

## In Defense of Moral Luck

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There is a philosophical problem involving the phenomenon that has come to be known as 'consequential moral luck' which for some time has lacked a fully satisfying philosophical account. Although the phenomenon of moral luck has been the subject of much debate, particularly within law and philosophy, it has found few defenders, the more popular position being to reject that there is moral luck, or at least to reject that it is the sort of thing we should be willing to embrace. Despite the tremendous number of articles setting out to explain away the phenomenon, such explanations have so far failed to put to rest the problem of moral luck. Recent work in social and developmental psychology however has brought renewed attention to the issue and promises to bring new tools to bear on our understanding of the problem. Interestingly, this recent work in psychology has come at a time when interest in the problem of moral luck has returned in philosophy and law, and with this renewed interest in the issue has come renewed efforts to solve or at least to rid ourselves of the problem of moral luck. Unfortunately however such efforts have failed to meet this burden and the reason for this, as I will argue in what follows, is that the problem of moral luck is not really a problem at all but rather a phenomenon in need of a clearer explanation, one which I hope to offer.

Before beginning it will be helpful to discuss the context of the debate of which this paper is a part. Despite the number of arguments purporting to explain away the phenomenon of moral luck, some philosophers, including most significantly Bernard Williams and Thomas Nagel who together reinvigorated debate of the topic with a pair of articles, have reluctantly accepted that there really is such a thing as moral luck and that it has normative significance.<sup>1</sup> Indeed most critical accounts of moral luck take the form either explicitly or implicitly of responses to the Nagel/Williams view. There is an important position missing from the argumentative spectrum however. While Nagel and Williams offer us reasons to think that our moral landscape is one in which luck plays an inescapable role, they hold the phenomenon at an arm's length, unwilling to fully embrace the role that luck plays in our moral lives. For Nagel and Williams that the phenomenon of moral luck is part of our moral lives is still a *problem*. In this paper I hope to fill the gap just pointed to by offering a defense of the phenomenon of moral luck which goes beyond the sort of qualified defense that Nagel and Williams.

In what follows I argue that our moral landscape is one in which the existence of consequential luck plays a fundamental role. In so arguing I have taken on an ambitious task, for I hope to show not only that consequential luck plays a fundamental role in our moral lives, but contra Nagel and Williams that this is not a problem. As the argument which follows develops, I hope to convince the reader that a world in which we do not attribute moral significance to consequential luck, the world which most critics of Nagel and Williams seem to imagine, would be a moral world that we would be hard pressed to recognize. Finally, I will show how the account of moral responsibility I develop, the account which in turn provides the grounding for my defense of the moral luck phenomenon, fits well with recent

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<sup>1</sup> Bernard Williams, "Moral Luck", *Proceedings of the Aristotelian Society*, supplementary vol. 50, (1976), 115 – 135, reprinted in (Williams 1981, 20 – 39) and Thomas Nagel, "Moral Luck", *Proceedings of the Aristotelian Society*, supplementary vol. 50, (1976), 137 – 151, reprinted in (Nagel 1979, 24 – 38).

experimental evidence concerning our moral judgments. Having done this I then conclude by suggesting that this is a virtue unique to the account of moral responsibility here developed and I argue that this gives us a substantial reason to favor the account I defend.

The paper proceeds in four parts. In section 1 I describe the phenomenon of moral luck and briefly discuss what the problem with the phenomenon is. As I pointed out above Nagel and Williams offer qualified defenses of the moral luck phenomenon, but both maintain that it presents a significant problem. Taking Nagel's view as my point of departure, part 1 will focus on the account of the problem of moral luck that he presents.

In section 2 I further sketch what I take to be the substance of the Nagel/Williams view, (section 2.1) and then discuss several of the most prominent lines of criticism of this view (sections 2.2 – 2.5). Broadly speaking there are two main lines of criticism of moral luck. The first attempts to explain away the problem of moral luck by arguing that the particular judgments that give rise to the problem (insofar as they conflict with a more general moral principle to which we are more strongly committed) are mistaken and as a result they ought to be given up or at least we ought to come to recognize that they do not generate a problem that needs to be reconciled. Views of this first type hang on the ability to account for our ostensibly mistaken moral judgments. In discussing them then (section 2.2 and 2.3) I will focus my attention primarily on how persuasive the descriptive accounts of our moral judgments they provide are. Where the first line of criticism tries to undermine the particular judgments that give rise to the problem of moral luck, the second attempts to explain away the problem of moral luck by arguing that though there is a real problem it is not a *moral* problem. This second strategy relies upon a distinction between blameworthiness and the appropriateness of our blame-related actions. As I will argue however (section 2.4 and 2.5) there are good reasons to doubt that this distinction can be maintained and even if it can it fails to support the argument that its defenders typically assert viz. that there is not moral luck.

In section 3 I develop a conception of moral responsibility that provides a foundation from which the phenomenon of moral luck can then be defended and I argue that adopting this conception of responsibility offers a more satisfying way of dealing with the problem of moral luck than any of the alternatives discussed in part 2. The account of responsibility I develop draws largely upon recent work by Benjamin Zipursky in which he identifies two dimensions of our concept of responsibility: a fault-expressive dimension and a causally-linking dimension.<sup>2</sup> Section 3.1 summarizes Zipursky's two-dimensional account of responsibility. In extending Zipursky's account though I will be especially concerned to motivate the idea that the causal-linking sense of responsibility is properly thought of as a dimension of our concept of *moral responsibility*. In trying to motivate this idea I first turn to an analogy with our concept of legal responsibility (section 3.2). I take the force of this analogy to stem from the idea that if we allow our moral and legal judgments to come too far apart, our legal practices become hard to justify, and that this is a result we should be reluctant to embrace. This is a view that has been criticized by many however and so I make sure to defend this approach from those, and in particular

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<sup>2</sup> (Zipursky, 2008)

Brian Rosebury, who have argued that doing so is a mistake.<sup>3</sup> In section 3.3 I offer further support for a two-dimensional account of responsibility by appealing to the important role played by relationships in providing a foundation for our moral concepts. My argument here looks to the way in which we think that unfortunate accidents can and *should* shape our relationships with others and also with ourselves. As I will argue, that we find it appropriate that unfortunate actions to shape our relationships in important ways is strong evidence for the existence of moral luck.

Finally, in section 4 I offer some concluding remarks. In particular I return to the problem of moral luck discussed in section 1 and I suggest how the account of responsibility developed in section 3 provides the resources for dissolving the problem. In this last section I also show how the account of moral responsibility I defend is independently supported by some recent results in experimental psychology that shed light on our judgments about moral responsibility. As I suggested above, a significant upshot of the theory defended here is that it doesn't commit us to either of two unsettling conclusions that other theories of moral responsibility seem committed to in the face of such evidence: that we adopt a revisionary stance towards the results of such experiments or that we adopt an error theory of (what appears to be) our folk concept of responsibility.

## 1. The Problem of Moral Luck

As Nagel describes it, the problem of moral luck arises because we are pre-theoretically committed to a certain moral principle, call it the control principle, that establishes as a necessary condition on the appropriateness of our agent-directed moral judgments that "people cannot be morally assessed for what is not their fault, or for what is due to factors beyond their control."<sup>4</sup> The problem that our commitment to the control principle generates is that despite our belief that it (or at least something very much like it) is correct, there are numerous cases 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."<sup>5</sup> More problematic still is that these moral judgments, judgments that seem to entail that at least as a matter of practice we reject the control principle, seem correct, or at least we don't stand ready to abandon them. Similarly, and despite the fact that our commitment to these particular judgments seems to entail that we often reject the control principle, reflecting on such judgments does little to move us from our firm conviction not only that the control principle is correct as a condition on some of our judgments, but that it seems correct to extend it even to the cases where affirming it proves paradoxical.

The problem of moral luck then is that our common-sense morality seems to firmly commit us to two mutually incompatible moral intuitions. One of these intuitions entails that there is such a thing as moral luck while the other entails that moral luck is impossible. Clearly these intuitions conflict and

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<sup>3</sup> (Rosebury, 1995)

<sup>4</sup> (Nagel, 1979, p. 25)

<sup>5</sup> (Nagel, 1979, p. 26)

yet when this conflict presents itself neither intuition yields generating a paradox so severe that threatens to undermine morality altogether.<sup>6</sup>

So far, what I have said under-specifies the problem of moral luck and so something more must be said in order to clarify what it is that is at stake and why the problem of moral luck is important. In the passage quoted above, Nagel describes the problem of moral luck as involving conflicting intuitions regarding the appropriate grounds for the moral assessment of persons. What Nagel and other moral luck commentators have in mind is a particular sort of moral assessment though, namely assessments of moral responsibility and the various normative practices that rely either implicitly or explicitly upon judgments that someone is morally responsible for some action or event. Although luck may affect many of our other moral judgments, it is the potential influence of luck on assessments of moral responsibility that I will be interested with in this paper. In particular, I will be interested with one sort of luck: luck in the way ones acts turn out (what I call 'consequential luck'). In other words, the moral luck problem I am interested in has to do with the way that factors beyond our control can have significant influences on the consequences of our actions, and the question of whether it is appropriate to hold persons responsible and especially morally responsible for these consequences.

At this point one might naturally wonder whether I and others interested in this issue have simply exaggerated the significance of the problem of moral luck. Someone harboring such worries might suspect that the problem of moral luck arises from cases at the periphery of morality and that as a result the problem could not be as central as I have suggested. Unfortunately, examples of the sort of problematic judgments that give rise to the problem of moral luck abound. So for instance, we seldom balk at the thought that the criminal who has been found guilty of murder deserves to be punished more severely than the criminal who despite his best efforts failed to kill his victim (perhaps because his gun jammed or the victim was wearing a bullet proof vest) and so was guilty only of attempted murder. Similarly, we are quicker to condemn the drunk or reckless driver who runs a red light and kills an unfortunate pedestrian than we are to judge the driver who despite being drunk and having run a red light at the very same intersection (perhaps only moments earlier) makes it safely home.

In each of the cases just considered the principal subjects, the murderer and attempted murderer and the drunk drivers, are guilty of some wrongdoing. The cases are thought to present a problem of moral luck though insofar as the murderer and the drunk driver who kills are punished more

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<sup>6</sup> A number of authors have stressed this unwelcome consequence. For instance Darren Domsky notes that the moral luck paradox "jeopardizes the very possibility of making evaluative moral judgments" (Domsky, 2004, p. 445) and Bernard Williams concludes his essay on moral luck with the observation that: "Scepticism about the freedom of morality from luck cannot leave the concept of morality where it was, any more than it can remain undisturbed by skepticism about the very closely related image we have of there being a moral order, within which our actions have a significance which may not be accorded to them by mere social recognition. These forms of skepticism will leave us with a concept of morality, but one less important, certainly, than ours is usually taken to be; and that will not be ours, since one thing that is particularly important about ours is how important it is taken to be." (Williams, Moral Luck, 1981, p. 39). Perhaps most significant is Nagel though who stresses not only the severe consequences that accompany the problem of moral luck, but that the paradox which brings them about is not a mistake. So, Nagel writes: "The view that moral luck is paradoxical is not a *mistake*, ethical or logical, but a perception of one of the ways in which the intuitively acceptable conditions of moral judgment threaten to undermine it all." (Nagel, 1979, p. 27).

severely or judged more harshly than their counterparts who seem to have performed *actions* that were in some sense just as wrong and yet managed to get lucky, the attempted murderer because his gun jammed and the drunk driver because there happened to be no pedestrian crossing the street as he ran a red light. The reason this asymmetry is said to present a problem is that the murderer and the unlucky drunk driver seem to be punished more severely than their lucky counterparts solely because of consequences that were beyond their control.

It has become commonplace to assume that when one reflects on the above cases she will notice that the murderer and the criminal guilty of only attempted murder each perform the same actions, in the case of the latter however fate intervened, the criminal's gun jammed, and as a result the consequences of his actions differed from that of his successful counterpart. Having reflected on this fact one should then come to question why this criminal should benefit from the intervention of fate in his case or if this isn't a worry one should wonder why the murderer deserves to be punished more severely when his actions were no different? At least these are the worries one should experience if she is committed to something like Nagel's control principle.

As Nagel points out however, while there is a sense in which the murderer and the attempted murderer both perform the same actions (the lucky or unlucky consequences of their respective actions being a result of circumstances beyond their control) there is another sense that "how things turn out determines what [one] has done," that "actual results influence culpability or esteem in a large class of unquestionably ethical cases."<sup>7</sup> On Nagel's view, "the *mens rea* which could have existed in the absence of any consequences does not exhaust the grounds of moral judgment."<sup>8</sup> If Nagel accurately diagnoses the source of the problem of moral luck though, as David Enoch and Andrei Marmor have helpfully drawn attention to, it is hard to see "what [it is], exactly, in the *ex post* moral evaluation of the situation that is really affected by the consequences?"<sup>9</sup> In what follows I will argue that the solution to the problem of moral luck lies in the answer to this question. Unfortunately, as we shall see a satisfying answer to the question has proved elusive. Many have taken this to be good reason to abandon the quest for an answer to this question and have instead turned their attention to explaining away the intuition that generates it. As I will argue in the next section however these efforts have proved similarly unsatisfying.

