EMBRACING MORAL LUCK
Accidents, Apologies, and the Foundations of Social Cooperation

by

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for Boompa

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ABSTRACT

The norms that mediate our responses to accidents play a critical role in facilitating social cooperation. My dissertation explores these norms with an eye towards what they can tell us about the nature of moral responsibility. Drawing on Adam Smith's brief, but important discussion of moral luck, I argue that our responses to accidents reveal the extent to which the obligations we incur and the moral appraisals we make of one another are often appropriately influenced by fortune. In particular, I show how making sense of these responses requires us to embrace the idea that we can sometimes be morally responsible for things without being culpable, and I argue that doing so need not do violence to our moral intuitions.

PRÈCIS

Causal responsibility is typically taken to be a necessary condition for moral responsibility. Few philosophers, however, have seriously considered the possibility that we can sometimes be morally responsible for things simply in virtue of having brought them about. Using the phenomenon of moral luck as a lens through which to view the concept of moral responsibility, my dissertation defends this view. More specifically, I defend the view that ill will, culpable ignorance, or malice of other sorts are not prerequisites for moral responsibility, and I seek to show that, far from being problematic, embracing view is instead the only way of satisfactorily resolving an apparent tension between our commonsense morality and some of our more important social practices.

As numerous commentators in the moral luck literature have pointed out, analyses of the concept of moral responsibility are plagued by a conflict between, on one hand, the intuitively plausible constraints on when we can be moral responsible, and, on the other hand, the particular judgments that our practices of holding one another responsible seem to commit us to. The former suggest that we cannot be morally responsible for things that we do not intend to do or at least could not have reasonably been expected to anticipate arising as a result of our actions. While the latter suggest that we can be responsible for these things (at least some of the time). So trenchant is this conflict, that some commentators have worried that it threatens to undermine the very possibility of our making coherent moral judgments. My dissertation is motivated by the belief that existing attempts to resolve this tension have been largely unsatisfying, but that those who have sought to resolve the tension are right that a compelling account of morality must do so.

Through a series of three closely related papers I seek to show how thinking about moral responsibility in a more nuanced way allows us to make sense of our practices without doing violence to our intuitions. As we will see, the key to doing this

lies in distinguishing between various aspects of our responsibility practices, and, in particular, between three separate, albeit related roles that blame plays. The first paper in my dissertation, titled "In Defense of Moral Luck," is a critical survey of the moral luck literature. There I use the phenomenon of moral luck to illustrate the tension between a number of our core moral intuitions and some of the judgments that our practices commit us to making. Having done this, I then explain why the myriad attempts that have been made to resolve this tension have been unsatisfying. As I argue, efforts to resolve the tension between our intuitions and practices have tended to follow one of three approaches, and my hope is that by exploring the advantages and disadvantages of each approach a more promising resolution to the problem can be arrived at.

Having described the problems that I think plague the moral luck literature, my second paper, titled "Adam Smith on Moral Luck and the Wide Scope of Moral Responsibility," explores Adam Smith's important, but underappreciated account of moral luck. As I argue, Smith's discussion of luck nicely illustrates the way in which we can look to our sentiments to ground a broad account of moral responsibility, and in doing so he suggests an innovative solution to the problem of moral luck. More specifically, Smith shows us how holding one another responsible for things largely on the basis of the consequences of our actions allows us to live in close proximity to one another, and, as result, allows us to reap the benefits of social cooperation. Smith, for instance, catalogs a number of ways in which attending primarily to the consequences of actions allows us to efficiently deal with the externalities that communal living thrusts upon us. And, similarly, he shows us why developing and internalizing norms that focus on the consequences of actions rather than the motives that accompanied them insulates us from the suspicions of others, providing the basis for a more trustworthy community in which we are more willing to cooperate with our neighbors. As I argue, though, the most significant aspect of Smith's discussion of luck is what it tells us about the relationship between our psychology and an effective social morality. Through a number of illuminating examples Smith shows us why our psychology allows us to

embrace the idea that we can be responsible for a wide range of things that we do not intend to do, and in doing so he illustrates how his brand of sentimentalism is able to get purchase on our practices in a way that other views have had trouble doing.

Developing the view that I think Smith suggests in greater detail, the heart of my dissertation is the third paper titled "Responsibility Without Culpability." It is there that I defend the idea that blame plays at least three distinct roles, only one of which is directly concerned with indicating that an agent has done something wrong. By exploring this distinction in the context of our responses to accidents I show how we can reconcile ourselves to the role of luck in morality. As we will see, the key to doing this lies in our ability to appreciate the role blame plays in indicating to those at whom it is directed that they have incurred morally significant obligations in virtue of what they have done. More specifically, it is by distinguishing this role from the role blame plays in expressing fault that we can make room luck in our moral practices while holding onto the intuition that certain moral judgments ought to be insulated from luck.

Of course, one dissertation can only do so much, and so I do not claim to have finally solved the problem of moral luck, as others have often claimed. Nor do I think that I've shown in a way that will satisfy everyone that there really are cases where we can be responsible without being culpable. Instead, my more modest hopes are first, that the papers that follow will go some of the way towards establishing what a completely satisfying solution to the problem of moral luck would look like. And, second, that the last paper in particular will convince the reader that the idea that we can be responsible without being culpable is surprisingly plausible, and perhaps even the key to solving the problem of moral luck.

IN DEFENSE OF MORAL LUCK

There is a philosophical problem involving the phenomenon of moral luck which for some time has lacked a satisfying account the broad strokes of which most philosophers would be willing to endorse. This despite the fact that the phenomenon, and the problem it is meant to pose, has received a great deal of attention among philosophers, legal scholars, and psychologists. The lack of such an account stems from two things. On one hand, scholars have been divided over the question of what the phenomenon itself consists in, and indeed over whether there is such a phenomenon at all. On the other hand, among scholars who agree that the phenomenon is real, there has been widespread disagreement regarding the nature of the problem it poses. Focusing on consequential moral luck, this paper seeks to resolve these disagreements by defending two theses. First, that the phenomenon of moral luck is real. Second, that the existence of moral luck is not a problem, or at least not the sort of problem that should bother us as theorists engaged in the enterprise of exploring its contours.

While it may seem surprising that, after all this time, the two theses just sketched could provide the basis of a satisfying account of the problem of moral luck, they have rarely been defended together. Philosophers have instead tended to fall into two camps, one denying that there is (or could be) moral luck and that the problem it poses is merely illusory, and the other accepting that there is moral luck, but arguing that its existence is problematic or paradoxical. It is the latter camp that houses Bernard Williams and Thomas Nagel who together reinvigorated debate about the place of luck in morality.[1] Both schools of thought, however, have been shaped by their initial thoughts insofar as philosophers in both camps have been responding (whether explicitly or implicitly) to qualified defense of moral luck that Williams and Nagel offer

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[1] Bernard Williams, "Moral Luck," *Proceedings of the Aristotelian Society* 50 (1976): 115–35, reprinted in *Moral Luck* (New York: Cambridge University Press, 1981), 20–39, and Thomas Nagel, "Moral Luck," *Proceedings of the Aristotelian Society* 50 (1976): 137–51, reprinted in *Mortal Questions* (New York: Cambridge University Press, 1979), 24–38.

in their seminal articles. My hope is that by surveying the difficulties that confront the views in each of these camps we will see that an alternative approach is needed. And, by providing a more thorough explanation of the phenomenon and the practices that give rise to it, I hope to convince the reader that Williams and Nagel were right that luck has an important place in morality, but wrong to think that this leaves us with an irreconcilable puzzle at the heart of morality.

I.   The Problem of Moral Luck

As Nagel describes it, the problem of moral luck arises because we are pre-theoretically committed to a moral principle – what he calls the *control principle* – that establishes as a necessary condition on the appropriateness of our agent-directed moral judgments that "people cannot be morally assessed for what is not their fault," or, more specifically, "for what is due to factors beyond their control."[2] What makes this commitment problematic is that, despite our belief that the control principle (or at least something very much like it) is correct, our moral assessments of both ourselves and others often are influenced by factors beyond an agent's control. As Nagel puts it, there are numerous cases 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."[3] Cases where, among other things, "how things turn out determines what [one] has done," and, "the *mens rea* which could have existed in the absence of any consequences does not exhaust the grounds of moral judgment."[4] So, for instance, a murderer will be punished more harshly than an attempted murderer, and we are quicker to condemn the agent whose negligence results in harm than the agent whose negligence is benign. And, in both of these cases, this tends to hold true even when the motives of the agents whom luck favors are less innocent than those who draw our ire.

Numerous studies have confirmed that the sort of judgments Nagel identifies are

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[2] Nagel, "Moral Luck," 1979, 25.

[3] Ibid., 26.

[4] Ibid., 30.

widespread.[5] As Nagel also points out, though, the problem of moral luck is not just that our judgments about particular cases conflict with our considered judgments about how we ought to judge those cases. Call that the *weak problem of moral luck*. More problematic, is that the judgments in question – judgments which entail that, as a matter of practice, we reject the control principle – seem correct and, at the very least, are not easily abandoned. Reflecting on such judgments, for instance, does little to move us from the firm conviction that not only is the control principle correct, but that it seems correct to extend it to the very cases where affirming it causes trouble.[6] What we can call the *strong problem of moral luck*, then, is that common-sense morality seems to firmly commit us to two mutually incompatible intuitions. One of these intuitions entails that there is such a thing as moral luck, while the other entails that moral luck is impossible. Clearly these intuitions conflict. And yet, when the conflict presents itself, neither intuition yields, leaving us with a paradox that some commentators have suggested is so severe that it threatens to undermine morality altogether.[7]

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[5] See e.g. Fiery Cushman, "Crime and Punishment: Distinguishing the Roles of Causal and Intentional Analyses in Moral Judgment," *Cognition* 108, no. 2 (August 2008): 353–80; Fiery Cushman et al., "Accidental Outcomes Guide Punishment in a 'Trembling Hand' Game," *PLoS ONE* 4, no. 8 (2009): 1–7; Fiery Cushman and Joshua Greene, "Finding Faults: How Moral Dilemmas Illuminate Cognitive Structure," *Social Neuroscience* 7, no. 3 (2012): 269–79; Liane Young, Shaun Nichols, and Rebecca Saxe, "Investigating the Neural and Cognitive Basis of Moral Luck: It's Not What You Do but What You Know," *Review of Philosophy and Psychology* 1, no. 3 (2010): 333–49; and Shaun Nichols, Mark Timmons, and Theresa Lopez, "Ethical Conservatism and the Psychology of Moral Luck," in *Empirically Informed Ethics: Morality between Facts and Norms*, ed. M. Christen et al. (Switzerland: Springer International Publishing, 2014), 159–76. Note that each of these studies focuses on a subset of our moral luck judgments, namely the way in which blame is prompted by bad outcomes in a way that is (at least partially) independent of the role mal intentions or culpable beliefs play. For a helpful survey of the experimental literature see Victor Kumar's "Empirical Vindication of Moral Luck" (Meeting of the Pacific Division of the American Philosophical Association, Vancouver, 2015).

[6] Indeed, David Pizarro and colleagues find that prompting individuals to rationally deliberate prior to making their judgments in such cases often makes them *more*, rather than less, committed to their moral luck judgments. See David Pizarro, Eric Uhlmann, and Paul Bloom, "Causal Deviance and the Attribution of Moral Responsibility," *Journal of Experimental Social Psychology* 39 (2003): 653–60.

