the falsity of determinism. On some versions, there may be free acts that are determined by prior causes at the time of the agent’s willing, but only if the causal history of that act includes a prior free act by the same agent which is itself indeterministic. So, for any version of libertarianism, there will be some acts A in circumstances C where C does not fully determine A. In such cases, the origins of an act are not exhausted by the elements of C. There are the external circumstances and the FR-relevant states, and in addition, a crucial third (and distinct) element:

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11 This is one of the unique twists given to the libertarian position by Robert Kane in *The Significance of Free Will* (1996). The indeterminacy, on Kane’s view, comes in “self-forming actions” (or “SFAs”), which help to form the agent’s character. Later acts may be both determined (by the agent’s character) and free, so long as the character itself was formed by an SFA.
how the agent decides. On libertarianism, this third element is not a freedom-undermining feature. It does not render the act capricious or arbitrary or chaotic. Rather, it is a necessary condition (at least somewhere in the act’s causal history) for the act being free. As such, it may serve as an item in virtue of which the agent may be morally evaluated.

Any libertarian acts view will be immune to the line of criticism just aimed at the compatibilist acts view. Return again to the revised argument of section 1.3 above, but delete assumption (9b)—i.e., the truth of determinism—from the argument, and insert “libertarian acts view” for “compatibilist acts view” in assumption (9a). Make analogous modifications to (3) and (7), and keep (8) as is, thereby denying the stark acts view. The result is that neither (10) nor (11) will follow. Given the falsity of determinism, there will be something other than the FR-relevant states and the external circumstances that brings about the action. We can appeal to this third element: how the agent decides. This feature, certainly, has not been ruled out by our discussion in chapter 2, and by libertarian lights, is up for moral evaluation. The libertarian acts view escapes unscathed.

This is not to say that the libertarian acts view is immune to situational moral luck. I will argue (in this chapter and the next) that it is not immune. We get a strong hint in this direction when we observe that the elements of C, even if indeterministic, nevertheless put severe constraints on what actions are available to the agent. Perhaps I have libertarian freedom, but I am not now free to leap over Mt. Everest (I am not Superman), or to save someone from a burning building (since there are no buildings burning in the vicinity), or even to accept a bribe (since no one has offered me one). So, cases of situational luck, like the ones introduced by Nagel and Thomson, need to be revisited.
Judge Counterfactual, we are told, would have freely accepted a bribe if offered, but never gets the chance, or, alternatively, the Argentinian businessman would have acted out Nazi orders had he not emigrated from Germany a decade earlier. Since the acts view is what is on the table, the cases of situational luck that are relevant will typically have this counterfactual form. One agent’s behavior (and so, on the acts view, her moral profile) might not actually be the same as another’s, but it would have been had it not been for some factor beyond her control.

A (compatibilist) determinist has the liberty of stipulating counterfactuals of this sort, because the antecedent of the counterfactual may be taken to include factors that (combined with the relevant background) determine the action named in the consequent. Of course, determinism alone won’t secure a truth-value for all counterfactuals of this sort. In some counterfactuals, the circumstances given in the antecedent are too different from the actual world to be able to assess easily.12 (Take, for example, “If Mark were a hippie in Queens, he would take to smoking hookahs.” How can anyone know what I would be doing if I were a hippie in Queens?) In others, the conditions in the antecedent might not be that different from the actual world, but still not have enough detail to render a determinate verdict. (If I am surly on Wednesday through Saturday but congenial on other days of the week, the conditional “If Mark met Sally, Mark would greet her with a smile” may lack a determinate truth-value.) Nevertheless, there will be many counterfactuals that do not fall to these problems. In particular, if determinism is true, then any counterfactual of the form, “If S were in C, S would do A,” where C is given a complete description, will have a determinate truth value; indeed, the antecedent of such conditionals

12 Presumably, this is why Thomson dismisses the counterfactual involved in Nagel’s example as “rather hard to get a grip on” (1989, 214). What can there be about the actual émigré to Argentina that would make it true of him that he would have behaved as a ruthless Nazi had he not emigrated?
would entail either the consequent or its negation. As a result, the assumption of determinism grants us the license to stipulate the needed counterfactuals in examples of situational luck.

Things are less obvious on the assumption of libertarian freedom. Specify the antecedent in as much detail as you please, and—so long as we are speaking of an indeterministically free action—there will be no entailment relation between the antecedent and the consequent. As a result, the standard possible worlds semantics for counterfactuals seems to rule out the possibility of any of these claims being true. Suppose that a counterfactual is true just in case the consequent is true in the closest possible worlds where the antecedent is true. What of a counterfactual of the form “If S were in (completely described) C, S would (indeterministically freely) do A?” Then there will be at least two possible worlds that are equally close to the actual world where (a) S is in C, and (b) their only difference is whether S does A or some other thing (and the consequences of these different acts). With respect to closeness, it’s a dead heat between the worlds, and the truth-value of the consequent shifts between them. It appears that the closest possible worlds semantics leads to the result that no such counterfactual can be true.

Similarly, one might wonder, in virtue of what, exactly, might it be true that the agent would do A in C? Ex hypothesi, the elements of C alone can’t explain its truth. They might render A more or less probable, but this does not seem to be enough to make the counterfactual “If S were in C, S would do A” true or false. But then, we’re left with a mystery about what could make the proposition true.13

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13 Considerations along these lines against the possibility of the libertarian “counterfactuals of freedom” being true appear frequently in the philosophy of religion literature—in particular, in attacks against Molinism, a view that attempts to reconcile apparent conflicts between divine providence and human freedom by making appeal to such counterfactuals. A representative example may be found in the second chapter of Hasker’s God, Time, and Knowledge (1989).
Some libertarians, then, resist the notion that counterfactuals describing what agents would libertarianly freely do in other circumstances can be true. As a result, they will resist the standard examples of situational luck that appear in the literature, which tend to rely upon these counterfactuals. How can we know what Judge Counterfactual would do if offered a bribe? Or--more to the point--there’s simply no fact concerning what he would do. If there were such a fact (this line of reasoning continues) then this counterfactual behavior wouldn’t be free at all (because it wouldn’t involve libertarian freedom), and so it wouldn’t be a factor in virtue of which we may evaluate the agent. The standard examples of situational luck are simply misguided by their very nature.

Then again, not all libertarians have the luxury of taking this path. Some libertarians have insisted that the counterfactuals involved in examples of situational luck may be true, even when describing indeterministic libertarian behavior. Perhaps the standard semantics of counterfactuals itself is flawed, and perhaps the demands that something explain the truth of the counterfactual, or make it true, are themselves either misguided or capable of being met.\(^{14}\) And perhaps it is simply intuitively compelling that there must be some fact of the matter about what the agent would freely do if placed in C. On such a line, there would be nothing structurally out of whack with the examples that Nagel and Thomson use. There may yet be epistemic concerns with how we would know how actual agents would behave in different circumstances. But there would be nothing amiss about stipulating, from a God’s-eye view, what hypothetical agents would do in alternative circumstances in fictional examples. So, libertarians of this stripe cannot

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\(^{14}\) For example, Richard Gaskin (1998) attacks the Lewis/Stalnaker semantics as committed to “conditional fatalism,” while William Lane Craig (2001) defends the libertarian counterfactuals against the grounding objection. Again, defenses of these counterfactuals typically appear in the philosophy of religion literature.
evade concerns about situational luck simply by shrugging off its paradigmatic examples as incoherent.

I will not, in the course of this study, referee the dispute between these alternative variants of libertarianism, and I will postpone until the next chapter my evaluation of which variant, if any, is better equipped to handle the problem of moral luck. For now, I wish to point to an alternative solution to the problem of moral luck that emerges when we consider the line that there are facts concerning what we would freely do in different circumstances. Then I will argue that this solution, too, is committed to libertarianism.

Suppose it is true, then, that Judge Counterfactual would accept a bribe if offered. On an acts view, it appears that the fact that he was not offered a bribe makes him morally lucky, for the catalogue of his acts is now better than it would have been but for this factor beyond his control. Perhaps this result will feel unsatisfactory. How can one’s moral profile differ depending upon whether someone else offers one a bribe? And shouldn’t the fact that the judge would accept the bribe if offered count against him morally?

Perhaps it should count against him morally. Assuming that there are true counterfactuals concerning what one would do in alternative circumstances, perhaps we can accommodate this intuition by simply incorporating these true counterfactuals into one’s moral profile.

3. The Counterfactual Acts View

3.1. Varieties of the Counterfactual Acts View

While anti-luck scholars may often flirt with the counterfactual acts view, only two (to my knowledge) have ever embraced it explicitly--John Greco (1995) and Michael Zimmerman
(2002). As a result, the many permutations that the view may take have not (yet) been thoroughly explored. Nevertheless, we can begin to distinguish between its possible forms here.

On any version of the view, the agent’s moral profile is constituted by both her actual free behavior and how she would freely behave in other (non-actual) circumstances. Since the view targets what the agent does or would do, it may be carved up in the same ways as the simple acts view. Different versions will target different kinds of (actual or counterfactual) acts as being morally relevant. On some versions, only the formation of intentions will matter, while on others, the act of the will even after the formation of the intention will be emphasized, or perhaps these combined with the agent’s bodily movements. Similarly, different versions will be aligned with different views of what freedom amounts to--some will be libertarian in nature while others will be compatibilist.

But the counterfactual acts view can be divided in other ways as well. First, the range of counterfactual behavior to which the agent’s moral profile is alleged to be sensitive will fluctuate on different versions. On an extreme version, the agent’s moral profile will be influenced by what she would do in just any set of circumstances which it is metaphysically possible for her to inherit. Alternatively, her counterfactual behavior in only a proper subset of these will count, and of course, different versions will include different circumstances in the subset. Second, there will be differences concerning the weight of counterfactual behavior. On some versions, what the agent actually does, and what she would do for any set of circumstances in the relevant subset, counts toward her moral profile with the same weight. We may call such versions of the counterfactual acts view “world-neutral.” On other versions, the agent’s actual behavior may count for more than her counterfactual behavior. On still others, there may be a gradation: the
closer the circumstances are to the actual world, the greater the weight of the agent’s counterfactual behavior in those circumstances.

To generate the result that the two judges in Thomson’s example are morally on a par, the version of the counterfactual acts view we would need to adopt would have to be world-neutral (or something close to it). Otherwise, Judge Counterfactual’s counterfactual bribe-taking would not count against his moral profile to the same degree that Judge Actual’s actual bribe-taking counts against his profile. If the agent’s actual behavior receives greater weight, we could still preserve the intuition that Judge Counterfactual’s counterfactual behavior counts against him, but we could not secure the anti-luck conclusion that Thomson thought to be so obvious. It is no surprise, then, that both explicit adherents to the counterfactual acts view in the literature should adopt world-neutral versions of the view.

They appear to differ, however, with respect to the range of counterfactual behavior that is relevant to the agent’s moral profile. That they differ is a bit surprising, since the control principles from which they operate are so similar. Here, once again, is Zimmerman’s control principle:

[I]f (a) someone’s being $F$ (where ‘$F$’ designates some complex property comprising both epistemic and metaphysical components) is sufficient for that person’s being morally responsible to some degree $x$, then, if (b) it is true of $S$ at some time that he or she would be $F$ if $p$ were true, and (c) $p$’s being true is not in $S$’s control at that time, then (d) $S$ is morally responsible to degree $x$. (2002, note 33)

And here is Greco’s:
If there is no difference between persons S1 and S2 with respect to an event X, except for factors which are outside of both persons’ control, then S1 and S2 are equal with respect to moral worth in virtue of X’s occurring. (1995, 90)

These control principles look to be very similar (perhaps identical), and they both seem to commit their authors to an unconstrained, extreme version of the counterfactual acts view. However, as we saw in section 2.1 of the last chapter, Greco may be interpreted as equating his view with the character view. If that is correct, apparently Greco intends to circumscribe the range of relevant counterfactual behavior significantly--to those circumstances in which the agent has the same character that she actually has.¹⁵

Zimmerman, by contrast, appears unabashedly to accept the consequences of his control principle, explicitly repudiating constitutive moral luck (in contrast to Greco), and so pursuing the counterfactual acts view as far as the counterfactuals will take him. Zimmerman, then, adopts the most extreme of counterfactual acts views--both world-neutral and with no limits to counterfactual behavior that is relevant to one’s moral profile. Just how extreme this view turns out to be will depend upon what metaphysical truths there are. For instance, if I (metaphysically) could have been a hard-boiled egg (and if a hard-boiled egg could have been a person), and if there are true counterfactuals about what the hard-boiled egg would do in circumstances where it is a person, then by Zimmerman’s lights, I could have the same moral profile as a hard-boiled egg.

