

## **There is no Moral Luck**

### Abstract

*A widespread opinion in present day ethics is that luck is morally relevant, that there is (genuine) moral luck. Bernard Williams and Thomas Nagel argued in two influential articles both titled "Moral Luck" in favour of this assumption. Till then there was not much of an opposition against it. If indeed there is moral luck, responsibility would be separated from control. We would be responsible for things beyond our control. Compatibilists find such a view attractive. It would make it easier to reconcile the metaphysical idea of a deterministic natural world with our moral intuitions. But in fact there is no moral luck. The examples which are employed to show that there is moral luck rest on conceptual confusions. The confusion between reasonable bad sentiments and moral responsibility (sec II), the confusion between ex ante rationality and ex post assessment (sec III), the confusion between epistemic and normative assessment (sec IV), the confusion between ideological interpretation and moral judgement (sec V). The canonical account for which action is intentional behaviour, which the agent controls and for which she is responsible, can be defended (sec VI) if one discriminates moral from other forms of responsibility (VII).*

Sometimes you are lucky, sometimes you aren't. Sometimes you did something with good intentions, but it turned out that what you did had quite bad consequences. Then you feel you should have done something else. Sometimes you act in a way which you yourself find morally doubtful. But then it turns out that what you did had no bad consequences. In a way you were lucky. In such a case you may feel relieved afterwards and you may say:

“I was lucky, what I did was o.k. as it turned out afterwards.”

Immanuel Kant took the philosophical position that luck is morally irrelevant, that luck should not influence our moral judgement of actions and persons, that there is not such a thing as *moral luck*. I think he is right.

Thomas Nagel who in many respects is a Kantian himself argued that Kant was wrong and that common moral sense was right, in other words: there is moral luck, luck is morally relevant. After the publication of Nagel’s influential article “Moral Luck” there are not many philosophers left who doubt that luck is morally relevant. But if they are right, freedom of choice and responsibility for what we do would be disentangled. I think they are wrong.

I am convinced that luck is morally irrelevant and I also think that freedom, and responsibility regarding ones own actions are most closely related to each other. Any philosophical strategy which tries to disentangle these to normative concepts must fail. In this article, however, I want to argue exclusively in favour of the first assumption: luck is morally irrelevant there is no (genuine) moral luck.

If my argument is right one element of common-sense morality is defeated, i.e. that luck can have moral relevance and it would strengthen another element of common-sense morality that people cannot be morally assessed for what is beyond their control. If my argument is right there would be one reason less to doubt that freedom, rationality and control are crucial for moral assessment and moral responsibility.

## **I**

### **The problem**

There can be no doubt: whether we succeed or fail often depends on factors beyond our control. Even the adequate individuation of action depends on external factors. Whether A helps B depends not only on what he did but also on external factors which determine the consequences of what he did. If B is better off after that what A has done he might have been helped. If this is not the case we rarely would say A had helped B. If to help others is a moral duty it seems that whether I fulfilled my moral duty is dependant on external facts.

On the other hand if I did the best I could do under the given circumstances it seems unfair to blame me for the fact that I did not succeed in helping because of some external factors which could not be foreseen. Put in more general terms: The moral duty to help others if they need help and I can give help, should be formulated more precisely as: Do that of what you can rationally expect that it helps those in need of help!<sup>1</sup>

No doubt there is a difference between “rescuing someone from a burning building and dropping him from a twelve-storey-window while trying to rescue him.” And there is a difference between “reckless driving and manslaughter. But whether a reckless driver hits a pedestrian depends on the presence of the pedestrian at the point where he recklessly passes the red light.”<sup>2</sup> The essential question is, however, whether this difference is a moral one as Nagel and most other present day philosophers assume.