[7] Darren Domsky, for instance, notes that the moral luck paradox "jeopardizes the very possibility of making evaluative moral judgments" ("There Is No Door: Finally Solving the

Of course, while the problem of moral luck (in both its strong and weak forms) may be serious, it is not quite as broad as this initial characterization would suggest. In the passage quoted above, Nagel describes the problem of moral luck as involving conflicting intuitions regarding the appropriate grounds for the moral assessment of persons. However, what Nagel and other moral luck commentators have traditionally had in mind is a particular sort of moral assessment, namely assessments of moral responsibility and the various normative practices that rely either implicitly or explicitly upon judgments that someone is morally blameworthy (or praiseworthy) for some action or event. Although luck may affect many of our other moral judgments, it is the influence of luck on these sorts of assessments that have received the most attention, and with which I will be concerned. Furthermore, while luck may influence our lives in numerous ways, one sort of luck has received by far the bulk of the attention of moral luck commentators. That form of luck is luck in the way ones acts turn out, or what is more commonly referred to as *consequential* or *resultant* luck.[8] Following these commentators, then, the moral luck problem I am interested in has to do with the way in

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Problem of Moral Luck," *Journal of Philosophy* 101 (2004): 445). Similarly, Bernard Williams concludes his essay on moral luck with the observation that "scepticism about the freedom of morality from luck cannot leave the concept of morality where it was" and so, while we may be able to hold onto a concept of morality, that concept will be "less important . . . than ours is usually taken to be," and such a concept "will not be ours, since one thing that is particularly important about ours is how important it is taken to be" ("Moral Luck," 1981, 39). Perhaps most significant is Nagel, though, who stresses not only the severe consequences that accompany the problem of moral luck, but that "the view that moral luck is paradoxical is not a *mistake*, ethical or logical, but a perception of one of the ways in which the intuitively acceptable conditions of moral judgment threaten to undermine it all" ("Moral Luck," 1979, 27).

[8] There are at least three other types of moral luck: circumstantial luck, constitutive luck, and causal luck. The first concerns luck in the circumstances in which one finds oneself. The second, luck in who one is, including the traits or dispositions that one has, but which she may or may not have played a part in cultivating. And the third, luck in how antecedent circumstances determine who one is and how things turn out, which Nagel points out essentially reduces to the classic problem of free will, but which Andrew Latus has pointed out is simply a composite of the other kinds of luck. See: Nagel, "Moral Luck," 1979, 60; Dana Nelkin, "Moral Luck," ed. Edward N. Zalta, *The Stanford Encyclopedia of Philosophy*, 2013, http://plato.stanford.edu/archives/win2013/entries/moral-luck/; and Andrew Latus, "Moral Luck," ed. James Feiser, *The Internet Encyclopedia of Philosophy*, 2001, http://www.iep.utm.edu/moralluc/.

which factors beyond our control play a part in determining the consequences of our actions, and the question of whether it is appropriate to hold persons responsible (and in particular *morally* responsible) for these consequences.

Put slightly differently, our question is whether an individual can be *more* responsible, *more* blameworthy, or *more* culpable for her actions than another individual who performs a similar action that differs only in its consequences, but not the malice, ill will, or culpable ignorance that characterized the individual's intent (or lack of intent)? Or, alternatively, whether it is appropriate to hold an individual to be more responsible, blameworthy, or culpable than an equally negligent or malicious, but luckier peer? As David Enoch and Andrei Marmor put things, our task is to answer, "what [it is], exactly, in the *ex post* moral evaluation of the situation that is really affected by the consequences?"[9] Ought we to judge the assassin who succeeds in killing his target more harshly than the attempted assassin who fails (perhaps because his target was wearing a bulletproof vest)? Should we blame the drunk driver who runs a red light and kills an unfortunate pedestrian more than the driver who, despite also being drunk and having run a red light at the very same intersection (perhaps only moments earlier), makes it safely home? And, perhaps most importantly, if the answer to any of these questions is yes, does this threaten the coherence of our moral practices?

As I suggested at the outset of the paper I think the answers to the questions laid out about are: yes and no, respectively. More specifically, yes, individuals can be more blameworthy than their peers simply in virtue of their (otherwise similar) actions having (unluckily) resulted in worse outcomes. And no, this doesn't threaten the coherence of our moral judgments, and this is so even if we accept that the control principle (or something like it) is true. As we will see, defending these claims together provides an attractive resolution to the strong problem of moral luck, and leaves us with a more manageable version of the weak problem. What makes the solution attractive is that it

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[9] David Enoch and Andrei Marmor, "The Case Against Moral Luck," *Law and Philosophy* 26 (2007): 409. Note that, at the end of the day, Enoch and Marmor are skeptical that consequences really do matter.

lets us hold onto the bulk of our intuitive judgments without requiring us to resign ourselves to the incoherence of our practices. Furthermore, it allows us to do so without relying on forced distinctions or implausible (because too general) debunking stories as other proposed resolutions have, the key to this lying in two observations. First that the control principle is narrower in scope than some have realized, and, second, that the particular judgments that appear to conflict with it are more nuanced than has been appreciated and yet still distinctly moral.

Finally, before moving on, I want to draw attention to one last feature of the problem of moral luck, lest one come away from this thinking the problem is less significant than it really is. One might think that moral luck only presents itself in cases, like those discussed above, where someone has done something wrong, and while the problem is often discussed in these terms focusing only on these cases is, I think, a mistake. This is because there are arguably cases where whether one has done something wrong *at all* seems to be a matter of luck. So for instance, Nagel offers the example of the political leader whose wisdom will be differentially judged depending upon whether the revolution he leads ends in disaster or glorious victory, and Williams offers the example of Gauguin whose decision to leave his family for Tahiti so that he might paint free from distractions, is judged with an eye towards his subsequent success as a painter.[10] It is illustrative that it is these sort of cases, and not cases of negligence that were foremost in the minds of Nagel and Williams when they first brought attention to the problem of moral luck. Following the lead of Nagel and Williams, then, I want to suggest that in searching for a satisfying solution to the problem of moral luck it will be useful to turn our attention, at least in part, away from cases of negligence and towards cases more like those that Nagel and Williams originally envisioned, as well as

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[10] Experimental evidence confirms the existence of moral luck judgments in an interesting analog to these sorts of cases, viz. cases where individuals are judged to be blameworthy when they engage in actions that enable them to benefit from the misfortune of others, even when the actions of those judged to be blameworthy are known to not have contributed to the misfortune. See Yoel Inbar, David Pizarro, and Fiery Cushman, "Benefiting From Misfortune: When Harmless Actions Are Judged to Be Morally Blameworthy," *Personality and Social Psychology Bulletin* 38, no. 1 (2012): 52–62.

towards another sort of case that is seldom discussed in the literature, namely genuine accidents.

II.   Do Consequences Really Matter?

I have suggested that commentators in the moral luck literature have tended to fall into two camps: 1) those who deny that there can be moral luck and argue that the phenomenon and the problem it poses are merely illusory and 2) those who accept that there is moral luck, but also that it is a problem. In order to explain why commentators in both camps have failed to provide satisfying resolutions to the problem of moral luck in whichever form they conceive it, however, the terrain must be carved up more precisely.

Among those who deny that there can be moral luck there are two approaches to explaining the phenomenon and dealing with the problem it presents (or three depending on how one thinks about things). The first, what we can call the *debunking approach*, exemplified by Darren Domsky, Ed Royzman, and Rahul Kumar, argues that the particular judgments that suggest there is moral luck are either mistaken or not to be trusted because they arise as the result of well documented cognitive biases.[11] By counseling us to reject the particular judgments that give rise to the problem of moral luck this approach allows us to avoid the paradoxical implications of the strong problem of moral luck, and provides a blueprint for resolving the weak problem (albeit one that may be hard to implement in practice). The second approach, on the other hand, argues not that the particular judgments that appear to give moral weight to consequences are mistaken or unreliable, but rather that they are misunderstood. Champions of this approach, take one of two tacks. The first, denies the conflict between intuitions that gives rise to the problem of moral luck. The second, reformulates the problem by

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[11] See Domsky's "There Is No Door," and "Tossing the Rotten Thing Out: Eliminating Bad Reasons Not to Solve the Problem of Moral Luck," *Philosophy* 80 (2005): 531–41, and Royzman and Kumar's "Is Consequential Luck Morally Inconsequential? Empirical Psychology and the Reassessment of Moral Luck," *Ratio* 17, no. 3 (2004): 329–44.

directing our attention to the epistemic questions bound up with it. The *denial approach*, adopted by Judith Thomson, Norvin Richards, Susan Wolf, among others, suggests that, properly understood, our ostensibly problematic judgments drawn from particular cases do not actually give *moral* weight to matters of chance.[12] This, of course, means that they do not actually conflict with the control principle (or whatever other general constraints we accept on attributions of moral responsibility), and, more importantly, means that advocates of the approach can defuse both the strong and weak versions of the problem of moral luck.[13] The *reformulation approach*, on the other hand, directs our attention to the imperfect epistemic conditions in which our responsibility practices are embedded and draws a distinction between when blame is appropriate and when it is deserved. Doing so, proponents of this approach argue, allows us to avoid the strong problem of moral luck, by allowing us to say that individuals do not deserve to be blamed for things over which they have no control, while offering an attractive diagnosis of the weak problem viz. that in the particular cases that give rise to the problem blame is often appropriate (if not deserved).[14]

Turning to those who accept that there can be moral luck, there are again two approaches to explaining the phenomenon and the problem it poses. The first *reconciliatory approach*, embodied by Nagel's and Williams's early articles, simply accepts the problem of moral luck in its strong form, and presents us with the task of reconciling

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[12] See Thomson's "Morality and Bad Luck," *Metaphilosophy* 20 (1989): 203–21; Richard's "Luck and Desert," *Mind* 95 (1986): 198–209; and Wolf's "The Moral of Moral Luck," *Philosophic Exchange* 31 (2001): 4–19.

[13] Note, too, that on this view, because no one disputes that luck might appropriately influence our non-moral judgments, the only problem that remains is that we mistakenly persist in believing in moral luck (and the problem it poses) because we are often insufficiently attentive to distinctions between moral and non-moral judgments that in some respects have something in common with one another, but which are importantly distinct.

[14] See Brian Rosebury, "Moral Responsibility and 'Moral Luck,'" *Philosophical Review* 104, no. 4 (1995): 499–524, and Enoch and Marmor, "The Case Against Moral Luck," and also Michael Zimmerman who defends a similar approach, that differs primarily in the emphasis he places on a distinction between responsibility (or blameworthiness) *simpliciter*, and responsibility *for something*. See Zimmerman's "Luck and Moral Responsibility," *Ethics* 97, no. 2 (1987): 374–86, and "Taking Luck Seriously," *Journal of Philosophy* 99 (2002): 553–76.

ourselves to the paradoxical nature of our moral practices.[15] As we will see, Nagel and Williams both suggest that the key to doing this lies in our ability to simultaneously adopt different evaluative perspectives on our lives. However, this is something that Nagel, at least, is skeptical that we can actually do. On the other hand, what we can call the *principle revising approach* argues that the control principle is mistaken (or at least certain formulations of it are). This approach, defended by Brynmor Browne and, more recently, Nathan Hanna, dissolves both the strong and weak problems of moral luck by undermining the principle, rather than the particular judgments that give rise to the problem.[16]

Each of the approaches just described has its merits. As I have now twice suggested, though, and as I will argue for at length in the sections that follow, none of these approaches is satisfactory by itself. By drawing on each of these accounts, however, and supplementing them in various ways we can provide a more complete account of the phenomenon of moral luck, and the problem it poses, that avoids the respective shortcomings of other accounts. The first step in building such an account will be to systematically catalog the merits and shortcomings of each approach, and, having said that most commentators in the moral luck literature have been responding in one way or another to Nagel's and Williams's respective accounts of the problem, it's natural to begin with their account of the phenomenon and the problem it poses.

III.   The Paradox of Morality

Nagel's view that we ought to accept the existence of moral luck seems to be a function of his respect for the strength and persistence of our intuitions. Having

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[15] Nagel, "Moral Luck," 1979, and Williams, "Moral Luck," 1981.

