

# *How to Reject Resultant Moral Luck Alone*

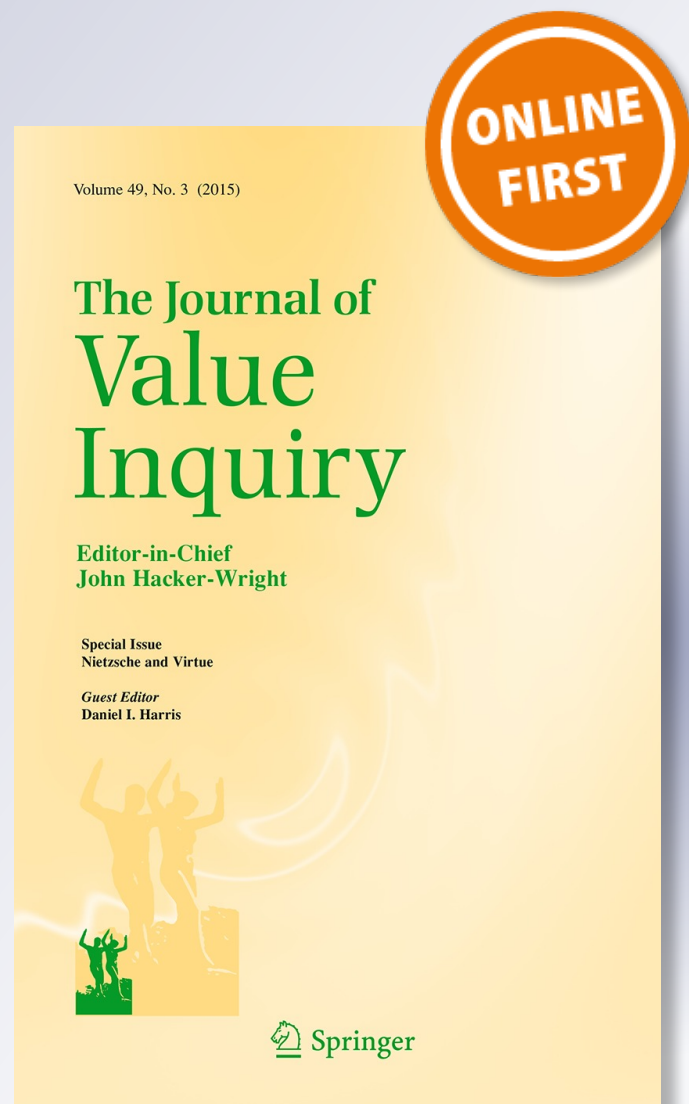
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## How to Reject Resultant Moral Luck Alone

Eduardo Rivera-López<sup>1</sup>

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Thomas Nagel famously distinguishes four kinds of moral luck (in which factors beyond our control nevertheless have bearing on our moral responsibility).<sup>1</sup> Three of these are antecedent to our actions: **constitutive luck** (our character traits), **remote causal conditions** (being born in a certain time and place, for example), and **circumstantial luck** (the circumstances in which we act). The remaining kind of moral luck, **resultant luck**, concerns the results of our actions: the fact that our negligent or intentional actions produce a particular outcome or not often depends on whether some uncontrollable facts occur. Many think that resultant moral luck does not exist, because we cannot be blamed more or less depending on facts that are entirely beyond our control. The problem with this argument is that the other three kinds of moral luck (though I will focus specifically on circumstantial luck) have exactly the same feature: our responsibility also depends on whether certain (antecedent) uncontrollable facts hold. However, rejecting all kinds of moral luck is, as we will see, a bold and implausible move. My goal is to take some initial steps in defense of the motto: *circumstantial (and all other kinds of antecedent) moral luck, Yes; resultant moral luck, No*. My argument does not amount to proof that resultant moral luck does not exist. I merely try to show that rejecting resultant luck while accepting circumstantial luck is not necessarily inconsistent or unmotivated.

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<sup>1</sup> See Thomas Nagel, "Moral Luck," in D. Statman (ed.), *Moral Luck* (Albany: State University of New York, 1993), pp. 57–71.