Before moving on I want to draw attention to one last feature of the problem of moral luck, lest one come away from this thinking the problem is less significant than it really is. One might think that moral luck only presents itself in cases, like those discussed above, where someone has done wrong. Although the problem is often discussed in these terms, taking only examples of negligence and similar cases as exemplars of the problem, I think this is a mistake. There are arguably cases where whether one has done something wrong *at all* seems to be a matter of luck. So for instance, Nagel offers the example of the political leader whose wisdom will be differentially judged depending upon whether the revolution he leads ends in disaster or glorious victory, and Williams offers the example of Gauguin

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<sup>7</sup> (Nagel, 1979, pp. 29 - 30)

<sup>8</sup> (Nagel, 1979, p. 30)

<sup>9</sup> (Enoch & Marmor, 2007, p. 409)

whose decision to leave his family for Tahiti so that he might paint free from distractions, is judged with an eye towards his subsequent success as a painter. It is illustrative that it is these sort of cases, and not cases of negligence that were foremost in the minds of Nagel and Williams when they first brought attention to the problem of moral luck. Following the lead of Nagel and Williams, I want to suggest that in searching for a satisfying solution to the problem of moral luck it will be useful to turn our attention, at least in part, away from cases of negligence and towards cases more like those that Nagel and Williams originally envisioned, but also to another sort of case seldom discussed in which accidents involving no negligence are brought to center stage.

## **2. Do Consequences Really Matter? What to Make of the Problem of Moral Luck?**

As I suggested briefly in the introduction, although moral luck has been much discussed in the philosophical literature it has found few defenders. When I say that moral luck has found few defenders, what I mean is that there have been few that have defended the moral luck thesis. As I understand it, the moral luck thesis is that there are some moral judgments, and in particular attributions of responsibility, that at least partly depend on luck, and that at least some these judgments are correct. Among the most prominent defenders of the moral luck thesis are Nagel and Williams. As I pointed out above though, while Nagel and Williams both accept there is such a thing as moral luck, they each view it as something problematic: evidence that our moral lives are paradoxical and in the case of Williams, evidence that perhaps morality is a less important part of our lives than we typically think.<sup>10</sup> Understandably, many find the Nagel/Williams view to be unsettling. As a result, since Nagel and Williams reintroduced the moral luck problem to the philosophical literature the majority of moral luck commentators have focused their efforts on dissolving the moral luck problem with the vast majority of these efforts attempting to dissolve the problem by denying the moral luck thesis that generates it.

As I have pointed out already, my goal in this paper is to fill in what I see to be a gap in the literature on moral luck by defending the moral luck thesis but also arguing contra Nagel and Williams that this is not a problem. In order to motivate my view however I will first discuss several of what I take to be the most views that I am offering it as a competitor to. In particular, I will focus on the reasons why I think each of the views discussed offers a less than fully satisfactory account of the moral luck phenomenon. In what follows I begin with a brief discussion of the Nagel/Williams view (section 2.1), and because their views are in many ways similar I focus on Nagel's, though I will mention Williams's view at several points along the way. Having discussed Nagel and Williams I will then turn my attention to the moral luck critics. As I suggested in the introduction there are broadly speaking two strategies for denying the moral luck thesis.<sup>11</sup> The first appeals to various psychological biases in order to undermine

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<sup>10</sup> For example, see note 7 above.

<sup>11</sup> There is a third line of criticism that tries to dissolve the problem of moral luck by arguing that the control principle (the moral principle that generates the problem of moral luck) is mistaken and that once we realize this, the problem of moral luck falls away. This last line of criticism is especially heterogeneous with some authors arguing that we ought to give up not only our commitment to the control principle but many our particular judgments as well, while others use these particular judgments to provide the foundation for an alternative to the control principle. See (Browne, 1992) for just one example of this sort of view. Although a complete defense of an account of responsibility proposed in what follows would have to address this line of criticism, doing so here

our confidence in our particular judgments that seem to suggest that there is moral luck. The second strategy appeals to connotations that we are susceptible to make when thinking about moral concepts like responsibility, and argues that the moral luck phenomenon falls away as a problem, or at least as a moral problem, once we realize this. I discuss the first strategy in sections 2.2 and 2.3 and the second in sections 2.4 and 2.5. As I will argue, while the first strategy casts doubt on some of our judgments I am skeptical that it can or should wholly undermine our confidence in the moral luck thesis. Similarly, the second strategy though promising, fails to convincingly do away with the problem of moral luck.

## 2.1 Nagel and the Paradox of Morality

Nagel's view that we ought to accept the existence of moral luck seems to be largely a function of his respect for the strength and persistence of our intuitions. Having considered Kant's argument that it makes no sense to condemn oneself or anyone else for a quality which is not within the control of the will, Nagel notices that, for all its persuasiveness, our intuitions persistently undermine Kant's position. Here Nagel relies on the observation that although we can be persuaded that our moral judgments are irrational, these judgments "reappear involuntarily as soon as the argument is over."<sup>12</sup> For Nagel then, the belief that we judge people for what they actually do (or fail to do) is uncompromising and if, as he recognizes, this form of moral determination by the actual is paradoxical, we have no choice but to accept that our concept of responsibility is one in which this paradox is deeply embedded.

Nagel's view does not just rest on the strength of our intuitions however. Rather, he argues that the particular judgments which we are intuitively inclined to accept and which in turn generate the problem of moral luck, are genuine moral judgments. Nagel takes this to be indicated by the fact that generally "one can say *in advance* how the moral verdict will depend on the results."<sup>13</sup>

Perhaps most important for Nagel though is his recognition that in denying that there can be moral luck we leave ourselves with an impoverished conception of both ourselves and our place in the world. Here Nagel observes that "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."<sup>14</sup> As Nagel points out "moral judgment of a person is judgment not of what happens to him, but of him"; denying that there can be moral luck however leads us to concentrate on the influence of what is beyond our control and in doing so makes the 'responsible self' which is the object of our moral judgments seem to disappear, "swallowed up by the order of mere events."<sup>15</sup> Ultimately, Nagel's argument that there *is* moral luck is

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would take me too far afield of my main concerns in this paper. One reason for this stems from the fact that while I am sympathetic with the idea that the control principle cannot capture our entire concept of responsibility, I think that it does capture something important about our concept of responsibility. To the extent that Browne and other exemplars of this last line of criticism reject even this claim though they seem to be left with a conception of responsibility that fails to take seriously the idea that the pervasive influence of luck on our lives presents a problem for our practices of holding one another responsible for our actions.

<sup>12</sup> (Nagel, 1979, p. 33)

<sup>13</sup> (Nagel, 1979, p. 30)

<sup>14</sup> (Nagel, 1979, p. 36)

<sup>15</sup> (Nagel, 1979, p. 36); Nagel emphasizes this point again a few paragraphs later drawing a parallel with the problem of free will: "as the external determinants of what someone has done are gradually exposed . . . Eventually nothing remains which can be ascribed to the responsible self, and we are left with nothing but a

grounded in his confidence that the impoverished conception of our moral selves and of the place of morality in our lives that the denial of moral luck entails is not a conception of morality that we recognize.

Nagel nicely summarizes where his account leaves us with respect to our concept of moral responsibility in the following passage: "A person can be morally responsible only for what he does; but what he does results from a great deal that he does not do; therefore he is not morally responsible for what he is and is not responsible for."<sup>16</sup> Put slightly differently Nagel's point is that we can be responsible for things which, for all intents and purposes, are matters of brute luck, but that we are responsible for these things is not itself something we can be responsible for. Nagel thinks that this leaves us with a paradox. To the contrary, I think probing this idea more closely offers us a way out of the paradox; the key to the way out lying in a more nuanced understanding of what attributions of responsibility say *about us* as moral agents. I will return to this point in the next part of the paper (section 3) where I develop my positive account of responsibility.<sup>17</sup>

Before moving on, it will be helpful to briefly discuss Williams's view and how it is similar, but also importantly different than Nagel's. Williams like Nagel accepts that there can be moral luck, and also like Nagel he worries that this brings our ordinary moral conceptions into doubt. Nevertheless, Williams shares Nagel's view that ultimately the place of luck in morality is not something that can be gotten rid of. Where Nagel sees moral luck as a significant problem though, Williams is less worried owing in large part to the fact that he is, as he admits, more skeptical about our moral conceptions than Nagel.<sup>18</sup> Perhaps ironically, Williams's skepticism seems to motivate his acceptance of a broader, more inclusive account of morality (one that extends the notion of morality to certain attitudes, phenomena,

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portion of the larger sequence of events, which can be deplored or celebrated, but not blamed or praised." (Nagel, 1979, p. 37).

<sup>16</sup> (Nagel, 1979, p. 34)

<sup>17</sup> Another way of understanding Nagel's worry is that while he accepts that our moral lives are shaped by things beyond our control, this is not a fact he thinks we can happily accept. If the denial of moral luck threatens to dissolve the significance in our lives of our being moral agents, on Nagel's view the acceptance of moral luck seems to leave us only marginally better off. Nagel's worry is that the inclusion of consequences in our conception of what we have done encourages us to adopt an external evaluative view of ourselves, a view which Nagel thinks fits rather precariously with our ordinary conception of ourselves as moral agents. Such a view requires us to see ourselves as *parts* of the world and yet as Nagel puts it: "We are unable to view ourselves simply as portions of the world . . . We do not regard our actions and our characters merely as fortunate or unfortunate episodes – though they may also be that" (Nagel, 1979, p. 37). The problem Nagel sees is that the internal and external perspectives available to us are to some extent in tension with one another. To have any recognizable conception of morality requires that we be able to take up an internal perspective and see our actions as our own and not merely as events in the world, but the recognition of moral luck foists upon us an external perspective that threatens to undermine the internal perspective, and in the worst case "leaves us with no one to be" (Nagel, 1979, p. 38). Nagel concludes his article on moral luck with the observation that: "The degree to which the problem has a solution can be determined only by seeing whether in some degree the incompatibility between [the internal conception of agency] and the various ways in which we do not control what we do *is only apparent*" (Nagel, 1979, pp. 38, emphasis added). What I hope in part to show in section 3 is how the positive account of responsibility I develop provides some grounds for thinking that the tension Nagel points to *is* to some extent only apparent.

<sup>18</sup> (Williams, Moral Luck, 1981, p. 36 fn. 11)

and judgments which Nagel hesitates to describe as properly moral).<sup>19</sup> Ultimately however Williams's discussion of moral luck leads him to accept a somewhat deflationary account of the significance of morality in our lives.

One reason for not simply setting Williams's view aside is that the positive account of responsibility I develop in section 3 benefits significantly from William's discussion of moral luck. Where Williams is deflationary about morality though, I hope that my account will be able to accommodate our intuitions concerning the importance of morality (and our various moral conceptions) in our lives, and so hopefully be less deflationary.

## 2.2 Should We Trust Our Judgments of Particular Cases?

Darren Domsy has argued that the problem of moral luck is a plague. In Domsy's words, "it is widespread, difficult to overcome, and tends to still show symptoms even in those who claim to be rid of it."<sup>20</sup> What is so surprising according to Domsy is that there is a sense in which a relatively straightforward solution to the problem of moral luck is available. The solution lies in realizing that the particular assumption that drives the problem of moral luck (the assumption that moral blameworthiness is not independent of luck) is false. As Domsy recognizes, not only is the solution straightforward it should be familiar, having been advanced by many critics of moral luck. The problem Domsy sees is that the solution has been advanced with very little success.<sup>21</sup>

Domsy has three particular targets in mind: Judith Jarvis Thomson, Norvin Richards, and Susan Wolf.<sup>22</sup> Each of Domsy's targets argues that our intuition that blameworthiness is to some extent influenced by luck (what Domsy labels Intuition 2) is mistaken. In order to account for the resiliency of our intuitions however each is forced to adopt what Domsy has derisively called "awkward and suspicious alternatives."<sup>23</sup> Referring to the authors' respective alternatives, Domsy argues that far from showing that Intuition 2 is mistaken, each author has merely dressed up the intuition in "appealing disguise" asking us to accept in its place that the morally unlucky are appropriately blamed more, but only in a second innocuous (non-moral) sense of blame, or that the unlucky should feel worse than the lucky, but that they ought not blame themselves, and where we expect them to continue to blame themselves we should recognize that this blame is undeserved.<sup>24</sup>

In response to such views Domsy appeals to Williams who he says expresses perfectly what is so unsatisfying about such views, namely that it is hard to see "what comfort it is supposed to give me, or what instruction it offers to other people, if I am shunned, hated, unloved, and despised, not least by myself, but am told that these reactions are not *moral*."<sup>25</sup> Because Domsy and Williams among other have addressed the arguments of Thomson, Richards and Wolf at length and because I am concerned

