CAMBRIDGE
UNIVERSITY PRESS

ARTICLE

Pandemic Rule-Breakers, Moral Luck, and Blaming the Blameworthy

Jesse Hill

Lingnan University, Tuen Mun, Hong Kong
Email: jessehill@ln.edu.hk

Abstract

This paper takes under consideration a piece by Roger Crisp in which he questions what the problem of moral luck can teach us about COVID-19 lockdown rule-breakers. Taking the position that although such rule-breakers might seem to be new examples of moral luck, Crisp ends up denying the existence of moral luck and argues that moral luck is an outdated notion in so far as it relies on other questionable aspects of morality, that is, retributivist punishment and blame. Although the author agrees with Crisp that pandemic rule-breaker cases are putative examples of resultant moral luck, he proposes that Crisp has misconstrued what moral luck is and the paper examines in detail what he sees as the numerous problems with Crisp's claims. The author concludes that Crisp's analysis of pandemic rule-breaking does not shed any new light on the moral luck debate, and the difficult questions of luck, moral responsibility, and desert are not so easily resolved.

Keywords: moral luck; COVID-19; retributivist punishment; blame; moral responsibility

Introduction

Roger Crisp has recently published on what the problem of moral luck can teach us about lockdown rule-breakers.[1] Although I agree with Crisp that pandemic rule-breaker cases are putative examples of resultant moral luck (i.e., luck in the way that things turn out),[2] I propose he has misconstrued what moral luck is. To this end, I first recapitulate the standard view on what moral luck entails. I then argue that Crisp's focus on intention as opposed to control in cases of moral luck is a mistake. Next, I argue that Crisp's appeal to our intuitions in cases of agent-regret to mollify our intuitions about blame in cases of moral luck fails in that the comparison is disanalogous. There is an important difference between the cases, that is, the presence (or absence) of fault, and this is what is driving our intuitions. Lastly, Crisp claims that "we ought to adopt a form of benevolence that avoids the whole problem of "moral luck" and seeks to make the world better than it otherwise would have been."[3] I argue that this move toward benevolence neither vitiates blame nor solves the problem of moral luck.

What the Luck?

Thomas Nagel famously defines moral luck as "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."[4] There is a lot going on in this definition that is worth unpacking.

First, moral luck, although perhaps only nominally, involves luck. Philosophers typically define luck in terms of significance factored by chance.[5] For Nagel and many others, moral luck is chancy in the sense

that it involves the absence of control.[6] But even when combined with significance, defining luck in terms of a lack of control casts too wide of a net; there are many unlucky events that are significant and outside of my control. For example, today is Tuesday, which means that tomorrow will be Wednesday. This may be significant for me and is completely outside of my—or anyone else's—control, but it is not a matter of luck.[7] Most events are like this; I have no control over most of the significant goings on in the world, but this does not make all these events lucky. Consider that the current actions of 1.39 billion people in China are completely outside of my control and some of these actions are significant to me (perhaps even morally significant), but to consider all these actions to be purely a matter of luck is insular and dismissive of others' abilities.

Control does not capture everything we mean by the word "luck" or "chance." This is fine. Philosophers who write on moral luck are using the term in a stipulative way.[8] They are trying to explain how some of our common beliefs about control and moral responsibility appear paradoxical. The problem is simple. First, stipulate that luck involves the absence of control. Second, most people find it highly intuitive that a person should not be blamed or punished (or praised or rewarded) for something that happened to him or her that was either lucky or outside of his or her control—such treatment would be undeserved or unfair. As Michael Zimmerman writes, "one cannot be culpable for something that neither is nor was in one's control."[9] If this is right, then the phrase "moral luck" expresses an oxymoron. However, when we reflect on how much control we have in our own lives, we realize that luck is ubiquitous and an ineliminable part of the human condition.[10] Luck affects the results of our actions, the circumstances in which we find ourselves, and who we are. But when we fully appreciate this fact, our insistence on holding people morally responsible only for what is in their control threatens "to erode most of the moral assessments we find it natural to make" and leaves "few of [our] pre-reflective moral judgments intact."[11] The paradox is that our ordinary reflections about control lead to the conclusion that moral responsibility is either incredibly rare or impossible, yet we continue to treat people as if they are deserving of praise or blame.