I will give an evaluation of the plausibility of various versions of the counterfactual acts view in the following chapter. In the remainder of this chapter, I will simply begin the process

¹⁵ This leads to questions (already raised in section 2.1 of chapter 2) about how exactly the circumscribing is supposed to work. Greco appears to be in trouble, since narrowing the range of counterfactuals here would appear to require an independent analysis of character.
by ruling out compatibilist versions of the view. The counterfactual acts view, like the simple acts view, requires libertarianism to succeed as an anti-luck position.

3.2. *Why the Counterfactual Acts View Requires Libertarianism*

Section 1 has already suggested that libertarianism is needed for the counterfactual acts view to succeed as an anti-luck position. If the compatibilist’s handling of the agent’s *actual* behavior is unsatisfactory for the opponent of moral luck, then it is hard to see how her handling of the agent’s *counterfactual* behavior would be any better. However, I think it will be illuminating to approach the topic from a different direction. In the process, I think we might discover a bit more about why it is, exactly, that compatibilism and opposition to moral luck make such awkward bedfellows.

We can begin with a simple argument. It is unsound, but it will be useful to see why it is unsound.

   17. Suppose S does A in (completely described) C.

   18. Assume (for conditional proof): (a) for any agent that actually exists, for any world in which that agent exists, determinism is true; and (b) the counterfactual acts view. So,

   19. For every actual agent S*, S* would do A in C. (17, 18a) So,

   20. For any (completely described) possible set of circumstances in which it is metaphysically possible for any actual agent to be placed, all actual agents would do the same thing. (17, 19, arbitrariness of S, A, and C) So,

   21. All agents have the same moral profile. (18b, 20) So,

   22. If the assumptions in (18) are true, then all agents have the same moral profile. (18-21, conditional proof)
Naturally, if (22) is true, then the counterfactual acts view can avoid the indistinguishability of everyone’s moral profile only if some of our actual or counterfactual behavior is indeterministic.

The argument breaks down at two points. First, the inference to (19) is suspect. In order to derive the claim that any S* would do A in C, it must first be possible for any S* to be in C. But (arguably) different agents may well have different essential properties which constrain the range of possible circumstances in which they may participate. (This will be seen to be quite plausible once we remember that C includes a complete atom-for-atom description of the relevant elements of the world.) If so, then (19) will fail to be true. There will be agents for whom the sum total of their actual and counterfactual behavior will differ, due to differences in the possible circumstances in which they may possibly behave.

Second, the inference to (21) will fail on most versions of the counterfactual acts view. Even if the sum total of everyone’s actual and counterfactual behavior were identical, different versions of the counterfactual acts view would consider different ranges of that sum as relevant to determining the moral profile of different agents. For instance, perhaps I would have gone on a killing spree if I had inherited the same circumstances (completely described) that Jeffrey Dahmer in fact participated in. However, on a version of the counterfactual acts view, like Greco’s, on which it is only the behavior that one would perform in circumstances where one has one’s actual character that matters, this ugly fact of my counterfactual behavior won’t count against me. Further, even if the range of moral-profile-relevant counterfactual behavior is the same for all agents, with the same sum total of actual and counterfactual behavior for all these agents, any version of the counterfactual acts view which is not world-neutral will emphasize different portions of that range differently for different agents.
So, we may resist the consequence of indistinguishable moral profiles, given the assumptions in (18), (i) by appeal to differences in agents’ essential properties (which would undercut the move to (19)) or (ii) by appeal to differences in the accidental features (e.g., character) of the circumstances which agents have inherited (which would undercut the inference to (21) by altering the range of relevant counterfactual behavior or by emphasizing some items of one’s behavior over others). Barring both (i) and (ii), the only option remaining, on the assumptions in (18), is simply (iii) to accept the consequence that all agents are indistinguishable in terms of their moral profiles. Will any of these alternatives be satisfying to opponents of moral luck?

Consider first option (i), the appeal to the essential properties of the agent. On first glance, it seems that this move will not be satisfactory. Recall our minimalist control principle from the previous chapter:

CP3. Necessarily, for any two agents, if they differ in moral profile, then it is not the case that that difference is due entirely to facts beyond either agent’s direct control.

Now, suppose that (21) is false, and that there are agents who have different moral profiles. Suppose further that the only difference in the moral profiles in agents is due to their different essential properties. This appears, on first blush, to be the case on a position like Zimmerman’s, which is world-neutral and makes no restriction in the range of relevant counterfactual behavior, given the assumptions in (18). Then, (CP3) would be false (since neither agent exercises any control over either agent’s essential properties). But this result would be intolerable to opponents of moral luck.

Is this first glance accurate? Technically, it is not. Suppose that I (compatibilistically) freely kill my neighbor, while you (compatibilistically) freely help fix your neighbor’s barn.
Suppose further that you could never be in my shoes, due to your essential properties, and I could never be in your shoes, due to my essential properties. Nevertheless, since our *actual* behavior counts on the counterfactual acts view, and since we *do* have direct control over our free actual behavior (so far as anything I have said is concerned), it would *not* be true that the differences between our moral profiles would be *entirely* due to factors beyond our direct control. This would be true even if (*per impossibile*) a change in my essential properties (over which I have no control) would result in the indistinguishability of our moral profiles. So, resisting the above argument by appeal to the differences of our essential properties will not require a rejection of (CP3).16

Nevertheless, the spirit of the objection is sound. I have already argued in section 1 of this chapter that opponents of resultant moral luck cannot consistently appeal to *actual* compatibilistically free acts as the sole determinant of the agent’s moral profile. So, if something is going to distinguish my moral profile from yours, it will need to be more than simply different compatibilistically free acts. On (i), something further *does* distinguish my moral profile from yours—the difference in our essential properties. But since neither of us exercises any control over our essential properties, this further element goes no distance at all in rescuing a compatibilist version of the counterfactual acts view from the problems that beset the compatibilist version of the simple acts view.17

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16 I should note, however, that I will show in the next chapter that any version of the counterfactual acts view will be incompatible with (CP3) on other grounds. Then I will offer a replacement that is intended to do the same work.

17 This simple observation has not stopped some scholars from grounding the agent’s moral profile in her essential properties. Charlotte Katzoff, for one, presents as a solution to the problem of “religious luck” (a close analogue to moral luck) the idea that our profiles are contained within our individual essences, or haecceities (2004). This move might be attractive to those who are concerned with the problem of moral (religious) chanciness, but not for those dealing with the problem of moral (religious) out-of-control-ness.
But then, it is hard to see how option (ii) would fare any better. On (ii), indistinguishability is avoided by restricting the range of counterfactual behavior or emphasizing certain elements of it over others. Of course, for this sort of move to be sensible at all, it will need to restrict the range, or provide emphasis, on the basis of some criterion or other. And it is hard to see what criterion would fare better than essential properties as the determining feature that distinguishes one moral profile from another. Perhaps the standard criterion is the one that Greco hints toward—that what matters (or, on non-world-neutral versions, what matters more) is counterfactual behavior in circumstances where the agent has her actual character. But I have already argued (in chapter 2) that opponents of moral luck cannot ground the agent’s moral profile in her character itself. It would be mysterious, then, why they should feel at liberty to adopt a view which (on some variations) will be extensionally equivalent to the character view. On this variant of (ii), the agent’s character, combined with her essential properties, fully determines the difference between her moral profile and everyone else’s. But this line, surely, is just as unavailable to opponents of moral luck as the simple character view.

Is there any other variant of (ii) that might do better? Perhaps we may say that the criterion by which we restrict or emphasize certain counterfactual behavior is simply whatever features of the world the agent is responsible for. Suppose, then, that the agent is responsible for some states of affairs \( \{X_1 \ldots X_n\} \) obtaining. Then, the determinants of the agent’s moral profile will be restricted to, or emphasize, what she would do in all possible circumstances where \( \{X_1 \ldots X_n\} \) obtain. Perhaps I have worked hard throughout my life to acquire a decent job that provides for my family and so am responsible for our comfortable lifestyle. If so, then we needn’t consider (or emphasize) what I would do in desperate circumstances where I have no honest way of meeting my family’s needs. Maybe this way of approaching (ii) will seem more
plausible. What better way to distinguish my profile from yours than by appeal to what we are and are not responsible for?

And yet, a second glance will show that this variant of (ii) is no better than Greco’s. In chapter 2, we saw that it scarcely matters whether we are responsible for our characters—the character view is off limits as an anti-luck position. The same will hold generally, regardless of which states \( \{X_1\ldots X_n\} \) happen to be. Perhaps I am responsible for my family’s comfortable lifestyle. But no opponent of resultant moral luck will say that this responsibility has any greater significance to my moral profile than my responsibility for the acts which led to that lifestyle. In virtue of the relevant details, I am no better, morally speaking, than an equally diligent philosopher who did not receive the same resultant luck that I did on the job market. So why should I be immune to consideration of what I would do in desperate circumstances, while my unlucky doppelganger is not immune? The reasoning I provided in the last chapter against the character view will hold mutatis mutandis for any view which grounds the agent’s moral profile in certain states of the world, regardless of whether the agent is responsible for those states. At least, it will if those states alone are supposed to be doing the work—and this version of option (ii) will be extensionally equivalent to any such view.

But perhaps the elements of \( \{X_1\ldots X_n\} \) shouldn’t be taken to be states of the world, but just a list of acts that the agent has done? Then we are left with a perplexing view. If we are supposed to consider only those worlds in which the agent performs exactly \( \{X_1\ldots X_n\} \), then what we have is a convoluted way of expressing the simple acts view. On the other hand, if we are supposed to consider circumstances where the agent has performed at least \( \{X_1\ldots X_n\} \), or at least some of the acts enumerated in the set, then we are scarcely given a restriction on (or a particular emphasis on) the relevant parts of our counterfactual behavior at all. For, as examples
of resultant luck from the literature show, virtually anything can follow the performance of an act. I work diligently, and then (a) get a job and inherit circumstances where I can live a comfortable lifestyle, or (b) get unlucky and inherit circumstances where I’m homeless and have starving children, or (c) am noticed by diligent-philosopher-seeking aliens and inherit circumstances where I am confined in a zoo on another planet. For any set of circumstances C you like, it seems that my doing X is consistent with my being in C. So, the proffered suggestion provides no restriction on the range of the agent’s counterfactual behavior, other than simply to insist that the agent’s actual behavior has to be included. And we have already seen (in section 1) that actual deterministic behavior can’t mark the sole difference in moral profile between agents. The suggestion, then, looks like a non-starter. If the elements \{X_1…X_n\} are supposed to provide a limitation in the range of (or an emphasis of certain parts of) the agent’s counterfactual behavior, they will need to refer to states of the world, and that alternative is off the table, due to the reasons already given. Option (ii) does not look promising.

But so far I’ve been pointing to the extensional consequences of options (i) and (ii)—noting, for instance, that a variant of (ii) that differentiates agents on the basis of character will be extensionally equivalent to the character view. But what about intensional differences? Perhaps (i) and (ii) can be thought to be vindicated in the following way. What the compatibilist counterfactual acts view is saying, on either of these options, is not that the agent’s moral profile is directly constituted by her essential properties, or states of the world \{X_1…X_n\}, or what have you. It is saying, rather, that it is constituted by what she would have done in circumstances that answer to these features. These features might fully determine the contours of the agent’s moral

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18 I should remind the reader that C does not include causal history, but just the arrangement of the world at a time and the laws of nature. If C did include causal history, then performance of acts \{X_1…X_n\} would limit what circumstances C could follow. But that is not the case; hence, the acts \{X_1…X_n\} appear to provide no restriction at all.
profile, but that does not mean that they are the morally relevant features that we take into consideration when evaluating the agent. We are simply looking at the actual and counterfactual behavior.

The response to this defense of (i) and (ii) is simple. Would we be content with this kind of observation if it turned out that everyone had the same moral profile? After all, the proponent of (iii) also has the option of simply shrugging her shoulders and saying, “Well, all that really matters is our actual and counterfactual behavior. It seems we would all do the same thing in all possible circumstances, so I guess we’re all morally on a par.” Is there something problematic about this response? If so, then it will be important that it be defeated somehow—and then the sorts of features to which options (i) and (ii) point will not be merely incidental features of the compatibilist counterfactual acts view. They will be crucial features that are doing important moral work by saving the view from the threat of indistinguishability. And that’s precisely the sort of work that the opponent of moral luck will deny that they can do.