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<sup>19</sup> See (Williams, *Moral Luck*, 1981, pp. 36 - 37) and (Nagel, 1979, pp. 28 - 29 and especially fn. 3)

<sup>20</sup> (Domsy, 2004, p. 445)

<sup>21</sup> (Domsy, 2004, p. 446)

<sup>22</sup> (Thomson, 1989), (Richards, 1986), and (Wolf, 2001)

<sup>23</sup> (Domsy, 2004, p. 446)

<sup>24</sup> (Domsy, 2004, pp. 446 and 448 - 453)

<sup>25</sup> (Williams, *Postscript*, 1993, p. 254) cited by Domsy at (Domsy, 2004, p. 451)

primarily with motivating my own defense of moral luck I will not discuss here the arguments of Thomson, Richards, and Wolf or Domsky's criticism of them, except to say that I am generally sympathetic to Domsky's concerns with the general strategy for explaining away the problem of moral luck that Thomson, Richards, and Wolf each employs.<sup>26</sup>

Domsky's project is not merely negative however. Rather, he offers his own solution to the problem of moral luck (hence the subtitle of his article: "Finally Solving the Problem of Moral Luck..."). Like Thomson, Richards, and Wolf, Domsky argues that Intuition 2 is false. Where Thomson, Richards, and Wolf purport to solve the problem of moral luck by pointing to various ways in which we misunderstand what exactly it is that our intuition that our (apparently) moral judgments are vulnerable to luck is tracking, Domsky argues that the intuition is strictly speaking mistaken and that its resiliency can be explained by appealing to a pair of familiar but pernicious psychological biases. The two biases that Domsky suspects are at work are a selfish bias towards moral convictions that favor us personally and an optimistic bias in our assessments of how lucky we are and will be.<sup>27</sup> Without realizing it, Domsky argues, we are drawn toward a moral intuition that allows the morally lucky to free ride on the morally unlucky and the reason we are drawn towards this intuition is that "deep down we believe we are luckier than our peers."<sup>28</sup>

Domsky's appeal to the notion of free riding here is somewhat misleading. What he has in mind though seems to be that we are deeply committed to punishing and/or blaming persons for their negligent behavior, but that for reasons that are deeply rooted in various psychological biases we deflect most of this blame towards the morally unlucky (those negligent actors whose acts culminate in injury or other bad outcomes). Here the idea is that our optimism bias drives us to believe that though we might be just as negligent as our peers, *our* negligent actions are somehow less likely to culminate in bad outcomes. Piggybacking off this bias, our selfish bias then leads us to deflect blame towards the morally unlucky because doing so facilitates more favorable moral evaluations of ourselves because we think our negligence is less likely to result in bad outcomes.

The solution to the problem of moral luck that that Domsky offers is potentially quite powerful, if not unique.<sup>29</sup> If Domsky is right that the particular judgments that give rise to the moral luck problem are rooted in pernicious psychological biases, then he will have resolved the problem (or at least he will

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<sup>26</sup> Though see section 2.3 below where I discuss Brian Rosebury's proposed solution to the problem of moral luck which shares much with Thomson, Richards, and Wolf.

<sup>27</sup> (Domsky, 2004, pp. 453 - 464)

<sup>28</sup> (Domsky, 2004, p. 446)

<sup>29</sup> I say that Domsky's proposed solution to the problem of moral luck is not unique because Gilbert Harman (Harman, 1999) and Edward Royzman and Rahul Kumar (Royzman & Kumar, 2004) have offered alternative solutions to the problem of moral luck that appeal to psychological biases as the source of our (ostensibly mistaken) judgments of particular cases that stand in tension with the belief that our moral judgments should not be sensitive to luck. Harman suggests that it is a "fundamental attribution error", the mistake of underestimating the degree to which behavior is externally rather than internally caused, that explains why our particular judgments that seem to entail that moral judgment is not independent of luck are so resilient. Unlike Domsky though, Harman does not suggest that recognizing that this psychological bias underlies many of our judgments solves the problem of moral luck (presumably this is because he doesn't think all of our problematic judgments can be attributed to such attribution errors). I discuss Royzman and Kumar's view below.

have cast considerable doubt on our reasons for holding onto the particular judgments that generate the problem). Unfortunately, Domsky's solution, which following Daniel Statman I will refer to as the *psychological explanation*, is not any more satisfying than the alternatives he has criticized.<sup>30</sup>

Domsky's psychological explanation suffers from two shortcomings in particular. First, although the psychological explanation offers a novel way of understanding what leads us to make the particular judgments we do that entail that blameworthiness is in many ways influenced by luck, it is far from clear that the psychological explanation can account for all, or even most, of these judgments. Particularly problematic here, is that it is hard to see what exactly the mechanism is whereby the selfish and optimistic biases combine to generate (or push us towards) our firm conviction in the problematic judgments Domsky wants to undermine. For the biases in question to do the work Domsky attributes them they would have to be especially strong and far-reaching, two conclusions which absent any experimental evidence to this effect we should be hesitant to accept.

Especially challenging on this front are our self-directed attributions of blame and feelings of guilt or what Williams has called agent-regret. Few of us are immune to luck and as a result will at some point in our lives have occasion to feel guilt or to blame ourselves for the unlucky consequences of our actions and in these cases we really do feel guilty and blame ourselves. Here the problem is not that we expect others to blame themselves, but do not actually blame ourselves, something which a selfish bias would predict, the problem is that we actually do blame ourselves. Domsky suggests that even these self-directed feelings can be accounted for by our optimistic bias though, noting that to be optimistically biased is to irrationally believe that one has the special skill or foresight to avoid bad outcomes and so when we are ourselves the victims of bad luck we have all the more reason to blame ourselves because we have failed to make use of the foresight we irrationally believe ourselves to have.<sup>31</sup> The problem with Domsky's account here though is that it is simply wildly implausible, or at least he has marshaled very little evidence in favor of it. While many and perhaps even most instances of agent-regret can ultimately be explained in terms of irrational confidence in our own abilities, Domsky provides little empirical evidence for this claim, and he offers no reason at all to think that *all* instances of agent-regret can be accounted for by our psychological biases.<sup>32</sup>

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<sup>30</sup> For a criticism of Domsky that takes a different approach than the one I offer here see (Statman, 2005), from which I have borrowed the name "psychological explanation" for Domsky's solution to the problem of moral luck.

<sup>31</sup> (Domsky, 2004, p. 463)

<sup>32</sup> For another example that puts pressure on this shortcoming in Domsky's account consider our judgments concerning the blameworthiness of others with respect to negligent actions which we have never and don't ever expect to take part in. Here we might imagine someone, call him Andrew, who neither drinks alcohol nor drives, but who nevertheless judges that the drunk driver who kills a pedestrian is deserving of significantly more blame than the drunk driver who despite being negligent gets morally lucky. The problem Andrew presents for Domsky's account is that it is hard to see how it is optimistic and selfish biases that are driving his judgment in this case. Andrew has never been, nor is he likely to ever be a drunk driver (or even a negligent driver for that matter) and so it is hard to see how his differential judgments of the drunk drivers can be attributed to the sort of moral free riding that Domsky's psychological explanation identifies as the culprit. There are I think several responses to the objection that Andrew's case presents that are open to Domsky, because this is not the main concern of this paper I won't consider these here.

The second shortcoming the psychological explanation faces is not so much a problem with the psychological mechanism Domsky proposes, rather it is that his interpretation of the problem of moral luck is far too narrow. Domsky points out that there is a difference between moral luck and ordinary luck, as there surely is, what is problematic though is that he goes on to argue that only negligent agents experience moral luck because he thinks it is only cases involving negligence that give rise to our intuition that blameworthiness should be sensitive to outcomes over which we might have little control.<sup>33</sup> Domsky argues that “ordinary unlucky outcomes are bad, but we do not blame non-negligent agents, if we even blame them at all, according to how unlucky they are.”<sup>34</sup> Here again the problem is that this is just false. While it is true that we occasionally and perhaps even often don’t blame non-negligent agents according to how unlucky they are, there are many instances where we *do* blame non-negligent agents for things that are wholly beyond their control. In section 3.3 I spend considerable time elaborating one example that I think shows this to be true. Domsky’s point though also fails to capture the entire range of moral luck cases, including especially the cases where whether one has done something wrong at all seems to be a matter of luck. To take just one example consider William’s Gauguin who leaves his family to paint in Tahiti. As I suggested at the end of section 1, the force of Williams’s example is that Gauguin’s actions are held to be justified or not depending upon whether or not he succeeds in producing brilliant works, but that this will to a great extent be a matter of luck. While Domsky might try to extend his psychological explanation to account for such cases doing so would further strain the theory and especially the moral free-riding thesis that underlies it.<sup>35</sup>

### 2.3 Royzman and Kumar’s Epistemically Corrupted Evaluation Thesis

Like Domsky, Edward Royzman and Rahul Kumar have proposed a solution (what they call the *epistemically corrupted evaluation* thesis (ECE)) to the problem of moral luck that seeks to de-claw the moral luck phenomenon by showing the particular judgments that give rise to the problem of moral luck are the result of well-recognized epistemic biases.<sup>36</sup> As they describe it, the ECE thesis is that:

In assessing an agent’s accountability, individuals see themselves as taking into account only those considerations that adhere to the control principle, as the correct criteria for assessment, sanction as morally salient. Owing to a propensity towards bias of the general mechanisms employed in making judgments of a certain kind, of which judgments of accountability are but one example, individuals unknowingly misidentify those considerations. They therefore take into account as relevant considerations that are not in fact sanctioned as relevant by the control principle criteria of assessment, though it is the operative principle guiding assessments of responsibility.<sup>37</sup>

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<sup>33</sup> (Domsky, 2004, p. 448)

<sup>34</sup> (Domsky, 2004, p. 448)

<sup>35</sup> I should note at this point that Domsky is not alone in assuming that moral luck only arises in cases where negligence is also present, but as I have said I think this is a mistake. I return to this point at length in section 3.

<sup>36</sup> (Royzman & Kumar, 2004)

<sup>37</sup> (Royzman & Kumar, 2004, p. 336)

Though Royzman and Kumar present the ECE thesis as a single claim, it is actually advanced in two parts. First they argue that experimental evidence demonstrably confirms the existence of the moral luck phenomenon.<sup>38</sup> The second and more significant part of their argument then suggests that the particular judgments that give rise to the moral luck phenomenon can (at least in some cases) be shown to be the result of epistemic bias. Here the specific bias Royzman and Kumar appeal to is the 'I know, you know' bias, a relative of 'hindsight' bias, where the biased subject tends to falsely assume that information to which she has privileged access will be shared by others.<sup>39</sup>

As Royzman and Kumar point out, the significance of identifying epistemic bias as a possible source of the moral luck phenomenon is that contra the Nagel/Williams view our judgments of particular cases need not be thought to stand in real tension with or have revisionary implications for the regulatory status of the control principle.<sup>40</sup> Having argued that our particular judgments do not cast doubt on the regulatory status of the control principle for assessing responsibility, the alternative thesis Royzman and Kumar propose (ECE) offers a way of holding onto the control principle in the face of these judgments. In advancing the ECE thesis however Royzman and Kumar are careful to point out that more work has to be done in order to fully substantiate their case.<sup>41</sup> In particular, they acknowledge they do not provide a positive defense of the control principle; rather they merely take themselves to be showing how the moral luck phenomenon need not be thought to be a problem for someone interested in defending the control principle. They also acknowledge though that the extent of the explanatory power of the ECE thesis has yet to be fully explored and as a result it might ultimately account for only part of the consequential moral luck phenomenon.

Before moving on I want to draw attention to one last aspect of Royzman and Kumar's solution to the moral luck problem. Although Royzman and Kumar are aware of the limits of what they have shown, the thesis they defend offers a powerful challenge to Nagel and Williams, and other would-be defenders of moral luck. Having made their case for the ECE thesis, Royzman and Kumar argue that at the very least they have shown that:

Those who would look to the experimental data used to establish the reality of the consequential moral luck phenomena as evidence for RV [Royzman and Kumar's label for views like Nagel's and Williams's that defend moral luck] should . . . look elsewhere. . . . . citing case-specific intuitions as evidence for the RV thesis will not provide the RV thesis the kind of support it needs. What is required is a general theoretical argument concerning the moral importance, or value, of taking into account, as relevant for assessments of individual culpability, considerations whose relevance could not have been reasonably foreseen. The case in favor of the Nagel/Williams understanding of the significance of the moral luck phenomena turns, to an extent not generally recognized by its proponents, on the plausibility of some such theoretical argument. For if ECE is

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<sup>38</sup> (Royzman & Kumar, 2004, pp. 333 - 335)

<sup>39</sup> (Royzman & Kumar, 2004, pp. 335 - 342)

<sup>40</sup> (Royzman & Kumar, 2004, p. 342)

<sup>41</sup> (Royzman & Kumar, 2004, p. 342)

defensible as a plausible interpretation of the experimental data, it can no longer be cited as providing even a presumptive case in favor of the Nagel/Williams view.<sup>42</sup>

Royzman and Kumar's challenge to the moral luck defender is that our confidence in the particular judgments that give rise to the moral luck phenomenon can no longer be taken at face value. As such any defense of moral luck will need to offer convincing reason for holding onto these judgments that goes beyond appealing to the mere fact that we do make such judgments. The reason for emphasizing the challenge Royzman and Kumar levy here is that it is my hope that in section 3 I will provide just the sort of argument that they call for, and in doing so provide the foundation for a more satisfying defense of moral luck.