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## 1 A Problem for Kantians

Let us first consider (once more) the following well-known example:<sup>2</sup>

*Anne attempts to kill Robert and kills Robert in circumstance C1 (Robert walking on some specific street at some specific time).<sup>3</sup> Bertha attempts to kill Robert in C1 and fails because of the occurrence of E2: the sudden and unexpected flight of a bird diverts Bertha's shot. In Anne's attempt, E1 occurs: the bird's flight passes just a few centimeters from the bullet's trajectory and does not divert the shot. All other things are equal.*

Let us assume that the bird's flight is completely beyond Anne's and Bertha's control. That means that the fact that the bullet may or may not be diverted by the bird's flight is impossible to foresee and cannot be prevented by Anne or by Bertha. Does the occurrence (or nonoccurrence) of the diverting flight exert any influence on Anne's and Bertha's responsibility?

Facing examples like this, philosophers usually endorse one of the following alternative positions:

Kantian:<sup>4</sup> Provided that no justifying or excusing circumstances hold, both Anne and Bertha are morally responsible. Further, they are *equally* responsible: their responsibility does not get weaker (or stronger) for the occurrence (or nonoccurrence) of the bird's diverting flight. More generally: once the agent (Anne or Bertha) has taken the shot (the last event over which she exerts control), her responsibility does not get weaker (or stronger) due to the occurrence (or nonoccurrence) of Robert's death (the outcome).

Anti-Kantian: Provided that no justifying or excusing circumstances hold, both Anne and Bertha are morally responsible. However, Anne's responsibility is stronger than Bertha's, because Anna has killed Robert, and Bertha has not (she has merely attempted to kill him).<sup>5</sup>

Before continuing, I would like to briefly clarify the concept of responsibility that I assume both Kantians and anti-Kantians are using (and that I will assume throughout). In very general terms, an agent is responsible for *X* if she, *prima facie*,

<sup>2</sup> See *ibid.*, p. 61.

<sup>3</sup> C1 is actually compounded by a huge number of facts, but I stress Robert's being on a certain street at a certain moment because these are the relevant facts for my discussion.

<sup>4</sup> See for example Steven Sverdlik, "Crime and Moral Luck," in Statman, *op. cit.*, 181–194; Marcelo Ferrante, "Recasting the Problem of Resultant Luck," *Legal Theory*, Vol. 15 (2009): 267–300; Michael Zimmerman, "Taking Luck Seriously," *The Journal of Philosophy*, Vol. 99, No 11 (2002): 553–576. The labels "Kantian" and "anti-Kantian" are stipulative. They are not meant to indicate that Kant defended exactly this view.

<sup>5</sup> See Bernard Williams, "Moral Luck," in Statman, *op. cit.*, 35–55. Anti-Kantians might explain the different degree of responsibility by appealing to the fact that Anne and Bertha are responsible for different things: Anne is responsible for attempting to kill, whereas Bertha is responsible for killing (or for Robert's death). I will come back to this point later on, but the crucial disagreement between Kantians and anti-Kantians is, in my view, that, according to the anti-Kantian, in examples of this kind Bertha deserves stronger blame than Anne, whereas for Kantians they deserve equal blame.

is a legitimate target of moral blame (or other negative reactive attitudes) for  $X$ .<sup>6</sup> There are two basic kinds of  $X$ s an agent can be responsible for: we can be responsible for what we are and/or we can be responsible for what we do.

The first kind of responsibility is responsibility for the way we are: traits of character, our virtues and vices, desires or plans we conceive internally, etc. This kind of aretaic or constitutive responsibility is in fact important in our everyday moral life (we blame people for being egoistic or aggressive, or for having bad desires). However, few moral philosophers think that aretaic responsibility accounts fully for the social practice of holding people responsible.

The second kind of responsibility— responsibility for what we do—is the one I will assume both Kantians and anti-Kantians are talking about, and it will be my focus in the rest of this paper. We say that Anne is responsible for her action of killing Robert, and Bertha is responsible for her action of attempting to kill Robert. I do not want to take a position here on whether we should include results into the description of the action, since the concept of responsibility should be neutral between Kantians and anti-Kantians. The point is that, regardless of how we exactly characterize Anne's and Bertha's behavior, we are blaming them for what they did: for their behavior or features of their behavior.