[16] Brynmor Browne, "A Solution to the Problem of Moral Luck," *The Philosophical Quarterly* 42, no. 168 (1992): 345–56, and Nathan Hanna, "Moral Luck Defended," *Nous* 48, no. 4 (2014): 683–98. Note, however, that Hanna adopts this approach as a way of resolving the problem posed by circumstantial moral luck. As we will see in section 8, though, his argument also provides a framework for resolving the problem posed by consequential luck.

considered Kant's argument that it makes no sense to condemn either oneself or anyone else for something over which the will has no control, Nagel notices that, for all its persuasiveness, our intuitions persistently undermine Kant's position. Here Nagel relies on the observation that, although we can be persuaded that our moral judgments are irrational, these judgments tend to "reappear involuntarily as soon as the argument is over."[17] For Nagel, then, the belief that we judge people for what they actually do (or fail to do) is uncompromising, and if this form of moral determination by the actual is paradoxical, then we have no choice but to accept that our concept of responsibility is one in which this paradox is deeply embedded.

Nagel's view does not just rest on the strength of our intuitions however. Rather, he argues that the particular judgments which we are intuitively inclined to accept, and which in turn generate the problem of moral luck, are genuine moral judgments. For Nagel this is evidenced by the fact that, generally, "one can say *in advance* how [a] moral verdict will depend on the results."[18] Perhaps most important for Nagel, though, is his observation that in denying that there can be moral luck we leave ourselves with an impoverished conception of both ourselves and our place in the world. Here Nagel suggests that "the self which acts and is the object of moral judgment is threatened with dissolution by the absorption of its acts and impulses into the class of events."[19] As Nagel points out, "moral judgment of a person is judgment not of what happens to him, but of him."[20] Denying that there can be moral luck then is a problem insofar as it leads us to concentrate on the influence of what is beyond our control, and, in doing so, makes the 'responsible self' which is the object of our moral judgments seem to disappear "swallowed up by the order of mere events."[21] What we see here, in other words, is that

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[17] Nagel, "Moral Luck," 1979, 33.

[18] Ibid., 30.

[19] Ibid., 36.

[20] Ibid.

[21] Ibid., Drawing a parallel with the problem of free will, Nagel emphasizes this point again a few paragraphs later observing that, "as the external determinants of what someone has done are

Nagel's argument that there *is* moral luck is ultimately rooted in his confidence that the impoverished conception of ourselves (and of the place of morality in our lives) that the denial of moral luck entails is not a conception of morality (or ourselves) that we recognize.

Summing up where his account leaves us with respect to our concept of moral responsibility Nagel concludes that, although "a person can be morally responsible only for what he does," what he does "results from a great deal that he does not do," meaning that the prototypical moral agent " is not morally responsible for what he is and is not responsible for."[22] Put slightly differently Nagel's point is that we can be responsible for things which, for all intents and purposes, are matters of brute luck, but that we are responsible for these things is not itself something we can be responsible for. However, while this conclusion might initially appear easy enough to accept, Nagel suggests that it too is not a conclusion that we should be happy to embrace. This, Nagel thinks, is because embracing the role that luck plays in shaping who we are and what we do encourages us to adopt an external view of ourselves, a view that Nagel suggests fits rather precariously with our ordinary conception of ourselves as moral agents. More specifically, Nagel suggests that the external perspective that moral luck forces on us requires us to view our actions as "fortunate or unfortunate episodes" with which we are associated, rather than as something which reflects our agency, the latter being the perspective which, at some point, any plausible view of morality requires us to take up.[23]

Ultimately then, for Nagel, moral luck is paradoxical because our lives *are* influenced by chance, and yet, whether we choose to make room for this or not *from within the perspective of morality*, the worry nags that we will be left "without anyone to

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gradually exposed . . . eventually nothing remains which can be ascribed to the responsible self, and we are left with nothing but a portion of the larger sequence of events, which can be deplored or celebrated, but not blamed or praised"(ibid., 37).

[22] Nagel, "Moral Luck," 1979, 34.

[23] Ibid., 37.

be."[24] And, for Nagel, the only way out of this paradox lies in our ability to satisfy ourselves that that this worry "is only apparent" – something he was skeptical we could actually do.[25] As we will see, though, I think Nagel overstates the worry posed by accepting that there is moral luck, and by more carefully accounting for what it is that our moral evaluations of one another say about us, we can satisfy ourselves that this making room for luck within the perspective of morality need not diminish its significance or leave us "without anyone to be." Interestingly, however, most other commentators have been inclined to attack the other horn of Nagel's dilemma, and have sought to show that denying the existence of moral luck need not leave us with a conception of morality and its place in our lives that is unrecognizable. This is something that, I think, unifies the debunking, denial, and reformulation approaches to solving the problem. Before turning our attention to these approaches, however, it will be helpful to briefly discuss Williams's account of the problem and how it is similar, but also importantly different than Nagel's, because Williams's account gestures towards an important counterpoint to the dominant approach in the literature.

Williams, like Nagel, accepts that there can be moral luck. Also like Nagel he worries that this casts doubt on our ordinary concept of morality. Where Nagel sees moral luck as a significant problem, though, Williams is less worried owing in large part to the fact that he is, as he admits, more skeptical about our conceptions of morality than Nagel is.[26] Perhaps ironically, Williams's skepticism seems to motivate his acceptance of a broader, more inclusive account of morality – one that extends the notion of morality to certain attitudes, phenomena, and judgments which Nagel hesitates to describe as properly moral, and which makes room for luck.[27] Ultimately, however, Williams's discussion of moral luck leads him to adopt a somewhat deflationary account of the significance of morality in our lives, an account that he acknowledges might also be

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[24] Ibid., 38.

[25] Ibid.

[26] Williams, "Moral Luck," 1981, 36 fn. 11.

[27] See ibid., 36–37, and Nagel, "Moral Luck," 1979, 28–29, especially fn. 3.

unrecognizable.[28] And, in later work, Williams would back away from this view altogether, in favor of the view that morality really does leave no room for luck, but that the problem of moral luck could nevertheless be resolved by leaning on a distinction between the narrow domain of morality and the wider domain of ethics.[29] Despite Williams's own skepticism, though, his suggestion that embracing a broader conception of morality might provide a way of resolving the problem is moral luck is worth keeping in mind as we turn our attention to the other approaches to resolving the problem.

IV.   Debunking and Denying: What to Make of Our Judgments in Particular Cases?

Darren Domsky has argued that the problem of moral luck is a plague that is "widespread, difficult to overcome, and tends to still show symptoms even in those who claim to be rid of it."[30] On Domsky's view, though, this is surprising, or, rather, the fact that the problem has received so much attention is surprising because there is a sense in which a relatively straightforward solution to the problem of moral luck is available. The solution lies in realizing that one of the assumptions that drives the problem – that there is moral luck and that moral blameworthiness is appropriately influenced by factors beyond our control – is false. And, Domsky suggests, not only is the solution straightforward, it's familiar, having been advanced by many critics of moral luck. The problem, on Domsky's view, is that the solution has been advanced in convoluted ways.[31]

Domsky's targets are the advocates of the denial approach, and in particular Thomson, Richards, and Wolf, each of whom argues that the intuition that

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[28] See the quotation in note 7 above.

[29] Williams reports that this move was motivated, at least in part, by the worry that his earlier comments had been misunderstood. See Bernard Williams, "Postscript," in *Moral Luck*, ed. Daniel Statman (Albany, NY: SUNY Press, 1993), 251–58.

[30] Domsky, "There Is No Door," 445.

[31] Ibid., 446.

blameworthiness is to some extent influenced by luck is mistaken. As we saw in section 2, the denial approach attributes this intuition (what Domsky refers to as Intuition 2) to our failure to draw important distinctions between our moral and non-moral judgments when we reflect on particular cases. Domsky, as the reader will have anticipated, is critical of this approach, derisively suggesting that each of his targets are forced to adopt "awkward and suspicious alternatives" in order to account for the judgments that give rise Intuition 2.[32] Referring to these alternatives, Domsky argues that far from showing that Intuition 2 is mistaken, each author has instead dressed up the intuition in "appealing disguise." Thomson, for instance, asks us to accept in its place that the morally unlucky are appropriately subjected to a greater degree of blame, but only in an innocuous, non-moral sense. While Richards and Wolf suggest that that the unlucky should feel worse than the lucky, but ought not blame themselves, or, alternatively, that they ought to blame themselves, but should also recognize that this blame is undeserved.[33]

Defending his criticism of Thomson, Richards, and Wolf, Domsky appeals to Williams who he says perfectly captures what's so unsatisfying about their views, namely that it is hard to see "what comfort it is supposed to give me, or what instruction it offers to other people, if I am shunned, hated, unloved, and despised, not least by myself, but am told that these reactions are not *moral*."[34] For the sake of brevity, and because our discussion of the reformulation approach will return to the concerns that Domsky presses, I won't discuss the arguments of Thomson, Richards, and Wolf further except to say that I am generally sympathetic to Domsky's criticism of their arguments. That said, where Domsky's critical project succeeds in identifying what is, I think, a fatal flaw in the denial approach to solving the problem of moral luck, his own solution to the problem, a version of the debunking approach, is less successful.

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[32] Ibid.

[33] Ibid., 446 and 448–453.

[34] Williams, "Postscript," 254, cited by Domsky at "There Is No Door," 451.

Like Thomson, Richards, and Wolf, Domsky argues that Intuition 2 is false. Where Thomson, Richards, and Wolf purport to solve the problem of moral luck by pointing to various ways in which we misunderstand what exactly it is that our intuitive belief in moral luck is tracking, though, Domsky argues that the judgments that give rise to the intuition are simply mistaken, and that the resilience our intuition can be explained by appealing to a pair of familiar but pernicious cognitive biases. The two biases he suspects are at work are: 1) a selfish bias towards moral convictions that favor us personally and 2) an optimistic bias in our assessments of how lucky we are and will be.[35] Together, Domsky suggests, these biases lead us to make judgments that allow the morally lucky to free ride on the morally unlucky, and the reason they lead us in this direction is that "deep down we believe we are luckier than our peers."[36] More specifically, Domsky argues that our optimism bias drives us to believe that, although we might be just as negligent as our peers, *our* negligent actions are somehow less likely to culminate in bad outcomes. Then, piggybacking off this bias, our selfish bias leads us to deflect blame towards the morally unlucky in order to paint ourselves in a better light, which makes sense given the optimistically biased belief that we are among the morally lucky who would thereby avoid blame.

The solution to the problem of moral luck that Domsky offers is potentially quite powerful, if not unique.[37] If Domsky is right then, at the very least, he will have cast

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[35] Domsky, "There Is No Door," 453–464.

[36] Ibid., 446.

[37] Not unique because Gilbert Harman and, as we will discuss in more detail, Edward Royzman and Rahul Kumar have each offered alternative accounts of the problem of moral luck that also appeal to cognitive biases as the source of the particular judgments that stand in tension with the belief that our moral judgments should not be sensitive to luck. Harman suggests that it is a "fundamental attribution error" – the mistake of underestimating the degree to which behavior is externally rather than internally caused – that explains why our intuitive commitment to moral luck is so resilient. Unlike Domsky, though, Harman doesn't suggest that this bias is widespread enough to explain all of our (ostensibly problematic) judgments, which is what would be required to solve the problem of moral luck. See Gilbert Harman, "Moral Philosophy Meets Social Psychology: Virtue Ethics and the Fundamental Attribution Error," *Proceedings of the Aristotelian Society* 99 (1999): 315–31.

doubt on our reasons for holding onto the particular judgments that give rise to the problem. Unfortunately, Domsky's debunking account is incomplete in at least two respects. On one hand, although the genealogy Domsky offers provides a novel way of understanding the judgments that give rise to the intuition that blameworthiness is influenced by luck, it is far from clear that it can account for most of these judgments (let alone all of them). On the other hand, even if Domsky's account is empirically plausible, it's not clear how much traction this provides on the problem of moral luck.