## **2.4 Is the Problem of "Moral Luck" a *Moral* Problem?**

In his own attempt to solve the problem of moral luck, Brian Rosebury has defended an account of moral responsibility that more or less extends the control principle in a way consonant with the fact that, as he argues, "epistemic inquiry is an indissoluble part of moral responsibility in a world of intellectually and morally fallible persons."<sup>43</sup> At the heart of Rosebury's account is his recognition that practical moral decision-making invokes separate (if related) questions of means, knowledge, and values.<sup>44</sup> Rosebury's point is that in morally evaluating our choices and actions, intentions are not all that matter. Here Rosebury appeals in part to our normal practices, pointing out that: "conspicuous failures to pay attention to the relevant circumstances of our actions or to predict realistically their consequences, tend in fact, however virtuous our intentions, to attract a distinctively moral kind of censure."<sup>45</sup> Ultimately, on Rosebury's view, the lesson is that if we are to avoid criticism our moral choice and action must be mediated by a suitably appropriate degree of epistemic investigation. Presumably though, the degree of epistemic care it is appropriate to hold one another to will vary in proportion with the seriousness of the choice being made (or act being committed) and must also reflect, as Rosebury is careful to point out, that setting the standards too high runs the risk of holding us captive to a disabling perfectionism.<sup>46</sup> The key to moral evaluation on Rosebury's view then is that one distinguishes "between decision making vitiated by avoidably and by unavoidably insufficient knowledge, by culpably and by non-culpably ineffective deployment of knowledge."<sup>47</sup>

Though the account of moral responsibility that he develops is consonant with the control principle, Rosebury shifts the focus of our moral assessment away from control and towards the epistemic context in which decisions are made and actions undertaken. Rosebury then goes on to argue that once we understand responsibility in the way he suggests the phenomena that supposedly requires moral luck as part of their explanation become fully explicable without it. Here, Rosebury's argument relies heavily on the idea that our judgments of praise and blame that are problematic to the degree

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<sup>42</sup> (Royzman & Kumar, 2004, p. 339)

<sup>43</sup> (Rosebury, 1995, p. 499)

<sup>44</sup> (Rosebury, 1995, pp. 499 - 505)

<sup>45</sup> (Rosebury, 1995, p. 500)

<sup>46</sup> (Rosebury, 1995, p. 503)

<sup>47</sup> (Rosebury, 1995, p. 500)

that they are sensitive to factors beyond the responsible agent's control and thus in conflict with his variant of the control principle, are in principle correctable with sufficient reflection.<sup>48</sup> Rosebury doesn't however tie himself to the claim that reflection *will* lead us to give up the incorrect moral judgments we find ourselves making, nor does he think this reflects fault in our moral characters though. Indeed, Rosebury argues that it is *appropriate* that an ineliminable part of our moral practice is that we go on blaming those who do not *deserve* to be blamed and perhaps worse still those who are blamed do not even have the recourse of justifiable complaint (about such practices).<sup>49</sup> The reason for this is that like moral choice, moral judgment takes place within imperfect epistemic conditions: in making moral judgments we seldom (if ever) have access to all of the relevant evidence and as moral judges we are also epistemically fallible, occasionally making mistakes in how we interpret the evidence that is available to us. All this Rosebury thinks suggests "not that morality is subject to luck, but that moral choice is often very lonely, and one cannot necessarily comfort oneself with the thought that in the fullness of time one's action will be praised by other people."<sup>50</sup>

On Rosebury's view the phenomenon that initially presents itself to us as moral luck is reinterpreted so that what initially appeared to be moral luck is now luck of a different sort, namely that in the world we live in moral judges seldom if ever have access to all the information needed to make an all things considered moral judgments. Despite this we do not have reason to give up our moral practices though for imperfect as they may be they play an important role in structuring our lives. One way of understanding Rosebury's point then is that the appropriateness of moral judgment is not the relevant moral truth-maker, and once we realize this we are in a position to realize that what once appeared to be moral luck is not really moral at all.

The problem Rosebury's account faces is that it is hard to see how he can maintain the division between those judgments, choices, and actions that are properly thought of as moral and those that are not. Rosebury supports his claim that moral choice is lonely with the observation that:

No doubt some people are unlucky to face more testing, more lonely, and more frequent moral choices than others, and to incur incorrect but practically uncorrectable blame more often than others. But that is not "moral luck," since a fully informed observer would be in a position to make a just evaluation taking account of these variations in the agent's moral opportunities and challenges. It is just bad luck (or good luck) for a person's happiness that certain facts that would affect his reputation if known remain unknown. (Rosebury, 1995, p. 521)

Here Rosebury directs our attention to the fact that recipients of undeserved blame are in fact victims of luck, but this luck is not moral because "a fully informed observer" would not apportion blame to those

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<sup>48</sup> (Rosebury, 1995, p. 514)

<sup>49</sup> Of course it is not strictly speaking true that the recipients of undeserved blame have 'no justifiable complaint' as I have said here, after all they don't deserve the blame, what I mean is simply that the unlucky recipients of undeserved blame cannot complain *to others* and expect their complaints to be accepted by those others as reason to stop what they are doing (blaming the unlucky person in question).

<sup>50</sup> (Rosebury, 1995, p. 521)

who do not deserve it. The problem with this is that our morality is not a morality for ideal observers, but rather a morality for ordinary, epistemically fallible agents and more importantly, ours is a morality in which we make judgments without having access to all the evidence *and this seems appropriate*.<sup>51</sup> Of course when we make such less than fully informed judgments we are (at least occasionally) doling out undeserved blame, the important point though is that although this blame is undeserved it remains blame nonetheless and as I will argue in section 3 this blame has a distinctively moral flavor.<sup>52</sup> That Rosebury fails to see this is particularly surprising given that his account is built up in part from our ordinary practices and especially given his recognition that “the assessment of another’s actions is itself a *morally significant action*.”<sup>53</sup>

## 2.5 Blameworthiness and Blame-related Reactions

Like both Domsky and Royzman and Kumar, David Enoch and Andrei Marmor have articulated a view which tries to undermine our conviction in the intuition that blameworthiness is sensitive to luck and that our judgments of particular cases support this intuition.<sup>54</sup> Enoch and Marmor though don’t argue, pace Domsky or Royzman and Kumar, that our case specific judgments are the result of bias, rather they argue that our case specific judgments are not actually evidence for what we typically take them to be evidence of, viz. that the blameworthiness of an agent is appropriately influenced by circumstances beyond her control.<sup>55</sup> Enoch and Marmor’s argument relies on an important distinction between moral blameworthiness and the appropriateness of blame-related reactions, a distinction which they suggest we look past when we take our case specific judgments to support the intuition that blameworthiness is sensitive to luck.<sup>56</sup> By overlooking this distinction, they argue, we are led to incorrectly infer from the appropriateness of our blaming someone to the (false) conclusion that the recipient of such blame is thereby morally blameworthy.<sup>57</sup>

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<sup>51</sup> It is of course not obvious that there is no room in our morality for the idea of ‘ideal observers’ and I don’t mean to be arguing for *that* thesis. There are countless philosophers who have developed moral theories in which there is an important role carved out for an ideal evaluative standpoint. While I am skeptical of that approach I want to allow for its possibility. What I am arguing here is merely that Rosebury has not argued for such a conception of morality and further he has not shown how such a conception would support the idea he argues for that our normal practice in which we occasionally apportion blame to those who don’t deserve it doesn’t generate a problem of moral luck.

<sup>52</sup> Another way of putting the point is that, as Rosebury knows, there are no ideal observers and so the problem of blaming those who don’t deserve to be blamed is pervasive and that the problem is so pervasive, indeed that it characterizes our *normal* practice, gives us reason to think that the problem is a moral problem.

<sup>53</sup> (Rosebury, 1995, pp. 503, emphasis added)

<sup>54</sup> (Enoch & Marmor, 2007)

<sup>55</sup> Note that Enoch and Marmor’s argument is similar in many respects to the arguments of Thomson, Richards, and Wolf that Domsky criticizes.

<sup>56</sup> (Enoch & Marmor, 2007, pp. 411 - 417) One way of understanding the distinction that Enoch and Marmor suggest is that: “Questions of blameworthiness are about the truth or falsehood of attributions of blame. Questions of the justification of blame-related reactions are practical questions, about the justification of actions or attitudes. The former call for epistemic reasons to decide them, the latter for practical ones.” (413).

<sup>57</sup> More specifically, the false inference we are supposed to be drawing is from the judgment that it is appropriate to blame (or punish) someone more for an act with bad consequences (where these consequences are due to factors beyond the agent’s control) than for a similar act without such consequences to the conclusion that the

In distinguishing between blameworthiness proper and the appropriateness of our blame-related reactions Enoch and Marmor's case against moral luck shares much with Brian Rosebury's view (discussed in section 2.4 above). Unfortunately Enoch and Marmor's case also shares many of the difficulties that Rosebury's view faces. In particular, it's not clear that the distinction between blameworthiness and blame-related reactions can do the heavy lifting that Enoch and Marmor suggest it can.

For Enoch and Marmor the distinction between blameworthiness and blame-related actions supports their argument that there is no genuine moral luck phenomenon in two ways. First, following Rosebury, they argue that there are epistemic considerations that justify different blame-related reactions to otherwise identical cases of blameworthiness.<sup>58</sup> Second, Enoch and Marmor point out that consequential luck typically arises in cases of risky activities and they suggest that our blame-related practices that seem to raise a problem of moral luck can in fact be justified by the need to internalize the risks associated with our various activities.<sup>59</sup> The problem with Enoch and Marmor's argument here, like the problem with Rosebury's argument I pointed out earlier, is that even accepting the distinction they draw between blameworthiness and blame-related reactions, it is hard to see how our blame-related reactions, which include practices like punishment, don't count as moral.<sup>60</sup> This becomes especially clear when one looks at the argument that our blame-related practices might be justified by the need to internalize the risks of many of our activities.

Enoch and Marmor make much of their largely undefended claim that moral responsibility for the assumption of risks should only depend on those factors that are available to an agent *ex ante*. This is important given a second stipulation they make that blameworthiness is solely a function of moral responsibility.<sup>61</sup> Having stipulated these two points, they argue that the question of who should bear the costs of various risky activities is not a matter of moral responsibility, but rather a question that belongs to the realm of distributive justice. Having made this move, Enoch and Marmor seem to think that they have dissolved the problem of moral luck. The problem though is that, at best, all they have succeeded in doing is to insulate our notion of moral responsibility (and perhaps also blameworthiness) from the influence of luck, pushing the lump under the rug as it were to a different albeit *distinctly moral* domain, namely distributive justice. While this might be significant,<sup>62</sup> it should leave us at least somewhat

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agent is more *blameworthy*, where her blameworthiness is supposed to correspond to the degree that she is morally responsible for the action (and its consequences).

<sup>58</sup> (Enoch & Marmor, 2007, pp. 415 - 416) Among these considerations are the imperfect epistemic conditions which provide the background against which moral judgments are made and especially the fact that actual results often have evidential value.

<sup>59</sup> (Enoch & Marmor, 2007, pp. 416 - 417)

<sup>60</sup> I should note that although I am willing to grant it for the sake of argument, I am skeptical, for reasons related to the argument I lay out against Rosebury in section 2.3, of the distinction between blameworthiness and blame-related actions and attitudes.