Notice that Nagel's definition also involves a significance condition, "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*, it can be called moral luck" (emphasis added).[12] But moral luck, as opposed to other kinds of luck, involves a specific kind of significance, that is, moral significance. It might be bad luck that I lose the lottery or good luck that I have true belief in a Gettier case, but these examples do not necessarily involve moral significance or moral luck. Furthermore, the problem of moral luck involves a particular way of thinking about morality. Obviously, it is a bad thing if a hurricane hits the coast as opposed to staying in the gulf. The world would be a better place if the latter occurs. But moral luck involves the actions of agents, that is, the kind of things that can, at least in theory, be held morally responsible. Lastly, Nagel's definition is in error. Nagel holds that moral luck occurs when we treat a person as if they are blameworthy or praiseworthy for something that is outside of their control. But we are often mistaken about whether people deserve blame or praise. Sometimes we blame agents when we should not. Sometimes we fail to blame when we should. The same holds for praise. What matters is not our practices but whether the agent is blameworthy or praiseworthy.

What the above shows is that we should view moral luck as a particular species of luck that involves a chanciness condition thought of in terms of the absence of control and a significance condition thought of in terms of an agent's moral standing or the extent to which they are deserving of blame or praise. Putting all of this together, I agree with Robert Hartman that "The *Standard View* on moral luck is that it occurs when factors beyond an agent's control partially determine her positive praiseworthiness or blameworthiness."[13] With this in mind, someone who *accepts* the existence of moral luck believes that an agent can be held morally responsible with respect to something that is outside of her control. There are, at least, three ways in which one could *deny* the existence of moral luck. One is by holding that agents are only morally responsible for what is in their control and revising some of our practices when it comes to blame and praise. But one could also deny that moral luck exists by denying that anyone is ever morally responsible for anything or by denying that luck is an objective, real phenomenon.

Crisp on Moral Luck

First, let us look at Crisp's putative example of resultant moral luck:

> Consider the imaginary case of two people, unknowingly carrying the virus at the time, who deliberately break the law [during a nation-wide lock down for the coronavirus pandemic]. *Lucky Linda* drives several hundred miles to see her father in a care home. Though she is stopped [after her visit] by the police and fined, she gets home safely without infecting anyone. *Unlucky Ulla* does the same [and is the exact same in every way], except that she does infect her father. That infection then spreads to others in the home, causing several deaths. Both incidents are widely publicised (emphasis added).[14]

Linda and Ulla are the exact same except for one lucky difference, that is, whether they infect other people with the new coronavirus, and this is to some extent (they could have stayed inside) outside of their control. This difference changes the scope of what these two agents could be responsible for. Ulla is causally responsible for something that Linda is not, that is, infecting someone with the coronavirus. The question of moral luck is if this matters when we are morally assessing Linda and Ulla. It might seem as if it should not since the two cases are identical except for an unlucky difference, but, as Crisp notes, "We tend to blame people more for greater wrongs, and most will think Ulla's wrong much greater than Linda's."[15]

I agree that this is a putative example of resultant moral luck. However, Crisp explains the case in terms of Linda's and Ulla's having identical intentions and not in terms of control. In describing the problem, he questions, "Is it ever right to blame people for the unintended consequences of their actions?"[16] This is the wrong question to ask. The answer is yes, but this does not have anything to do with the moral luck debate. Moral luck is not limited to what is in one's intentional control.

