

Though Thomas Nagel's article, "Moral Luck," is fairly short, it raises some intriguing and troubling questions about the applicability of Kantian ethics. The crux of his argument is what is termed the "responsibility assumption," the moral belief that "people cannot be morally assessed for what is not their fault, or for what is due to factors beyond their control."¹ However, as Nagel points out, "whether we succeed or fail in what we try to do nearly always depends to some extent on factors beyond our control,"² and real-life moral judgments are almost always influenced by the results of an individual's actions, even though these results are mainly shaped by chance. The principle acting in such situations is termed "moral luck:" chance occurrences that are nevertheless given moral weight, in direct conflict with the widely held responsibility assumption. Nagel ultimately despairs this apparently irresolvable paradox, but there may be ways to respond to it and rescue Kantian ethics, to some extent, from annihilation. Though the responsibility assumption is difficult to dispute, I argue below that moral luck is not as ironclad a concept as Nagel portrays it to be. There is a middle ground that allows some consideration of moral luck, but still vests Kant's rational agents with responsibility for their actions.

Our legal system is replete with issues of moral luck. For example, if a trucker fails to check his brakes before embarking on a long trip, but no important consequences come of this, his negligence is punished, in the unlikely case that it is discovered, only by discipline from his employer. If, on the other hand, he hits a child as a result of his non-functional brakes, he will be incarcerated for involuntary manslaughter. The only factor difference between these situations, however, is the presence of the child, which was out of the control of the truck driver. Any one of

¹ Thomas Nagel, *Moral Luck*, in *Ethics: History, Theory, and Contemporary Issues*, ed. Steven M. Cahn and Peter Markie, second edition (New York: Oxford University Press, 2002), p. 726.

² Nagel, p. 727.

an infinite set of similarly paradoxical cases defies satisfactory resolution to obey both the responsibility assumption and one's inherent sense of justice.

Though they are difficult to extract directly from Nagel's writing, there are at least three significant sources of moral luck, classes of uncontrollable factors that have a significant influence on the moral judgment of an action: constitutive, circumstantial, and outcome luck. Similarly, there are four possible reactions to Nagel's dilemma. First is Nagel's own response, despair at the paradox and a basic questioning of the validity of ethics as a whole. In a more practical vein, one can uphold the responsibility assumption and dispute that the types of moral luck described above are truly out of our control. The extreme opposite approach is to reject the responsibility assumption entirely and develop a new basis for judgments of responsibility, or even reject responsibility judgments altogether. The final approach, which I intend to argue, is to uphold the responsibility assumption, accept that at least some of the forms of moral luck above are valid, and reform responsibility judgments to be consistent with the partial admission of moral luck.

Under the heading of constitutive luck, I have also included a fourth form of moral luck that Nagel mentions, the causation of will. This point boils down to a frightening (no less frightening to Nagel himself than the reader!) denial of free will. Take, for example, a poor woman who kills someone for money, in order to continue sustaining herself. She is likely not directly responsible for her desperate situation: perhaps she was born into it, maybe her own money was stolen away from her, maybe she hasn't been able to find a job, despite trying. She is in an inescapable cycle of poverty. Furthermore, that she would allow herself, in her own mind, to commit murder is a result of her upbringing, over which she had no control. Many factors may be genetic: a stronger-than-usual fight-or-flight response, an inherently low motivation for work. At every turn a new and reasonable explanation can be found to redirect responsibility for her action away from her. "The area of genuine agency, and therefore of legitimate moral judgment, seems to

shrink under this scrutiny to an extensionless point,” observes Nagel. “How can one be responsible even for the stripped-down acts of the will itself, if *they* are the product of antecedent circumstances outside of the will’s control?”³

There are many routes of argument to oppose this point. Firstly, Nagel applies moral luck to Kantian ethics; in a consequentialist system, moral luck would not pose significant difficulties. However, Nagel’s formulation of moral luck serves only to destroy the moral law: as Kant himself phrased it, “rational nature exists as an end in itself.”⁴ Furthermore, the freedom to exercise this rational nature requires the absence of external causation, including heredity and environment, for one’s decisions. Constitutive moral luck pulls the forensic rug out from under itself: it is intended as a refinement of Kantian ethics and is argued within a Kantian framework, and yet defies the very basis of that system.