It is important to stress that, regardless of the disagreement between Kantians and anti-Kantians about the relevance of results for responsibility (which is, of course, their main disagreement), they agree about something important: that responsibility for what we do does not involve events that are previous to the act of will that initiates the action. Responsibility for what we do does not, for example, involve desires, pure intentions or plans that we may have made before (or independently of) performing an (intentional) action. Those mental events may carry some responsibility, but it would only be aretaic responsibility.

By differentiating between the responsibility held by Anne and Bertha, the anti-Kantian accepts resultant moral luck. The acceptance of resultant moral luck can be defined as follows:

Resultant Moral Luck: assuming that

- (1) an agent performs an action  $A$  seeking to produce an outcome  $O$ ,<sup>7</sup> and that
- (2) either one of two possible events  $E1$  or  $E2$  occurs, such that
  - (a) neither  $E1$  nor  $E2$  is part of the causal explanation of the occurrence of  $A$ ,
  - (b)  $E1$  is causally necessary for the occurrence of  $O$ ,
  - (c)  $E2$  is causally sufficient for the occurrence of non- $O$ , and
  - (d) the occurrence of  $E1$  or of  $E2$  is completely beyond the agent's control,

<sup>6</sup> "Prima facie," because there may be cases in which, for some specific reason, the agent should not be blamed. For example, if blaming that person carries extremely bad consequences.

<sup>7</sup> For simplicity, I will focus on actions. Most of what I say should also be valid for omissions, although there are some asymmetries that might make a difference (see Carolina Sartorio, "Resultant Luck," *Philosophy & Phenomenological Research*, Vol. 84, No 1 (2011): 1–24, pp. 8–15).

the occurrence of E1 or of E2 can influence the agent's responsibility for having done A.

The Kantian rejects Resultant Moral Luck in that the occurrence of E1/E2 (the bird's failing to divert the shot or the bird's diverting the shot, in our example above) cannot influence the degree of the agent's responsibility (Anne and Bertha are equally responsible).

Consider now this further case:

*Anne attempts to kill Robert and kills Robert in circumstance C1, for instance, as Robert is walking on the street. Carla would attempt (and perhaps kill) Robert if he were in C1; but just two minutes before leaving, Robert decides to remain at home. Therefore, circumstance C1 does not occur (C2 occurs, in which Robert is not available to be killed) and Carla does not attempt to kill Robert. All other things are equal.*<sup>8</sup>

If we say that Anne is responsible and Carla is not (or that Anne is more responsible than Carla), we accept the existence of circumstantial moral luck. The thesis here is:

Circumstantial Moral Luck: assuming that

- (1) an agent will perform an action A seeking to produce an outcome O, and that
- (2) either one of two possible events C1 or C2 occurs, such that
  - (a) C1 is part of the causal explanation of the occurrence of A (and O),
  - (b) C2 is causally sufficient for the occurrence of non-A, and
  - (c) the occurrence of C1 or of C2 is completely beyond the agent's control,

the occurrence of C1 or of C2 can influence the agent's responsibility.

In my example, C1 is the fact that Robert decides to go out into the street at a certain time. Such fact (conjointly with other factors) makes Anne's decision to kill Robert possible. In C2 (the circumstance that Robert is not on the street, but at home) there cannot be such a decision. This is why Carla is not responsible. But she would have killed Robert in C1 (just as Anne did), and the occurrence of C1 or of C2 is fully beyond both Anne's and Carla's control.

This case is a problem for the Kantian. If we reject Resultant Moral Luck, it seems that we do so because we believe that moral responsibility should not be affected by luck (i.e., factors that are fully beyond the agent's control, like the flight of a bird). But if this is so, we should also claim that Anne and Carla are equally responsible (or not responsible), since the only difference between them is a matter of luck: whether C1 or C2 occurs (that Robert decides to go out or to remain at home), a circumstance over which, I reiterate, Anne and Carla have no control at all.