One problem is that Crisp's focus on intention—as opposed to control—cannot make sense of his own putative example of moral luck. If we focus only on intention, then it seems as if Linda and Ulla are not blameworthy for anything. This is because neither of them intended to harm anyone. What they intended to do was visit their fathers. In this way, Linda and Ulla are morally on par with someone—say *Considerate Carla*—who stayed at home during the lockdown because of her concern for others. Many will find this to be the wrong intuition. After all, both Linda and Ulla had control over their decision to visit the care home, and they knew of the dangers of COVID-19 and the reasons for the lockdown. It seems then that they are blameworthy for their decision to break the law and perhaps for their inconsiderate character. Crisp ends up arguing that there is no such thing as moral luck as "blame should not be the mechanism of moral assessment."[17] This makes Crisp's view highly revisionary. But his focus on intention is problematic in that it cannot make sense why people view cases such as Linda and Ulla as putative instances of moral luck, whereas a control-based view can and thus has more explanatory power. Note that Crisp's focus on intention cannot explain why people who accept moral luck think that there is a morally relevant difference between Linda and Ulla, why most people who reject moral luck think that both Linda and Ulla are blameworthy to the same degree, and why nearly everyone thinks that Linda and Ulla are morally worse than Carla.

To make clear the problem with an intention-based approach, consider another case in which two hunters fire off their guns straight up in the air in a sparsely populated forest in celebration of a Danica Patrick NASCAR victory. Suppose one of the bullets kills a hiker, while the other falls harmlessly to the ground. This is a putative example of moral luck. However, neither hunter *intended* to kill anyone. What they intended was to celebrate Patrick's victory by harmlessly shooting their guns up in the air. Nevertheless, they are arguably responsible for recklessly shooting their guns because this is something that is within their control. The point is that agents can be morally responsible not just for what they intentionally deliberate over but for events that they have some degree of control over. Additionally, agents can be responsible for actions that reflect their character as the formation of one's character is, at least, sometimes under one's limited control. For these reasons, it is best to explicate potential cases of moral luck in terms of control and not intentions. In doing so, we can explain why some philosophers

accept that moral luck exists while others deny its existence, whereas a focus on intention cannot explain many putative examples of moral luck.

Agent-Regret Versus Resultant Moral Luck

Crisp also discusses a version of Bernard Williams' lorry driver case[18]:

> You are backing your car out of a neighbour's drive, slowly and carefully. Suddenly your neighbour's toddler, who has been playing in the garden, appears from the shrubbery. You brake immediately, but it is too late and the toddler dies. Clearly, you didn't intend this accident to happen, you were taking all reasonable steps to avoid anything like it, and you shouldn't be blamed for the consequences.

He goes on to say that "Having unintentionally killed your neighbour's child, you can express deep sorrow and regret at what has happened; but there's no need for guilt, blame, or atonement."[19] Whether this is true in cases of agent-regret is debatable. Daniel Tigard in this volume and elsewhere argues that there can be something valuable (in terms of outcomes, relationships, and one's own character) in a person taking up a kind of responsibility or blame-like acceptance in such cases.[20]

What I wish to focus on is Crisp's next claim that "The same applies to Ulla," that is, that there is no need for Ulla to feel guilt, blame, or atonement over the deaths at the care home.[21] This is an outrageous claim. Ulla and Linda put other peoples' lives at risk by selfishly and deliberately breaking quarantine. They knew about the dangers of coronavirus and had control over their decision to visit the care home. In short, they were at fault for what they did. Importantly, there is no such fault in cases of agent-regret. Thus, we cannot compare our intuitions about blame in cases of agent-regret and cases of moral luck. The cases are disanalogous in a crucial respect, that is, the presence of fault, and this is what is driving our moral intuitions about such cases.

To see this clearly, consider the following cases.[22] Suppose that there are two surgeons neither of whom wash their hands or disinfect before performing several operations. Some of these surgeons' patients go on to develop infections after their surgeries, while others do not. In such cases, luck may play a role regarding whether a particular patient develops an infection. However, suppose that one of the surgeons—say *Ignorant Igor*—is operating during the 1700s, that is, over one hundred years before scientists started to understand what causes infections and began recommending antiseptic procedures. Igor may feel grief, regret, or guilt over one of his patients dying postsurgery in a way that resembles how someone might feel in cases of agent-regret. Still, Igor is not blameworthy. This is because he is nonculpably ignorant about the causes of infection in his patients. He is not at fault for what happened, and his ignorance entails a lack of control when it comes to the infection rates of his patients. He has a reasonable excuse that gets him off the hook.