With respect to the first shortcoming, particularly problematic is that Domsky provides no evidence that the selfishness and optimism biases he points to actually interact in the way he suggests they do, and, as David Enoch and Ehud Guttel have argued, while there is compelling evidence that both of these biases are pervasive, the way they interact is less well understood.[38] Furthermore, even if Domsky is right that the selfishness and optimism biases sometimes work together in the way he suggests, they would have to be especially plastic and far-reaching to give rise to the full range of judgments that Domsky must undermine in order for his approach to succeed. Consider feelings like guilt or agent's regret that are associated with individuals blaming themselves. These sentiments are ubiquitous, and, the latter in particular, often arises when our actions give rise to unintended and unforeseen consequences. Here, though, the problem posed by such sentiments is not that we expect others to blame themselves, but do not actually blame ourselves (something a selfish bias would predict). Rather, the problem is that we actually do blame ourselves, and we do this even when we know that we've not done anything wrong. Domsky, to his credit, recognizes that such cases present a problem for his account. However, he suggests that even these cases can be accounted for by our optimism bias. Here Domsky notes that to be optimistically biased

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[38] David Enoch and Ehud Guttel, "Cognitive Biases and Moral Luck," *Journal of Moral Philosophy* 7, no. 3 (2010): 372–86, especially sections 1.3 and 1.4. Along similar lines, Daniel Statman has pointed out that in order for our optimism and selfish biases to work together in the way Domsky suggests we would have to care far more about how we fare in comparative (as opposed to absolute) terms, and while this may be plausible it is another claim that Domsky provides no evidence for. See his "Doors, Keys, and Moral Luck: A Reply to Domsky," *Journal of Philosophy* 102 (2005): 422–36, and especially the discussion at p. 429.

is to irrationally believe that one has the special skill or foresight to avoid bad outcomes, and so he suggests that when we find ourselves the victims of bad luck we have all the more reason to blame ourselves because this will be an indication that we failed to make use of the foresight we irrationally believe ourselves to have.[39] As a general explanation, though, this is unsatisfying. While many (and perhaps even most) instances of agent's regret can be explained in terms of our irrational confidence in our own abilities, Domsky provides no evidence for this claim, and it stretches the bounds of credulity to think that *all* instances of agent-regret can be accounted for in this way.

Turning to how much Domsky's account can show, as Enoch and Guttel point out, even if Domsky's account were plausible, a debunking story like the one he offers can't by itself undermine the judgments it seeks to explain (at least not completely).[40] Everything Domsky argues, in other words, is consistent with the intuitive belief that there is moral luck being philosophically respectable. Furthermore, this matters, for, as Chris Freiman and Shaun Nichols have shown, our moral judgments in abstract and concrete cases reliably come apart, and there doesn't seem to be any reason to privilege our more abstract judgments.[41] Finally, as Enoch and Guttel, as well as Daniel Statman, have each argued, Domsky takes an unhelpfully narrow view of what the problem of moral luck consists in.[42] The criticism here is double-pronged. First, Domsky focuses only on cases of consequential luck, so even if his account were convincing it wouldn't provide traction on the problem posed by other forms of luck. Second, Domsky doesn't

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[39] Domsky, "There Is No Door," 463.

[40] Enoch and Guttel, "Cognitive Biases and Moral Luck," sec. 2. As Enoch and Guttel note, an equally plausibly debunking account could be provided to explain our commitment to the control principle, and, as they also note, this criticism extends to the proposal offered by Royzman and Kumar that we will discuss shortly.

[41] Chris Freiman and Shaun Nichols, "Is Desert in the Details?," *Philosophy and Phenomenological Research* 82, no. 1 (2011): 121–33. Freiman and Nichols focus on judgments involving desert, but their finding is relevant to the matter at hand given that problem of moral luck is about when blame is *deserved*.

[42] Enoch and Guttel, "Cognitive Biases and Moral Luck," sec. 1.2, and Statman, "Reply to Domsky," sec. 1.

merely narrow his focus to consequential luck, but rather to a single species of consequential luck, namely cases involving negligence.

It is the first prong of the criticism just sketched that most worries Enoch, Guttel, and Statman, each of whom complains that there is no reason to think that the problem posed by consequential luck is different in kind or severity than the problem posed by other forms of luck. Contra Domsky's critics, I think there is good reason to treat consequential luck differently. For one thing, it's often easy to see the consequences of one's actions as divorced from one's agency, but far harder to treat one's intentions or intrinsic character traits as alien. The second worry is serious though. Defending his narrow focus, Domsky points out that there is a difference between moral luck and ordinary luck, as there surely is. Having said that, however, he goes on to suggest that only negligent agents experience moral luck, arguing that, while ordinary unlucky outcomes are bad, "we do not blame non-negligent agents, if we even blame them at all, according to how unlucky they are."[43] But this is just false. As I discuss at length in "Responsibility Without Culpability" there are many instances where we *do* blame non-negligent agents for things that are wholly beyond their control, to say nothing of the cases of agent's regret Domsky recognizes where individuals blame themselves (often despite knowing they've not done anything wrong). And, even if one is not persuaded by the significance of these cases, Domsky ignores several other clear cases of consequential moral luck, including especially the cases where whether one has done something wrong at all seems to be a matter of luck. To take just one example consider Williams's Gauguin who leaves his family to paint in Tahiti. The force of Williams's example is that whether Gauguin's actions are held to be justified (or not) depends on his success in producing brilliant works of art, but that is something that, to some extent, is not up to him.[44] Of course, Domsky could try to extend his debunking account to capture our intuitions in these sorts of cases, but this strategy is just as likely to magnify

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[43] Domsky, "There Is No Door," 448.

[44] At the very least Gauguin's success depended on his ability to find inspiration in Tahiti, and on the aesthetic tastes of his day.

some of the other problems sketched above.[45]

V. Further Debunking: Royzman and Kumar's Epistemically Corrupted Evaluation Thesis

Like Domsky, Edward Royzman and Rahul Kumar have proposed a solution to the problem of moral luck that seeks to resolve the problem by showing that the particular judgments that give rise to is come about as a result of a well-recognized epistemic bias[46] Their solution, however - what they call the *epistemically corrupted evaluation thesis* – relies on a different genealogical story that explains the phenomenon of moral luck and the problem it poses by appealing to two claims. First, in assessing an agent's accountability, individuals see themselves as taking into account only those considerations that are morally salient, namely those sanctioned by the control principle. However, due to bias in the general mechanisms employed in making such assessments, individuals unknowingly misidentify the salient considerations, and so take as relevant considerations that are not in fact sanctioned by the principles for assessing responsibility that they accept.[47] More specifically, the bias Royzman and Kumar appeal to is the 'I know, you know' bias, a relative of 'hindsight' bias where the biased subject tends to falsely assume that information to which she has privileged access will be shared by others. On their view then, our apparent belief in moral luck simply reflects our tendency to falsely attribute beliefs to individuals that makes their actions look worse than they actually were.

As Royzman and Kumar point out, the significance of identifying this sort of bias as a possible source of the moral luck phenomenon is that gives us some reason to let go of the particular judgments that give rise to the problem of moral luck, or at least to

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[45] I should note at this point that Domsky is not alone in assuming that (consequential) moral luck only arises in cases where negligence is present.

[46] Royzman and Kumar, "Is Consequential Luck Morally Inconsequential?"

[47] See their discussion at ibid., 335–342, and especially the characterization of their thesis at p. 336.

revise our view that these judgments really stand in real tension with the control principle.[48] Unlike Domsky, though, in advancing their thesis Royzman and Kumar are careful to point out that more work has to be done in order to fully substantiate their case.[49] In particular, they acknowledge that the explanatory power of their thesis has yet to be fully explored and that, as a result, it might account for only part of the consequential moral luck phenomenon.[50] Furthermore, they acknowledge that they do not provide rebutting defeaters for our particular judgments, nor do they provide a positive defense of the control principle.[51] Ultimately, then, Royzman and Kumar suggest that their debunking account of the moral luck phenomenon is important for two reasons. First, it gives us some reason to think that we can avoid having to reconcile ourselves to the pessimistic conclusions about ourselves and the significance of morality in our lives that Nagel and Williams are forced to accept. Second, and more importantly, Royzman and Kumar argue that their account forces us to accept that any defense of moral luck and the problem it poses must do more than appeal to intuitions that purport to show that it exists.[52]

VI.   Reformulating the Problem: Is the Problem of "Moral Luck" a *Moral Problem?*

Having pointed to problems with the debunking and denial approaches to solving the problem of moral luck we can now turn our attention to the reformulation

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[48] Ibid., 342.

[49] Ibid.

[50] As Enoch and Guttel also point out, our reasons for thinking that the debunking accounts provided by Domsky, Royzman, and Kumar are incomplete are magnified by the fact that the accounts they offer are inconsistent with one another, or at least appeal to very different mechanisms. See Enoch and Guttel, "Cognitive Biases and Moral Luck," sec. 1.1.

[51] In general debunking accounts provide undercutting defeat, but as we saw in the previous section, any explanation of how a judgment arises as a result of cognitive bias is consistent with it being true.

[52] See especially their discussion at "Is Consequential Luck Morally Inconsequential?," 339.

approach that has a lot in common with the denial approach, but is more promising. Like proponents of the denial approach, champions of the reformulation approach deny that there can be moral luck (at least of the sort that gives rise to the problem of moral luck). Rather than explaining the particular judgments that seem suggest there is moral luck by drawing distinctions between moral and non-moral brands of blame, though, the reformulation approach draws our attention to the circumstances in which we make moral assessments of one another. By reformulating the problem in this way, the hope is that we can explain our particular judgments, and why they seem entirely appropriate, while holding onto the intuition that we cannot be responsible for things over which we have no control. Ultimately, then, the reformulation approach is not entirely distinct from the denial approach. Rather, it is a species of the denial approach distinguished by the motivation it provides for the distinctions that purport to resolve the problem of moral luck.

Nicely summarizing the motivation of the reformulation approach Brian Rosebury has argued that, "epistemic inquiry is an indissoluble part of moral responsibility in a world of intellectually and morally fallible persons."[53] Drawing on this observation, Rosebury defends an account of moral responsibility that tries to extend the control principle in order to accommodate the fact that moral agents do not always have access to all of the information that would be required for them to act in ways that would leave them invulnerable to criticism.[54] At the heart of Rosebury's account lies his recognition that practical moral decision-making invokes separate (if related) questions of means, knowledge, and values, and that, as a result, when we are morally evaluating an agent's actions, her intentions are not all that matter. As Rosebury notes, we see this in our everyday practices where conspicuous failures to predict the consequences of our actions or to pay attention to the circumstances in which we act tend to "attract a distinctively moral kind of censure [however virtuous our

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[53] Rosebury, "Moral Responsibility and 'Moral Luck,'" 499.

[54] See especially, ibid., 499–505.

intentions]."[55] In order to avoid criticism moral choice must be mediated by a suitably appropriate degree of epistemic inquiry. As Rosebury is also careful to point out, though, the appropriate degree of inquiry will vary in proportion to the seriousness of the choice being made, and must also reflect the fact that setting our standards too high runs the risk of holding us captive to a disabling perfectionism.[56] On Rosebury's view, then, the first step in solving the problem of moral luck lies in distinguishing between decision making that is and is not vitiated by culpable ignorance or other sorts of defective deployments of knowledge.