The question is whether there is genuine moral luck i.e. whether our moral judgement of a person’s action depends on factors beyond the control of the person. In a more general perspective the question is whether the assumption that someone is morally responsible for what he does depends on the fact that he controls what he does which indeed “behold most of the moral assessments you find it natural to make”.<sup>3</sup>

The arguments for the existence of genuine moral luck, i.e. for the assumption that luck is morally relevant although it is out of the agent’s control seem to me to be astonishingly weak. In case outstanding thinkers among them Bernard Williams<sup>4</sup> and Thomas Nagel adopt an obviously wrong position presenting weak arguments in favour of it, it is not enough to show that the position is wrong and the arguments are weak. In such case one should try additionally to explain why they adopted that position and why they thought their arguments were good arguments. In fact I try to do both in this article. I try to show that the position is wrong and that the arguments in favour of them are weak on the one hand and explain why this position is so attractive that even weak arguments seem to justify it.

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<sup>1</sup> We leave out constraining conditions like that. It is possible for you to do what you rationally expect will help others in need of help without severe disadvantages for yourself or only if those in need of help cannot help themselves or that they have not provoked their need of help etc.

<sup>2</sup> Thomas Nagel, Moral Luck, in: Freewill, ed. by Watson, Oxford 1982, D.Th. p.175

<sup>3</sup> Ibid p. 176

<sup>4</sup> B. Williams, Moral Luck, Proceedings of the Aristotelian Society, suppl. vol. (1976) 115-135. Thomas Nagel’s Moral Luck originally was a reply to Williams.

## II

### The argument

The arguments in favour of genuine moral luck have the following simple structure: Give an example in which luck (or chance) is responsible for how an action is morally assessed. Since chance, i.e. the concrete results and consequences of what I do are beyond my control it seems that the moral assessment of what I do is dependent on something which is beyond my control: Chance.

Think of the following situation: You drive slowly keeping to the traffic rules, you are not drunk, you are concentrated but nevertheless a horrible accident takes place because a child which you could not have seen in advance runs out on the street being hidden before by parking cars. It is impossible for you to stop before your car hits the child. The child dies.

After such an accident everybody would feel terrible. It is most natural in such a case to deliberate on what one should have done differently in order to avoid that accident. If only you had kept to your original plans to have breakfast first and then start the journey, probably you would not have run into the child. It should be clear that considerations of this kind natural as they might be, have no moral relevance. In fact many things out of your control led to that horrible accident and caused in effect the death of that child, which have no moral relevance whatsoever. To blame you for not having had breakfast before you started because then you probably would not have had that accident, is plainly irrational. The generalized normative assumption is that if an agent is without moral fault in doing an action he remains without moral fault if it turns out that contrary to that what could be expected he caused some bad event. If an event caused by a morally right action is disastrous as in our example one might call it a tragic event. It is the causal chain between a morally right action and bad consequences which constitutes tragedy. People experiencing a tragedy feel miserable, but they are not morally guilty. Someone is morally guilty only if that what he had done not merely caused some bad event but was in itself wrong.

Whereas most ethicists including Nagel, agree on that point they differ from my point of view if we change the example a bit. Let us modify the situation in introducing only one additional element: you drove careless, for example too quickly given the situation. The child runs on

the street, you cannot stop your car. The child dies. You feel miserable as you felt miserable in the first case, but now you are aware of the fact that if only you drove careful instead of careless, the child probably could still live. To make this point a bit more precise: Let us assume that if you drove 10 mph more slowly you could have stopped before the car would hit the child and given the situation there careful driving in general would require to drive 10 mph less. Nagel's position is that in such a case it makes a moral difference whether you hit the child or not. Careless driving gives reason to blame oneself *slightly*, but if careless driving results in the death of a child it gives reason to blame oneself greatly. Since the driver has no control of whether his careless driving results in an accident or not this seems to be an example of genuine moral luck, i.e. an example for the assumption that luck or *chance is morally relevant*.

But is this argument sound? What counts intuitively against that argument is that there is not just *good* and *bad*, *right* or *wrong*. Some actions seem to be perfectly o.k. under a moral perspective. Others seem for some slightly deviant for others still perfectly o.k. Some comply with juridical laws but seem dubitable at least under a moral perspective. Others are in conflict with juridical rules and seem to be at the same time morally acceptable or even obligatory. In short: There is a *continuum* between perfectly right and outrageously wrong. To say that at one end of the spectrum chance has no moral relevance whatsoever but that if one deviates even the slightest degree from that point chance becomes to have a tremendous moral relevance and must be inadequate.