<sup>8</sup> I am assuming that the counterfactual is true (Carla would kill Robert if...). A libertarian (an incompatibilist defender of free will) might deny that this kind of statement is true or false. Nevertheless, even the libertarian should agree that Carla has been morally lucky not to be confronted to the situation in which she should have made the (free) decision of killing Robert (or not).

In other words, rejecting Resultant Moral Luck seems to be incompatible with accepting Circumstantial Moral Luck, since it seems that the rationale behind rejecting Resultant Moral Luck (that the occurrence of E1/E2 cannot have any influence on the agent's responsibility) is equally applicable to Circumstantial Moral Luck. Conversely: if we accept Circumstantial Moral Luck and say that Anne and Carla are not equally responsible (for example, by saying that Anne is responsible and Carla is not), then the main argument against Resultant Moral Luck fails. We are accepting that C1 (Robert going out into the street) can be relevant in attributing responsibility; therefore, we have no reason to deny that E2 (the deviating flight of the bird) can have similar relevance: both are a matter of luck; both are fully beyond the agent's control.<sup>9</sup>

One way to deal with this problem is to reject Circumstantial Moral Luck. Michael Zimmerman tries this. He thinks that the fundamental meaning of being morally responsible is immune to circumstantial luck. It is what he calls "responsibility *tout court*".<sup>10</sup> I will not follow this path. Although a thorough explanation would be too lengthy, I shall briefly mention two (connected) problems. For one thing, there are reasons to think that the concept of responsibility *tout court* is conceptually unstable. The responsibility *tout court* of an agent is the moral record of everything that the agent has done and would have done in all possible circumstances. If circumstances include everything beyond control (including character and other constitutive features), then everyone could have done everything and the moral record of every agent would be identical. To avoid this result, we have to say that there is a factor inherent to the agent, so that we can say of a particular agent that she would not have done an action *X* in any circumstance. But those essential features, as Zimmerman finally concedes, are a matter of (constitutive) luck.<sup>11</sup> Moreover, even if we accept the existence of this kind of responsibility (*tout court*), we still need a different meaning of responsibility in order to evaluate the actions and decisions that moral agents perform in their everyday lives. Responsibility *tout court* is not useful for differentiating legitimate from illegitimate blame under conditions of limited time and information, and implies a highly revisionist stance that may well imply abolishing the practice of holding people responsible for their actions.<sup>12</sup>

<sup>9</sup> This problem is approached in different ways in Ferrante, op. cit., p. 268; Zimmerman, op. cit.; Michael Moore, *Placing Blame* (Oxford: Oxford University Press, 1997), pp. 233–243; Brynmor Browne, "A Solution to the Problem of Moral Luck", *The Philosophical Quarterly*, Vol. 42, No 168 (1992): 345–356, p. 347; Brian Rosebury, "Moral Responsibility and 'Moral Luck'", *The Philosophical Review*, Vol. 104, No 4 (1995): 499–524, p. 507.

<sup>10</sup> Zimmerman, op. cit., p. 564.

<sup>11</sup> See Zimmerman, op. cit., p. 575. A more radical Kantian position might reject that essential character traits are a matter of luck. One might interpret Kant as holding that those traits are based on pure, spontaneous reason. I cannot discuss this point here (although I thank a reviewer for calling my attention to it). However, we should admit that the idea of a rational will, completely detached from any kind of determination, has always been very difficult to sustain, even for Kantians.

<sup>12</sup> In fact, Zimmerman seems inclined to such a revisionist view. See his argument against retributive punishment in Michael Zimmerman, *The Immorality of Punishment* (Buffalo, N.Y.: Broadview Press, 2011), pp. 121–150.

Another way to confront the objection is to accept Circumstantial Moral Luck and try to find a relevant difference between it and Resultant Moral Luck that explains why the first is valid while the second should be rejected. This is the direction I want to explore here.