Rosebury is adamant that shifting our focus away from control and towards the epistemic context in which decisions are made and actions undertaken in no way undermines the control principle's privileged position as the ultimate principle for assessing moral responsibility. After all, whether our actions are accompanied by the appropriate degree of epistemic care is, to some extent, up to us. The second step in solving the problem of moral luck, however, lies in recognizing that the very same epistemic limitations that complicate moral choice also complicate our tasks as moral judges. Recognizing this fact, Rosebury suggests, allows us to explain the judgments that appear (at least superficially) to commit us to the existence of moral luck. Here, Rosebury offers two arguments. First, anticipating Rozyman and Kumar's diagnosis of the problem of moral luck, Rosebury argues that many of the problematic examples of praise and blame arise because we mistakenly attribute beliefs or knowledge to the individuals being praised and blamed. And, given their genealogy, Rosebury then argues that these judgments are, in principle, correctable with sufficient reflection, at least in retrospect.[57] Unwilling to tie himself to the claim that reflection *will* lead us to

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[55] Ibid., 500.

[56] Ibid., 503.

[57] Ibid., 514. Developing this line of argument further, Neil Levy has argued that many of our moral luck judgments arise because we reasonably use the outcomes of an agent's actions as proxies for their intentions. However, because this is an unreliable proxy, these judgments are mistakes, albeit mistakes we are perhaps excused in making. See his "Dissolving the Puzzle of Resultant Moral Luck," *Review of Philosophy and Psychology*, 2015, 1–13.

give up these judgments, though, or, more importantly, to the claim that all of these judgments *are* mistakes, Rosebury then argues that it is an *appropriate* and *ineliminable* part of our moral practices that we go on blaming those who do not deserve to be blamed. Furthermore, and worse still from the perspective of the unlucky recipients of undeserved blame, Rosebury suggests that in such cases those who are blamed do not even have the recourse of justifiable complaint (about such practices).[58] Rosebury's second argument, then, is that just as setting our epistemic standards too high risks holding moral agents hostage to a disabling perfectionism, so too, holding moral judges to these standards runs the risk of undermining our ability to hold one another accountable for moral transgressions.

At this point, however, Rosebury makes a surprising pivot. Having directed our attention to the imperfect epistemic conditions in which our moral practices are embedded, and to the fallibility of both moral agents and moral judges, Rosebury then suggests that all of this shows us "not that morality is subject to luck," but, rather, "that moral choice is often very lonely, and one cannot necessarily comfort oneself with the thought that in the fullness of time one's action will be praised by other people."[59] Here, Rosebury appeals to the fact that, although the lives of individuals who are subjected to undeserved but "practically uncorrectable" blame will often be made worse as a result of this, it will always be the case that "a fully informed observer would be in a position to make a just evaluation."[60] Rosebury thus divorces the question of which all things considered moral assessments are true from the question of which moral practices are worth keeping (and which particular instantiations of those practices are, or are not, criticizable).

What makes Rosebury's conclusion surprising is that he begins his essay with the

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[58] More precisely, the unlucky recipients of undeserved blame can complain that their blame is undeserved, but they cannot complain to others and expect their complaints to be accepted by those others as a reason to stop what they are doing.

[59] Rosebury, "Moral Responsibility and 'Moral Luck,'" 521.

[60] Ibid.

observation that "the assessment of another's actions is itself a *morally significant action*."[61] The problem Rosebury's account faces, then, is that it is hard to see how he can maintain the division between those judgments that are properly thought of as moral and those that are not. Furthermore, *pace* Williams, this problem is compounded by the fact that it's hard to see what solace targets of undeserved blame are supposed to take in the knowledge that an ideal observer would not blame them, especially when Rosebury tells us that the blame is appropriate and that its targets have no grounds for complaint. Put slightly differently, the problem is that in practice there are no ideal observers. As a result, the problem of blaming individuals who do not deserve to be blamed is pervasive. So pervasive, in fact, that, as Rosebury goes to great lengths to emphasize, it characterizes our normal practice, and it is this that ultimately gives us reason to think that the problem is a *moral* problem.[62]

VII.   Blameworthiness and Blame-related Reactions

Adopting a slightly different version of the reformulation approach, David Enoch and Andrei Marmor have argued that our case specific judgments are not actually evidence for what we typically take them to be evidence of, viz. that the blameworthiness of an agent is appropriately influenced by circumstances beyond her control.[63] At the heart of Enoch and Marmor's argument is a distinction between moral blameworthiness, on one hand, and the appropriateness of blame and the attitudes and practices related to it, on the other. As they put it, questions about the former concern "the truth or falsehood of attributions of blame," and so call for epistemic reasons to decide them, whereas questions about the latter "are practical questions about the justification of actions or attitudes," that are appropriately settled by appealing to

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[61] Ibid., 503, emphasis added.

[62] Note, however, that in making this argument I am not arguing for the thesis that there is no room in our moral theorizing for the notion of an 'ideal observer.'

[63] Enoch and Marmor, "The Case Against Moral Luck."

considerations including, but not limited to epistemic considerations. [64] It is because we tend to overlook this distinction, Enoch and Marmor argue, that we are led to incorrectly infer from the appropriateness of our blaming someone to the (false) conclusion that the target of this blame is thereby morally blameworthy (or more blameworthy than an equally criticizable peer who may have luckily avoided bringing about harm).

For Enoch and Marmor the distinction between blameworthiness and blame-related actions is important for two reasons. First, following Rosebury, they argue that there are epistemic considerations that justify different blame-related reactions in otherwise identical cases.[65] Second, they point out that consequential luck typically arises in cases involving risky activities, and they suggest that our blame-related practices that seem to raise a problem of moral luck can in fact be justified by the need for agents to internalize the risks associated with their activities.[66] Taken together, Enoch and Marmor suggest that these considerations support the conclusion that equally blameworthy agents can be appropriately subjected to different degrees (or types) of blame and censure. The key to this argument, however, lies in two further assumptions. First, that responsibility for the assumption of risks (or at least moral responsibility for such assumptions) should only depend on factors that are available to an agent *ex ante*. And, second, that blameworthiness is solely a function of moral responsibility.[67] Understood against this background, Enoch and Marmor suggest that the particular judgments that seem to commit us to the existence moral luck (of a sort that poses a problem) do not actually commit us to this belief. This is because it is only questions about our *blameworthiness* for things that raise questions about our moral responsibility for them. Questions about who should bear the costs of various risky activities, on the other hand, are not a matter of moral responsibility, but rather a question that belongs to the realm of distributive justice. And, because it is only questions about our moral

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[64] Ibid., 413.

[65] Ibid., 415–416.

[66] Ibid.

[67] Ibid., 412.

responsibility for things that are plausibly governed by the control principle, it's only judgments that suggest that an agent's blameworthiness depends on how things turn out that pose a problem.

The problem with Enoch and Marmor's argument, like the problem I identified with Rosebury's argument, is that even if we accept the distinction they draw between blameworthiness and our blame-related reactions, it is hard to see how the latter – which include things like punishment, censure, ostracism, and demand – don't fall within the bounds of our moral practices, and more specifically our responsibility practices. After all, it is blame and the set of practices related to it that constitute the practice of holding responsible. While one might argue that it is the fact of an agent's blameworthiness (or not) that determines when these practices are appropriate, this move isn't available to Enoch and Marmor who insist that our blame-related practices can be justified by practical considerations like the need to internalize the risks associated with our behavior.

Nor is the problem just sketched the only problem with Enoch and Marmor's account. Even if we were satisfied with their explanation of the particular judgments that seem to give rise to our belief in moral luck, Enoch and Marmor don't actually show that moral luck doesn't exist, or that it isn't a problem. At best, all they have succeeded in doing is insulating our notion of moral responsibility from the influence of luck, pushing the lump under the rug as it were to a different, albeit *distinctly moral* domain, namely distributive justice. And, while this might be significant, it should leave us at least somewhat unsatisfied given that they present their argument as "a case against moral luck." Of course, Enoch and Marmor could argue that the influence of luck on morality (or distributive justice as the case might be) is not problematic because our blame-related reactions are justified. This is not an argument that they make, though, and even if it were, we should be similarly unsatisfied given that their stated goal is to offer a case against moral luck and not, as this reading would have it, to be giving us an account of why moral luck is not problematic. Admittedly, these last two complaints are

rather pedantic, especially given that Enoch and Marmor are clear that their aim is to put to rest the idea that consequential moral luck exists and is a problem. However, Enoch at least has argued elsewhere that there are no principled grounds for thinking that the problem posed by consequential luck is more serious, or different in kind, than the problem posed by circumstantial or constitutive luck,[68] and so it seems reasonable to complain that, even if he and Marmor succeed in providing us with a solution to the problem that consequential luck poses for moral responsibility, they leave us with an equally serious problem in its place.

VIII.   Taking Stock of Things

Having surveyed the reconciliatory, debunking, and reformulation approaches to solving the problem of moral luck it's worth pausing to take stock of how each of the approaches we've considered gains leverage on the problem. As I suggested at the outset of the paper, this will be useful because, while each approach fails to provide a complete accounting of the problem, by drawing on each we might piece together a more satisfying account. The virtue of the reconciliatory approach with which we began our survey was that it, unlike the other approaches we surveyed, forced us to take the notion of moral luck seriously. Where this approach left us wanting, however, was in its inability to allow us to make sense of the phenomenon of moral luck while also holding onto our conceptions of ourselves, and especially of the importance of morality in our lives. Both the debunking and reformulation approaches, on the other hand, were unsatisfying to the extent that they each failed to take seriously the extent to which our moral assessments one another *really are* influenced by circumstances beyond our control. That said, I think advocates of both approaches are right that the particular judgments that seem to commit us to the belief that there is moral luck do not actually commit us to what we think they commit us to, and if this is right then the problem of moral luck is not as serious as Nagel or Williams suggest. Furthermore, I think

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[68] See Enoch and Guttel, "Cognitive Biases and Moral Luck," sec. 1.2.

proponents of the reformulation approach are right that the key to seeing this lies in attending to the circumstances in which our responsibility practices are embedded, and in more carefully distinguishing between the various things that blame and the practices related to it presuppose. As we are about to see, though, because the particular distinctions drawn by proponents of the reformulation approach have been made with the goal of showing that there is not moral luck in mind, they have been misleading.

Before setting out to cast these distinctions in a different light, however, it will be helpful to briefly consider two additional approaches to solving the problem of moral luck that attack the problem in similar ways, but ultimately take different stances on whether there can be moral luck. The first approach we must consider is the principle revising approach described in section 2. This approach tries to dissolve the problem of moral luck by arguing that the control principle, at least as it is typically understood, is mistaken. The key to this approach is to do away with the intuition that it would be a problem for our responsibility judgments to be sensitive to chance. In order to make this compelling, though, some proponents of this approach have advanced radical alternatives. Brynmor Browne, for instance, suggests that we do away with the practice of punishing wrong-doers, on the grounds that punishment is not an essential part of holding responsible and it's punishment that is subject to chance that is the real problem.[69] While I am sympathetic with the idea that the control principle does not capture the whole of our concept of responsibility, Browne's argument seems to me a step too far. The intuition that control matters seems plausible beyond questions involving punishment. More promising, then, is the sort of view articulated by Nathan Hanna.[70] Rather than rejecting the control principle outright, Hanna suggests we apply it with narrower scope. In particular, Hanna argues that whether an agent has some control over how she acts in a particular set of circumstances is a plausible prerequisite on holding her morally responsible for how she acts. What it is not, however, is a

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[69] Browne, "A Solution to the Problem of Moral Luck."

[70] Hanna, "Moral Luck Defended."

plausible constraint on the *relative degree* to which she can be held responsible. On Hanna's view, in other words, there is nothing wrong with blaming one agent more than another who might, say, have been equally negligent or malicious. And, although Hanna presents his proposal as a solution to the problem posed by circumstantial luck, we will see that it can also help us grapple with the problem posed by consequential luck.