<sup>61</sup> (Enoch & Marmor, 2007, p. 412)

<sup>62</sup> Though there is reason to doubt even this. While I think their account fails independently for the reason just discussed, Enoch and Marmor's account of moral responsibility and their related argument that responsibility is immune from luck similarly fails to be convincing. In an example similar to those discussed in section 1 above, Enoch and Marmor consider the case of two reckless drunk drivers, Brian and Arnold, one of whom kills a

unsatisfied giving the rather broader aims of Enoch and Marmor's paper that presents itself as a "case against moral luck." Perhaps, I have been unfair to Enoch and Marmor though. One could read them as simply arguing that the influence of luck on morality (or distributive justice as the case might be) is not problematic because our blame-related reactions are justified. Notice though that this should leave us similarly unsatisfied given that their stated goal is to offer a case against moral luck and not, as this reading would have it, to be giving us an account of why moral luck is not problematic.<sup>63</sup>

### **3. Defending Moral Luck: A New Conception of Responsibility and Why Moral Luck Is No Longer a Problem**

In the previous section I discussed several of the most promising strategies for explaining the phenomenon of moral luck. At several points along the way, I also argued that each of the accounts discussed fails in some way to be completely satisfying. Though the accounts I have discussed vary along several dimensions, their collective failure can ultimately be traced back to a single source, namely each account is framed in terms of an impoverished conception of responsibility. What impoverishes the operative conception of responsibility in each of the competing views so far discussed is that they fail to recognize the multi-dimensional nature of responsibility. In this section I will put forward a conception of responsibility that takes this multi-dimensionality seriously. The account I offer is not entirely my own though, rather I borrow the account of responsibility recently developed by Benjamin Zipursky as a part of his own effort to solve the problem of moral luck.<sup>64</sup>

Although I am borrowing Zipursky's account of responsibility I do not mean to merely rehash it in what follows. While I think Zipursky's account of responsibility provides the resources for solving the problem of moral luck once and for all, I don't think he has offered the final words on the issue. In particular, Zipursky doesn't engage with much of the philosophical literature on moral luck. A principal aim of this part of the paper then will be to show why Zipursky's two-dimensional account of

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pedestrian (Brian) and one of whom gets lucky and does not (Arnold). They then argue that in order to show that our conception of moral responsibility is susceptible to luck: "What we need is a reason to hold Brian morally responsible for his reckless drunken driving under the description of a killing, and not just under the description (of a reckless drunken driving) that equally applies to Arnold. But any such reason will just be a reason to acknowledge moral luck. At the present stage of the argument, just assuming from the start that Brian is morally responsible for his action under the description of a killing would be a clear case of begging the question against the denial of moral luck." (411). Here they accuse the defender of moral luck of begging the question against the denial of moral luck, and they are certainly right that in order to establish that there really is moral luck some sort of argument needs to be given, but surely the critic of moral luck faces a similar burden. Enoch and Marmor though simply stipulate that the control principle is the correct account of moral responsibility and they do not defend *it* from any counter-arguments. Perhaps this is because they don't see any sufficiently pressing counter-arguments to the control principle. If that is the case I hope that the account of responsibility I develop in the next section (3) will offer just such a counter-argument to their view.

<sup>63</sup> Here it should be emphasized that Enoch and Marmor *do not* take themselves to be giving an argument against the role of luck in our lives, their argument is simply that there cannot be moral luck. They are careful to point out that "a denial of moral luck need not entail that life in general should be immune from luck, as it were" (Enoch & Marmor, 2007, p. 417). The problem I have tried to show with their view though is that while they deny that there is moral luck, one of the aspects of our lives where they suggest luck might be pervasive is related to the question "who should bear the costs of risky activities?" and as I have argued this strikes me as a distinctly moral question.

<sup>64</sup> (Zipursky, 2008)

responsibility is both better able to account for the phenomenon of moral luck than the alternatives discussed above and also importantly why it doesn't face the sort of difficulties that I have pointed to in each of those accounts. A second and equally important aim will be to defend Zipursky's account of responsibility and especially what he calls the 'agency-linking' dimension of responsibility from the objection that although the agency-linking dimension of responsibility might have a place within our legal conception of responsibility, it is not a part of our *moral* conception of responsibility. This is an objection that Zipursky anticipates and although he deals with it at some length, he fails to fully dispense of it. The argument which follows then will develop and extend the argument Zipursky gives for thinking that the agency-linking dimension of responsibility is morally salient. Ultimately, my hope is that in doing this I will sure up the case for thinking that Zipursky's account provides the resources for finally solving the problem of moral luck.

### **3.1 Zipursky's Account of Responsibility: Multi-dimensionality and Normative Vulnerability**

Zipursky distinguishes between two dimensions of our concept of responsibility – the first he labels *fault-expressing responsibility* and the second *agency-linking responsibility* – and this two-dimensional concept of responsibility he suggests is at home in three distinct, though related normative domains: tort law, criminal law, and conventional morality. Fault-expressing responsibility captures the idea that one's responsibility (or blameworthiness) for one's acts "is fundamentally a matter of the degree to which one's acts constitute conduct that expresses one's character or faultiness," while agency-linking responsibility relates to the notion that "the degree to which a person is responsible for some event is dependent upon whether that event is a doing, or an action, of that person."<sup>65</sup> As Zipursky points out, it is the fault-expressing dimension of responsibility that is more familiar in today's moral discourse.<sup>66</sup> More important for our purposes here, it seems to be the conception of responsibility as intrinsically fault-expressing that most critics of moral luck have in mind and this is especially true of those who think something like the control principle captures the whole of our concept of responsibility. Perhaps most important though is that although the fault-expressing conception of responsibility is the dominant conception of responsibility in the minds of most, there is a sense in which our normative practices in each of the three domains Zipursky points to are not fully explicable without (at least implicit) appeal to a concept of responsibility that includes something like the agency-linking dimension he identifies.

If as I suggest our normative practices can't be made sense of without appealing to something like Zipursky's agency-linking conception of responsibility we seem to be left with three options:

1. We adopt a radically revisionary stance with respect to many of our normative practices. Here we might actually be seen to have two options: either, we reject as unjust or otherwise

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<sup>65</sup> (Zipursky, 2008, p. 99) As Zipursky points to in a footnote to the former passage, neither "negative attributes of character" nor "faultiness" are fully adequate terms to denote what is meant to be captured as part of "fault-expressing responsibility". Because it is considerably clearer what is meant to be captured by "agency-linking responsibility" however, and also because fault-expressing responsibility is the sense of responsibility that is more familiar in our moral discourse, this is not a place where lack of clarity might detract from the strength of Zipursky's argument.

<sup>66</sup> (Zipursky, 2008, p. 99)

incorrect many of our practices of punishing, blaming, and holding one another liable, or following Williams we defend these practices but we do so together with a revised conception of the place of morality in our lives.

2. We accept most, if not all, of our normative practices as they are, but we try to disentangle these practices from our morality.
3. We accept with Zipursky that our concept of moral responsibility really is two-dimensional and that we can be responsible for some things simply in virtue of being causally implicated in bringing them about.

The various views discussed in section 2 are each versions of one of the first two options above and as I have argued none of these is fully satisfying.<sup>67</sup> While I have so far only offered arguments against particular versions of options 1 and 2 above, I think there is reason to be skeptical about the prospects of these respective strategies more generally. Although I will not argue for this claim, I hope that what I say in the remainder of this section and in the following section (section 4) will provide yet more reason to reject the first two options in favor of the third.

Having suggested that our concept of responsibility really is two-dimensional, the pressing question is why there is a dimension of responsibility that is agency-linked? Perhaps even more important though is the further question whether upon reflection we are able to endorse an account of moral responsibility that includes an agency-linking dimension (and which brings with it the influence of consequential luck on our responsibility)? Let us now deal with these questions in the order they are posed, for the answer to the second will draw on the first.

Zipursky looks to tort law to shed light on why we need an account of responsibility that is agency-linked. Zipursky points out that when a tort action is brought against a defendant, the matter of law in question is whether the defendant was responsible for having wrongfully injured a plaintiff. What is illustrative about tort actions is the nature of the responsibility they delineate. Here Zipursky observes that in a tort action:

The holding-responsible is not . . . for an outcome. Nor is it . . . for a breach of a duty of non-injuriousness — negligence in the air. It is holding responsible for a complex, result-embracing act — a breach of a qualified duty of non-injury — the negligent injuring of the plaintiff by the defendant. And [the tort action] is literally a responding-to—an exacting of damages from—the defendant who injured the plaintiff.<sup>68</sup>

The point here is not that there are no duties of non-injuriousness, or that responsibility doesn't track these — surely, we can be responsible for breaching duties of non-injuriousness. Rather, the point is that

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<sup>67</sup> At this point it will be helpful to briefly discuss where each of the views already discussed fit into the logical space just carved out. Domsky and Royzman and Kumar can each be read as adopting the first strategy. Nagel (and obviously Williams as well) can be read as adopting the second version of first strategy; here instead of being revisionary about our practices however they are revisionary about our concept of morality, and our concept of responsibility in particular. On the other hand, Rosebury along with Enoch and Marmor adopt their own versions of the second strategy.

<sup>68</sup> (Zipursky, 2008, p. 104)

*in tort actions* defendants are being identified by and (when found guilty) held responsible for breaching duties of non-injury. Even this latter point is somewhat ancillary though. The real point is that without an agency-linking dimension, our concept of responsibility would lack the resources needed to make the sort of fine-grained distinctions needed to make sense of our tort practices.

From the point of view of a conception of responsibility that includes only the fault-expressing dimension, it makes little sense to distinguish breaches of duties of non-injuriousness from breaches of duties of non-injury. After all, as Zipursky points out “the same degree or kind of fault is manifested or expressed whether the act ripens into injury or not.”<sup>69</sup> If what we are doing when we are holding persons responsible is implicating their character then, it makes no sense for our apportioning of responsibility to track breaches of duties of non-injury and not duties of non-injuriousness. Yet, as Zipursky argues, the distinction between duties of non-injuriousness and duties of non-injury *is* central to tort law. In tort actions we *do* hold defendants differentially responsible depending upon whether their negligent acts result in injury. The question then is what we are doing in these cases, or perhaps more accurately what we are saying about a person when we do this?

Here, Zipursky notices that when we find a defendant guilty in a tort-action and thus hold her responsible for breaching a duty of non-injury, we are not expressing anything about her character over and above what might be indicated by her having breached the associated duty of non-injuriousness. What we are doing though is saying of her that she is vulnerable to a certain sort of response that she would not have been vulnerable to had she merely been guilty of breaching a duty of non-injuriousness. In the case of a tort action the vulnerability in question is to a plaintiff who can exact damages from her and the reason we think the plaintiff is entitled to exact damages from the defendant is not because the defendant acted negligently and in doing so breached a duty of non-injuriousness, rather the defendant is vulnerable to the plaintiff because in so acting the defendant injured the plaintiff.<sup>70</sup> In tort law then, the kind of response a plaintiff will be vulnerable to will be a function of both an event being appropriately linked with her agency and of whether her conduct displayed fault or violated some other relational norm of conduct and as Zipursky points out neither of these two conditions is sufficient.

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<sup>69</sup> (Zipursky, 2008, p. 100)

<sup>70</sup> (Zipursky, 2008, p. 104) Alternatively one could argue that in tort actions defendants really are being held liable for breaches of duties of non-injuriousness, and that it is simply the fact that ours is a system in which only plaintiffs who have been wronged can seek damages that explains why it is only those defendants whose actions culminate in injury that are subject to tortious liability. The idea here is that absent a negligent act culminating in injury, it will not be possible to identify a wronged party. On this account then, it really is the case that defendants in tort actions are *only* being held responsible for breaching duties of non-injuriousness, but the distinction between duties of non-injuriousness and duties of non-injury is still playing an important epistemic function. Something like this argument seems to be what both Rosebury and Enoch and Marmor have in mind when they argue that our blame-related practices are justified, but that the sense of responsibility these practices involve (if such a concept is involved at all) is not a moral concept. While this might be a plausible account of the nature of tort law (a matter I don't want to take a stand on here), notice that it clearly commits one to accepting the influence of luck on some of our normative practices (in this case tort liability). As I suggested in sections 2.4 and 2.5 and as I discuss in more detail in section 3.2 below the significance impact that the apportionment of tortious liability can have on the lives of both the victim/plaintiff and the tortfeasor/defendant suggests that the influence of luck in these cases is a distinctly moral brand of luck.

Extrapolating from the example of tort liability, Zipursky suggests that tort law shows us two things about our concept of responsibility. First, responsibility is one of a family of concepts of normative vulnerability so that the question of whether someone is responsible for some unwelcome event is a matter of “whether a kind of response to the event may legitimately be visited upon that person.”<sup>71</sup> For Zipursky though, just as significant as the move to understanding responsibility as one of a family a concepts of normative vulnerability, is the fact that the vulnerability in question is in response to something and typically an action. In other words, holding an agent responsible is always a matter of holding her responsible *for something* and this is true even if one thinks of responsibility or blameworthiness only in a fault-expressing sense because responsibility will always be a matter of fault *as expressed by an act or choice*. The second lesson Zipursky draws from our legal practices then is that actions can be evaluated in both result-abstracting and result-embracing ways and as he notices, the latter are often just as important as the former when it comes to determining whether an agent bears responsibility for some event.

Taken together these two facts about the nature of our concept of responsibility imply that when we hold an agent responsible for something and thus say of her that she is vulnerable to a certain kind of response, the kind of response the agent will be vulnerable to will be a function of both an event being appropriately linked with her agency and of whether her conduct displayed fault or was in some way indicative of a flaw in her character. In other words responsibility is, as Zipursky has suggested, multi-dimensional. When we hold someone responsible for something what we are doing is both implicating her character or at least a particular choice or action of hers *and* identifying her as the cause of some event in the world for which she is being held responsible.