More importantly, there is an alternative account which renders the moral situation transparent. If your car hit the child but you cannot be blamed for anything having done wrong, you nevertheless feel miserable. This feeling seems to be a natural one. I cannot see any good reason to argue that such a feeling although it is natural and most of us would have it, nevertheless is irrational. If you see a child dying you feel miserable. And if accidentally you are closely involved you feel more miserable. Why should that be irrational?

If you drove too fast and your car hit the child causing its death you feel miserable because you observed the death of a child and additionally because you were closely involved and additionally because you know you should have driven more slowly in which case the child would not have died. In that case you are to be blamed morally for not driving careful. But the

moral blame which we can put rationally on you does not differ depending on chance, i.e. the actual consequences of that.

### III

#### The analogy with prudence

That the argument in favour of moral luck fails might become more apparent if we compare the *moral* question with the *prudential* one. In case of prudential choice it is obvious that chance is *irrelevant* for prudential assessments. If an action is prudent it is prudent irrespectively of what its consequences are. If it was rational to expect a rise of interest rates and you were well advised by your bank therefore to buy a real estate this action remains prudent even if it turns out that the expected rise of interest rates does not take place. It remains prudent under the condition that your expectation was rational or that it was rational to follow the advice of your bank. The fact that some expected event in the future does not take place, gives reason to question the expectation itself. But as probability theory shows high probability for some event is compatible with the fact that this event does not take place.

Prudential choice can be defined in the following way: A decision is prudential if its expected value regarding my personal interests is bigger than that of any other action which I could have done at that moment. Or shortly: The prudential choice has maximal expected value regarding my own interests. A decision is prudential if and only if its expected value regarding my personal interests is maximal at the time I take the decision, whatever its consequences. Therefore we judge an action as prudential given the probabilities and given the preferential situation at that moment. It is a specific form of irrationality to focus on the real consequences of a decision when confronted with probabilistic phenomena. What counts is the *probability* of the consequences of a decision, it is not the consequences itself. This is undoubtedly true in case of prudential decisions. If a decision is prudential at the time I took it, it remains prudential forever.

Some might be seduced to think otherwise because they confuse the epistemic and the probabilistic aspects. If a certain type of decisions has bad consequences again and again whereas the expectation was that it had good consequences, this fact rises doubts whether the probability estimations were adequate. This is an epistemic question. Certainly it can turn out

that the epistemic basis of my decision was inadequate. But in case the estimation was right and the methods adequate, there is no reason to doubt the prudence of some action merely because it had bad consequences. Chance is prudentially relevant. *There is no prudential luck.*

The fact that I feel miserable if I loose a fortune although I decided prudentially about it, does not threaten this assumption. Chance remains morally irrelevant although I have bad feelings if some of my prudential choices in fact have bad consequences. Rationally it makes no sense to blame myself of having decided imprudentially. This is quite important because one's self image, one's self esteem, one's self critique should not depend on chance. Prudence and morality constitute a good part of one's self image, one's self esteem, one's self critique. Prudence and morality therefore should be independent from chance. And in fact there is no good argument that prudence or morality does depend on chance.

Deontologists usually assume that the criteria of morality have a fundamentally different nature from those of prudence. I do not agree with that assumption, not because I question the deontological nature of morality but because I question the deontological nature of prudence.<sup>5</sup> Prudential reasons are one kind of reasons. Moral reasons are another kind of reasons. In the end these two kinds of reasons cannot exist independently from each other. If a person thinks about what he should do, he has to deliberate about prudential and moral reasons alike. In some cases reasons of the prudential kind collide with reasons of the moral kind and in these cases deliberation requires to weigh them against each other. Maybe that the adequate weighing procedure is such that in case of conflicts moral reasons always win. But even if this is the case which seems doubtful, some form of integration of prudential and moral reasons is required in order to determine whether a decision is the right one. The integration of all different kinds of reasons requires coherence. Coherent deliberation of practical reasons, prudential and moral alike, results in coherent preference relations. If a preference relation is coherent, it can be represented by an ordered pair of functions, one function representing the agent's subjective probabilities and the other function representing the agent's subjective values including the moral rules the agent accepts. Probabilistic considerations play an important role for rational deliberation be it in the moral or in the prudential sphere. In order to come to right decisions it is necessary to have adequate probability estimates, adequate personal and moral values and to follow the adequate rules which constitute a good and moral