The second additional approach we must consider is a variant of the reformulation approach defended by Michael Zimmerman. Where Hanna defends moral luck, though, Zimmerman tries to provide us a way of denying it, while still making sense of our particular judgments. The key to this lies in a distinction he draws between the *scope* and *degree* of an agent's responsibility.[71] Luck, Zimmerman suggests, plays a part in determining what it is we are *responsible for*, and so appropriately influences the scope of our responsibility. The assassin whose bullet finds its target is guilty of murder, while the assassin whose bullet misses is not (although he may be guilty of *attempted* murder). On the other hand, Zimmerman suggests that the degree to which we can be responsible for something is a function only of our character or the quality of our will, and so is immune from the influence of luck. In this sense, the murderer and attempted murderer are morally responsible to the same degree, and ought to be held accountable to the same extent. Indeed, Zimmerman goes one step further, suggesting that there may be cases where we can and should hold individuals responsible *tout court*, even if they are not responsible *for* anything, and because he thinks this sort of responsibility is the ultimate standard of accountability he denies that the differences in what we are responsible for are genuine instances of moral luck.[72]

Zimmerman's proposal provides a nice way of explaining why it makes sense to

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[71] Zimmerman, "Taking Luck Seriously."

[72] In other words, Zimmerman thinks there are cases where we ought to hold individuals responsible for the quality of their will even if we can't find a description of their action whereby the action itself is objectionable. For Zimmerman's exposition of this point see especially ibid., 565, and for a helpful synopsis of Zimmerman's view Nelkin's "Moral Luck."

blame some individuals and not others, even when, upon closer inspection, they seem equally culpable. The problem his account faces, however, is that it is hard to say what it would mean to hold an individual responsible *tout court*, and harder still to say what exactly would be entailed in actually doing so. Furthermore, as Adam Smith nicely describes, and as we will discuss in more detail in the next chapter, there is a real worry that holding individuals responsible in this way threatens to open up their hearts and minds to "the tyranny of public inspection."[73] As I will argue in the sections that follow, then, in light of these difficulties, what is needed in order to solve the problem of moral is not a distinction between the aspects of our responsibility practices that do and do not fall within the confines of morality. Rather, what is needed is a more careful accounting of the various things that our responsibility practices presuppose about (and expect of) the agents participating in them, and in particular a more nuanced account of what it is that blame conveys about the agents at whom it is directed.

IX.   Two Dimensions of Responsibility

Like Zimmerman, Benjamin Zipursky distinguishes between two dimensions of our concept of responsibility. For Zipursky, though, the relevant distinction is between a *fault-expressive* dimension and an *agency-linking* dimension.[74] On Zipursky's view, fault-expressing responsibility captures the idea that an agent's responsibility (or blameworthiness) for her acts is "fundamentally a matter of the degree to which one's acts constitute conduct that expresses one's character or faultiness."[75] Agency-linking responsibility, on the other hand, relates to the notion that "the degree to which a person is responsible for some event is dependent upon whether that event is a doing, or an action, of that person."[76] The former thus loosely maps onto what Zimmerman calls the

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[73] See especially "Adam Smith's Intriguing Solution to the Problem of Moral Luck" section II.ii.

[74] Benjamin Zipursky, "Two Dimensions of Responsibility in Crime, Tort, and Moral Luck," *Theoretical Inquiries in Law* 9, no. 1 (2008): 97–137.

[75] Ibid., 99.

[76] Ibid.

degree of an agent's responsibility, while the latter tracks what an agent is responsible for. As Zipursky points out, however, although there is a sense in which the fault-expressive dimension lies at the core of the concept of responsibility, neither our legal nor our moral practices can be fully explicated without appealing to the latter. Nor, can the two dimensions can be divorced from one another in a way that would allow us to say that only luck's influence on the former counts as either a distinctly moral or distinctly problematic brand of luck.

In order to shed light on why we need an account of responsibility that is agency-linked Zipursky looks to tort law where he points out that the crucial issue is often not whether the defendant was responsible for injuring the plaintiff, or whether the defendant was negligent, but whether the defendant was responsible for having wrongfully injured a plaintiff. As a result, when a tort action is brought against a defendant:

> The holding-responsible is not . . . for an outcome. Nor is it . . . for a breach of a duty of non-injuriousness — negligence in the air. It is holding responsible for a complex, result-embracing act — a breach of a qualified duty of non-injury — the negligent injuring of the plaintiff by the defendant. And [the tort action] is literally a responding-to—an exacting of damages from—the defendant who injured the plaintiff.[77]

Zipursky's point here is not that there are no duties of non-injuriousness, or that responsibility doesn't track these – surely, we can be responsible for breaching duties of non-injuriousness. Rather, his point is that *in tort actions* defendants are being identified by and, when found guilty, held responsible for breaching duties of non-injury. Without an agency-linking dimension, then, our concept of responsibility would lack the resources to make sense of our tort practices.

This is only part of the story, though, because it begs the question of whether it makes sense to distinguish breaches of duties of non-injuriousness from breaches of duties of non-injury in this way. After all, as Zipursky points out, "the same degree or

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[77] Ibid., 104.

kind of fault is manifested or expressed whether [an] act ripens into injury or not."[78] The second part of the story, then, concerns what we are doing when we find a defendant guilty in a tort action over and above indicating fault. Here Zipursky points out that when we find a defendant guilty what we are indicating is that she is vulnerable to a certain sort of response that she would not have been vulnerable to had she merely been guilty of breaching a duty of non-injuriousness. In the case of a tort action the vulnerability in question is to a plaintiff who can exact damages from her, and, importantly, the reason we think the plaintiff is entitled to exact damages from the defendant is not because the defendant acted negligently and in doing so breached a duty of non-injuriousness. Rather, the defendant is vulnerable to the plaintiff because in so acting the defendant injured the plaintiff. In tort law then, the agency-linking dimension of responsibility is important because it plays a role in determining who has standing to seek damages and what sort of damages they can seek. And, because whether our actions cause injury (or not) is something that is not entirely up to us, tortious liability is to some extent a matter of luck.[79]

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[78] Ibid., 100.

[79] See especially Zipursky's discussion at ibid., 104. Of course, one could imagine alternative schemes for dealing with torts that put less emphasis on the relationship between the wrongdoer and the injured party. New Zealand, for instance, has a universal no-fault insurance scheme run by the government that provides compensation to all victims of accidents without respect to the accident's cause that does away with the need for injured parties to identify wrongdoers in order to receive compensation. However, it's not even clear that this sort of scheme can do away with the agency-linking dimension of responsibility altogether. Alternatively one could argue that in a legal scheme with tort liability, like the one we find in most other countries, defendants really are being held liable for breaches of duties of non-injuriousness, and that it is simply the fact that only plaintiffs who have been wronged can seek damages that explains why only those defendants whose actions culminate in injury are subject to tortious liability. The idea here is that absent a negligent act culminating in injury, it will not be possible to identify a wronged party. On this account, then, it really is the case that defendants in tort actions are *only* being held responsible for breaching duties of non-injuriousness, but the distinction between duties of non-injuriousness and duties of non-injury plays an important epistemic function. Something like this argument seems to be what both Rosebury and Enoch and Marmor each have in mind when they argue that our blame-related practices are justified, but that the sense of responsibility these practices involve is not a moral concept. While this might be a plausible account of the nature of tort law (a matter I don't want to take a stand on here), notice that it clearly commits one to accepting the influence of luck on some of our normative practices (in this case tort liability).

Zipursky of course recognizes that the concepts of responsibility at home in the law and in morality are not the same. Extrapolating from the example of tort liability, however, and also from a parallel analysis of the criminal law, Zipursky suggests that the concept of legal responsibility teaches us three things about the concept of responsibility more generally. First, as a species of normative vulnerability, the question of whether someone is responsible for some unwelcome event is not only a matter of whether she did something wrong, but also of "whether a kind of response to the event may legitimately be visited upon that person."[80] Second, holding an agent responsible is always a matter of holding her responsible *for something*, and this is true even if one thinks of responsibility in a strictly fault-expressing sense, because even there responsibility is a matter of fault *as expressed by an act or choice*. Contra Zimmerman, in other words, the question of the degree to which we are responsible for something cannot be cleanly severed from the question of what we are responsible for. And last, but not least, our actions can be evaluated in both result-abstracting and result-embracing ways, and the latter are often just as important as the former when it comes to making sense of our practices.

It is this last point that most clearly sets Zipursky apart from other moral luck commentators, and which is worth pausing to emphasize. Appealing to Nagel's original statement of the problem of moral luck, Zipursky argues that, "it is not justifiable to suppose that the referents of the act description that abstracts away from results are for that reason somehow metaphysically prior to the referents of the act description that embraces the injury."[81] The important point here is not really about metaphysical priority, though, but rather about normative significance, and specifically the sense in which normative judgments that rely on result-abstracting descriptions of acts supervene on result-embracing descriptions of those acts. To take just one example, consider why acts of negligence leave one vulnerable to criticism. Here the answer is

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[80] Ibid., 100.

[81] Ibid., 113.

that negligence often culminates in injury (or if not injury some other sort of bad). Were this not the case, there would be no reason for result-abstracting descriptions of negligence to be morally significant. Ultimately, then, the point is not that an agency-linking dimension of responsibility paired with result-embracing descriptions of actions is necessary to *explain* our practices, though it may be that as well, but rather that it is needed to *justify* them.

Even if Zipursky is right about what legal responsibility can teach us about the contours of the more general concept of responsibility, though, it remains to be seen whether the features he identifies vindicate the idea that there is moral luck. It's perfectly possible, for instance, that, in the moral domain what we ought to be held responsible for extends only to the result-abstracting descriptions of our actions, even if, in the legal domain, it is the result-embracing descriptions of our actions that determine what sort of sanctions we are vulnerable to, and who is in a position to levy these sanctions. As Brian Rosebury puts it, the objection, blunt as it may be, is that "law is different from morality, and that, consequently, legal examples do not tell against an idea of moral responsibility."[82] Two tasks remain then. First, to establish that the legal example really does tell against accounts of moral responsibility that insulate themselves from luck. Second, to briefly sketch how the legal example provides a blueprint for handling the problem that luck is meant to pose.

X.   From the Legal to the Moral (and Back Again)

Rosebury's objection to the idea that facts about legal responsibility are indicative of facts about moral responsibility is that the law is first and foremost an instrument for maintaining social order. As such it must be sensitive to a range of second-order objectives directed towards that end.[83] Of course, as Rosebury acknowledges, one of these objectives is to maintain "a sufficient correspondence" of law

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[82] Rosebury, "Moral Responsibility and 'Moral Luck,'" 522.

[83] See ibid., 521–524.

with morality.[84] So, in order for members of society to have confidence in their legal orders, they "need to feel that their stronger moral sentiments are not offended by its laws."[85] However, because the concern for maintaining a correspondence between our moral and legal conceptions of responsibility is only one consideration among many, on Rosebury's view it is appropriate that these two notions will occasionally come apart. Indeed, as he points out, this will sometimes be desirable, and, moreover, it will often be desirable *from the moral point of view* – something we can see when we consider that achieving an exact correspondence between legal and moral responsibility would require the sort of intrusions upon our private lives apt to offend anyone with liberal moral sensibilities. The specific lesson, as Rosebury puts it, is that there is no deep need for individuals to "feel that all their moral judgments are given legal force."[86] And, bringing this lesson to bear on the case for, or rather against moral luck, Rosebury concludes his argument with the observation that:

> If it is intelligible to a reflective citizen, as it is, that [our institutional conception of legal accountability] will sometimes diverge from [our conception of moral responsibility] for political reasons that outweigh, but do not negate, optimally fair assessment of moral blameworthiness, there is no basis for supposing that the collective consent given to legal accountability undermines the coherence of the luck-free conception of moral responsibility.[87]

Rosebury's objection presses a powerful point, one with which I am in fact sympathetic. There are good reasons for our legal and moral concepts to come apart. His argument proceeds too quickly though. In particular, his conclusion that there is "no basis for supposing" that the assent given to our legal practices undermines the coherence of a luck-free conception of moral responsibility doesn't follow from the observation that our legal and moral concepts come apart in various ways. Here the specific problem is that Rosebury ignores the extent to which our legal practices lean on

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[84] Ibid., 522.