Well, what is the problem with (iii), anyway? We can begin, I suppose, with certain counterintuitive results that (iii) seems to have. Mother Theresa was no better, morally speaking, than any of the vilest and most despicable wrongdoers on death row. The whole retributive approach to punishment seems to be undercut in one fell swoop (unless, of course, one maintains that everyone should be punished equally). We can do nothing in our lives to influence our moral profiles, and so there is no incentive (with respect to improving one’s moral status) to do what is right. These are consequences that some philosophers (e.g., hard determinists) have already adopted, but these are precisely the philosophers who have rejected the notion of moral profiles to begin with. What proponents of (iii) are asking is that we maintain our belief in moral
profiles while acting as if there were no such things. This much seems to suggest that (iii) ends up undermining the very concept it is supposed to protect.

Then again, it is worth noting that there is a special class of thinkers who have wholeheartedly adopted the consequences listed in the above paragraph without junking the concept of a moral profile. The Apostle Paul, for one, seems to embrace these consequences, as well as those very many Christians who embrace a straightforward reading of the Pauline epistles (and with it, the doctrine of salvation by faith alone). So, perhaps adopting these consequences does not force us to abandon the concept of a moral profile.

But these consequences are only the symptoms of a deeper disease. When we adopt option (iii) on the grounds given by the compatibilist counterfactual acts view, we are basically conceding that our moral profile has precious little to do with us at all. There is nothing about me or my actions that gives me the moral profile that I have. What gives me my moral profile is simply a set of facts about the way matter responds to the laws of nature. I would do A in C simply because everything about me (at that moment) would be contained in C. But then, anybody else would do the same, simply because everything about that person would be contained in C. Once we concede that everyone can be in all the same circumstances, and their counterfactual behavior in all those circumstances counts and counts equally, then there is nothing left about me to judge at all.19 The damning verdict presaged by Nagel comes to a fuller consummation than even he imagined:

19 It is worth noting that the New Testament epistles may be interpreted as taking a very different path to the counterintuitive consequences I mentioned two paragraphs ago. The basic idea presented there (by a combination, say, of Romans 3:23 and James 2:10) is that everyone has done what is wrong, and that any blemish on one’s moral profile is tantamount to a completely soiled profile. Unlike the line of reasoning offered by (iii), the New Testament grounds its position in a fact about me—i.e., that I have done what is wrong.
The problem arises, I believe, because the self which acts and is the object of moral judgment is threatened with dissolution by the absorption of its acts and impulses into the class of events….The effect of concentrating on what is not under his control is to make the responsible self seem to disappear, swallowed up by the order of mere events….Eventually nothing remains which may be ascribed to the responsible self, and we are left with nothing but a portion of the larger sequence of events, which can be deplored or celebrated, but not blamed or praised. (1979, 36-37)

Except that here, the problem is not merely that the agent disappears into the larger sequence of events, but into *all possible events* involving human agents—which themselves are simply comments on the laws of nature. The agent disappears, the laws of nature remain, and the notion of a moral profile, far from being saved from moral luck, is condemned in the most spectacular way imaginable.

Options (i) and (ii), quite naturally, are supposed to protect against this threat through appeal to certain features of the agent or to certain relations that the agent has to the actual world. “I don’t need to consider (or emphasize) what I would do in such-and-such circumstances,” say proponents of these options. Why not? “Because of what I am essentially,” say proponents of (i). “Because of the sort of person I am,” say proponents of (ii) who focus on character. “Because of what I am responsible for,” say other proponents of (ii). And so on. The answer will always be some variation on “This is what I am,” or “This is how I happen to be related to the world.” This is natural enough. How else is the compatibilist supposed to prevent the complete disappearance of the agent other than by appeal to her features? These are not incidental features of these variants of the compatibilist counterfactual acts view. They are doing crucial work--indeed, *all* the work--in rescuing these variants from the specter of (iii). What
separates my profile from yours? My essential properties, or my character, or some other relation I have to the world. (My counterfactual behavior itself seems to be doing no more work than it was doing in (iii), when my moral profile vanished into the laws of nature.) But to say this is to abandon one’s opposition to moral luck, for the reasons already given.

It can now readily be seen that the simple compatibilist acts view is simply a limiting case of the compatibilist counterfactual acts view: it is simply the counterfactual acts view where what matters is what the agent would do in exactly the circumstances she in fact inherits.

One of the deepest incompatibilist intuitions that many philosophers have (what Kane labels “UR” for the notion of “ultimate responsibility” (1996)) is that, if determinism is true, then it is not really me doing anything, but matter and the laws of nature. The compatibilist response to this is that, once we exhaust our discussion of matter and the laws of nature, we have answered the question of what it is that I am. If there is matter arranged in such-and-such a manner and governed by such-and-such laws, that matter is me. And if I do something on the basis of these, that is me doing something. Now we can see this exchange in its broader context. The incompatibilist objection that Kane and others urge is basically the specter of (iii)--the disappearance of the agent into the laws of nature. The compatibilist response is some variation of options (i) and (ii)--the appeal to certain elements of the world as distinguishing features of the agent, features that are up for moral evaluation. However much one might like this compatibilist reply, it does not appear to be available to the opponent of moral luck.

So, it is clear that the opponent of moral luck needs to reject at least one of the assumptions in (18). If she is to defend any version the counterfactual acts view (including the simple acts view), she will need to reject assumption (18a)--the idea that, for any agent who actually exists, for any world in which that agent exists, determinism is true. Now, this alone
might not sound very exciting. What’s so interesting about the claim that someone out there exists in an indeterministic world? And yet, to escape the problems mentioned above, it is clear that the opponent of moral luck will need to say some special things about this indeterminacy.

First, the indeterminacy must concern the agent’s behavior in this indeterministic world, and this behavior must fall within the range of (actual and counterfactual) behavior that influences her moral profile. Otherwise, clearly enough, all the problems caused by determinism, as expressed in the above criticism of (i) through (iii), would remain. For the simple acts view, this means that the indeterminacy must be involved in the agent’s actual behavior.

But second, what kind of indeterminacy are we talking about? Suppose S1 would do A in C, while S2 would do something other than A in C. Is the difference between them supposed to be random, or arbitrary, or capricious--where this is understood to be morally irrelevant? It is very hard to see how the problems we’ve discussed concerning options (i) through (iii) would be solved if it were. For then, any difference in moral profile between agents would amount to differences in the elements mentioned in (i) and (ii)--which, for the opponent of moral luck, can’t do that work by themselves--and something else which is morally irrelevant. Adding some further morally irrelevant feature into the mix will get us nowhere. What we need is some indeterminacy which is itself a proper locus of moral evaluation. Further, since it is luck--or out-of-control-hood--that we are concerned about, this morally evaluable element must be a proper locus of control. Now, perhaps randomness really is such a thing--some libertarians might well say so. Or perhaps there is some further tale to be told about libertarian freedom. But whatever the case, we need some scenario where S1 would do A in C, S2 would not do A in C, or would do something other than A in C, and either S1 controls her doing A rather than something else or
S2 controls her doing something other than A rather than A. However one wants to cash this out--in terms of randomness or something else--what we are talking about is clearly the (actual or counterfactual) exercise of libertarian freedom.

Finally, of how many agents must it be true that they either do exercise or would exercise libertarian freedom in some circumstances? Denying (18a) simply commits us to one agent having at least counterfactual libertarian agency. Yet, that seems way too minimal. Ultimately, the job of determining how many agents need (actually or counterfactually) to exercise libertarian agency will be tackled by the control principle that we adopt (in particular, the role of the quantifiers in that principle), and I will take up the challenge of managing libertarian control principles in the next chapter. However, at least one thing seems immediately clear. No opponent of moral luck will be satisfied if there are any two agents of whom it is true that their moral profiles differ solely in virtue of the items listed in options (i) and (ii) above. This much is shown by the very process of providing examples of luck in philosophical discussion--the concerns discussed for those examples are expected to generalize to all agents. The implication, then, is that all agents either are or at least could be libertarian agents.

So, all roads lead to libertarianism--to the idea, that is, that there is something about our (actual or counterfactual) impact on the world that is not swallowed up by the laws of nature, the contingencies of circumstance, or the necessities of what we are. To deny moral luck per se is to engage the notion of libertarian agency. I will grapple with libertarian solutions to the problem of moral luck in the next (and final) chapter of this study.
IV. Keeping Score

The previous chapters have revealed that the denial of moral luck requires an appeal to libertarian agency, and they have whittled the field of acceptable anti-luck positions down to two genera: libertarian acts views and libertarian counterfactual acts views. This chapter evaluates these two kinds of solutions to the problem of moral luck, with the general aim of identifying the costs and benefits of each approach. As has already been observed, each has multiple versions, and I intend to go some little way toward seeing which versions are most palatable from the perspective of the opponent of moral luck. But the contrast between the two approaches can be seen immediately, from the way each has to address the notion of control. This contrast prevents me from declaring a clear-cut winner--the difference in strategy is too strong to admit one, and different philosophers will no doubt have very different reactions. However, each side does have very clear limitations and advantages, which I intend to expose here.

1. Revisiting Control Principles

In the second chapter, I identified the following control principle as the weakest control principle available that renders an anti-resultant luck verdict while at the same time opposing moral luck *qua* luck:

\[
CP3. \text{Necessarily, for any two agents, if they differ in moral profile, then it is not the case that that difference is due entirely to facts beyond either agent's direct control.}
\]

However, in the third chapter, I rejected compatibilist acts views, despite acknowledging that--so far as anything I have said is concerned--such views are consistent with (CP3). This shows that some tinkering is needed in order to generate a control principle that is inconsistent with compatibilist views.
So long as we have only the simple acts view in mind, it seems that we needn’t fuss too much over this project. What is it about the compatibilist approach to control that we found so problematic in the last chapter? The problem, roughly, was that in the final analysis, compatibilism allows (to use Nagel here) the “absorption of [the agent’s] acts and impulses into the class of events,” events which--for the opponent of moral luck--“can be deplored or celebrated, but not blamed or praised” (1979, 36-37). When searching for a kind of control which does invite blame or praise, the opponent of moral luck must appeal to something which is not swallowed up by the laws of nature, the contingencies of circumstance, or the necessities of what we are--and so she needs an appeal to libertarian agency.

In the second chapter, I identified direct control as the agent’s control over her actions, not their effects. I demanded only (in section 3) that direct control involves whatever freedom is necessary for moral responsibility. Beyond that, I left questions concerning direct control quite thoroughly open--including what kind of freedom the opponent of moral luck is after. The third chapter of this study has closed that particular question. Since the opponent of moral luck will need libertarian agency, she will want a libertarian variant of direct control. So, I will simply use the expression “libertarian direct control” to name the agent’s control over her libertarianly free acts. I still intend to leave open a number of questions concerning what this control involves--for example, questions concerning what exactly is involved in the libertarian act or whether the act in question extends beyond the volition itself.¹ By and large, however libertarians wish to talk

¹ I leave this latter question open, and yet I think there is substantial pressure--especially in light of my discussion of the last chapter--to claim that the act does not extend beyond the volition itself. If Smith and Jones both will to shoot someone, but Smith pulls the trigger while Jones has been unknowingly laced with a paralyzing drug that arrests his bodily motions, it seems the opponent of moral luck will feel a strong intuition that both agents are on a par. This seems especially plausible if, as I claimed in section 1.4 of chapter 3, the bodily motions themselves have no moral significance (over and above the elements that bring them about) with respect to an evaluation of the agent.
about free acts, and however the opponent of moral luck wants to distinguish between acts and their effects, the same may carry over to the concept of libertarian direct control.

There is one caveat, however. While all libertarians demand that, for an act to be freely willed, there must be indeterminacy in the history of the act, not all libertarians agree on where that indeterminacy must lie. Robert Kane, for one, holds that an act may be libertarianly free even when it is deterministically caused by the agent’s character and environment, provided only that the agent’s character itself is the causal consequence of the agent’s prior indeterministic libertarian action (1996). Chapters 2 and 3 have already exposed how this approach will be unattractive to the opponent of moral luck. Suppose Smith and Jones perform qualitatively identical indeterministically libertarianly free acts at t1, but with different results for their character, which then determine very different acts at t2. In light of chapter 2, the moral profiles of Smith and Jones do not differ (in relation to the events described) in virtue of their different character, and in light of chapter 3 (and especially in light of my discussion of the BaseballE example), they do not differ in virtue of their deterministic actions at t2. Opponents of moral luck will need to claim that Smith and Jones are morally on a par, despite Kane’s claim that their different actions at t2 are libertarianly free. The acts at t2 lack the element of libertarian agency that the opponent of moral luck needs--they lack the agent’s independent impact on the world. They are, rather, the results of the agent’s prior independent impact on the world. Since “libertarian direct control” is supposed to refer to that independent impact itself, then it will need to refer to control over that species of libertarian behavior that gets the most press--indeteriministic libertarian behavior. By the same token, we will need to restrict our view of libertarian acts views to views on which indeterministic libertarian behavior in particular is what determines the agent’s moral profile.
With this new expression in tow, it appears to be a simple matter to revise (CP3). Here is a replacement:

CP4. Necessarily, for any two agents, if they differ in moral profile, then it is not the case that that difference is due entirely to facts beyond either agent's libertarian direct control.