## 2 How to Reject Resultant Luck and Accept Circumstantial Luck

A Kantian who accepts Circumstantial Moral Luck is someone who accepts that our responsibility can be influenced by factors (like C1) that are fully beyond our control. This implies that our Kantian (whom I will call “moderate Kantian”) cannot claim that the only reason to reject Resultant Moral Luck is that the occurrence of E1/E2 is fully beyond our control. The moderate Kantian must identify a meaningful difference between E1/E2 and C1/C2 independent of the fact that each is a matter of luck. Such a difference must explain why Resultant Moral Luck can be rejected without rejecting Circumstantial Moral Luck. It should also be a difference that the anti-Kantian is also willing to endorse (otherwise, the argument would beg the question).

Let us then identify some relevant anti-Kantian’s commitments. The most obvious one that defines the anti-Kantian position: the anti-Kantian thinks that Anne is more responsible than Bertha; Anne deserves a harsher blame (other things being equal). This is obviously the main disagreement with Kantians. Beyond this, it is important to list some claims that an anti-Kantian would endorse, which would also be defended by a moderate Kantian.

The first claim an anti-Kantian would endorse is that Anne and Carla also deserve different treatment: Anne deserves blame for having killed Robert whereas Carla does not.

The second claim is that it is not the case that Bertha is not responsible *at all*, even though Bertha does not produce any harmful outcome (Bertha’s shot does not kill or harm anyone). That means that the anti-Kantian believes that the fact that Bertha attempts to kill Robert is relevant for assigning responsibility to Bertha.<sup>13</sup> Attempting to produce a harm is, under the circumstances, sufficient for the existence of (some) responsibility.<sup>14</sup>

The third claim requires us to imagine a further case:

*Anne attempts to kill Robert and successfully kills Robert. Donna, who is cleaning and testing a gun, accidentally shoots and kills Robert. Donna does not attempt to kill Robert and is not negligent in her manipulation of the gun. It is just that Robert unexpectedly (and unpredictably) appears in the testing place and stands exactly on the path of the bullet. In Donna’s case, as well as in Anne’s, E1 holds (no birds divert the shot).*

<sup>13</sup> A further consequence is that the anti-Kantian also accepts that Bertha is, *ceteris paribus*, more responsible than Carla, although neither has killed Robert (or anyone).

<sup>14</sup> By saying that the attempt is, under the circumstances, sufficient for responsibility, I mean that a set of additional conditions holds, such as that there is no justification or excuse (insanity, coercion, etc.). The assumption is not problematic because it remains constant in all my examples.



The point is that, for the anti-Kantian, Donna is not responsible for Robert's death and is not blameworthy at all for her action. The anti-Kantian does not support moral strict liability: rather, something like intention (attempt) or negligence is a necessary condition for holding responsibility. For simplicity, I will set aside the case of negligence and assume that intention (or attempt) covers the whole spectrum of intentional attitudes that are relevant for responsibility (whenever I say "attempt," "intentional or negligent action" can be substituted). We can say, then, that, for the anti-Kantian, there is no moral responsibility without an attempt: an attempt is a necessary condition for the existence of responsibility.

We have therefore several statements that moderate Kantians and anti-Kantians can agree on:

- (1) C1 is necessary for responsibility: the fact that Robert goes to the street at the right moment is necessary for Anne's being responsible, because it is necessary for her to attempt to kill him. This is also why Carla is not responsible.
- (2) C1 is not sufficient for responsibility: the fact of Robert being on the street at the right moment does not, by itself, make Anne responsible. She must attempt to kill him in order to be responsible.
- (3) The attempt is necessary for responsibility: Anne and Bertha are responsible (to some degree), but Carla and Donna are not, because they do not attempt to kill Robert.
- (4) E1 (that no bird diverts the bullet) is not necessary for responsibility: Bertha is responsible, although E2 (and not E1) holds in her case.
- (5) A harmful result is not sufficient for responsibility: Donna is not responsible, although Robert dies as a consequence of Donna's action.

Assuming that these five statements are shared by moderate Kantians and anti-Kantians, let us compare E1/E2 (the fact that the bird does not or does deflect the shot) with C1/C2 (the fact that Robert goes out to the street or remains at home). A crucial difference, both for Kantian and anti-Kantians, is that E1/E2 is not necessary for the *existence* of the agent's responsibility. An agent can be blamed regardless of whether E1 or E2 holds. This is why both Anne and Bertha are responsible (in whatever degree). On the contrary, C1/C2 is crucial for the existence of the agent's responsibility, because C1 is necessary for the existence of the attempt, which in turn is necessary for the existence of responsibility. If C2 holds, the attempt never occurs, and therefore no responsibility for action exists. This is why Anne is responsible and Carla is not. Up to this point there is a complete agreement between moderate Kantians and anti-Kantians.