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<sup>5</sup> C.F. Mai, *Rationality and Coherence*, in: *Rationality, Rules and Structure*, ed. by J. Nida-Rümelin and Wolfgang Spohn, Dordrecht 2000 and in more detail *Strukturelle Rationalität. Ein philosophischer Essay über praktische Vernunft*, Stuttgart 2001. Mai, "Why rational deontological reaction maximizes subjective value"...

life. These are the ingredients of right decision. If some decision is right, given the accepted values and rules, given the probability estimates, this decision remains right whatever its consequences. “Right” in the sense that the agent cannot be blamed for having taken it. Probabilities are prudentially and morally relevant. Chance or luck remains irrelevant.

#### IV

#### **Epistemic and normative assessment**

If you drive fast on a curvy road your friend in the car might admonish you saying “Don’t drive so fast it’s dangerous here”. You might answer: “I am not driving too fast, I have my car under control”. Obviously there is a disagreement whether you can be blamed to drive too fast. If then you have an accident your friend might say “Look, I was right: you drove too fast”. This is not a normative but an epistemic disagreement. You and your friend agreed that one should not drive dangerously, but you disagreed whether you drove dangerously. Your friend took the accident as evidence for the fact that you indeed drove dangerously. Whether the accident indeed showed that you drove dangerously is an open question which can be answered only by an analysis of its causes.

We should stick to the moral irrelevance of chance but take into consideration that normative judgement is not independent from epistemic judgement. In many cases seemingly normative disagreement is in fact epistemic disagreement. In the middle range of concrete norms and values there is a broad normative agreement. Whereas there are deep ranging disagreements about how these norms and values should (and could) be embedded in an all comprising normative view (Weltanschauung, world view).

Exemplified with this case: At first glance it seems that there is a normative disagreement about what you should do. You think that it is o.k. that you drive as fast as you do. Your friend thinks that you should slow down. But probably you both agree that everybody should drive slowly enough that he does not endanger himself and others. The disagreement then seems not to be a normative one, but an epistemic one: Is it the case that (with this velocity) you do not endanger yourself and others? Your friend doubts that. Saying that you endanger yourself and others he endorses a probabilistic proposition which is difficult to make explicit. Endangering others means something like there is an unacceptable high probability for

causing an accident. The probability can be quite low in order to be unacceptably high, say 0.1%. You, the driver instead are convinced that you have everything under control and that the probability of an accident is much lower with, say, a factor of thousand: below 0.0001%. If then the accident in fact occurs your friend probably takes this as a proof that he was right and you were wrong. That his probability estimate was better than yours. To be sure the fact that the accident occurred is not a proof that your friend was right, but on closer examination it may indeed deliver good evidence for his probability estimate.

It is not necessary to go more into the details of such an example in order to draw the conclusion that there is indeed a way in which chance is relevant for moral judgement. This relevance, however, is not a genuine moral one, it is confined to the epistemic dimension of moral judgement. This role of chance does not make you as the driver more guilty if you have an accident than you were if you had none. You are to be morally blamed to exactly the same degree, but an epistemic disagreement between you and your friend may be settled in favour of your friend. That is, your friend was right when he said (before the accident took place) that you drive too fast. It is morally unacceptable in any case – whether the accident takes place or not. It does not become more unacceptable because the accident took place. And it does not become less unacceptable because the accident did not take place. If indeed there is this kind of life world irrationality of moral judgement, a jury should not adopt it.

## V

### **Life world irrationality and ethical theory**

Indeed if the Decembrists had succeeded in overthrowing Nikolaus I. in 1825 and establishing a constitutional regime, they would be heroes. If the American Revolution had been a bloody failure resulting in greater depression, then Jefferson, Franklin and Washington would still have made a noble attempt, and might not even have regretted it on their way to the scaffold, but they would also have had to blame themselves for what they had helped to bring upon their compatriots. If Hitler had not overrun Europe and exterminated millions, but instead had died of a heart attack after occupying the Sudetenland, Chamberlain's action at Munich would still have utterly betrayed the Czechs, but it would not be the great moral disaster that has made his name a household word. Thomas Nagel gives these examples (p. 178 f.) to show that moral assessment depends heavily on chance.