(CP4) rules out compatibilist acts views. On any compatibilist acts view, two agents may have different deterministic behavior, and different moral profiles, without exercising any libertarian direct control at all. By contrast, (CP4) is consistent, and even entailed by, libertarian acts views. On any libertarian acts view, the agent’s moral profile is determined by her actual libertarian behavior. So, for any possible difference in moral profile between two agents, there will be a corresponding difference in their libertarian behavior; at least one of the agents will have libertarian direct control over a fact which distinguishes the two profiles.

It might be wondered whether at least some libertarian acts views might entail an even stronger control principle. Consider the following:

CP5. Necessarily, for any two agents, if they differ in moral profile, then that difference is due entirely to facts within each agent’s libertarian direct control.

Suppose that there are no true counterfactuals regarding what agents would libertarianly freely do in non-actual circumstances. All differences in moral profile are due to differences in how agents exercise their libertarian direct control, and since there are no facts about how agents would behave in other circumstances, what other facts are there to explain the difference in profile? And yet, I will argue in the next section that any version of the libertarian acts view renders the agent’s moral profile vulnerable to circumstantial luck, regardless of whether there
are true counterfactuals concerning non-actual libertarian behavior. (CP5), then, will cut against the libertarian acts view.

Might some versions of the *counterfactual* acts view secure (CP5)? One might think that, by incorporating counterfactuals of libertarian freedom into the agent’s moral profile, all the facts that go into the agent’s moral profile fall within the agent’s libertarian direct control. But the opposite is true. The counterfactual acts view is inconsistent with (CP5). Indeed, it is inconsistent with the weaker (CP4) and even (CP3).

Suppose that Smith and Jones are libertarian agents who have qualitatively identical histories from the womb to the grave. Their counterfactual behavior likewise is identical, but for one detail: Smith, but not Jones, would rob a bank in some non-actual set of circumstances. Supposing that this set of circumstances is one of those that are relevant to their counterfactual moral profile (and we can simply stipulate that it is), then they will have different moral profiles in virtue of this fact. But this fact is not within either agent’s direct control—libertarian or otherwise. Direct control is control over one’s actions, and with respect to their actions, there is no difference between Smith and Jones. There is nothing either agent *does* to make it such that Smith would rob a bank or that Jones would not.² So, there is a difference in moral profile

² This is one of the few points of consensus in the philosophy of religion debate over Molinism. Basinger, in an attack on Molinism, begins with the claim that agents do not make true any counterfactuals of freedom with false antecedents, and then argues that parity of reasoning demands that we conclude that we don’t make true any counterfactuals of freedom with true antecedents either (1984, 298-99). Gaskin, in a defense of Molinism, resists the inference, but not the premise (1995, 508). Hasker, an outspoken critic of Molinism, uses his “power entailment principle” to show that “Molinists will and must affirm that we do have the power to bring about the truth of the counterfactuals of freedom about us, and that we do so at least on some occasions,” but then specifies that those occasions are “when we perform the action specified in the consequent of the counterfactual under the circumstances specified in the antecedent” (1999, 292-93). Craig’s defense of Molinism involves rejecting the power entailment principle and thus rejecting the notion that Molinists are committed to agents making *any* counterfactuals of freedom true (1998, 238-39); others will naturally take up the challenge to show that agents do make them true on precisely those occasions that Hasker identifies. But no one in the debate holds that agents bring about the truth of counterfactuals with false antecedents.
which is due entirely to facts beyond either agent’s direct control. The counterfactual acts view is inconsistent with (CP3) through (CP5).

Is there anything queer about the example? Perhaps we might think it strange that two agents can have qualitatively identical histories and nevertheless have different counterfactuals true of them. And yet, that appears to be exactly what is entailed by any libertarian counterfactual acts view. Recall the kind of counterfactuals we have in mind. Even when the circumstances are specified in atom-for-atom detail, they do not entail which action the agent performs. Given that Smith and Jones can both be in some non-actual, fully specified set of circumstances C, there will be possible worlds for each agent in which he robs the bank in C and possible worlds in which he does not rob the bank in C (since we’re talking about counterfactual libertarian agency). Now, given the qualitative identity of the histories of Smith and Jones, it is plausible to suppose that, if it is metaphysically possible for Smith to be in some completely specified C, then it is metaphysically possible for Jones to be in C as well. But what would the agent do in C? On the libertarian counterfactual acts view, there is some determinate answer to this question—an answer which is not determined by the (rather exhaustive) elements of C. And so, for each agent, some of those possible worlds in which he acts in C will correspond to what he would do, and some of them do not. It is perfectly coherent, given this picture, to stipulate that Smith would rob the bank in C and that Jones would not. Of course, some will blanch at this picture (how could there be such true counterfactuals?), but that would represent resistance to the metaphysics of the counterfactual acts view, not to the example. The example is as coherent as the view itself.

And we can give other examples to exploit this feature of the counterfactual acts view even further. Suppose Smith and Jones have quite different histories. Smith spends his days
from the cradle to the grave exercising his libertarian agency in a deplorable fashion, while Jones spends his days exercising his libertarian agency in a saintly fashion. And yet the bulk of Smith’s *counterfactual* behavior is saintly, while the bulk of Jones’ counterfactual behavior is deplorable. On most counterfactual acts views—ones where the range of relevant counterfactual behavior is suitably wide, and without too heavy a weighting toward the actual world—Smith will turn out to have a better moral profile than Jones. And yet, with respect to what they directly control, with what they experience in the actual world, Smith invests all his energies toward evil, while Jones invests his toward good. This consequence of the counterfactual acts view might appear unattractive.

But we can just as easily spin this kind of example differently. Jones invests his energies toward good, and yet the story tells us that he *would* have behaved deplorably in the bulk of the other circumstances he could have inherited. Doesn’t that show that Jones is extremely *lucky* in his good behavior? But for facts beyond his control, Jones would have behaved as a villain. The stars had to align *just so* for him to behave as a saint. By contrast, Smith is extremely *unlucky* in his bad behavior, and the stars had to align *just so* for him *not* to behave as a saint. Surely, the alignment of the stars (or the alignment of whatever circumstances one might inherit) can’t play such a severe role in determining an agent’s moral profile, can they? The counterfactual acts view is designed to prevent them from doing so—hence it renders the verdict that might seem so unattractive on first glance.

At any rate, this is the kind of spin applied by Michael Zimmerman and John Greco in the defenses of their respective versions of the counterfactual acts view. In each article, examples

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3 Recall that we’re interested in what the agent does in C, not the elements of C itself. So, to behave as a saint, one has to actually *do* something with what one is given. It is perfectly coherent to stipulate that someone would fail to behave as a saint for *any* non-actual set of circumstances, even in other circumstances where one has morally admirable (even saintly) motivational states.
are given in which agents behave in ways that are distinctly morally different--in Greco’s article, some agents choose to drive drunk while others do not (1995, 87-89); in Zimmerman’s some choose to attempt murder while others do not (2002, 563-65). Yet each author alleges that, with respect to the details of their examples, the agents are morally on a par--simply because the differences in what the agents do are influenced by the circumstances that they inherit, and in such a way that each agent would behave exactly as the other did had he been in the other’s shoes. They are thus willing to divorce the agent’s moral profile from her actual history and to leave us with a life lesson in the process: be careful in your moral evaluations of others. Here is Greco:

    Moreover, this sort of reasonable skepticism about moral worth should undermine self-righteousness when we blame others in less fortunate circumstances. The reason: perhaps that person acting very badly in her circumstances would act very well in ours, and perhaps we would act very badly in hers. Such things are hard to tell. (94)

And here is Zimmerman:

    [T]hose whom we actually punish are likely to be no more deserving of punishment than many of those whom we do not punish and also likely to be as deserving of reward (or at least of nonpunishment) as many of those whom we reward (or refrain from punishing). Insofar as our current practices are based on judgments about what people deserve in light of the responsibility they bear, they radically distort the truth and are deeply discriminatory. (571)

In these passages, Zimmerman and Greco are at least willing to ascribe moral parity to agents with very different actual histories of behavior. There is no reason why they would not be just as
happy to ascribe the better moral profile to the agent with the worse actual history, as in the example provided two paragraphs ago.

But since each author is separating the agent’s moral profile from her direct control, how is each providing an anti-luck position? It is worth taking one final glance at the control principles they embrace. Here, once again, is Greco’s:

If there is no difference between persons S1 and S2 with respect to an event X, except for factors which are outside of both persons’ control, then S1 and S2 are equal with respect to moral worth in virtue of X’s occurring. (90)

And here is Zimmerman’s:

[I]f (a) someone’s being F (where ‘F’ designates some complex property comprising both epistemic and metaphysical components) is sufficient for that person’s being morally responsible to some degree x, then, if (b) it is true of S at some time that he or she would be F if p were true, and (c) p’s being true is not in S’s control at that time, then (d) S is morally responsible to degree x. (note 33)

Each of these principles uses the term “control,” but only in a negative sense. Greco speaks of “factors which are outside of both persons’ control,” while clause (c) of Zimmerman’s principle identifies something that “is not in S’s control at that time.” Each principle is designed to mute the effect of luck on the agent’s moral profile (perhaps as much as possible), but does so without doing much to identify how the agent does control her moral profile. But surely it would be pointless to inoculate the agent’s moral profile from out-of-control-hood while still leaving it out of her control.

Zimmerman is at least aware of the paradoxical nature of his position. His favored example of situational luck involves George, who kills Henry, and Georg, who did not even
attempt to kill Henrik but would have but for factors beyond his control. Of that example, he writes:

I doubt it should be said that Georg was in control of his being such that he would have freely killed Henrik. In my view…an agent exercises control directly over his choices (that is, his choosings) and indirectly over the consequences of his choices. In the sort of case under discussion, Georg’s being such that he would have freely killed Henrik is clearly not itself a choice of his; nor is it the consequence of a choice of his. Rather, he would have freely killed Henrik because he would have chosen to shoot him, had he had the cooperation of certain features of the case; and this is a choice which did not occur, precisely because the requisite cooperation was not forthcoming. (564)

This feature of the case leads Zimmerman to deny that Georg is responsible for this feature of his counterfactual record, since one is only responsible for that which is in our control. So, he isn’t responsible for anything in this case--“the scope of Georg’s responsibility has dwindled to nothing” (564). And yet, he is still “responsible tout court in virtue of this element of his counterfactual record. And since it is responsibility tout court, not what we are responsible for, that determines our moral profile, Georg’s moral profile does not differ from George’s with respect to the details given (564-65).

This gloss appears to reveal that Zimmerman is willing to say that our moral profiles are out of our control after all. If this is so, then it appears to be a mistake on Zimmerman’s part. The paper is saturated with denials that factors beyond our control influence our moral profile, and for the reason that they are beyond our control. I take it as analytic that, assuming we have moral profiles (and Zimmerman is asserting that we do), then if they are not out of our control,
then they are in our control. The question is simply what kind of control we are talking about. Zimmerman’s comments reveal that a standard notion of control will not do.

Libertarian direct control is the control the agent exercises over her libertarian acts. That is what Zimmerman is (correctly) denying that Georg exercises in his example, and so there is a difference between what Georg and George libertarianly directly control. But we can use the expression “libertarian direct control*” to refer to the control the agent exercises over her subjunctive libertarian acts, where “subjunctive libertarian acts” refers to what the agent actually libertarianly freely does and to what she would libertarianly freely do in non-actual circumstances. (So, the set of what an agent libertarianly directly controls is a subset of what she libertarianly directly controls*.) So far as the details in Zimmerman’s example are concerned, there is no difference between what Georg and George libertarianly directly control*. Since Zimmerman wants to say that there is no difference in moral profile between Georg and George, and since he wants (or needs) to say that one’s moral profile is determined by what one controls, libertarian direct control* seems to be the concept his position needs.

