

Moral Luck and Moral Theory

A school bus driver swerves to avoid a dog crossing an icy road, loses control of his bus and runs into a tree. Twenty children die. It is discovered after the accident that the driver's blood alcohol level exceeded the legal limit. It was also discovered that he had been driving in this condition for twenty years without a mishap. Every school day, before his scheduled run, he visited the same bar and downed a pitcher of the same beer. His habit was widely known. Some people disapproved mildly, but no one made a public issue of it. Attitudes changed dramatically after the accident. The fact that he was now responsible for the death of twenty children made him a villain in the eyes of many. It didn't matter that his ability successfully to avoid dogs on icy roads was no worse on this occasion than it was on many earlier ones. (This is based loosely on an actual incident).

An enraged woman empties a seven shot pistol into her estranged husband at point blank range, intending to kill him. Miraculously, he survives without permanent injury or disfigurement. She is blamed for her act but not nearly as much as she would have been had he died or suffered permanent disability. In fact—this is an actual case-- she serves no jail time and (after some months) she is reintegrated into her old social network.

Our judgments in these cases seem odd, even paradoxical to many moral philosophers. The *action* for which we are blaming seems to be the same in cases in which we blame lightly (if at all) and cases in which we blame quite harshly: driving under the influence and shooting with the intent to kill. But if the actions seem the same, how can the moral judgment differ? In particular, how can outcomes that seem to be a

matter of luck make the difference? How can our assessment of a person's goodness or badness—her moral worth--be a hostage to circumstance in this way? Isn't our moral worth something that should, in some fundamental sense, depend entirely on us?

This problem, called the problem of Moral Luck, has received considerable attention in the ethics literature. This is partly because much (perhaps most) discussions of moral issues are driven by intuitions and these are cases in which our intuitions about cases seem to conflict with our intuition about a principle. Most people rather strongly feel that the murderer does deserve more blame than someone who merely fails in the attempt (even if they are spared this additional blame simply by virtue of their incompetence). Most people also blame those whose negligence injures far more than those whose negligence does not. And yet many people accept as intuitively obvious the principle that our moral evaluation of a person should not be a hostage to fortune. This problem is deeply troubling to many moral philosophers.

It is not just that this is a case of conflicting intuitions. God knows, conflicting intuitions are no novelty in moral philosophy. Rather it is deeply troubling because it threatens what I call "The Metaphysical Conception of Morality". According to the Metaphysical Conception, there is a set of knowable moral standards binding on rational agents as such that is sufficient for the moral life. The term "Morality" is a proper name for this particular set of standards (as "London" is a proper name for a particular city). These standards provide a kind of metric for judging the rightness and wrongness of acts and the goodness and badness of people. They are the basis on which God would judge us on Judgement Day if there were a God. They have and need no point or purpose beyond that. Moral worth, on this view, is a very deep fact about persons. Indeed, it is

the most important fact. Our criteria for determining moral worth must reflect this. So it is disturbing that our actual judgments of moral worth seem not to be based on the standards by which God would judge us (were there a God) but rather on events beyond an agent's control. This seems not only unreasonable but also incompatible with the idea that one of the main points of morality is to provide us with a metric for measuring the goodness of our wills or souls.

This problem is especially acute because there is an alternative conception that makes sense of our "intuitions" in the moral luck cases. I call this "the Instrumental Conception". The Metaphysical Conception is at one end of a continuum, the Instrumental Conception at the other. According to the Instrumental Conception, there is no such thing as Morality. There are only moralities. Moralities are among the means by which we regulate our collective existence. Their point or purpose is to regulate our collective existence wisely. Very roughly, they do this by promoting and protecting reasonably valued ways of life (i.e., ways of life that realize and acceptably distribute reasonable values). Instead of tying judgments of blame to some deep fact about the person himself, Instrumentalists fix our standards for blaming in ways that promote our reasonable values. Blame is not regarded as a fitting response to some deep Moral aspect of a person; some Moral defect of will or soul. Roughly, it is a means by which we influence one another's behavior. This is just the barest sketch but enough of a sketch to show that moral luck need not be a problem for Instrumental accounts. (As the reference to continua implies, there are also intermediate positions. For a lengthy exposition, see my *Between Universalism and Skepticism*, OUP, 1994).