We just have to broaden this scope of the argument of the last section in order to see that these examples do not show what Nagel pretends them to show. That so called national histories resemble more stories than historical science is a truism. Who counts as a hero in national history depends more on political interests and ideological points of view than on the facts. The instrumentalization of moral assessment for political and ideological ends is so common that examples of this type are unable to show anything for ethical theory. To me it seems almost hopeless to use examples of this kind within an ethical argument. If the opponent insisted to use arguments of this type, I would advise to take a closer look. Chamberlain probably did not expect that Hitler and Nazi-Germany would overthrow only shortly afterwards a good part of Europe. He probably took the rhetoric Hitler used these days much too serious. As many others including many Germans, Chamberlain and his officials, if informed at all, probably thought that the general account of Hitler's political aims which he quite explicitly had written down some years ago in "Mein Kampf", were obsolete after the overwhelming political success of the NSDAP.

In order to undertake a serious assessment of Chamberlain's action at Munich we had to analyse whether the assumptions on which Chamberlain's indulgence was based were rational, not whether they later on turned out to be true. If I pass a green traffic light and later on it turns out that it was out of order I cannot be blamed for the accident which results out of that behaviour because I could expect that a green traffic light indicates that I can pass. It would be unfair to say the least if later on people knowing that the traffic light was out of order blame me for not having stopped. The analogy is applicable to the Chamberlain cause. If Chamberlain indeed had good reason to assume that Hitler after succeeding in the Sudetenland would turn to a more cooperative and peaceful political strategy, Chamberlain still could be blamed for not taking the national interests of the Czech population in account, but he could not be blamed for encouraging Hitler to overthrow a good part of Europe and murdering most European Jews. On the other hand if there was good evidence that the aggressive aims also in the future would frame Nazi-politics, then indeed Chamberlain could be blamed for not taking this into account. The fact that afterwards it turned out that Hitler had not given up even one single point of his program can be taken as the evidence for the assumption that the peaceful rhetoric Hitler used during a certain period was designed to defeat European public. In this sense there is an epistemic, but not a moral relevance of what actually happened after the Munich conference.

Life world's moral judgement plays an important role for ethical theorizing because there is no archimedean point from which ethical theory can be started. We have to check the normative implications of ethical theory against life world moral assessment. An ethical theory which is in open and deep conflict with the central elements of our life world moral assessment cannot be upheld. On the other hand ethical theory is a means to criticise life world moral judgement. A good ethical theory is able to systematize the central elements of life world moral assessment and qua systematization ethical theory can help to make our life world moral judgement more coherent. Not every intuitive moral judgement is beyond ethical critique. Ethical theory cannot be checked against live world moral judgements which themselves are the result of ideology and political strategy as is the case with these examples. Some widespread intuitive moral judgements are quite obviously irrational. Ethical theory would too easily be infected by this irrationality if we allowed every widespread intuitive moral judgement to become part ethical theory. The irrationalities of moral assessments within national histories are an exemplification of that point.

## VI

### **In defence of the canonic account**

That what I want to call the *canonic account* can be characterized by the following propositions: (1) action is intentional behaviour. (2) the agent has control over his actions. (3) the agent is morally responsible for his actions.

The argument in favour of genuine moral luck is thought to show that this canonic account cannot be upheld. But as we have seen the argument itself is extremely weak. It is much too weak to be able to overthrow the canonic account. The canonic account is not only an explicit or implicit part of most ethical theories beginning with Aristoteles until present time Kantians and utilitarians, it frames decision and game theory and the most philosophical, psychological and sociological theories of action. The canonic account can be understood as a *metaphysics of ethics*. It contains the basic presuppositions which we accept in our life world moral praxis and in ethical theorizing alike. Those who challenge this account presumably are not fully aware what that means. In fact I am convinced that even those who challenge this canonic account do not take that challenge seriously. They continue to theorize about ethics and they

continue their life role moral as if this challenge did not exist. Confronted with the question whether the canonic account is right or wrong one should take a Wittgensteinian position: there is no interpretation possible which renders a challenge of the canonic account reasonable. Every kind of reasoning comes to an end. There are rules of reasoning – in this case moral and ethical reasoning – which cannot be given up because this would mean to end the moral practise *in toto*. There are constitutive rules of moral and ethical reasoning. The canonic account is an essential part of that.