But is libertarian direct control* (or, more precisely, the “control” we exercise over counterfactual acts) really control at all? Perhaps it is a stretch of the term. We usually would reserve the term to refer to the ability to bring things about, and we do not bring about the fact that we would do such-and-such a thing in certain such-and-such non-actual circumstances.

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4 If there is a temptation to claim that we can bring about these counterfactual facts, this temptation will almost certainly arise out of a misunderstanding of the libertarian counterfactual acts view. Can’t I, by practicing the piano dutifully, bring about the fact that, if I were given the opportunity to play at a party, I would do so well—something that would not be true otherwise? Perhaps so, but only so long as the antecedent is understood in a general sense. This optimism drops out once we individuate the circumstances in the antecedent completely, as including an atom-for-atom description of the world. By practicing the piano, I make it such that worlds where I am given the opportunity to play and where I have the ability to play are closer to the actual world than worlds where I am given the opportunity but I do not have the ability. That is, it makes us respond to the locution “were I given the opportunity to play at a party” by considering some C which includes my ability. But practicing the piano does nothing to bring about what I would do in some completely specified C which includes that ability, and it does
How could we, if we never have the opportunity to do so? And yet, there is at least some intuitive plausibility to the idea that libertarian direct control* is the concept that a solution to the problem of moral luck demands. The suggestion offered by Zimmerman and Greco in response to the problem of luck is that our moral profile is ultimately up to us and not some other thing. A description of the sum total of what we libertarianly directly control* is a complete description of our libertarian agency--both how it is exercised and how it would be exercised had things gone differently. It is not subject to any contingencies external to our libertarian agency in the way that (as I will argue) libertarian direct control simpliciter appears to be. "Moral judgment of a person," says Nagel, "is judgment not of what happens to him, but of him" (1979, 36). And in a sense, a complete profile of what a person libertarianly directly controls* is a complete account of the person herself--with all the external factors stripped away. And so, while it may be a heterodox notion of control, the concept introduced here might nevertheless be the one appropriate for the problem at hand. It certainly seems to answer to the anti-luck intuitions we have in paradigmatic cases of circumstantial luck that we see in the literature. Judge Counterfactual, we are expected to say, belongs in the same circle of hell as Judge Actual in virtue of what he would have done. And the German émigré to Argentina, we are supposed to believe, is no better than his Nazi kin in virtue of his own counterfactual behavior. At any rate, this concept of control deserves its day in court and so will receive further examination in section 3 below.

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5 It may, however, be subject to the necessities of our essential properties, as I will explore in the section 3.
All versions of the libertarian counterfactual acts view are inconsistent with (CP3) and
(CP4). On the other hand, any such version will entail their analogue:

CP6. Necessarily, for any two agents, if they differ in moral profile, then it is not the case
that that difference is due entirely to facts beyond either agent's libertarian direct
control*.

On any version of the libertarian counterfactual acts view, moral profiles are determined both by
what the agent libertarianly freely does and what she would libertarianly freely do in at least some
subset of other circumstances she could inherit. These are features that the agent libertarianly
directly controls*. So, any difference between agents’ moral profile will be due at least in part to
a difference in what they libertarianly directly control*.

Of course, (CP3) was doing substantial work in chapter 2, and the counterfactual acts
view needs to jettison (CP3). Does (CP6) do the same work? Yes. Since libertarian direct
control* concerns acts and not their effects, (CP6) is flatly inconsistent with resultant moral luck,
and thus is flatly inconsistent with any attempt to defend the character view on the grounds that
class is often the result of our free actions. Further, quite apart from its commitment to
libertarianism, (CP6) is inconsistent with the simple character view. Not only may character be
formed independently of our actual actions, but it may also be formed independently of our
counterfactual actions, as the original *Baseball* story from chapter 2 indicates. So, nothing is lost
with respect to prior arguments by replacing (CP3) and (CP4) with (CP6).

On the other hand, (CP6) might not seem like much of an upgrade on (CP4). On (CP4),
every difference in moral profile between agents will be due to some difference between what
the agents *actually* do. On (CP6), the difference might only be due to their different behavior in
other possible worlds. How does its mere sensitivity to the non-actual (as in (CP6)) show that the counterfactual acts view gives the agent more control over her moral profile?

One putative advantage of the sensitivity to the non-actual is that, with that sensitivity, the counterfactual acts view comes closer to establishing the truth of an analogue of (CP5):

CP7. Necessarily, for any two agents, if they differ in moral profile, then that difference is due entirely to facts within each agent’s libertarian direct control*.

Depending on what version of the counterfactual acts view one has in mind, and depending upon the truth of certain other metaphysical claims, the counterfactual acts view might give us (CP7). (CP5), by contrast, is simply false, as I argue in the next section.

2. Evaluating the Simple Libertarian Acts View

If we opt not to appeal to counterfactual behavior, we are left with what the agent actually libertarianly freely does in the circumstances she actually inherits. This leaves us with the question of how best to manage the problem of circumstantial luck. No action is ever performed in a vacuum. It is done in a situation that sharply delimits the number of options available to the agent and in which there are forces that, if not determining the output of what the agent decides, nevertheless might incline the agent to decide in one way over the other. The presence of libertarian agency in the mix shows that object of moral evaluation is not itself a function of these factors, and yet these factors appear to play a significant role in influencing it nonetheless. This fact seems to show that the libertarian acts view is saddled with circumstantial luck.

Or is it? Perhaps we can mute the effect of this kind of luck by weighing it into our evaluation of agents. Smith is saddled with a disease that leaves him with chronic discomfort which makes him irritable, he gets stuck in a traffic jam, and then is confronted with obnoxious customers at work. Jones is in perfect health and is kissed by his loving wife as he heads out the
door, breezes through traffic to work, and is confronted by congenial customers. Smith is
disrespectful toward his customers, while Jones treats his with respect. The mere fact that Smith
behaves less respectfully might suggest on a first glance that the simple acts view must assign a
worse moral profile to him (in virtue of the details of the story). Yet this is not at all obvious on
reflection. The proponent of the simple acts view might say that Smith’s behavior, *given the
disadvantages he was under*, is no worse than Jones’, given his advantages. While the simple
libertarian acts view is not directly sensitive to what the agent does in non-actual circumstances,
it may certainly consider the *actual* circumstances. So it may consider not just that S did A, but
that S did A *in C*.

Here is another kind of case which appears in Enoch and Marmor (although they have
slightly different aims here):

For example, think of those friends of ours who are always late. Chronically, they just
never make it on time for anything!...We expect such people to realize that their behavior
is unacceptable, and that they should really try to make an effort not to be late. On the
other hand, we may also come to realize that some people just find it extremely difficult,
almost impossible, to get their schedule under control. To some extent they cannot really
do much about it. In some such cases it may be very hard to know whether a
responsibility judgment is in place. (429)

Here, Enoch and Marmor are dealing with constitutive luck, but we can adapt the point for the
current context. When a person is in circumstances where it is very difficult to be on time,
perhaps her failure to be on time does not count against her very much—or at all. Conversely, if
someone is in circumstances where it is easy to be on time, then perhaps her punctuality does not
count in her favor much—or at all. For that matter, perhaps we can go further. The former agent
struggles mightily against her oppressive schedule and arrives only 5 minutes late, whereas the latter person arrives early on a day where she has nothing better to do. We might claim that, in light of these details, the former agent has a better profile than the latter in virtue of her behavior.

The suggestion that these examples point to is that the luck involved in the circumstances an agent inherits may be handled by grading her moral profile on a curve which is sensitive to the details of those circumstances. Jesus famously stated that “[f]rom everyone who has been given much, much will be demanded” (Luke 12:48), and, to complete the thought, we might add that from those who have been given little, little will be demanded. The question to be asked is what the agent does with what she is given. We can address this question without appealing to the non-actual. What does the agent actually do with what she is actually given in the circumstances she actually inherits? Needless to say, there will be difficulties in making comparative judgments here. How does the moral profile of a sinner who is confronted with nothing but opportunities for villainy compare against the moral profile of a saint who is confronted with nothing but opportunities for benevolence--and how do either of them compare against the profile of a man stranded on a desert island with no other morally considerable beings within the sphere of his influence? But these difficult questions needn’t show that there are no such facts. (Perhaps God can make these judgments with pinpoint accuracy.) Alternatively, the matter may sometimes be genuinely indeterminate--and yet that conclusion would not obviously be out of place when our own intuitions are muddled. So, the proponent of the simple acts view has the makings of a response to the problem of circumstantial luck: “Yes, there is luck in the circumstances we find ourselves in, but no matter. All that is taken account of in the correct assessment of our moral profile, which is sensitive to the advantages and disadvantages that those circumstances bring with them.”
But how far, exactly, does this response take us? Does it successfully protect the agent’s moral profile from the luck involved in the circumstances she inherits? The natural first step to take in answering this question is to see first whether, had the agent inherited different circumstances, her moral profile would have remained the same. And this question leads us directly back to the counterfactual claims about what agents would libertarianly freely do in non-actual circumstances.

There is no inconsistency between adopting the simple libertarian acts view while still affirming that such counterfactuals can be true. Let us assume for a moment, then, that there are true counterfactuals about what our libertarian acts would be in non-actual circumstances. Then, on the simple libertarian acts view, our moral profiles are still determined by what we do in the circumstances we actually inherit, but there are still facts regarding what we would have done in non-actual circumstances—and so there are facts about what the agent’s moral profile would have been had she inherited other circumstances. If her moral profile would have been different had she been in other circumstances, then clearly there is circumstantial moral luck after all. The only way this version of the simple libertarian acts view can avoid circumstantial moral luck is if her profile would not change on the basis of the circumstances she inherits.

So, take any agent you like. Would we have reason to think that the moral profile of this agent would have remained the same—as measured by this sophisticated version of the libertarian acts view—had some non-actual set of circumstances obtained? There are times when we may be tempted to say so. Take the chronically late person who is constantly struggling against an oppressive schedule. “Don’t judge her too hard,” you might say. “She would have been on time if she didn’t have so many commitments.” And perhaps you might want to say that the agent who arrives on time without the oppressive schedule has the same moral profile (with respect to
these events) as the agent who struggles to be on time but doesn’t quite make it. (The
equivalence here isn’t at all obvious--why not say that struggling against a difficult schedule
carries more merit than easing into your chair on time with no difficulty?--but we can let that
pass for now.) Perhaps that judgment about the agent’s counterfactual behavior would be right.
But there is a leap of faith that you take when making it. Exactly how confident can we be that
this person would arrive on time were she free from her other commitments? After all, given the
kind of counterfactual we have in view, it is not as if her commitment-free circumstances here
would determine her decision. Perhaps we know enough about what she would likely do in these
non-actual circumstances, but given that she would have libertarian agency, she would have the
power to surprise us. So, whatever knowledge we have about her counterfactual behavior (if,
indeed, we have any such knowledge at all) will not be infallible.

Of course, if she is to avoid circumstantial moral luck, the proponent of the simple acts
view will need much more than one or two counterfactuals of this sort--where, had some non-
actual set of circumstances C obtained, the agent’s moral profile would not be different than it
actually is. She needs that same result for just any set of circumstances the agent can possibly
inherit. Take all the subjunctive conditionals of libertarian freedom that are true of the agent.
Take all of the possible worlds (including the actual world) in which the agent exists and in
which those very same conditionals are true.6 These represent all the worlds in which the agent
libertarianly freely behaves in the way the true subjunctive conditionals say she would behave.
What the simple acts view needs, in order to protect the agent’s moral profile from circumstantial
luck, is the conclusion that the agent’s moral profile--as measured by what she freely does with

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6 I assume here that if I actually do A in C, then the subjunctive conditional “If Mark were in C, Mark would do A”
is true.
what she is given—does not fluctuate between these worlds. Otherwise, the circumstances that
the agent inherits will be playing an ineliminable role in determining her moral profile—had she
inherited different circumstances, her moral profile would be different than it actually is.

Suddenly, the uncertainty that was involved in the leap of faith we took in the simple case
two paragraphs ago is magnified exponentially. We are no longer talking about a simple leap of
faith; we are talking about outrageous determination to believe the incredible. Given the
enormous number of circumstances it is possible for the agent to inherit, and given that we are
speaking of libertarian behavior here, it would simply be a miracle if the symmetry the simple
acts view needs actually obtains for any agent, let alone all agents, or indeed, all possible agents.
In the absence of some principled reason to believe this story, we should surely reject it. I doubt
that there are any credible principled reasons available to believe this story. So, we should
reject it, and conclude that—given the assumption that there are true counterfactuals of libertarian
freedom—the simple libertarian acts view saddles the agent with circumstantial moral luck.