The disagreement starts by considering the relevance of E1/E2. Anti-Kantians claim that E1/E2 can increase or diminish the agent's responsibility, which moderate Kantians deny. But moderate Kantians can offer a reason for this. The reason can be stated as follows:

*Main Reason:*

The occurrence of fully uncontrollable events *that are not necessary for the existence of responsibility* cannot affect the degree of responsibility.

Note that E1/E2 is different from C1/C2 in this respect: C1 is necessary for the existence of responsibility because it is necessary for the existence of the attempt, which in turn is necessary (and sufficient) for the existence of responsibility. As we have seen, this is a difference that the anti-Kantian also acknowledges. Why is the Main Reason reasonable?

The idea is that we accept moral luck when (and only when) it is necessary for making the practice of attributing responsibility possible. Circumstances are necessary factors in making people responsible for their actions because they create the possibilities within which agents perform certain actions with specific purposes (or even negligently). On the contrary, events that directly affect the outcome of the agent's actions (or attempts) are not necessary to make the practice of responsibility possible. Even the anti-Kantian accepts that there is responsibility regardless of how things turn out. We do not need this kind of moral luck to make people responsible for their deeds.

This is not presented as a knockdown argument against Resultant Moral Luck. The anti-Kantian can still think that E1/E2 makes a difference and that, therefore, Anne is more responsible than Bertha. The argument is just aimed at countering the claim that, if we accept Circumstantial Moral Luck, we necessarily lack a good reason to reject Resultant Moral Luck.

It is certainly true that my argument works on the assumption that both Kantians and anti-Kantians agree on a number of commitments that are fundamental, but, at the same time, controversial. One might think that such an assumption is unwarranted. For example, I have assumed agreement on the claim that the locus of responsibility is (intentional) action (or attempt). But this presupposes that we are able to neatly distinguish between actions, volitions, antecedent desires, etc. And this is highly debatable. If the distinction is not as clear as I suppose, a Kantian might think, for example, that we can be responsible for our pure intentions, for whose existence antecedent circumstances are not necessary. Were this the case, the purpose of the argument distinguishing between E1/E2 and C1/C2 would collapse; it would no longer be true that C1 (and not E1) is necessary for responsibility: both would be unnecessary.<sup>15</sup>

I concede that the distinction and relationship between desires, mere intentions, plans, acts of will, and overt actions, are highly fraught issues (into which I cannot enter here). Still, this does not imply that assuming some claims on the matter necessarily begs the question. It does not beg the question insofar as those assumptions could be shared by the contending positions. And it seems that both Kantians and anti-Kantians could accept that the proper loci of (non-aretaic) responsibility are actions. Both moderate Kantians and anti-Kantians want to say that Carla is not responsible for having shot Robert (since she did not do so). Both want to say that Anne and Bertha are responsible for having shot Robert (regardless

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<sup>15</sup> I thank an anonymous reviewer for raising this point.

of the degree of responsibility). And both agree that Donna is not responsible (despite of having shot Robert). These shared assumptions are incompatible with claiming that we can be responsible for mere desires or pure intentions. They are the background against which both the main problem I address in this paper *and* my proposed solution are discussed.

### 3 Conclusion

Being responsible for our acts depends on a myriad of factors over which we do not have the slightest control: circumstances, some (deep) character traits, events in our near or remote past (having being born, having certain parents, having met certain persons, and so on). Such uncontrollable factors are necessary for the existence of the very attribution of responsibility. They make possible our performance of specific actions with specific intentions. The moderate Kantian wants to exclude those uncontrollable factors that are *not* necessary for the existence of responsibility from having any influence on our responsibility. If the emergence of responsibility does not depend on such factors, there is no obvious reason why they should impinge on its degree.