I never felt it necessary to answer the radical philosophical sceptic. The radical sceptic doubts the metaphysics of epistemology, he doubts that anything is reliable. If we took the sceptical position seriously, epistemic reasoning would come to an end. There would be no space left for epistemic reasoning confronted with the radical sceptic. It is even impossible to show that the radical sceptic is wrong because he would reject every argument you would develop because he does not accept the presuppositions of your argument as reliable. If no presupposition of any argument is accepted, no argument is possible anymore. Those who challenge the metaphysics of ethics and not of epistemology may think to be in a more comfortable situation. Challenging the metaphysics of ethics could threaten the ethical project, i.e. the project to give good arguments for and against moral rightness of action. But since this project seems dubious for many philosophers, much more dubious than the project to give good arguments for empirical judgements the philosophical costs of such an undertaking seem to be acceptable. Probably this discrimination is even in line with the thinking of Ludwig Wittgenstein. But however that may be, this discrimination cannot be upheld. The moral point of view, the life world moral practice and ethical theorizing growing out of it is as essential as our life world epistemic reasoning and epistemology and science going out of it. It is plainly inconceivable to challenge the most basic rules on which these two kinds of reasoning (which are closely related anyhow) are based.

In order to get a better picture of the metaphysics of ethics which are at stake here we draw some implications from (1), (2) and (3). We are morally responsible exactly for what is under our control. Action is exactly that part of our behaviour which is under control. Therefore we are morally responsible for our actions, not for other parts of our behaviour. To be in control of requires that it is our intention which determines what happens. If some part of our behaviour is not determined by our intention we are not responsible for that part and we should not call that part an action of ours. The notion of *freedom* comes into play when one

tries to interpret the essential element of *control*. What does it mean to have control over something? It means that it is our intention which decides whether it happens or not. Compatibilists think that this is possible even if the state of the world, say 2000 years ago, together with the laws of nature determine what I do at every point of time. Non-compatibilists think that this is not the case, because if the state of the world, say 2000 years ago, together with the laws of nature determines what I do, it is not my intention which determines what I do, because what I do is determined independently from my present intention.<sup>6</sup>

Whether compatibilism is conceivable can be left open here. It should be noted, however, that the driver example and other examples of that kind do not give any plausible account of moral responsibility for events beyond our control. These examples do not mark the path to a broader theory which disentangles control and responsibility. *Without control there is no moral responsibility*. It has not been shown by the opponents that this element of the canonical account had to be given up. The concepts of *action, control, intention, freedom* and *responsibility* are closely and – it seems to me – irresolvably interlinked.

## VII

### Other kinds of responsibility

Obviously there are other kinds of responsibility, non-moral responsibilities, for which this close interlinkage of action, intention, control, freedom and responsibility does not hold. We have to check therefore whether this phenomenon does threaten the canonical account. Take e.g. political responsibility. Think of the following example. A higher state official uses the influence of his office in order to foster his private economic interest. It might well be that e.g. the Secretary of Defence is asked to take the political responsibility. How can we understand this kind of responsibility? It is obvious that the Secretary of Defence cannot control every action of every official in his administration. At most there is an indirect genuine responsibility in so far as he has the possibility to hire and fire, he trusts those who work for him and if he distrusts some of those who work for him he should fire them. Nevertheless, it seems unfair to hold him responsible for everything what somebody in his

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<sup>6</sup> c.f. Peter van Inwagen, *An essay on free will*, Oxford 1983. Tommis Kapitan criticises this incompatibilists argument in “A master argument for compatibilism?”, the *Oxford Handbook of Freewill*, ed. by Robert Kane, Oxford 2002, S. 127-157

administration does in office, because actual control would neither be possible nor even desirable if possible.