[85] Ibid.

[86] Ibid.

[87] Ibid., 524.

our moral judgments. While Rosebury grants that *ceteris paribus* our legal practices are more justifiable to the extent that they don't come apart from our conception of moral responsibility, and that some minimal level of correspondence between the two may be necessary, he doesn't seem especially concerned by the extent to which they *do* come apart. What I want to suggest, in other words, is that even if our legal and moral conceptions of responsibility need not be thought to be conceptually linked in any tight way, our legal practices become harder to justify the farther apart they come from our concept of moral responsibility. And given that they do come rather far apart, at least from a luck free conception of responsibility, those who deny that there can be moral luck are left with a pressing problem.

Put another way, the problem that Rosebury and other moral luck skeptics face is that the luck-free conception of moral responsibility they defend doesn't merely come apart from our conception of legal responsibility at the margins. Cases where legal accountability is sensitive to luck abound, and in these cases the moral luck skeptic is forced to say that, although the tortfeasor is and ought to be liable for significant damages (to take just one example), she is not morally responsible for what she did, at least not in a way that differs from the negligent but lucky driver whose negligent act did not culminate in injury. And, while this view might seem superficially plausible, it becomes harder to make sense of when we turn our attention to the impact that these sorts of practices have on the courses of our lives – an impact which is surely morally significant. How do we justify sending some of our fellow citizens to jail for life, while others, who committed acts for which they are just as morally culpable, go free? Once one admits that consequences should have little or no bearing on moral responsibility, our punishment practices begin to look arbitrary and capricious. As Williams worried, the murderer sitting on death row is unlikely to take much solace in the fact that he is no more *morally* responsible for what he has done than the criminal who like him attempted murder, but unlike him failed.

Of course, the moral luck skeptic is likely to object that all worries like Williams's

show is that we should punish attempted murder more severely, but that the murderer has no complaint. If there is a problem it's that there are attempted murderers who, because they failed to complete their attempted crimes, are not punished to the degree they deserve. I'm willing to cede this claim. Two worries remain, however. First, even if our legal practices don't tell against the conception of luck-free responsibility that someone like Rosebury wants to defend, they do tell against the thesis that there is not moral luck. This is because our practices of holding responsible are sensitive to luck. Second, and more important though, is that the relevant sort of luck is not just a matter of some agents avoiding being held responsible for things for which they clearly are responsible. As Jeremy Waldron suggests in his article aptly titled "Moments of Carelessness and Massive Loss," what makes our tort practices look morally problematic is that tortious liability often arises not from grossly negligent acts, but rather from moments of mere carelessness.[88] We hold the unlucky tortfeasor whose careless moment culminates in an injury legally responsible for what are, in many cases, massive damages, and we do so even while recognizing that there are innumerable other instances of carelessness that do not culminate in injury and so go overlooked. The issue here is that in cases involving mere carelessness whether someone should be held responsible *at all* seems to be almost entirely a matter of luck. Indeed, whether she *is responsible* at all seems to be a matter of luck. For instance, most readers, I suspect, don't have the intuition that individuals whose moments of carelessness don't lead to harm are luckily avoiding being held responsible for something for which they are responsible. And, yet, given the massive impact that this sort of holding responsible is capable of having on one's life, it is hard to see how we can justify the conception of legal responsibility that demands this outcome while at the same time maintaining that that the merely careless tortfeasor bears only minimal moral responsibility for what she has done.

Ultimately, then, while I am sympathetic to Rosebury's claim that our legal

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[88] Jeremy Waldron, "Moments of Carelessness and Massive Loss," in *Philosophical Foundations of Tort Law*, ed. David Owen (New York: Oxford University Press, 1997), 387–409.

practices need not tell against our moral concepts, it remains the case that they often do. If what I have argued in the preceding paragraphs has been persuasive, we must choose between defending our legal practices as they are and defending a luck-free conception of moral responsibility, and, at least with respect to tort law, it seems like we have good reason to hold onto our practices. As Waldron points out, refusing to hold a tortfeasor responsible for damages when her negligent action culminates in a tort merely deflects the losses onto the victim, and while alternative schemes for compensating victims are available, they will have their own costs as well.[89] Nor does this merely raise a question of distributive justice, as Enoch and Marmor would have it. As the case of massive liability for minimal negligence was meant to illustrate, these are practices that are hard to maintain unless we hold onto the belief that minimally negligent tortfeasors are *morally responsible* for what they do. Furthermore, as we will discuss at much greater length in the next two chapters, and especially the last, even if the reader is unpersuaded by the legal example, reflecting on our responses to accidents reveals a wide array of cases where the matter at hand is not one of legal accountability, but rather moral accountability. There are cases, in other words, where legal accountability is not at issue, but where an agent's moral accountability is, and in many of these cases blameworthiness depends almost entirely on matters of chance. And, as we will see, the reason for this is that, like our legal practices, our moral responsibility practices play an important role in maintaining social order, and, as Rosebury, Enoch, and Marmor have all emphasized these practices are embedded in less than ideal epistemic circumstances.

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[89] See especially, ibid., sec. iv. One such alternative is the no-fault system that New Zealand has adopted which we discussed briefly above. As Waldron points out, though, that system faces its own difficulties. In particular, there is a common complaint that victims of accidents in New Zealand often get less than they deserve in the way of compensation. For this argument see Waldron's discussion at ibid., 407, and for another argument for why strict liability (counter-intuitively) mitigates the problem of moral luck by collectivizing responsibility see Gregory Keating, "Strict Liability and the Mitigation of Moral Luck," *Journal of Ethics & Social Philosophy* 2, no. 1 (2006): 1–33.

XI.   Three Roles of Blame

Having been compelled to accept that our responsibility practices are influenced by luck, this last section will conclude our discussion by saying something about why luck's influence on our practices need not be thought to be a problem. Here, the legal example is again telling. As Zipursky has rather convincingly shown, the concept of responsibility includes both a fault-expressive dimension and an agency-linking dimension, and this is true whether one has the moral or the legal concept in mind. The significance of the latter stems from the role it plays in associating responsible agents with the things for which they are responsible – in paradigmatic cases, the things they have done which betray their malicious intent or culpable ignorance. Drawing on this distinction, however, we can draw a further distinction between three separate, albeit related, roles that blame plays in its capacity as the primary mechanism through which we appraise agents as being morally responsible. As I will explore at greater length in the third chapter of this dissertation, "Responsibility Without Culpability," the distinction I have in mind is between: 1) the *identificatory* role blame plays in indicating why the agent is being held responsible, or, alternatively, what it is that an agent is being held responsible for, 2) the *evaluative* role it plays in expressing fault or wrongdoing, and 3) the *prescriptive* role it plays in indicating that some sort of response is required of the agent.

In paradigmatic cases blame plays all three of the roles described above, often simultaneously. In playing the first role blame will typically be proscriptive. It picks out something that the agent in question *ought not to have done*, or at the very least something that it would have been preferable for her not to have done. On the other hand, in playing the second role blame's function is to convey a normative evaluation *of the agent*. It's function in this respect, in other words, is to indicate that the agent's actions betrayed her ill will or lack of regard for others (or, perhaps, a more durable, but flawed aspect of her character), and then to attribute the ill will or lack of regard *to her*. Finally, in playing its third role, blame indicates that a response of some sort is expected of the agent being

played, and perhaps, too, *demands* this of her.

Reflecting on this distinction we are now in a better position to see what it is that the reformulation and denial approaches to solving the problem of moral luck get right. Our responsibility practices are complex phenomena, and the practices of praising and blaming individuals that attend these practices are easily misunderstood. Where those approaches go wrong, though, is in implausibly severing the aspects of those practices from one another so that luck's influence on them can be shown to be benign, or of a flavor that's not distinctly moral. What makes this move so implausible is that luck has a clear influence on the way in which blame plays its identificatory and prescriptive roles. What one does depends a great deal on things over which she has no control, and how one ought to respond to what she does depends on what she does. The latter, prescriptive role, though, *is* distinctly moral. It consists in placing demands and expectations of other sorts on one another, and when these demands aren't met the agents who fail to meet them are typically subjected to further blame or sanctions of other sorts, including in extreme cases expulsion from the moral community. That luck influences these sorts of judgments and practices is not problematic though. After all how one ought to respond to what she does, *really does* depend on what she does.[90]

The only question that remains, then, is to explain why the existence of moral luck seems to be so problematic. Here I think the answer is that there really is a certain aspect of our moral judgments that ought to be insulated from luck, and that aspect is the one captured, at least in part, by the evaluative role blame plays. Whether one's malicious designs or culpable ignorance do or don't lead to harm has no bearing on the extent to which they betray one's lack of regard for others. What makes moral luck

[90] Furthermore, as we will explore in "Responsibility Without Culpability," we sometimes use blame as a way of indicating that the agent being blamed has done something which gives us reason to suspect her motives. In these cases the evaluative role blame plays is influenced by circumstances beyond an agent's control. The evaluations being made, however, are merely *pro tanto*, and in these cases blame is important because it provides us a way of acquiring new information, something it does by serving as an invitation for the party being blamed to respond to the accusation.

appear problematic, then, indeed what makes luck's influence on our moral judgments actually problematic, is that luck's appropriate influence on the identificatory and prescriptive aspects of our responsibility practices bleeds into the evaluative aspect of these practices. When the drunk driver who kills a pedestrian or fellow motorist is blamed more severely than the drunk driver who (luckily) makes it home without incident, we tend to think that she is a worse person. She isn't. Nevertheless, it is appropriate for us to blame her more severely because she did do something worse that calls for a more substantial response. This doesn't reflect a deep paradox in our moral commitments though. Instead it merely reflects the fact that our responsibility practices are complex, and the apparent conflict between the two judgments is simply an artifact of the fact that it's often hard to distinguish the various roles blame plays from one another.

ADAM SMITH'S INTRIGUING SOLUTION TO THE PROBLEM OF MORAL LUCK [*]

> "The person himself, who by an accident of this sort has involuntarily hurt another, seems to have some sense of his own ill desert, with regard to him. He naturally runs up to the sufferer to express his concern for what has happened, and to make every acknowledgment in his power. If he has any sensibility, he necessarily desires to compensate the damage, and to do every thing he can to appease that animal resentment, which he is sensible will be apt to arise in the breast of the sufferer. To make no apology, to offer no atonement, is regarded as the highest brutality."
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> -- Adam Smith, *The Theory of Moral Sentiments*, II.iii.2.10 --

In an important section of Adam Smith's *The Theory of Moral Sentiments* titled "Of the Influence of Fortune upon the Sentiments of Mankind, with regard to the Merit or Demerit of Actions" we find a brief, but fascinating discussion of the phenomenon of moral luck.[91] Revolving around a number of sentiments that he describes as 'irregular,' Smith's discussion is important for two reasons. First, for the example it provides of the role the sentiments play in grounding our moral judgments, expressing our humanity, and making us fit for social life. Second, for what it tells us about the place of luck in morality, including especially the novel solution it suggests to the problem of moral luck.

As was the case with many of the thinkers whose work influenced his own, much of Smith's work, from *The Theory of Moral Sentiments* to *The Wealth of Nations*, reflects a deep appreciation of the fact that our lives are substantially shaped by circumstances that lie beyond our control. Of particular interest to Smith was the way in which this is reflected in the irregularity of our sentiments, especially our tendency to

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[*] A revised version of this paper with the same title is forthcoming in the journal *Ethics*.