For Zipursky this is especially significant because on his view consequential luck (what he calls ‘causal luck’) “seems paradoxical only when we assume that responsibility, liability, blameworthiness, and punishability are and ought to be dependent entirely on faultiness expressed and choices made.” However as he points out, on his view “what a person is responsible for having done and what she may be blamed for doing are also a function of whether various untoward events are not simply events, but actions *of that person*.”<sup>72</sup> If Zipursky is right about these two things (that is if he is right about when consequential luck is paradoxical and also about what we are doing when we hold one another responsible for certain events) then his account of responsibility provides the resources for dealing with the problem of moral luck. The question of course is whether he *is* right, and if he is, whether the sort of responsibility that stems from one’s agency being bound up with some untoward events that is in fact a moral sense of responsibility, for this is what Zipursky needs if he is to distinguish his view from those others that argue that there can’t be *moral* luck.

Having sketched a model of our concept of responsibility built up from our tort practices, Zipursky then argues that our concept of moral responsibility is structurally similar. Zipursky’s argument that our moral concept of responsibility is multi-dimensional in the way he suggests relies in large part

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<sup>71</sup> (Zipursky, 2008, p. 100) Zipursky suggests that the family of concepts of normative vulnerability includes among other things blameworthiness and liability.

<sup>72</sup> (Zipursky, 2008, pp. 99 - 100)

upon two things. First is the distinction between result-embracing and result-abstracting descriptions of actions or events and the way these influence our moral judgments including especially attributions of blame. Second, and related to the first, is the argument that blameworthiness is a concept of normative vulnerability.<sup>73</sup> Zipursky notices that although it is possible to describe acts in a way that abstracts from the consequences of the action, we can also describe acts in ways that embrace their consequences. Here Zipursky appeals to both Nagel and John Gardner, pointing out that “it is not justifiable to suppose that the referents of the act description that abstracts away from results are for that reason somehow metaphysically prior to the referents of the act description that embraces the injury.”<sup>74</sup> This is important and sets Zipursky apart from other moral luck commentators who by and large prefer to talk only in terms of result-abstracting descriptions of actions. What is more important here though, as Zipursky notices, is not just that acts can be described in both result-abstracting and result-embracing ways, but that the world contains both result-abstracting and result-embracing acts and that to constrain our agent directed moral discourse to just the former is to leave us with an impoverished conception of morality. Further as Zipursky surely also notices though he does not point this out, there is a sense in which our moral evaluations that rely on result-abstracting descriptions of acts supervene on result-embracing descriptions of acts. So for example, the reason that acts of negligence open one up to moral criticism is that occasionally acts of negligence culminate in injury or if not injury some other sort of bad. Were it not the case that occasionally the result-embracing descriptions of negligent acts included as an important part an injury, there would be no reason for result-abstracting descriptions of negligence to be morally significant.

For Zipursky though, more important than the relationship between result-embracing and result-abstracting descriptions of acts just discussed, although related to this, is that responsibility is always a matter of responsibility for something and it is this fact that explains why the agency-linking dimension of the concept is important.<sup>75</sup> This is perhaps best described by Zipursky in the following long passage:

The question of responsibility is to some extent a question of responsibility for what has happened. But the question is really whether the injury is something that should be regarded as merely having happened, or as an action for which a person is responsible, an injuring of someone by someone. Given that the negative consequences did indeed occur, then if certain agency conditions are met, it will be regarded as a doing of the

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<sup>73</sup> Notice that these are the two lessons that I suggested Zipursky draws from our tort practices.

<sup>74</sup> (Zipursky, 2008, p. 113)

<sup>75</sup> Michael Zimmerman makes a similar observation when he draws a distinction between ‘degree of blameworthiness’ and ‘blameworthiness-for’ (See (Zimmerman, Luck and Moral Responsibility, 1987) and (Zimmerman, Taking Luck Seriously, 2002)). Zimmerman’s idea is that the negligent driver who kills and the negligent driver who gets lucky and does not share the same degree of blameworthiness, but the former is ‘blameworthy-for’ something that the latter is not, namely a killing. While Zimmerman’s view is perhaps similar to both Zipursky’s view and my own, I am hesitant to embrace Zimmerman’s distinction. One place where I think Zimmerman’s view comes apart from my one is that I think there are cases where luck bears not only on what we are blameworthy for, but whether we are blameworthy *at all* (I develop this idea in greater detail in section 3.3). For this reason I prefer to stress the distinction between the fault-expressing and agency-linking dimensions of responsibility.

person who injured the complainant. Then we can move to the next question, if we wish, of the degree to which this is a reflection of certain aspects of the agent's faultiness. As mentioned, there is a sense in which the answer to this question would be the same if things had not ripened into injury. But the attribution of responsibility and blame is not simply about the nature of the character or fault expression through the conduct of the actor. It is also about the specification of the set of actions for which they are to blame and for which they are responsible, and whether the sets of actions differ in the two cases.<sup>76</sup>

This is where Zipursky most clearly lays out the claim that our concept of responsibility is multi-dimensional, involving both an agency-linking dimension and a fault-expressing dimension. Although he suggests that these two can come apart, in practice they tend to go together. Further and perhaps more significant though is the fact that our practices of blaming and holding one another responsible invoke a concept of responsibility or blameworthiness that is ambiguous between these two senses.

As Zipursky realizes, there are broadly speaking two types of responses to actions or events that typify our moral practice. The first involves appraisals and the second reactive judgments. This observation by itself isn't particularly novel, where Zipursky's contribution lies however is in his recognition that it is appraisals that relate to the fault-expressing dimension of our concept of responsibility while our reactive judgments are more clearly bound up with the agency-linking dimension though they might implicate the fault-expressing dimension as well. For Zipursky this is especially significant because our reactive judgments are paradigmatically moral.<sup>77</sup>

### **3.2 From the Legal to the Moral: How Our Legal Practices Can Help Flesh Out Our Moral Concepts**

At this point one might be willing to grant that there are good reasons for thinking that our legal concept of responsibility includes something like what Zipursky calls an agency-linking dimension. All along though the pressing question has been whether this suggests anything about our moral concept of responsibility. As Brian Rosebury points out, the objection, over-blunt as it may be, is that "law is different from morality, and that, consequently, legal examples do not tell against an idea of moral responsibility."<sup>78</sup> Rosebury's objection is that the law is essentially an instrument for promoting well-being, primarily through maintaining social order, and that as such it must be sensitive to a range of second-order objectives directed towards that aim.<sup>79</sup> Here Rosebury notes that one of these objectives will be "to maintain a sufficient, but not necessarily an exact correspondence of law with morality."<sup>80</sup> Because the concern for maintaining a correspondence between our moral and legal conceptions of responsibility is only one of the many considerations which inform our institutional conception of legal

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<sup>76</sup> (Zipursky, 2008, pp. 120 - 121)

<sup>77</sup> In this sense Zipursky follows Strawson.

<sup>78</sup> (Rosebury, 1995, p. 522)

<sup>79</sup> (Rosebury, 1995, pp. 521 - 524)

<sup>80</sup> (Rosebury, 1995, p. 522)

accountability though, on Rosebury's view it is appropriate (even if perhaps unfortunate) that these two notions of responsibility will occasionally come apart. As he recognizes:

In order to have confidence in [our legal order] and to identify with it members of society will need to feel that their stronger moral sentiments are not offended by its laws, but there may not be the same necessity for them to feel that all their moral judgments are given legal force.<sup>81</sup>

The lesson Rosebury draws is two-faced, albeit not in a bad way. First he points out that it is important that our concept of legal responsibility not offend our moral sense. Second though Rosebury notices that there will be a range of epistemic, pragmatic, and indeed other moral considerations that give us reason to think it appropriate for our legal and moral conceptions of responsibility come apart, and in some cases to prefer that they come apart.<sup>82</sup>

Rosebury's objection presses a powerful point, one with which I am in fact sympathetic. There *is* good reason for our legal and moral concepts to come apart. Rosebury's argument proceeds too quickly however. Having defended a luck-free conception of moral responsibility and having also objected to the suggestion that our legal practices tell against this conception, Rosebury concludes his argument with the observation that:

If it is intelligible to a reflective citizen, as it is, that [our institutional conception of legal accountability] will sometimes diverge from [our conception of moral responsibility] for political reasons that outweigh, but do not negate, optimally fair assessment of moral blameworthiness, there is no basis for supposing that the collective consent given to legal accountability undermines the coherence of the luck-free conception of moral responsibility.<sup>83</sup>

Where Rosebury's argument moves too quickly is with his assertion that political reasons, or for that matter other prudential considerations, actually do outweigh the concern that our legal practices closely track our judgments of moral blameworthiness. While Rosebury seems willing to grant that *ceteris paribus* our legal practices are more justifiable to the extent that they don't come apart from our conception of moral responsibility, he doesn't seem especially concerned by the extent to which they *do* come apart. What I want to suggest contra Rosebury is that although our legal and moral conceptions of responsibility need not be thought to be conceptually linked in any tight way, our legal practices become hard to justify the farther apart they come from our concept of moral responsibility and given that they do come rather far apart we are left with a pressing problem.

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<sup>81</sup> (Rosebury, 1995, p. 522)

<sup>82</sup> Rosebury points out that achieving an exact correspondence between our legal and moral desert would require extensive intrusions upon our private lives, something which offends many of liberal moral sensibilities, and so he suggests exact correspondence between law and morality is something which we have good moral reason not to favor.

<sup>83</sup> (Rosebury, 1995, p. 524)

Put another way the problem that Rosebury and other moral luck critics face is that the luck-free conception of moral responsibility they defend doesn't merely come apart from our conception of legal responsibility at the margins, rather the two conceptions are radically different. As I have pointed out at various points above, examples of legal practices where legal accountability is sensitive to luck abound. Typically these are cases where punishment or liability is influenced by factors or outcomes that are to some extent beyond an agent's control. So for instance, we punish criminals differently depending upon the outcomes of their criminal acts (outcomes that are in some sense beyond their control). Similarly our system of tort law is one in which it matters a great deal whether negligent acts culminate in injury. More significantly though is the fact that, these practices are not only central among our legal practices, but arguably they represent paradigmatic examples of the structure of our concept of legal responsibility.

The reason all this is significant is that from the perspective of the moral luck critic, at least to the extent that we think our legal practices are justifiable, we are forced to say in all of these cases that although the tortfeasor (to take just one example) is liable for significant damages, she is not morally responsible for what she did, at least not in a way that differs from the negligent but lucky driver whose negligent act did not culminate in injury. To my ear this begins to sound worrisome though, not the least because our legal practices have significant bearing on the courses of our lives and this is morally significant. More specifically, the worry is that it is hard to see how these legal practices are justifiable when they come so far apart from our moral notions.

How do we justify sending some of our fellow citizens to jail for life or in some cases putting them to death while others, who committed acts for which they are just as morally culpable, go free (or more realistically see significantly reduced sentences)? Once one admits that consequences should have little or no bearing on moral responsibility, at least to the extent that these consequences are influenced by factors beyond our control, our punishment practices begin to look arbitrary and capricious. The murderer sitting on death row who is punished much more severely than the attempted murderer is not likely to take much solace in the fact that he is no more *morally* responsible for what he has done than the criminal who like him attempted murder, but unlike him failed. And there is good reason for the murderer to take no solace in this fact. Although we might say that the murderer is no more morally responsible for what he has done than the attempted murderer, we are *holding him* more responsible, or at least this seems to be what we are expressing when we punish him differently.

No doubt there are many who will not be persuaded by the example just given though. Such persons might say of the case above that what it shows is merely that we should punish attempted murder more severely. The murderer though has no complaint to being punished differently. If anything the problem is that there are attempted murderers who, because they failed to complete their attempted crimes, are not punished to the degree they deserve. I'm willing to cede this claim to the objector. Notice though that even if this example doesn't tell against the conception of luck-free responsibility that someone like Rosebury wants to defend, it *does* tell against the thesis that there is not moral luck. The reason for this, as I pointed out in section 2.5, is that punishing another is an act of paradigmatic moral significance. To the extent that our punishment practices are influenced by matters of luck then it seems that there is moral luck, and this is true even if our practices are justified on

epistemic, pragmatic, or even moral grounds. So long as how we punish others continues to be influenced in part by factors beyond the control of the persons being punished, and this is taken to be appropriate, moral luck critics will be hard pressed to deny that there is at least some sort of luck pervading our morally significant practices.

I am not merely interested in defending moral luck though. Rather I am interested in defending the more robust thesis that we can be morally responsible for things that are to a great extent beyond our control. In order to show how our legal practices might offer evidence in favor of this thesis let us consider again the matter of tort law. Here, our practices really do begin to look much harder to justify, at least to the extent that the account of legal responsibility they employ comes apart from our conception of moral responsibility. This is especially problematic for the defender of the luck-free conception of moral responsibility because, as I suggested above (section 3.1) and as Zipursky has argued at length, we cannot make sense of our tort practices without a conception of legal responsibility that is sensitive to luck or more specifically outcomes.