If we conceive blame in this Instrumental way, our apparently inconsistent “intuitions” in the moral luck cases make perfectly good sense. The case for this is best made by contrasting our actual policy with a plausible Metaphysical strategy for dealing with moral luck. According to that strategy, our intuition that moral worth should not be a hostage to fortune should take precedence over our intuitions about blame in particular cases. On this view, failed attempts should be judged the same as successful ones and lucky negligence the same as unlucky negligence. Suppose we follow this policy, e.g., suppose that we blamed someone to the same degree for all cases of negligence involving equal risk of equally serious harm. We still need to decide how much to blame. Should we blame the one responsible for the deaths as little as we now blame the lucky one? In that case we would do very little to discourage negligence.

Should we, then, blame the lucky bus driver to the same degree as we now blame the one responsible for the deaths of twenty children? Think about it. Even very conscientious people have lapses of attention—how many times have you adjusted your radio in traffic or taken your eye off the road to chastise a child? How many times have you momentarily left a small child unattended? Are we to blame ourselves and be blamed by others as much for these things as we would were our negligence responsible for, e.g., the death of a child? Do we want to live in a cauldron of resentment and recrimination? Imagine what our emotional lives would be like under this suggestion. .

How much blame, then, is appropriate? The Metaphysical conception has no way to answer this problem save by appealing to their intuitions (which diverge considerably on this question). The Instrumentalist insists that the point of blaming people for their negligence is to discourage the harms born of negligence. She may also

regard blame as a healthy outlet for the anger and pain of the injured and as a means by which we collectively affirm our values. But she also wants to do this without drowning us in a torrent of guilt, blame, resentment and recrimination. Arguably, our current social practice achieves an acceptable balance. We blame to some degree for negligence per se, but much more strongly for negligence resulting in harm (the more harm the more blame). This means that those who are negligent put themselves at risk not only of causing harm but also of serious recrimination (from self and others). If this *is* defensible, it achieves an acceptable balance between deterring negligence and channeling negative emotions, on the one hand, and minimizing guilt, resentment and recrimination, on the other.

Our policy in relation to failed attempts can be explained and evaluated in the same way. Degrees of harm being equal, we blame people more for attempts to do wrong than we blame them for negligence. In general, attempts to do wrong are more likely to do harm (one almost always gets away with fiddling with one's radio in traffic). This policy does not inundate us with excess resentment and recrimination because we don't both try and fail so very often. Still, it makes sense to blame failed attempts less than we blame successful ones. Failed attempts produce less injury and hence less anger. So there is less need for outlets.

Like most matters of social policy, these issues are underdetermined by the evidence. Still, it is clear what counts as evidence for an Instrumentalist and sometimes the evidence is decisive (e.g., drunk driving is no longer the laughing matter it was thirty years ago). In any case, Instrumentalism explains our "intuitions" in the moral luck cases. They simply reflect our policies currently in place. Instrumentalism makes sense

of these policies and provides us with a basis for arguing for and against them. The Metaphysical Moralists is faced with what she can only regard as our conflicting “intuitions” in these cases and has no principled basis for choosing between them. We are asked to peer Godlike into the souls of our neighbors and measure their moral worth on the bases of principles accessible to rational agents as such but there is no agreement on these principles.

A final note: what I am calling the Instrumental approach to this problem resembles at least certain Utilitarian approaches. Each evaluates our policies of blaming on the basis of how well they achieve our ends. But Instrumental theories are grounded in a different understanding of the nature and role of morality than at least many versions of utilitarianism and need not be vulnerable to the objections from justice that plague standard Utilitarian theories. In particular, an Instrumentalist can plausibly argue that justice itself is a reasonable value. But this is a topic for another article. (Although, for a detailed account of these matters, the reader is shamelessly referred to Chapters 5 and 6 of *Between Universalism and Skepticism*).

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