However, compare Igor to another surgeon—*Blithe Barry*—who is practicing in the year 2021 and does not always sanitize or wash his hands before surgery. Barry and Igor are disanalogous. Barry, at least some of the time, does have control over whether his patients develop an infection, and he is at fault when they do so because of his carelessness. Barry lacks any excuse for the tragedies he has caused. I take it as obvious then that although both Igor and Barry end up infecting some of their patients, there is no moral comparison between the two surgeons. Igor has a legitimate excuse for his actions and is not at fault, whereas Barry is blameworthy and lacks an excuse for his behavior. In the same way, one should not compare cases of agent-regret (e.g., Williams' lorry-driver or Crisp's toddler case) with instances of moral luck where there is a fault. Doing so tell us nothing about the moral status of seemingly blameworthy agents such as Ulla and Linda.

To be fair to Crisp, he immediately goes on to say that

> Ulla … Like Linda … should feel guilty about what she *intended* [had control over]—putting the lives of others at risk [again, this is not something they intended but it is something that they had

control over]. And Ulla can greatly regret what happened as a result of that. But from the point of view of a morality … Linda and Ulla are in the same position and should be treated accordingly.[23]

So perhaps we can only take Crisp to be denying the existence of resultant moral luck in that Ulla and Linda are equal from a moral perspective. Still, Crisp eliminates talk of blame from his analysis.

Benevolence, Blame, or Both?

Whether we focus on intentions or control it becomes more difficult to deny that moral luck is a problem when we consider cases of circumstantial and constitutive luck. Circumstantial luck is luck in the situations in which one finds oneself.[24] For example, some people are placed into difficult moral situations (e.g., being a citizen of Nazi-controlled Germany) that other people do not have to face. Constitutive luck is luck in one's traits and dispositions.[25] For example, most if not all our characteristics have a genetic component and/or are shaped by early environmental influences that are outside of our control. These factors shape who we are and the decisions that we make.

Crisp claims that circumstantial luck serves as an excuse for Linda and Ulla: "We should also check our desire to blame them both given the unlucky fact that their fathers lived so far away … why should they now pay the price of being blamed and feeling guilty when others didn't need to take the risks they felt they had to take?"[26] Perhaps this fact mitigates or tracks the degree to which Linda and Ulla are deserving of blame, but I see no reason why it is exculpating.[27] For theorists who wish to deny the existence of moral luck, what this shows is that Linda and Ulla are as blameworthy as anyone else who would have also broken the lockdown under such circumstances. For theorists who accept the existence of moral luck, such modal facts will be thought of as irrelevant. They argue that you can only be responsible for your actions in the actual world. If this is right, then Linda and Ulla are more blameworthy than their counterparts who did not break lockdown in the actual world but would have if their loved ones lived far away.

At any rate, Crisp's solution to the problem of moral luck is for us to adopt a kind of forward-looking benevolence that does away with outdated notions of blame. In support of this view, he gives the following thought experiment:

> How might God reasonably respond [to Linda, Ulla, or a Nazi]? By being entirely merciful and forgiving … Were we to react to wrongdoers in the same way, by being entirely merciful and forgiving, we would have to give up on moral emotions such as resentment, as well as the desire to place blame and seek retribution for intentional acts.[28]

But no one knows how God (a being with all the perfections) or an ideal city planner would respond to pandemic rule-breakers. Ethical and political problems are problems for a reason; it is not always obvious what people deserve or how they should be treated.

Furthermore, Crisp's focus on benevolence as a response to the unfairness of luck does not do away with blame or the problem of moral luck. Crisp admits that we should levy higher fines for lockdown violators and humanely imprison violent individuals who are a threat to others. But fines and imprisonment—even if motivated out of benevolence and trying to make the world a better place—are kinds of punishment and blame. They involve setbacks to the interests of certain individuals, for example, Ulla. Moreover, these setbacks still seem unfair if they are not in any way deserved and are purely matters of circumstantial or constitutive luck. If Ulla does not deserve to be punished (because of luck) but must pay a fine or go to jail to make the world a better place, then this still seems unfair and a matter of bad luck for Ulla.