As Jeremy Waldron suggests in his aptly titled article “Moments of Carelessness and Massive Loss” what makes our tort practices look morally problematic is that very often tortious liability arises not from grossly negligent acts but rather, as the title of Waldron’s article suggests, from mere moments of carelessness.<sup>84</sup> We hold the unlucky tortfeasor whose careless moment culminates in an injury legally responsible for what are in many cases massive damages even while recognizing that there are innumerable instances in our world of careless moments that do not culminate in injury and so are overlooked in the course of our moral and legal evaluations of others and their actions.<sup>85</sup> Consider an example:

*Crying Baby:* A woman is driving and for the most part exercising due care in doing so. In the backseat of the car is her infant son, safely strapped into a car seat. As babies do, the baby begins to cry and so *momentarily* the woman takes her eyes off the road to ensure that her son is alright. Unfortunately for the woman, in this moment the car in front of her slows down and not seeing this right away she is unable to stop in time and slams into the rear of the car that has just slowed down in front of her, causing significant damage and perhaps injuring the driver of the other car as well.

In our legal system the woman in *Crying Baby* has committed a tort and will be liable for damages. Suppose further that the car the woman hits is very expensive and while the driver was not hurt badly, his minor injuries required a series of costly visits to the chiropractor. The damages the woman is liable for are quite significant then. So significant, let us suppose, that paying these damages is exceptionally

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<sup>84</sup> (Waldron, 1997)

<sup>85</sup> Of course injury is not the only relevant sort of tort. One can be responsible for property damage arising from negligence and this will raise the same sort of problems with our concept of moral responsibility.

burdensome for her, say because she is a poor and relatively uneducated single mother working a minimum wage job.<sup>86</sup>

The problem that *Crying Baby* is meant to highlight is that it is hard to see how, from the point of view that the moral luck critic asks us to take up, we can justify holding the woman responsible for the damages that she *is* responsible for. If we adopt the luck-free conception of moral responsibility that the moral luck critic defends, then in *Crying Baby* we must say that the woman is no more morally responsible for what she has done than are the countless others who like her have been momentarily careless. Further, and this is what distinguishes the tort case from the earlier example involving the murderer, it seems like we are committed to saying that the woman in *Crying Baby* bears only a very minimal degree of moral responsibility for what she has done.<sup>87</sup> The problem is that despite this we think that she *is legally responsible* for the tort and thus liable for the damages, while the countless others who have been similarly careless are not held responsible. Given that these damages are so burdensome though (so much so that they could forever change the course of her life), it is hard for me to see how we can justify the conception of legal responsibility that demands this outcome while at the same time maintaining that that the woman bears only minimal moral responsibility for what she has done.

As Rosebury recognizes, in order to have confidence in our legal practices it is important that they not offend our moral sensibilities. Yet it is hard to see how adopting a luck-free conception of moral responsibility could fail to threaten our tort practices wherein a fleeting moment of carelessness or momentary lapse in judgment can provide sufficient grounds for imposing significant burdens on an unlucky tortfeasor. While I am sympathetic to Rosebury's claim that our legal practices need not tell against our moral concepts, if what I have argued in the preceding paragraphs has been persuasive then we seem to be left in a position where we have to choose between defending our legal practices as they are and defending a luck-free conception of moral responsibility. Finally we are in a position to see how our legal practices might inform our moral concepts. To the extent that our legal practices stand in tension with our moral concepts and to the extent that we have reason to be confident in our legal practices, then it seems as if we have similar reason to revise our moral conception of responsibility so that we might hold onto our legal practices.

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<sup>86</sup> At this point one might object that ours is also a legal system where drivers are required to be insured. Imagine then that in this case the mother's moment of carelessness is enough to absolve her insurance company of the duty to pay out the damages. Or if this is too difficult to imagine, one need only imagine that the insurance company will significantly raise her monthly rates in response to the accident, so much so that she will no longer be able to afford insurance and so will be unable to drive. We might also imagine that losing the ability to drive will be especially burdensome to the mother for instance because she will no longer be able to get to her job and so will have to quit.

<sup>87</sup> This follows fairly straightforwardly from several considerations. For one thing the woman in the case is someone with whom we sympathize. Even more significantly though is that there is perhaps even a sense in which it would have been wrong of the woman *not* to take her eyes off the road to check on her crying son. Most significant though is the fact that we don't in general think that we are especially morally culpable for the numerous instances in which we are momentarily careless.

Ultimately of course whether our legal practices tell against some of our moral concepts will be a matter of whether we really do have reason to want to hold onto our legal practices. At least in the case of tort law though, it seems like we do have such reason. As Waldron points out, refusing to hold a tortfeasor responsible for damages when her negligent action culminates in a tort merely deflects the losses onto the victim.<sup>88</sup> Although there are other systems of civil law that set out practices designed to ensure that victims are made whole,<sup>89</sup> any system of tort liability and victim compensation will have its own costs and benefits. That the Anglo-American system of tort liability is both so widespread and well-functioning though, is at least some reason to think that it is close to an optimal system of apportioning tort liability and compensating victims.

Put another way, the lesson in all this is that the moral luck problem can't be solved merely by pointing out that the sort of legal responsibility entailed by our tort practices is in tension with a luck-free conception of moral responsibility. The reason is that to abandon our tort practices would be simply to leave victims uncompensated for losses they suffer through no fault of their own. If we want to hold onto our tort practices then, there is at least some reason to want to revise our concept of moral responsibility so that it doesn't come too far apart from the account of legal responsibility employed in our legal practices. In any case, there will be such reason so long as this doesn't require us to be radically revisionary about our moral concepts and practices.

Fortunately, Zipursky's two-dimensional account of responsibility allows us to make sense of our legal practices without requiring us to give up too many of our considered moral judgments. The reason Zipursky's account of responsibility doesn't entail a radical revision of our moral concept of responsibility is that it doesn't reject the control principle, but rather it merely supplements it.<sup>90</sup> As I discussed in section 3.1 above, Zipursky's account leaves significant room for the possibility that it is something like the control principle that captures the fault-expressing dimension of our concept of responsibility. Zipursky's argument is not that the control principle is false, but rather that there is a second dimension to our concept of responsibility, what he calls the agency-linking dimension, which the control principle does not capture, but which is needed to make sense of our legal practices and which is also a part of our moral concept of responsibility.

### **3.3 Moral Responsibility, Relationships, and Unfortunate Accidents**

In the previous section I argued contra Rosebury that our legal practices *do* tell against a luck-free concept of moral responsibility. I also argued that Zipursky's account of responsibility provides the resources for making sense of our legal practices without at the same time requiring us to radically revise our concept of moral responsibility. As I have pointed out at several points, what distinguishes Zipursky's account of responsibility from others is the multi-dimensionality of the account he defends. On Zipursky's account both the fault-expressing and agency-linking dimensions are important because

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<sup>88</sup> (Waldron, 1997)

<sup>89</sup> See (Waldron, 1997) who discusses one such alternative, the victim compensation system in New Zealand.

<sup>90</sup> Zipursky notes that his objection is not to the control principle, the notion of blameworthiness as fault-expressive, or the application of moral judgments to result-abstracting actions, but rather to the implied exclusivity of such a way of thinking about responsibility and blame. See especially (Zipursky, 2008, p. 119)

responsibility is always a matter of being responsible for something. In order to be responsible in the way Zipursky understands the concept, two things are required: first, one must be identified as the cause of some event for which she is being held responsible and second, her character or at least some particular choice or action of hers must be implicated in some way. Recall that for Zipursky, responsibility is a matter of normative vulnerability. Another way of understanding his claim then is that the sort of responses one is vulnerable to as a responsible agent is determined by both of the conditions just identified, but that neither of these two conditions is sufficient for determining which responses one will be appropriately vulnerable to.<sup>91</sup>

While Zipursky seems committed to the idea that an event must contain both fault-expressing and agency-linking features if we are to correctly attribute a moral sort of responsibility (for that event) to a person, in this section I will suggest that such a view is too strong.<sup>92</sup> In other words I will argue that there are times where we can be responsible for some untoward events merely in virtue of being causally bound up with them, and that this sense of responsibility retains its distinctively moral flavor. This argument is significant not only because it distinguishes my own view from Zipursky's, but also because if it is persuasive, it offers further and I think conclusive evidence that our concept of moral responsibility is multi-dimensional.

Consider the following example:

*Tragic Accident:* Having just gone to the grocery store, a woman is driving through the subdivision in which she lives on her way home. The woman is exercising due care in driving (she is driving the speed limit and keeping her eyes on the road, but also making sure to look about for any of the children that are often playing in the neighborhood). Unfortunately, despite the care being exercised by the woman, a small boy chasing after a ball darts out in front of her and

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<sup>91</sup> Note that what I have just said about Zipursky's view is true even though Zipursky talks as if sometimes we are only attributing responsibility in a fault-expressive sense. The reason this is true is that on Zipursky's account responsibility is always a matter of responsibility for something. While we might talk as if we are only blaming some morally responsible agent in the fault-expressive sense, when we are doing this we are still saying that there is something the agent did which expresses or indicates this fault. To return to the tort example, although the negligent driver who kills and the negligent driver who gets lucky and does not are perhaps both blameworthy in the same way when we restrict our concern to the fault-expressing sense of blameworthiness, for each driver it is a particular action, namely their negligent driving, with which they are agentively linked that generates this blame.

<sup>92</sup> Lest I attribute him a view that is not his own, I should note that it is somewhat unclear whether Zipursky means to generally defend the strong claim I have attributed to him that both agency-linking and fault-expressing features must be present in order to correctly attribute responsibility to someone. At least for the case of tort liability and other legal concepts of responsibility though this does seem to be what he has in mind. For example, Zipursky suggests that this helps to explain why the responsibility being apportioned in tort actions is not for outcomes as he suggests some have argued, but rather is a matter of wrongs (Zipursky, 2008, p. 104). Here Zipursky has in mind Stephen Perry, and especially (Perry, 2001). It is worth mentioning however that Zipursky misrepresents Perry, or at least the view that I take Perry to be defending. Perry does defend an account of outcome responsibility and relates it to tort law. As I understand it though, Perry's view is not that outcome responsibility can by itself give rise to legal obligation (for damages) as Zipursky suggests, but rather that outcome responsibility serves merely to single out potential cost-bearers (see especially (Perry, 2001, pp. 3 - 4). Presumably then on Perry's view there is something else that is needed in order to legally obligate one of these potential cost-bearers. Notice also that if this reading of Perry is right, it's not obvious how far apart Perry's view is from Zipursky's.

the driver strikes and kills the child. Let us also suppose that having run out onto the street from between two parked cars there was no way for the driver to see the child and this is obvious to anyone who might have witnessed the accident.

What I want to suggest is that there is a sense in which the driver in *Tragic Accident* is morally responsible for having killed the child. Clearly the driver cannot be said to be responsible for the accident in a fault-expressing sense, the description of the case precludes this. The driver though is causally bound up with the child's death; after all she was driving the vehicle which struck the boy causing his death. The question is whether being responsible merely in this agency-linking sense is enough to generate moral responsibility on the part of the driver. To show that it is, I suggest we consider how an accident like the one described in *Tragic Accident* would affect the relationships of the parties involved and more importantly how we think it would be appropriate for the parties to respond to the accident and how it would be appropriate for their relationships with one another to be affected.

Consider the driver in *Tragic Accident*. After the accident the driver of the car should feel guilty and perhaps more significantly, if the driver did not feel guilty this would be evidence that her moral character was deficient. Notice that there is something deeply paradoxical about our judgment of the driver in this regard. The paradox lies in the fact that although she would be morally deficient if she did not feel guilt for killing the child, at the same time we are likely to counsel the driver that she should *not* feel guilty, after all there really was nothing she could have done to avoid hitting the child. One way of making sense of this paradox is to argue that it is not really guilt which we think the agent should feel, but rather we think she should feel something more like what Williams has called 'agent-regret.' As Williams describes it, such regret "necessarily involves a wish that things had been otherwise . . . but it does not necessarily involve the wish, all things taken together, that one had acted otherwise."<sup>93</sup> Ultimately though whether it is guilt or agent-regret that the driver should feel, that she should display one of these emotions is, I think, evidence that the driver is morally responsible, because these are both distinctively moral emotions albeit of different sorts.

That the driver should feel some sort of agent-regret is not by itself enough to show that her responsibility for the death of the child is a distinctively moral sort of responsibility though, for although it does not beg the question directly, more certainly needs to be said about why the appropriateness of agent-regret should be taken as evidence that one is morally culpable for what she has done. While there is more that deserves to be said here, I want to set aside the issue of agent-regret and instead turn to another party involved in the accident.<sup>94</sup> Consider now the mother of the child that is killed in *Tragic Accident*. After the accident it is, I think, appropriate for the mother of the child to blame the driver of the car for having killed her child. Now the sort of blame appropriate here will obviously not be the same as the sort that would be appropriate if the driver had been negligent. Clearly, the mother should not actively blame or criticize the driver to others in a way that would perhaps ruin the driver's

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<sup>93</sup> (Williams, *Moral Luck*, 1981, p. 31)

<sup>94</sup> Before moving on I should note that one reason for setting aside this issue is that Williams does about as good of a job as can be done of defending the idea that agent-regret is a moral notion and my own views on the issue align with his for the most part. Of course there is substantial disagreement over this issue, not the least from Nagel. One reason for not saying more then is that I doubt anything I would say here could advance this debate further.

reputation in their community. The blame appropriate for the mother to take up with respect to the driver is a more internal sort of blame. So for instance when reflecting upon the accident it would be appropriate for the mother to blame the driver of the car, but it might not be appropriate for this to amount to anything more than thinking this to herself save perhaps expressing these feelings to close friends or family members.