But what if we reject the assumption that there are true counterfactuals of libertarian
freedom? Then it will not be true of any agent (or any possible agent) that, had she inherited
different circumstances, her moral profile would be different than it actually is. That is for the
simple reason that the moral profile is, on the libertarian acts view, determined by the agent’s
libertarian behavior, and there will be no facts about how the agent would libertarianly freely

7 Here is my best attempt to supply just such a principled reason. Begin with the assumption that Molinism is true.
God, prior to creating the world, has an infinite number of creaturely essences to survey, each one with a complete
set of true subjunctive conditionals of freedom about him or her. Infinity, of course, is a very large number, and so
surely there will be some creaturely essences in that infinite pot that just happen to be such that their moral profiles—
as measured by the simple libertarian acts view—would not shift depending upon what circumstances they inherit.
Motivated by the concerns presented in this very chapter, God then actualizes the world in such a way that all of its
moral agents just happen to be creaturely essences of this remarkable sort. Barring certain theological moves about
the necessity of God’s act of creation, this story will not give us (CP5)—since (CP5) includes the necessity operator,
and even on this story it will not be true of all possible agents that this symmetry will obtain, but only of all actual
agents. But it would give us an analogue of (CP5) that drops the necessity operator. I leave it to the reader to assess
how plausible this story is.
behave were she to be faced with other circumstances. Of course, as has already been noted, the standard examples of circumstantial luck in the literature make use of counterfactuals. We are told that Judge Counterfactual would have taken a bribe if offered, and the German émigré to Argentina would have been a ruthless Nazi had business not taken him elsewhere. But once we throw these stipulations out as incoherent, then can’t we simply throw off the whole problem of circumstantial luck altogether? We have already gone some way toward accounting for luck by making the moral profile sensitive to the advantages and disadvantages agents actually inherit, and there are no facts concerning their counterfactual behavior that show that they would have done differently had things gone differently for them. What is there left to be worried about?

What these comments fail to note is the flip side of denying that there are true counterfactuals of libertarian freedom. It is not true that, had the agent been in different circumstances, her moral profile would have been different than it actually is. But by the same token, it is not true that, had the agent been in different circumstances, her moral profile would have been the same as it actually is—and for the exact same reason.

Note that, regardless of how we deal with the semantics of counterfactuals, on the simple libertarian acts view, the moral profile of agents will vary wildly across possible worlds. Some of this variance, of course, will not pose a problem, for—given libertarianism—there will be worlds where the difference in moral profile from the agent’s profile in the actual world is due to differences in what the agent does in circumstances that the agent actually inherits. (Here’s an example: Assume that last night, there was indeterminacy regarding whether I would greet my wife with a kiss or a punch to the face upon coming home. I libertarianly freely chose to greet her with a kiss. But there is a possible world in which I greet her with a punch to the face.) On libertarianism, these are the worlds the agent makes non-actual through her libertarian acts. The
concern, of course, is with another kind of variance—the “lucky” variance of the agent’s moral profile in worlds where that profile is determined by behavior in circumstances that the agent does not actually inherit. (So, there will be worlds where I have to make some morally relevant decision while being chased by the Yakuza and suffering a neurological rage disorder—and in at least some of these worlds my decision will change my profile, and change it significantly, from what it is in the actual world.) Denying the truth of counterfactuals of freedom does nothing to eliminate this kind of lucky variance across possible worlds. It simply removes one method of sifting through these worlds.

And it is impossible to see how removing this method of sifting through worlds will help the simple acts position. It simply delays the sentence a moment. Do the agent’s circumstances play a crucial role in determining her moral profile or not? They certainly do influence the nature of what she libertarianly freely does, which is what the moral profile is supposed to be measuring. Further, her moral profile, on this position, varies wildly in worlds where she is in different circumstances, and bereft as we are of the necessary counterfactuals, there is no way to protect her profile from that lucky variance. “Here is what you actually did with what you were given,” says the defender of this view. “Had you been given something else, your moral profile could have been anything, but there’s no telling what it would have been. No sense in bothering with that—the actual is all we have to go on.” Perhaps the actual really is all we have to go on, but if so, then the luck involved in the actual will play an ineliminable role in determining the agent’s moral profile.

I conclude that (CP5) is false. It is not true that all differences in moral profile will be due exclusively to facts within the agents’ libertarian direct control, for any exercise of libertarian direct control occurs in a particular situation, which (a) influences any possible moral
evaluation of the agent in virtue of that exercise of control and (b) is not itself within the agent’s control. If the simple libertarian acts view is correct, there is circumstantial moral luck.

Of course, this fact needn’t be a deal-breaker for all opponents of moral luck. Perhaps a middle-of-the-road position on the topic is perfectly tolerable, and perhaps this is the best method of denying moral luck on the table. Whether it is depends on the feasibility of its primary alternative.

3. Evaluating the Libertarian Counterfactual Acts View

As we have seen, counterfactuals can be used (but needn’t be used) to show how a position is committed to situational moral luck. But they can also be used (and it seems they need to be used) to show how a position is free from situational moral luck. The allure of a position like Zimmerman’s is that it carries some hope for protecting the agent’s moral profile from all moral luck. But it carries with it a host of other objections, and there is at least some reason to doubt that, even if those objections are adequately refuted, even the most extreme version of the counterfactual acts view will rule out all moral luck. Mitigated versions of the view might reduce the force of some (but certainly not all) of the objections, but since they also carry the additional burden of commitment to more moral luck, I doubt that mitigated versions are viable.

3.1. Surveying the Objections

Let’s begin with the objections. The first of these might not be properly called an objection, per se, but it deserves our attention. I shall call it (adopting a phrase from David Lewis) the “incredulous stare.” The extreme version of this view--a view which is world-neutral (i.e., does not put greater weight on our behavior in worlds closer to the actual world) and which is unrestricted in its range (i.e., considers our counterfactual behavior in just any situation it is metaphysically possible for us to be in) is simply weird. Shall we say that my behavior in worlds
where I am chased by the Yakuza with neurological rage disorder counts *just as much* toward my moral profile as my actual behavior? Or whether I would have soiled my pants and run from battle at Agincourt? Or the morally relevant decisions I would have made while carving up a wooly mammoth for my tribe of fellow Neanderthals? Or (since we are talking of metaphysical possibility here) how I would have responded if aliens had grafted a rhinoceros horn to my forehead during experiments on Earthlings in their alien zoo? Isn’t this just a wee bit on the strange side--strange enough to dismiss out of hand?

There’s a question, though, of whether strangeness alone actually constitutes an objection to the view. Perhaps the point might simply be put that the extreme counterfactual view clearly does not correspond to our actual practices of blaming and praising agents morally. Surely this accusation is true. But whether that feature *alone* counts as a point against the view will depend upon the correct account of how moral responsibility works. If the view of Peter Strawson is correct, and if our reactive attitudes actually *constitute* moral responsibility, then it seems that the counterfactual acts view is in trouble. Since we don’t now normally have a strong reactive attitude to people in virtue of what they would have done as cavemen, then placing their counterfactual behavior as cavemen on equal moral footing with their actual behavior--as is done by the extreme counterfactual view--will seem to be out of bounds.

But then, it is also worth noting that the concern about our actual praising and blaming practices is nothing new to the issue of moral luck. Williams and Nagel *begin* the scholarly discussion of the concept with the claim that our actual practices draw us inexorably toward judging people in virtue of facts beyond their control. The anti-luck response has always been to attempt to explain away the appearances. (Recall my brief catalogue of such attempts by anti-luck scholars such as Richards, Rescher, and Jensen, which appears in section 3.2 of chapter 1.)
These explanations may be seen either as attempts to demonstrate that our actual attitudes are not what Nagel and other moral luck advocates say they are (which would be consistent with a Strawson-like approach to responsibility) or as attempts to show that the correct moral judgments do not fall in line with our reactive attitudes (Strawson be darned). But some explanation has always been needed and duly supplied. Zimmerman appears simply to be playing the same game that has been played from the beginning. Perhaps he may be interpreted in a Strawson-friendly way: “We might seem not to have reactive attitudes toward counterfactual behavior, but if we refine our view somewhat and look carefully at cases like George and Georg, the reactive attitudes are fully there.” Or perhaps he is saying that the correct view is divorced from our actual reactive attitudes. But the game being played here is not substantially different from what has always been played by opponents of moral luck. Since Zimmerman is denying more moral luck, he clearly has more explaining to do. But since opponents of moral luck are already involved in this business, they surely owe his explanation an audience.

Similar comments hold for concerns about how the extreme version of the counterfactual acts view will relate to our actual practices in the criminal justice system. This kind of concern is nothing new, as opponents of moral luck have always had to grapple with the disparity between their own view on moral profiles and our actual legal practice of punishment. Opponents of moral luck might call for reform of our legal practices. Alternatively, they might attempt to explain how our current practices are just (or maybe the best available to us), so that legal luck is unproblematic even when there is no moral luck (see Jensen 1984, 328). When we turn to the counterfactual acts view, reform along the lines that would be recommended by it

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looks like a hopeless enterprise.\footnote{Or so it seems, although Zimmerman’s comments quoted above at page 571, in which he calls our practices of punishment “deeply discriminatory,” suggest that he might lean toward this option after all.} And yet the latter option--one frequently taken by those who deny moral luck--still appears open to people like Zimmerman. “We can’t \textit{actually} punish people for their counterfactual behavior, due to epistemic constraints,” the response might go. “And besides, there are other concerns--costliness, matters of deterrence, etc.--that govern principles of punishment and that have to be considered.” This kind of response would be perfectly familiar to opponents of moral luck.

So far, the weirdness of the extreme counterfactual acts view \textit{alone} does not seem to cut very deeply (or perhaps at all) against it. And yet it does raise red flags. Indeed, we have seen some of these red flags before, in section 3.2 of the previous chapter, when evaluating the idea that everyone has the same moral profile in virtue of having the same set of deterministic subjunctive behavior. For instance, on the claim that our moral profiles are indistinguishable, Mother Theresa is no better morally than the vilest evildoer on death row. On the extreme counterfactual acts view, Mother Theresa \textit{might} be no better than that evildoer--and perhaps \textit{worse}--depending upon her counterfactual behavior. Further, if our moral profiles are indistinguishable, the retributive approach to punishment seems to be undercut entirely. And on the extreme counterfactual view, as we have seen, we similarly need to rethink (although perhaps not revise) our practice of punishment. In the previous chapter, I followed these red flags to identify a deep and crippling problem with the claim that our moral profiles are indistinguishable. It remains to be seen whether they point to a similar problem with the extreme counterfactual view.
One problem that they do reveal is that, if the extreme counterfactual view is correct, we are left with severe limitations on what we can know about any agent’s moral profile. There is some disagreement among philosophers about whether, assuming there are true counterfactuals of freedom, we could know the truth-value of any of them (with false antecedents). Hasker has denied that we could (1989). Some Molinists (e.g., Plantinga and Yandell) have claimed that we can and do know the truth-value of some of them. But no one will claim that we know all of them, or even anything close. The best we can do (in at least most cases) is to make judgments about what people would likely do in certain circumstances. But the only justification we can possibly have for such judgments would have to do with the various features of the circumstances themselves. What would I be likely to do if I were a hippie in Queens? We might take educated guesses on the basis of an atom-for-atom individuation of the circumstances I might find myself in, which might involve forces that incline (but don’t determine) my behavior in one way rather than another. But then, our judgment would have to be the same for anyone in the exact same (atom-for-atom) set of circumstances, and so we will not be able to make different judgments for different people. And this result only serves to underscore the fact that it is not what people would likely do that we are after—since to focus on what we would likely do will simply lead us back to the very problem of indistinguishability that the libertarian counterfactual acts view is supposed to escape. We are after stronger counterfactuals than that, and we will be barred from knowing the truth-value of most of them. So, we are left without the possibility of knowing much about anyone’s moral profile.

To some extent, this objection also has its precursor in the broader spectrum of debate on moral luck. Whenever we deny moral luck, we take on greater epistemic limitations with respect to gauging moral profiles. We know of Doctor X’s negligence in his prescriptions, since
someone died in his case, but how many other doctors are there who are equally blameworthy but who (luckily) have not killed anyone? We typically will not know until something sensational happens. Once we take that first step and deny resultant moral luck, we limit our access to others’ moral profiles, since we do not know what others are doing in secret. In fact, this element is sometimes exploited in anti-luck arguments—in particular, in explaining the apparent discrepancy between our actual blaming or praising practices and the denial of moral luck. Why do we blame Doctor X more than the lucky doctors? Because—the answer goes—we know about Doctor X’s misbehavior but not theirs. (See Rescher 1993, 156 and Enoch and Marmor 2007, 422. Enoch and Marmor apply this kind of argument to circumstantial luck in particular.) The fact that the extreme counterfactual view, which denies more moral luck than most views, also saddles us with epistemic limitations is unsurprising.