One last objection is that one could still be morally lucky when it comes to a positive moral assessment even if we do away with blame. Consider Good Samaritan type cases. Suppose that while walking home from work Frankie runs into an incapacitated person in dire need of medical attention. No one else is around, and Frankie calls for help. Frankie's actions are praiseworthy. Not everyone would help in such situations. Yet, there are many other people who if placed in such a situation would have helped but did

not have the opportunity to do so. In such a case, Frankie could be viewed as the beneficiary of good circumstantial moral luck. He passed a moral test, and we think better of him for doing so. The point is that even if we do away with blame there is still the possibility that positive instances of moral luck exist and play an important role in our lives.

Crisp's analysis of pandemic rule-breakers does not shed any new light regarding the moral luck debate. Unsurprisingly, difficult questions about luck, moral responsibility, and desert are not so easily resolved.

Notes

1. Crisp R. What the problem of moral luck can teach us about lockdown rule-breakers. *New Statesman* 2020; available at https://www.newstatesman.com/international/2020/08/what-problem-moral-luck-can-teach-us-about-lockdown-rule-breakers (last accessed 16 Sept 2021).
2. See Nelkin DK. Moral luck. In: Zalta EN, ed. *Stanford Encyclopedia of Philosophy*. Stanford Encyclopedia of Philosophy 2020; available at https://plato.stanford.edu/archives/sum2019/entries/moral-luck/ (last accessed 29 June 2021).
3. See note 1, Crisp 2020.
4. Nagel T. Moral luck. In: *Mortal Questions*. New York: Cambridge University Press; 1978:24–38.
5. Levy N. *Hard Luck How Luck Undermines Free Will and Moral Responsibility*. Oxford: Oxford University Press; 2011:13.
6. For examples of adherents to this view, see Hartman R. *In Defense of Moral Luck: Why Luck Often Affects Praiseworthiness and Blameworthiness*. London/New York: Routledge/Taylor & Francis Group; 2017:23.
7. This kind of point was first made by Latus A. Moral and epistemic luck. *Journal of Philosophical Research* 2000;**25**:149–72, at 167.
8. See Anderson M. Moral luck as moral lack of control. *The Southern Journal of Philosophy* 2019;**57** (1):5–29.
9. Zimmerman M. Moral luck reexamined. In: Shoemaker D, ed. *Oxford Studies in Agency and Responsibility*. Vol. **3**. Oxford: Oxford University Press; 2015:136–59, at 137.
10. See Rescher N. *Luck: The Brilliant Randomness of Everyday Life*. New York: Farrar, Straus, and Giroux; 1995:18.
11. See note 4, Nagel 1978.
12. See 4, Nagel 1978.
13. See note 6, Hartman 2017.
14. See note 1, Crisp 2020.
15. See note 1, Crisp 2020.
16. See note 1, Crisp 2020.
17. See note 1, Crisp 2020.
18. Williams B. Moral luck. In *Moral Luck*. Cambridge: Cambridge University Press; 1981.
19. See note 1, Crisp 2020.
20. See Tigard DW. Taking the blame: Appropriate responses to medical error. *Journal of Medical Ethics* 2019;**45**:101–5. Also, Tigard DW. Taking one for the team: A reiteration on the role of self-blame after medical error. *Journal of Medical Ethics* 2020;**46**:342–4.
21. See note 1, Crisp 2020.
22. These cases are similar to ignorance examples discussed by Gideon Rosen and Nathan Biebel. See, Biebel N. Epistemic justification and the ignorance excuse. *Philosophical Studies* 2018;**175**(12):3005–28. Also, Rosen G. Kleinbart the oblivious and other tales of ignorance and responsibility. *The Journal of Philosophy* 2008;**105**(10):591–610.
23. See note 1, Crisp 2020.
24. See note 2, Nelkin 2020.
25. See note 2, Nelkin 2020.

26. See note 1, Crisp 2020.
27. See Hill J. What's luck got to do with the luck pincer? *Pacific Philosophical Quarterly* 2021; forthcoming. doi:10.1111/papq.12378.
28. See note 1, Crisp 2020.