As with agent-regret though that it is appropriate for the mother to blame the driver is not necessarily evidence that the driver is responsible or blameworthy in a moral sense. Consider though how the mother's feeling towards the driver and about the accident can justifiably shape the relationship of the mother to the driver. Here it would be appropriate for the mother to take the fact that the driver was in some sense causally responsible for the death of her son as reason to end or at least significantly change any pre-existing relationship that she might have had with the driver. Similarly if the mother and the driver previously had no relationship, the accident and the driver's causal role in it would be sufficient grounds for the mother to never allow a relationship between the two to develop. Of course, here too there will be constraints on the degree to which this is true. For instance, even if it is appropriate for the mother not to develop a relationship with the driver it would be inappropriate for her to be rude to the driver.

There will no doubt be some who are not convinced by this example. The critic of my account might argue that although it is perhaps understandable for the mother to end a relationship with the driver (or to prevent one from beginning), to say that it is appropriate for her to do so is to go too far. More clearly needs to be said then. What is important in determining whether it is appropriate for the mother to change her relationship with the driver of the car are the quality of her reasons for doing so. If the mother was pressed to give a reason for ending her relationship with the driver following the accident (assuming for the moment that they had a pre-existing relationship) and the only reason she could give for doing so appealed to the accident and the driver's role in her son's death, most of us would I think accept this reason even if we might be hesitant to endorse the reason. There is a sense then in which one can draw an analogy between the quality of the mother's reasons and the distinction between duties and supererogatory acts. While it would be better if the mother could forgive the driver and in time continue to cultivate their relationship, she need not do so. There is perhaps even a sense in which the mother is vulnerable to some criticism for not doing being capable of forgiving the driver, what is important though is that the mother's reasons need not be endorsable in order for them to appropriately shape her relationship with the driver.<sup>95</sup>

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<sup>95</sup> Some have objected that while it might be appropriate for the accident to give the mother reason to not develop a relationship with the driver going forward, it would not be appropriate for her to end a pre-existing relationship. While I am sympathetic to this claim, the objection as stated is too strong. All it shows is that we need not think that it will always be appropriate for the mother to end a relationship with the driver on the grounds of the accident. But this shouldn't be surprising for there can surely be over-riding and countervailing moral reasons that speak in favor of maintaining a pre-existing relationship or even in some cases developing a new relationship. So long as it is sometimes appropriate for the accident to provide sufficient reason for ending a relationship between the mother and driver, as I think it is, my case should retain its force. Even if there are no such cases in which the accident provides sufficient grounds for ending the relationship between mother and driver though, it will in almost all cases be appropriate for it to affect the relationship in some way and this too is morally significant.

Even if everything I have said so far is convincing it remains to be shown that the fact that being causally bound up with certain untoward events appropriately affects our relationships that this is reason to think that we can occasionally be *morally* responsible in a purely agency-linking sense. To get the claim that it is a distinctly moral sort of responsibility that the driver bears off the ground it is not enough to merely show that her causal relationship with the accident can affect her relationship with others. What needs to be shown is that this fact is morally salient. Here I think the significant role that our personal relationships play in shaping and defining our lives is some reason to think that anything affecting our relationships is morally salient in some way. The worry is that this is too quick though for our relationships are influenced by all sorts of arbitrary things, for instance whether one finds someone funny or attractive will often have important bearing on any relationship that might or might not develop. Surely though whether one is attractive or funny isn't of moral import. The question I must answer then is whether there is anything that distinguishes causal responsibility from non-moral reasons that might also affect relationships?

The answer to this question lies, as I suggested above, in the quality of the reasons that someone's being causally bound up with an event provides others. To return to the *Tragic Accident* case, the driver being causally bound up with the death of the boy provides the boy's mother with a reason for changing the nature of her relationship with the driver and this is a reason that we can accept even if we can't endorse it. Consider now one of the non-moral features that I pointed out above that might also appropriately affect our relationships. If someone, call her Mary, ended a friendship with her friend Susan because she found Susan's jokes to be especially obnoxious and Mary gave this as her only reason for ending the friendship we would I think be hesitant to accept this as a good reason. This does not mean that whether the Susan was funny or not should have no bearing on the relationship, it should. What it means is that Mary needs to at least be capable of offering some sort of further reason for ending the relationship with Susan. Such reasons are not especially hard to come by though. For instance Mary might appeal to the fact that an important part of friendship is the ability to enjoy yourself when you are with a friend and that Susan's obnoxious jokes began to make this difficult for her. Notice though that once Mary gives this reason it becomes clear that her grounds for ending the friendship with Susan is really that their friendship was missing something important and to my ear at least this begins to sound much more like a morally salient reason.

#### **4. Concluding Remarks**

In section 1 I introduced the moral luck phenomenon and drawing on Nagel's account of the phenomenon suggested why it poses a problem. In section 2 I then discussed some of the most promising strategies for explaining the moral luck phenomenon, beginning with Nagel and ultimately moving on to the moral luck critics. As I argued, though in many cases promising and incisive, each of the views discussed fails to offer a completely satisfying account of the phenomenon. For example, Nagel's view, like my own, defends the moral luck thesis, but for Nagel that there is moral luck is not a fact he happily accepts. On Nagel's view by accepting the moral luck thesis we are forced also to accept the unsettling fact that our morality is deeply paradoxical. While Nagel defends the moral luck thesis and with it the idea that our morality is paradoxical, as I pointed out at several points along the way, the majority of moral luck commentators have tried to solve the moral luck problem by denying the moral

luck thesis. Unfortunately, as I argued none of these views fails to fully dispense of the moral luck phenomenon.

As I suggested at the beginning of section 3, there is a common source underlying the failures of all of the views discussed in section 2, namely they each rely upon an impoverished conception of moral responsibility. In section 3 then I looked to the account of responsibility recently developed by Benjamin Zipursky to fill out our concept. Having developed and extended Zipursky's two-dimensional account of responsibility in the previous sections I am now finally in a position to suggest how this account of responsibility provides the resources for finally offering a fully satisfying account of the moral luck phenomenon. The argument here is actually quite straightforward. Once we understand responsibility to be a multi-dimensional concept as Zipursky has suggested, then we can see how the apparently conflicting intuitions that give rise to the problem of moral luck do not actually conflict with one another at all. With Zipursky's two-dimensional account in hand we can now see that moral luck problem arose because of an overly broad reading of one of the principles thought to be constitutive of our concept of responsibility, namely the control principle. As Nagel initially posed it the relevant claim was that "people cannot be morally assessed for what is not their fault, or for what is due to factors beyond their control."<sup>96</sup> The problem with this, at least if you take up the view that following Zipursky, I have defended here, is that we can be morally assessed for things that are beyond our control. That is to say the moral luck thesis is true. The important point though is that this is not problematic, or at least it isn't once we realize that the sense in which we can be assessed for things beyond our control and in particular held responsible for these things is not a sense that expresses fault in our characters even if it is a moral sense.

As I suggested at the outset of this paper, ultimately the moral luck problem can be seen to not be a moral problem at all, but rather a problem reducible to an ambiguity in our language namely that blameworthiness and responsibility are each ambiguous between two senses one fault-expressing and the other agency-linking. No less important than drawing attention to this fact though has been my argument that the agency-linking sense of responsibility really is moral. This was the focus of my discussion in sections 3.2 and 3.3. Here I should note though that even if the reader was not convinced by my argument in either of these sections, the large claim defended in these pages, that there is moral luck and that this is not problematic, is largely unaffected. Even if one thinks the agency-linking dimension of responsibility is not a properly moral concept, part of what I have tried to show is that our moral practices can't be immunized from luck even if our concept of responsibility can be. Similarly, if my argument that we can be responsible for things wholly beyond our control and that this responsibility bears a distinctive moral flavor is unconvincing all this indicates is that our concept of moral responsibility is narrower than I have claimed. What it doesn't show is that we cannot ever be responsible for things that are to some extent beyond our control.

Before concluding I would like to marshal one last piece of evidence in favor of the view defended here. Recent work in social psychology reported by Fiery Cushman promises to provide

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<sup>96</sup> (Nagel, 1979, p. 25)

independent evidence for the claim that responsibility is a multi-dimensional concept.<sup>97</sup> Cushman has collected survey data on our folk concept of responsibility which suggests that both intentions and outcomes with which we are causally bound up, provide independent influence on our attributions of blameworthiness for an act whereas our judgments of the wrongness of the act are influenced for the most part just by an agent's intentions. This is significant because Cushman's findings fit nicely with the two-dimensional account of responsibility that I have defended here. More specifically one plausible interpretation of Cushman's empirical data is that our judgments of wrongness track something like the fault-expressing dimension of responsibility while our blame judgments track both the fault-expressing and agency-linking dimensions of responsibility. If, as I have suggested, it is true that blameworthiness is often ambiguous between these two senses of blame or responsibility then this need not be surprising.

While the philosophically most defensible account of responsibility need not be constrained by our folk concept of responsibility that the account of responsibility defended here doesn't require us to be revisionary with respect to our folk concept is I think reason to favor this account over others. Here an analogy might be drawn with the argument offered in section 3.2 in which I appealed to our legal practices as a way of fleshing out our moral concept of responsibility. Given that it is for the most part our folk concept of responsibility that underlies the majority of our actual moral practices there might be good reason to think that any philosophically defensible account of responsibility should not come too far apart from our folk concept or at least it shouldn't so long as we take most of our actual practices to be justified.

## **Bibliography**

Browne, B. (1992). A Solution to the Problem of Moral Luck. *The Philosophical Quarterly*, 42 (168), 345 - 356.

Coleman, J. (1988). *Markets, Morals, and the Law*. Cambridge: Cambridge University Press.

Coleman, J. (1992). *Risks and Wrongs*. Cambridge: Cambridge University Press.

Cushman, F. (2008). Crime and punishment: Distinguishing the roles of causal and intentional analyses in moral judgment. *Cognition*, 108, 353 - 380.

Domsy, D. (2004). There Is No Door: Finally Solving the Problem of Moral Luck. *The Journal of Philosophy*, 101 (9), 445 - 464.

Enoch, D., & Marmor, A. (2007). The Case Against Moral Luck. *Law and Philosophy*, 26, 405 - 436.

Harman, G. (1999). Moral Philosophy Meets Social Psychology: Virtue Ethics and the Fundamental Attribution Error. *Proceedings of the Aristotelian Society*, 99, 315 - 331.

Honorè, T. (1999). Responsibility and Luck: The Moral Basis of Strict Liability. In T. Honorè, *Responsibility and Fault* (pp. 14 -41). Oxford: Hart.

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<sup>97</sup> (Cushman, 2008)

- Nagel, T. (1979). Moral Luck. *Mortal Questions* . New York: Cambridge University Press.
- Perry, S. (2001). Responsibility for Outcomes, Risk, and the Law of Torts. In G. P. (ed.), *Philosophy and the Law of Torts* (pp. 72 - 131). Cambridge: Cambridge University Press.
- Richards, N. (1986). Luck and Desert. *Mind* , 95, 198 - 209.
- Rosebury, B. (1995). Moral Responsibility and "Moral Luck". *Philosophical Review* , 104 (4), 499 - 524.
- Royzman, E., & Kumar, R. (2004). Is Consequential Luck Morally Inconsequential? Empirical Psychology and the Reassessment of Moral Luck. *Ratio* , 329 - 344.
- Statman, D. (2005). Doors, Keys, and Moral Luck: A Reply to Domsky. *The Journal of Philosophy* , 102, 422 - 436.
- Thomson, J. J. (1989). Morality and Bad Luck. *Metaphilosophy* , 20 (3-4), 203 - 221.
- Waldron, J. (1997). Moments of Carelessness and Massive Loss. In D. O. (ed.), *Philosophical Foundations of Tort Law* (pp. 387 - 409). New York: Oxford University Press.
- Williams, B. (1981). Moral Luck. In *Moral Luck* (pp. 20 - 39). New York: Cambridge University Press.
- Williams, B. (1993). Postscript. In D. (. Statman, *Moral Luck* (pp. 251 - 258S). Albany, NY: SUNY Press.
- Wolf, S. (2001). The Moral of Moral Luck. *Philosophic Exchange* , 31, 4 - 19.
- Zimmerman, M. (1987). Luck and Moral Responsibility. *Ethics* , 97 (2), 374 - 386.
- Zimmerman, M. (2002). Taking Luck Seriously. *The Journal of Philosophy* , 99 (11), 553 - 576.
- Zipursky, B. (2008). Two Dimensions of Responsibility in Crime, Tort, and Moral Luck. *Theoretical Inquiries in Law* , 9 (1), 97 - 137.