Is the institution of political responsibility therefore unfounded or even irrational? The answer depends on whether we are able to discriminate carefully between *political* responsibility on the one hand and *moral*, i.e. *genuine* responsibility on the other. If the Secretary of Defence has to give up his position because he takes the political responsibility for some act of one of his high ranking officials, this does not imply that he is to be *blamed morally* for what this high ranking official did. He might even say in a television debate that “although I am not responsible for what this person did, because I did not and could not even know of it, I take the political responsibility”. The institution of political responsibility can rationally be justified only if it is kept separate from moral responsibility. Certainly there are many further requirements for the rationality of political responsibility. Among these requirements one seems to be of special relevance: It is the idea that the public controls not the whole of the administration but concentrates its control on the person who presides this administration. If everybody knows that it is to a large degree fictitious that an administration acts like one person and that this institutional or corporate ‘person’ is represented by the head of that administration, it makes sense to establish political responsibility. For the good and the bad the politician on top of the administration takes the blame and takes the credit for what the whole of the administration accomplishes. His political orders are binding for every state official in that administration; his political intentions frame its agenda. This singular position testifies the institution of political responsibility. Political responsibility makes sense in the broader framework of democratic control and public discourse. It should not be confounded with moral or genuine responsibility.

The same holds for judicial responsibility. The driver is more or less responsible in the juridical sense depending on whether “a child gets into the path of ones car”<sup>7</sup>. If you shoot at your uncle with the intention to kill him because as his heir you expect to get a good share of his fortune, you are a murderer in the legal sense. If in this moment a bird flies into the path of your bullet you will not be sentenced for murder but merely for attempted murder. The penalty for attempted murder is less than that for successful murder although that what you controlled by your intention did not change. What changed was some event in nature (the bird’s flight) which was not under your control. You could not even foresee such an

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<sup>7</sup> Nagel, *ibid* p. 180.

improbable event which hindered you to become a murderer. Now the question is whether this natural event (a bird flies into the path of the bullet) changes our *moral* assessment of what you did and who you are. Also in this case it seems obvious to me that it would be irrational to change the moral assessment of your deed only because a bird flies into the path of the bullet. I do not think that your friends, who you told what happened, change their minds in assessing your character and motives, just because the bird flew into the path of the bullet. It was mere chance that you have not become a murderer. This chance is morally irrelevant. It is irrelevant for the assessment of your character, your motives, your deed. A rational moral judgement is not dependent on whether the bird flew into the path of the bullet or not.

But you may ask, what justifies then the different legal treatment of attempted and successful murder in this case? The answer to this depends on the theory of legal penalty which you adopt. If legal penalty will be justified merely as a means to give expression to moral assessment, then the difference between moral and legal responsibility could not be upheld. But most legal theories assume that legal penalty is justified differently. This explains why the legal system is such that agents cannot be punished for every action which is morally repellent. Not inviting your neighbour to your summerparty knowing that she will suffer a lot because you are motivated by enjoying to see other people suffer, is a harmless example for a morally repellent action which is not illegal.

The legal system concentrates on actions which have public and easily defineable consequences. It takes the interests of those into account which suffer from the legally wrongful act. In case of attempted murder these interests are quite different from that of successful murder. Legal rules are also different from moral rules in their certistic design. Because the legal system cannot be held responsible for controlling and healing all kinds of socially unacceptable behaviour, it concentrates on clear cases. The established legal practise is not a good starting point to conceive the metaphysics of ethics.

## Aktennotiz

Ad Essays über Willensfreiheit, hier: Moral luck

Die zentrale Frage, ob, und wenn ja in welcher Weise eine Entkoppelung von Verantwortung und Freiheit bzw. Kontrolle möglich ist, muss in einem eigenen Essay diskutiert werden.

Dabei sind dann die Argumente sowohl von Thomas Nagel in Moral Luck als auch von Harry Frankfurt in einer ganzen Reihe von Artikeln zu berücksichtigen. Dieser Artikel über Moral Luck könnte der Zeitschrift Ethics angeboten werden.