Of course, the epistemic limitations here are far more severe than they are with other views. If our moral profiles are determined by our acts, then while it will be rare to be able to give a complete account of someone else’s moral profile (since we don’t see everything they do), it will at least in principle be possible to do so. Perhaps more importantly, we will at least have good epistemic access to our own moral profiles. But on the extreme counterfactual view, it will be impossible for us to know much about anyone’s moral profile, including our own. This consequence may seem severe, and yet I doubt that proponents of the view will be too troubled by it. Here is how Greco responds to the objection:

In reply, I am not sure that we should admit that this is an objection. For it seems to me that it is very difficult to make an accurate judgement about moral worth. On the other hand, I do not want to be a radical skeptic about moral worth either. Perhaps it is sufficient to note that we can make educated guesses about how a person would
voluntarily choose and act in a variety of circumstances by observing how that person
does voluntarily choose and act in similar circumstances. But any guess here is
dangerous and the guesses get more dangerous the greater the dissimilarity in
circumstances. What this should teach us is that limited judgements about moral worth
can be reasonable, but we should hesitate to be very confident about such judgements.
(93-94)

Greco does not paint the epistemic limitations here quite as severely as I do (which may in part
be due to the fact that he does not explicitly have a libertarian version of the view in mind), and
he claims that he does not want to be a radical skeptic. And yet he embraces a significant degree
of skepticism as being the correct approach, and a sentence later, even uses it to deliver his life
lesson about the dangers of self-righteousness (quoted earlier). My suspicion, then, is that if one
is already convinced that the extreme counterfactual view is correct, if one finds moral luck to be
a severe enough threat to embrace this view, then one will not be deterred by the epistemic
limitations the view brings with it and may in fact find those limitations to be an attractive
consequence of it.

The principal objection to the extreme counterfactual view is not epistemic, but
metaphysical. It has to do with the heterodox nature of the notion of libertarian direct control*.
We have libertarian direct control* over facts that we do not have the power to bring about, since
we do not have the power to bring about the truth of most of our subjunctive conditionals of
freedom. But is this the sort of “control” that we want? On this view, we have libertarian direct
control* over our moral profile, but we can do (close to) nothing to change it. Of course, we
have direct control (and so direct control*) over our actual behavior; we have the power to
change that element of our moral profile, and we can do so by simply doing otherwise than we
actually do in the circumstances we’re actually given. 10 But on the extreme counterfactual view, the bulk of what determines our profile is our counterfactual behavior, and we can’t change that, since we are never given the opportunity to do so.

This is yet a third point of similarity to the thesis that our moral profiles are indistinguishable—the idea that I rejected in the last chapter. If our profiles are indistinguishable, due to parity of our deterministic counterfactual behavior, then we can do nothing to change our moral profiles. If the extreme counterfactual view is correct, then we can do precious little to change our moral profiles. So far, the two views look very similar. But if we pursue the root causes of this similarity, we find a stark contrast. On the idea that our profiles are indistinguishable, the underlying cause for our inability to change our profiles is that our moral profiles are completely divorced from us altogether. If everybody would (deterministically) do the same thing in just any set of circumstances, and if every possible set of circumstances count, then what you have left to evaluate is nothing about us, but simply facts concerning how matter responds to certain stimuli. Our moral profiles become one mere comment on the laws of nature, and we drop out entirely.

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10 There may be a temptation to deny the extreme counterfactual acts view even this. After all, the extreme view entails that the actual world is just one equally weighted world among others, so what you actually do has no more significance than what you would have done in any other set of circumstances. The total set of actual and counterfactual behavior is the going to be the same no matter which of these worlds is actual—and presumably all the relevant subjunctive conditionals are true before you ever act. Doesn’t that mean that we can’t do anything to change our moral profile? No—or rather, the claim that it does seems to beg the question against the counterfactual acts view. The view requires that there can be a fact about what one would (or will) libertarianly freely do, and that this fact does not undermine the freedom of the (actual or counterfactual) act. If the agent libertarianly freely does A in C, then she could have done something other than A in C. Although there appears to be some controversy on this score (see note 2), it seems that this fact reveals that it is the agent who makes the conditional “If S were in C, S would do A” true, and she could have made “If S were in C, S would do something other than A” true. The mere fact that there is one determinate set of true subjunctive conditionals that determines the agent’s moral profile, a set which would not have changed had the agent inherited other circumstances, does not demonstrate that the agent does not have the power to change a (very small) fraction of that set.
The exact opposite is true with the extreme libertarian counterfactual acts view. The cause of our inability to do much to change our moral profiles, on this view, is not that our moral profiles have nothing to do with us. The cause is just the opposite: that our moral profiles have everything to do with us, and--more to the point--are about us only, with no reference to anything else. On a less “pure” competitor, like the simple libertarian acts view, our moral profiles will in part be due to other things, such as the circumstances we in fact inherit. These other things are what give us the traction to change our profile. We can actually act only when in an actual situation. Once we remove the situation as playing a role in determining the agent’s profile, we remove the agent’s ability to change it. What we are left with is a far more complete account of the person’s libertarian agency--which is something “over and above” the mere laws of nature--than what the simple acts view gives us. But in the process, we lose the necessary ingredients to actually change our profiles.

There is a corollary to the consequence that we cannot do much to change our profiles. On the extreme counterfactual acts view, the goal of improving our moral profiles will not serve as a very strong reason to behave morally. Why do what is right, if doing right does little to influence my moral profile?

This problem will have teeth only to the extent that improving our own profiles is itself a proper kind of moral motivation. It surely seems that this is not the only good reason available to do what is right. If I rescue a child from drowning only in order to score up points toward my moral profile (who cares about the child, after all?), something seems to be wrong with me. Further, the Kantian idea of doing what is right out of the motive of duty need not make any essential reference to one’s moral profile, but simply doing what’s right itself. Or we can speak of virtuous character traits and the eudaimon life. A flourishing life, we might say, is one that
adopts the path of virtue, and this in turn should motivate us to behave morally. And so there are obviously other—and probably better—candidates for why one ought to do what is right. But to the extent that improving one’s profile (or “gathering up treasures in heaven”) constitutes at least one good reason to do what is right, then this corollary to the metaphysical objection will have at least some cost.

But the greater cost will surely be the metaphysical objection itself—the consequence that our moral profiles are protected from factors beyond our control only by our losing the ability to change them. For some opponents of moral luck, this will look like a clear deal-breaker. But others will not be so easily put off. This troublesome consequence is, after all, the paradoxical result of making the agent’s profile exclusively about her libertarian agency and nothing else. What the opponent of moral luck must do is to decide which element of control has more value: the ability to change something or having that thing being entirely up to oneself. These two elements ultimately come apart in this debate. If she opts for the latter, then the metaphysical objection will not undermine her commitment to the extreme counterfactual view.

3.2. Why We Should Reject Mitigated Forms of the Counterfactual Acts View

So far I have been speaking of the extreme counterfactual view—a view which is world-neutral and takes an unrestricted range of counterfactual behavior as relevant to the agent’s moral profile. But there are plenty of other versions of the libertarian counterfactual acts view on the table. Why not adopt a mitigated form of the view in order to ameliorate some of these objections? The answer, briefly, is that whatever advantages can be gained from taking a mitigated view will be minor, the most serious objections to the counterfactual acts view will not be mitigated at all, and the net result will be an approach that will surely be less attractive than either the simple acts view or the extreme counterfactual acts view.
Recall that there are two (non-exclusive) ways of softening the extreme counterfactual view. We may emphasize counterfactual behavior closer to the actual world (and perhaps actual behavior most of all) more than “distant” counterfactual behavior; alternatively, we can simply reduce the range of relevant counterfactual behavior according to some criterion or other. Barring some bizarre criteria on which to reduce that range, the second method will also have the effect of emphasizing the actual. We will only consider counterfactual behavior in worlds that have some feature X which matches features of the actual world.

Right off the bat, it is hard to see how the first method will secure much if any anti-luck advantage over the simple acts view. Judge Actual accepts a bribe, while Judge Counterfactual would accept the bribe if given the chance, but doesn’t get the chance. Thomson delivers what to her is the obvious judgment that the two judges belong in the same circle of hell (1989, 215). But if our actual behavior counts more than our counterfactual behavior, then Counterfactual will receive some demerit, but not the same demerit as Actual, and the putatively obvious equivalence will not hold. In general, any case that would serve as circumstantial moral luck for the simple acts view will also serve as circumstantial moral luck for the a kind of counterfactual acts view that grades counterfactual behavior differently in terms of proximity to the actual world.

Suppose that we cut down on the range of relevant counterfactual behavior, but keep the view world-neutral in order to weed out cases of moral luck. Will this help to reduce the force of the objections in section 3.1 in any way? If we cut down the range significantly, it might help with the epistemic objection, and it might help us to fend off the incredulous stare. What counterfactuals of freedom might I actually be taken to know? Perhaps I don’t know any, in which case cutting the range of counterfactual behavior will not help with the epistemic objection at all. Alternatively, I might know some, but precious few in relation to all the true
counterfactuals of freedom there are. To avoid the epistemic objection, the view will be committed to a rather narrow range of counterfactual behavior.

Once the range has been truncated appropriately, will the resulting view have any anti-luck advantages over the simple acts view? Perhaps, but they will hardly be significant. Recall from section 2 that the proponent of the simple acts view can use handicapping procedures when evaluating an agent’s moral profile. And the sort of counterfactual that is actually known is likely to be the sort of counterfactual that may be used in those procedures. “Don’t judge her too hard,” we might say of the chronically late person. “She would have been on time if she didn’t have all those commitments.” And knowing this (assuming we do know it), we may make use of this in measuring the moral value of what she does with what she is given--without even using counterfactual behavior itself as constituting the agent’s moral profile.

Of course, I don’t want to say that a sophisticated simple acts view will be extensionally equivalent with even a significantly truncated counterfactual view. There may be times where we know that, had things been different, the agent would have behaved in a way that would have altered her moral profile (as measured by the simple acts view). (And of course--assuming there are true counterfactuals of freedom--there will almost certainly be innumerable times where this is the case and we don’t know it, as I claimed in section 2.) And yet, the difference between a sophisticated simple acts view and a significantly truncated counterfactual view--when the view is truncated with an eye toward the epistemic objection--will not be very crisp. This kind of counterfactual view will weed out more cases of moral luck than the simple acts view, but not many more.

And whatever payoff may be gained from switching from a simple acts view to a significantly truncated counterfactual acts view will be offset by the metaphysical objection. Let
us suppose that we know that someone would have behaved in a way that is significantly morally
different from her actual behavior had she inherited different circumstances. And suppose that
difference could not be accounted for by handicapping procedures used by the simple acts view.
(For example, we know that, had the chronically late person not have had such a busy schedule,
she would have used her extra time to smoke weed and not show up at all.) Then her
counterfactual behavior will count toward her moral profile despite the fact that she can do
nothing to change it. The metaphysical objection is still there, and it is the metaphysical
objection that exposes the most serious problem for the counterfactual view. Why should the
opponent of moral luck sacrifice the lion’s share of the anti-luck benefits of the extreme
counterfactual view in order simply to avoid the epistemic problem, while nevertheless leaving
the most serious problem fully intact? It does not seem like an attractive trade-off.

Perhaps it might be alleged that the force of the metaphysical problem may also be
reduced by narrowing the range of relevant counterfactual behavior. But this seems false. On
the most extreme of counterfactual views, I can change perhaps the billionth part of my moral
profile. How sizable a fraction may I change on a significantly truncated view? The hundredth
part? The tenth part? But then, the nerve of the objection hardly seems to go away if 90% of my
moral profile is beyond my power to change. Perhaps half? But at this point, what anti-luck
advantage does the appeal to counterfactuals really achieve?11

It appears that the counterfactual acts view cannot avoid the metaphysical objection in
any of its forms. As a result, there is little point in adopting it unless it achieves significant anti-
luck advantages. And those advantages will not be available until the range of counterfactual

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11 At this point, it might be helpful to remind the reader—with a gesture toward note 4—that the counterfactuals we
are interested in are ones which specify the circumstances in the antecedent in atom-for-atom detail. We don’t have
the power to change the truth-value of such narrowly individuated counterfactuals in cases where the antecedents are
false.
behavior goes well beyond our epistemic limits. But at that point, we have both the epistemic and the metaphysical objection working against us. Then what grounds could we possibly have for stopping at all? For instance, why adopt a view on which my moral profile is determined by my counterfactual behavior in all and only those circumstances where I have had a decent upbringing? At that point, there’s no telling what I would have done in all those circumstances, and I can’t do anything to change what I would do in them. But the view entails that there is moral luck--that the fact that I have had a decent upbringing influences my moral profile. Why on earth accept this consequence when there is no further objection to be made against looking at the broader (unrestricted) range of counterfactuals?