On a more basic level, without free will, ethics is meaningless. The only practical end to judging actions is to direct them, so why try to judge if there can be no active modification of the real world? Determinism, in a sense, is an extended sort of solipsism: not only is everyone around me controlled from without, I am too. Arguments similar to those opposing solipsism also work powerfully against determinism. Let us assume, for the moment, that the world is in fact deterministic, that free will does not exist. We have no significant insight into the “external” control—whether it be the physical laws that govern brain function or the temporal effects of heredity and circumstance—of individuals’ actions, and therefore no way to predict them. From our perspective, then, everyone *appears* to have free will. For the sake of our functioning in this world, though it may be just a cosmic puppet show, we must assume that we and the people around us are agents, possessing free will. We can observe the disastrous effects in our own reality of behaving as though free will did not exist, being carried only by the tides of desire. Ethics exists in

³ Nagel, p. 731.

⁴ Immanuel Kant, *Fundamental Principles of the Metaphysics of Morals*, in *Ethics: History, Theory, and Contemporary Issues*, ed. Steven M. Cahn and Peter Markie, second edition (New York: Oxford University Press, 2002), p. 306.

order to control that behavior. Every time free will is argued out of existence, it reappears as a necessary assumption for functioning in this world. The conclusion from both these arguments is that constitutive moral luck must be rejected out of hand; free will *does* exist, for all intents and purposes, and the human will has ultimate control over its own actions.

To continue on to circumstantial luck, we must observe that in a non-consequentialist ethical framework, intentions matter just as much as actions. In addition, an individual's true nature is equally significant. By Nagel's reckoning, an ideal and fair system would treat all people equally, based on their true nature. The trouble with circumstantial luck, though, is that "it may be true of someone that in a dangerous situation he would behave in a cowardly or heroic fashion, but if the situation never arises, he will never have the chance to distinguish or disgrace himself in this way, and his moral record will be different."⁵ Nagel's example of this involves Nazi Germany: citizens under the Nazi regime had the "opportunity" to behave either heroically or badly in those circumstances, revealing their true selves and being judged accordingly. Other individuals, however, did not have this opportunity, and escaped judgment solely by fate.

Nagel himself admits that it is impossible to resolve this problem; in the real world we cannot respond directly to one's intentions or true nature, but only to their actions, concrete manifestations of intention—Nagel's previous argument against the existence of intention notwithstanding. It is not possible for a legal system to directly obey non-consequentialism. I propose, instead, an analogue to Rule Utilitarianism, as Mill proposed: Rule Kantianism. A society could be founded with its governing principles, the spirit of its law, grounded in non-consequentialism, while the actual letter of the law dictated practical rules to ensure a general compliance with Kant's ethical system. In this reformed legal system, attempted murder and actual murder would carry equal moral weight and draw equally harsh punishment. Consummated murder would result in additional punishment, however, simply to offset the social and financial

⁵ Nagel, p. 731.

costs of the crime. Though, ideally, sincere threats of murder would also draw the same punishment, in practice it is impossible to prove without a doubt that threats are sincere; like any legal system, this one would not be without shortcomings. Equating attempted murder and murder, however, would also handle the final class of factors, outcome luck.

In our current legal and moral system, an attempted assassination is treated differently from a successful one. If someone walked up to the White House and fired at the president, but a bird happened to intercept the bullet, the sniper would certainly receive punishment, but one not as strong as if the bullet had actually met its target. Outcome luck is also the principle that applies to the negligent trucker at the beginning of this paper: through the single action on the driver's part of not inspecting the truck's brakes, two tragically different outcomes can result. As we see, it is not even necessary for an action to have a specific intention driving it in order for outcome luck to apply: it was not malice but rather carelessness that led him not to check the brakes. Our hypothetical legal system would have to treat such negligence, if it were discovered, as though its worst possible consequence had actually resulted from it. While this may seem harsh, it is a legitimate way to respond to Nagel's demands for fairness.

Kantian ethics did not align particularly closely to German law at the time it was developed, and Nagel's observations certainly shake the foundation of non-consequentialist morality. In response to the conflict of the responsibility assumption and the principle of moral luck, an equally drastic solution is found: a fundamental restructuring of our legal and moral conceptions of responsibility. Even so, Kant's basic focus on the inherent power of the human rational nature is preserved. Moral luck is a troublesome issue, but with a slightly reformed legal system, the strength of free will can still survive.