The upshot here is that, so far as the debate on moral luck is concerned, all mitigated versions of the counterfactual acts view are very hard to motivate. If we are going to adopt a counterfactual acts view at all, we might as well go as far as the counterfactuals will take us.

3.3. What the Extreme Counterfactual Acts View Has to Offer

And how far will those counterfactuals take us? I have been speaking all this time as though, if there are true counterfactuals of freedom at all, there are true counterfactuals of freedom for just any set of circumstances it is metaphysically possible for the agent to inherit. In fact, I believe this conditional claim to be plausible. The sorts of considerations that are used to motivate the idea that there are true counterfactuals of freedom at all--e.g., a law of conditional excluded middle--seem to have no restriction on the basis of the proximity of circumstances described in the antecedent to the actual world. And yet some might deny this. What then?

Then, even if we go as far as the counterfactuals take us, they will not take us as far as we would like--and we would be left with a view that has the same kind of problem that we ascribed to the simple acts view. We might be tempted, in defense of such a counterfactual acts view, to
say something like this: “We’re still making the agent’s moral profile sensitive to a complete account of her libertarian agency--or at any rate, as complete as we can make it! It’s just that the account does not extend to her behavior in just any set of circumstances. Nevertheless, we’re going as far as the available facts will allow!” But we have already seen this kind of response in section 2 and found it lacking. If there are no true counterfactuals of freedom, then the simple acts view will go as far as the available facts will allow. And yet, even so, on the simple acts view, there will be lucky variance of the agent’s moral profile across worlds, and the circumstances will be playing a role in determining the agent’s moral profile. Similarly for the kind of counterfactual view under consideration here. Perhaps the counterfactuals will not in fact go far enough to determine what I would do if a rhinoceros horn were grafted to my forehead by aliens in their Earthling zoo--the circumstances (the story will go) are simply too far removed from the actual world. But then, although it will not be true that my moral profile would have been different had I been in that Earthling zoo, my moral profile will vary wildly across worlds where I am in the Earthling zoo, and there will be no protection from that lucky variance. The fact that I am not in such a zoo (a fact over which I have no control) will influence my moral profile, and there will be circumstantial moral luck after all.

So, the extreme counterfactual view will be in a better position if there are true counterfactuals of freedom for just any metaphysically possible set of circumstances. Then, for whatever set of circumstances you like in which it is metaphysically possible for the agent to be placed, were the agent to be placed in those circumstances, her moral profile would remain the
same.\textsuperscript{12} That is the result that the simple acts view cannot secure, and a result that is needed in order to deny all moral luck.

I say it is a result that is needed in order to deny all moral luck. Is it the only thing that is needed? It will be enough to get the result that the agent’s moral profile will not change from world to world on the basis of factors beyond her control (or, at any rate, her libertarian direct control\textsuperscript{*}). The account of a single agent’s libertarian agency will be fully complete. And yet even that will not be enough to demonstrate that there is no moral luck.

Imagine the following scrap of dialogue:

Husband: You know, wife, you behaved like a real shrew when you were in labor with our son.

Wife: Excuse me? You go through labor and see how you behave!

Husband: Ah, but you see, I’m essentially a man. So there are no metaphysically possible circumstances in which I go through labor. Face it, your moral profile is stained in a way that mine is not. So I have at least some evidence that I am morally better than you.

There are several problems with what the husband says here, aside from the fact that he is acting like a tactless prig. The idea that our sex is essential to us is dubious. The idea that it’s \textit{metaphysically} impossible for a man to go through labor is suspicious. But no matter, for the

\textsuperscript{12} I am assuming here (but will not defend) the claim that, were the agent to be placed in other circumstances, the truth-value of counterfactuals of freedom about her would not change. (If this claim is false, then there seems to be no way for the counterfactual acts view to escape moral luck altogether.) This claim appears to be required by Molinism, according to which there is a definite set of actualizable worlds—worlds that God can actualize through creation. Further, given the kind of counterfactuals we have in view—where the circumstances in the antecedent are specified in atom-for-atom detail—this claim is not as implausible as it might seem. If the circumstances in the antecedent were individuated more generally, then the details of the actual world would do some work to pick out which precise atom-for-atom C we have in mind when we say, “If so-and-so were in such-and-such circumstances, she would do A.” But this kind of sensitivity to the actual doesn’t hold when the circumstances are already cashed out in atom-for-atom detail. (See note 4.) As a result, it is unclear why we should expect that the truth-value of these counterfactuals would change were the agent to be placed in other circumstances.
basic idea being exploited here is surely philosophically defensible—that different agents have
different essential properties that constrain the range of circumstances in which it is
metaphysically possible for them to be placed. The most troubling thing about what the husband
says is that he is claiming that his essential properties are playing a role in making him morally
better than his wife. If he is right, then it looks like we have a case of moral luck, since of course
he doesn’t control what his essential properties are.

The remaining concern with the extreme counterfactual acts view is that it leaves open
the possibility that the husband is right. And if so, it appears that (CP7) will turn out to be false
in a way that is analogous to the way in which (CP5) is false. (CP5) is false because, for any
exercise of libertarian direct control, any possible moral evaluation of that exercise will be
influenced by the situation in which it takes place. Similarly, (CP7) would turn out to be false
because, for everything we libertarianly directly control* (the complete description of our
libertarian agency), any possible moral evaluation of that body of subjunctive behavior will be
influenced by the set of possible situations in which it takes place--where that set will differ
between agents on the basis of factors beyond their control.

How much difference between these various sets of possible situations is there? We
might hope to reduce the degree of variation in the following way. The husband, we’ll assume,
is essentially a man. Nevertheless, while he can’t be in labor, per se, he can nevertheless be in a
qualitatively identical state of pain—and we can compare his counterfactual behavior in that
situation against the actual behavior of his wife. But it is important to keep in mind what we
would have to mean by “qualitatively identical.” There is luck, we have said, in the atom-for-
atom set of circumstances we inherit, and we are trying to eliminate the role that that luck plays
in the agent’s moral profile. So, if the possible corresponding state of pain we are speaking of
differs from what the wife experiences in such a way that a morally relevant atom (an atom that plays an ineliminable role in some inclining force on the agent) is out of place, then this possible scenario will not rescue our moral profiles from the luck in circumstances we inherit (or could possibly inherit). In the case of the husband and the wife, perhaps we may accommodate this constraint by shrinking the set of circumstances $C$ to the states of the agent’s brain. Of course, in the wife’s case, those states are caused by nerves firing from feminine anatomy, while in the husband’s possible scenario, they would not be. But that difference needn’t enter into $C$ itself, which simply describes the brain states themselves and not their causes. Perhaps both the husband and the wife can be in $C$ itself.

Will this strategy eliminate all variation in metaphysically possible sets of circumstances in which agents may be placed? It may be too much to hope so. Perhaps there may be some essential differences between agents such that there are some circumstances $C$--even “whittled down” to include only those atoms that are directly relevant in inclining forces on the agent--in which some, but not others, may possibly be placed. And if so, (CP7) looks precarious.

Perhaps we can try to rescue (CP7) against this threat by making use of handicapping procedures, judging moral profiles in virtue of what people counterfactually do in light of what they are possibly given. This strategy, of course, looks rather like the strategy already employed by the simple acts view. There is surely nothing wrong with adopting this tack in order to ameliorate the effects of luck, but it is doubtful whether it will be enough to vindicate (CP7). My hopes for the success of this newer strategy are not much greater than they were for its predecessor.

There is a relevant point of disanalogy between the two strategies, however. With the simple acts view, it is an easy matter to show how the handicapping strategy will not protect the
agent’s moral profile from all luck, simply by pointing to how the view would assess the agent’s behavior in other possible worlds. But with the extreme counterfactual acts view, we are already presented with a complete description of the agent’s libertarian agency, and there are no other relevant possible worlds to point to.\\(^13\)

And yet, perhaps that very fact suggests that the handicapping procedures can’t rescue the counterfactual view, either. The husband’s profile, we’ll assume, won’t make reference even to some “whittled down” set of circumstances C, whereas the wife’s will. We assume that the correct measurement of his profile will grade his “less shrewish” subjunctive behavior according to higher standards and his wife’s “more shrewish” subjunctive behavior with some sympathy. What guarantee can we have that this correct measurement will successfully--and fully--inoculate the agents’ moral profiles from luck, and will similarly do so for all possible agents? Since there are no further worlds to appeal to (e.g., how the husband would have behaved had he had to go through labor), we seem to be hamstrung.

So long as we have different essential properties that constrain the range of circumstances it is metaphysically possible for us to be in, it seems doubtful that (CP7) can be true. This needn’t mean that the extreme counterfactual acts view is off the table. The view will still leave us with substantially less moral luck than will any of its competitors. And our moral profiles will be much more thoroughly up to us--up to a complete description of our libertarian agency--than they will be on any of the alternatives.

In order to secure (CP7), we will need something like the following metaphysical claim to be true: Necessarily, for any agent S and for any set of circumstances C (appropriately

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13 Perhaps we might appeal to how the agent would have counter-possibly behaved in impossible worlds? This move might successfully show how the extreme counterfactual view fails to protect against all moral luck, and it would also suggest a replacement: a view on which one’s profile is determined by what one actually does, would counterfactually do, would counter-possibly do. I won’t pursue the idea here.
“whittled down”), if S is in C, then for any further possible agent S’, it is metaphysically possible for S’ to be in C. If this is the case, then there is complete uniformity among all possible agents concerning which morally relevant circumstances they can possibly inherit. Given that our moral profiles are sensitive to what we would do in every morally relevant set of circumstances in which it is possible to be placed, and given that there is no difference between any possible agents in what those circumstances are, then it follows that

CP7. Necessarily, for any two agents, if they differ in moral profile, then that difference is due entirely to facts within each agent’s libertarian direct control*.

It would follow that there is no moral luck after all. But this result is only obtained by taking on an even greater metaphysical burden than already comes with the libertarian counterfactual acts view simpliciter. And to my mind, this is the only way to secure the conclusion that there is no moral luck.

4. Final Comments

The foregoing should warn us off from denying moral luck too lightly. In my own experience, it is commonplace to hear philosophers in informal settings claim that there is no moral luck. And yet a full denial of moral luck can only be achieved by taking on extraordinarily heavy metaphysical baggage, more than most philosophers in those settings (or anywhere) would be willing to carry.

Indeed, even a limited denial of moral luck—merely denying resultant moral luck in particular qua luck—carries significant metaphysical commitment. It requires a commitment to at least the coherence, if not the actuality, of libertarian agency. Further, it prizes apart two elements of control that we normally treat together. Typically, when we say that we control X, we are saying both that we have the power to bring X about and that X is up to us. But in the
context of the moral luck debate, it seems that we are confronted with a choice. We may say that we have the power to bring about our moral profiles through our actual acts, but then acknowledge that our moral profiles are not entirely up to us, but also to the circumstances we inherit. Alternatively, we may claim that our moral profiles are entirely (or at least close to entirely) up to us, but deny that we do much to bring them about. The opponent of moral luck must choose which of these two elements of control matters most in the context of this debate.

Some philosophers may wish to avoid this morass entirely and simply adopt the compatibilist approach to free will. They may still deny some moral luck, if their approach to responsibility happens to be incompatible with it. But they cannot deny it *qua* luck--they cannot deny it *on the grounds* that it separates the agent’s moral profile from what she controls. And so they will have to abandon the intuition with which this study began. And that, too, is a significant result.

When Thomas Nagel authored his now famous paper on the concept of moral luck over 30 years ago, he took himself to be articulating a deep problem which, in his view, had no solution (1979, 37). In light of what has been said here, that reaction was probably too strong. And yet, given the extraordinary consequences of what we say with respect to it, to the extent that Nagel considered the problem of moral luck to be particularly troubling and potentially divisive, he was not far wrong.
Works Cited