[91] Adam Smith, *The Theory of Moral Sentiments (6th Edition)*, ed. D.D. Raphael and Leonidas Montes, The Glasgow Edition of the Works and Correspondence of Adam Smith (Indianapolis: Liberty Fund Inc., 1982). References to this text will be abbreviated TMS followed by the book, section, chapter, and paragraph numbers. Smith's discussion of moral luck is found in TMS Book II, section iii.

blame ourselves (and others) in cases where our actions have bad consequences that do not reflect our intentions or the care with which we might have acted. Smith tells us that this tendency is socially useful. However, he also recognized that in many cases the judgments stemming from it are likely to strike us as deeply problematic. This is because malice or negligence on the part of an agent being blamed is typically assumed to be a necessary condition for blameworthiness, and the irregular sentiments reliably lead us astray of this constraint. By showing that the impartial spectator is able to endorse our irregular sentiments, though, and more importantly by explaining why it is able to do so, Smith provides a surprisingly compelling argument for the thesis that causal responsibility can sometimes be a sufficient ground for (a certain sort of) moral blameworthiness. In other words, Smith shows us that there are cases where an agent can be *appropriately* blamed even though her actions do not reflect her ill will or culpable ignorance.

As we will see, Smith's argument for this thesis is rooted in a penetrating analysis of the various roles blame plays in mediating our responses to accidents. In particular, Smith draws attention to the identificatory role blame plays in highlighting the relationships that agents bear to events of moral significance, and the prescriptive role it plays in indicating that an agent should respond to what she has done in certain ways. By showing that blame can play these roles without conveying anything about the quality of an agent's will, he provides a compelling argument for the idea that the irregular sentiments play a crucial role in expressing our humanity, and in doing so he suggests an intriguing solution to the problem of moral luck.

Unfortunately, the significance of Smith's discussion of the irregular sentiments, and especially his argument for the provocative thesis sketched above, has not been fully appreciated. One reason for this is that, although several Smith scholars have commented on his discussion of the irregular sentiments, these commentaries have tended to be too brief to fully capture the nuance of Smith's view.[92] A second reason is

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[92] Among the commentaries on Smith that briefly discuss his account of the irregular sentiments

that, among the few commentators that have offered extended comment, several have been too quick to embrace the pessimistic view that Smith's discussion of the irregular sentiments has trouble hanging together with other aspects of his view.[93] The most glaring oversight, however, has come from commentators in the moral luck literature where, excepting a handful of Smith scholars, Smith's contribution has gone entirely unnoticed.[94]

Proceeding in three parts, this paper seeks to give Smith's discussion of the irregular sentiments the careful attention it deserves. Section I introduces the problem of moral luck, distinguishes between two forms the problem can take, and offers a tentative view of Smith's account of the irregular sentiments according to which he endorses the problem in its weak form. Section II, which constitutes the bulk of the paper, then offers a closer look at Smith's account of the irregular sentiments. There I argue that Smith's account can be read in three increasingly sophisticated ways, and that his settled view is

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are Charles L. Griswold, *Adam Smith and the Virtues of Enlightenment* (Cambridge: Cambridge University Press, 1999), 240–243; Knud Haakonssen, *The Science of a Legislator: The Natural Jurisprudence of David Hume and Adam Smith* (Cambridge: Cambridge University Press, 1981), 65–66; Vincent Hope, *Virtue by Consensus: The Moral Philosophy of Hutcheson, Hume and Adam Smith* (Oxford: Clarendon Press, 1989), 99–100; and Tom Campbell, *Adam Smith's Science of Morals* (Lanham, MD: Rowman and Littlefield, 1971), 192–193. The lone exceptions that provide extended treatments are Paul Russell's "Smith on Moral Sentiment and Moral Luck," *History of Philosophy Quarterly* 16 (1999): 37–58; Chad Flanders's "'This Irregularity of Sentiment': Adam Smith on Moral Luck," ed. Leonidas Montes and Eric Schliesser (New York: Routledge, 2006), 193–218; Aaron Garrett's "Adam Smith on Moral Luck," in *Adam Smith Als Moralphilosoph*, ed. Christel Fricke and Hans-Peter Schütt (Berlin: Walter de Gruyter, 2005), 160–77; and Eric Schliesser's "The Piacular, or on Seeing Oneself as a Moral Cause in Adam Smith," in *Contemporary Perspectives on Early Modern Philosophy* (Netherlands: Springer, 2013), 159–77.

[93] I think Russell and Flanders are both guilty of this. On my view, only Garrett and Schliesser offer accounts that come close to capturing the full range of things Smith has to say about the irregular sentiments. The former, however, is published in German and so has not received the attention it deserves among English speaking scholars, while the latter is only tangentially concerned with the relevance of Smith's discussion to the problem of moral luck.

[94] To my knowledge the only reference to Smith in the moral luck literature other than the papers by Russell, Flanders, and Garrett cited in the previous notes is found in Nagel's seminal article which, alongside an article by Bernard Williams, reinvigorated discussion of the place of luck in morality (Thomas Nagel, "Moral Luck," in *Mortal Questions* (New York: Cambridge University Press, 1979), 31–32.). The view Nagel attributes to Smith however is hard to reconcile with lots of what Smith says about the irregular sentiments.

more nuanced and its relevance to the contemporary moral luck literature greater than even Smith's most careful commentators have appreciated. In particular I argue that on Smith's settled view the irregular sentiments are often capable of being endorsed full stop. As a result, his settled view is one on which he embraces the idea that there can be moral luck, but denies that it is a problem. Finally, having described Smith's account of the irregular sentiments, section III concludes by turning to the questions of what Smith's discussion illustrates about his moral theory and how his view helps to resolve the problem of moral luck.

I.   A Preliminary Look at Smith's Account of Moral Luck

Before looking at what Smith has to say about the influence of fortune on our moral judgments it will be helpful to say something about what the problem of moral luck is and why many have thought it to be so worrisome.

I.i   The Problem of Moral Luck

As Thomas Nagel describes it, the problem of moral luck arises because we are pre-theoretically committed to what he calls the *control principle*, that establishes as a necessary condition on the appropriateness of our moral judgments that, "people cannot be morally assessed for what is not their fault, or for what is due to factors beyond their control."[95] This commitment is problematic because our moral assessments typically *are* influenced by factors over which we have no control. Nagel offers the example of a lorry driver who (perhaps negligently) fails to keep up to date with his truck's maintenance and subsequently finds himself unable to stop when a young child darts in front of him. As a result of the driver's minor negligence, the child is injured, and the driver is subject to blame and censure. The driver is morally unlucky to the extent that his negligence is relatively banal. More importantly, he is also morally unlucky insofar as he had no control over whether the child would dart in front of his truck, and it is the driver's

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[95] Ibid., 25.

moral bad luck that leads us to blame him to a greater degree than we blame the equally negligent (but morally lucky) drivers who avoid such accidents.[96]

On Nagel's view, though, it's not just the conflict between principle and judgment in cases of moral luck that is problematic. More problematic is that there is a sense in which our `deviant' moral judgments seem correct. Nor does reflecting on these judgments do much to sway us from the firm conviction that it seems correct to extend the control principle to the cases where affirming it proves paradoxical. Moreover, one can feel the force of this problem even if one denies that the control principle is the right way of making sense of the preconditions for moral assessment. It is not just the control principle that gives rise to the problem of moral luck, in other words, but rather a more widely held suspicion that luck or fortune ought not influence the extent to which an agent can be morally responsible (or not) for something.

Put in more general terms, the problem of moral luck takes two forms. The first problem is that in a wide range of cases the moral judgments we actually make conflict with the judgments that, upon reflection, we think we ought to make. The second and more serious problem is that common-sense seems to firmly commit us to two mutually incompatible moral intuitions. One concerns which *principles* are appropriate constraints on our judgments and entails that moral luck is *impossible*, while the other concerns which *particular judgments* it is appropriate to make and entails that *there is such a thing* as

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[96] Ibid., 26., As we saw in Chapter 1, Nagel distinguishes between four ways in which luck bears on our moral assessments. The first, constitutive luck, reflects the fact that the kind of person one is (including the inclinations, capacities and temperament that one has) is not wholly a matter of one's own choosing. The second, circumstantial luck, reflects the fact that the kinds of problems and situations one faces are not up to her. Related to this second sort of luck is a third sort of luck that reflects the fact that circumstances often force one's hand, so that what one does is determined by the circumstances she finds herself in. Finally there is consequential luck which reflects the ways in which the outcomes of our actions depend upon factors outside our (immediate) control. The example sketched above illustrates this last sort of luck, and it is this type of luck that has been most discussed in the moral luck literature. It is worth noting however that Nagel's conception of the *problem* posed by the influence of luck on our moral assessments is grounded more directly in the worries generated by constitutive and circumstantial forms of luck. Interestingly, the same is not true of Smith whose account forestalls many of the worries that constitutive and circumstantial luck generate.

moral luck. And, when the problem takes this second form, the trouble we confront is not just that our judgments conflict with the principles we endorse, but that there also seems to be no way of resolving the conflict. What we are left with, in other words, is a paradox – one that some have thought to be so severe as to undermine the possibility of our making coherent moral judgments.[97]

I.ii   The 'Equitable Maxim' and Our 'Irregular Sentiments'

Having said something about the problem of moral luck we can now turn our attention to the question of whether moral luck presents the problem for Smith that it does for Nagel and so many others. Towards the end of his discussion of luck's influence on our sentiments Smith seems resigned to the conclusion that it does, observing that, "Fortune . . . has some influence where we should be least willing to allow her any" (TMS II.iii.3.1). At first glance this passage, and particularly its location towards the end of his discussion, suggests that Smith's considered view is that luck has a pernicious influence on our ability to make sound moral judgments. Smith, in other words, seems to accept the problem of moral luck in its first, weaker form.

As we will see in section II things are more complicated than this initial characterization suggests. It's clear however that Smith sees a real tension between the particular judgments we make and our considered views about the sort of judgments we ought to make. This is especially true with respect to judgments about the merit or demerit of actions (his main concern throughout the discussion of luck).[98] The source of

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[97] As we saw in Chapter 1, for instance, Darren Domsky writes that the problem of moral luck "jeopardizes the very possibility of making evaluative moral judgments" ("There Is No Door: Finally Solving the Problem of Moral Luck," *Journal of Philosophy* 101 (2004): 445), and Nagel expresses the sentiment particularly clearly when he writes that "the view that moral luck is paradoxical is not a *mistake*, ethical or logical, but a perception of one of the ways in which the intuitively acceptable conditions of moral judgment threaten to undermine it all" ("Moral Luck," 27). In a related vein, Williams concludes his essay on moral luck with the observation that "skepticism [about the freedom of morality from luck] leaves us with a concept of morality, but one less important, certainly, than ours is usually taken to be; and that will not be ours, since one thing that is particularly important about ours is how important it is taken to be" ("Moral Luck," in *Moral Luck* (New York: Cambridge University Press, 1981), 39).

[98] As we will explore at length in sections II.iii and II.iv, though, the apparent tension between the

the tension lies in the psychology of moral judgment, and in particular the fact that our sentiments are aroused too easily in some cases, and not easily enough in others. Smith describes this tension at the outset of his discussion of luck in the course of making an observation about the foundations of praise and blame:

> Whatever praise or blame can be due to any action, must belong either, first, to the intention or affection of the heart, from which it proceeds; or, secondly, to the external action or movement of the body, which this affection gives occasion to; or, lastly, to the good or bad consequences, which actually, and in fact, proceed from it. (TMS II.iii.intro.1)

Here Smith tells us that praise or blame must take one of three things as its object: i) the intentions, or other qualities of will expressed in our actions (what Smith calls the affections of heart), ii) our actions themselves, or iii) the consequences of our actions. Having identified these things, however, Smith goes on to tell us that it is 'abundantly evident' that neither actions nor their consequences taken alone can be the foundation of any *real* praise or blame.[99] He explains this in terms of a principle he refers to as the *equitable maxim* (henceforth **EM**):

> The only consequences for which [an agent] can be answerable, or by which he can deserve either approbation or disapprobation of any kind, are those which were someway or other intended, or those which, at least, show some agreeable or disagreeable quality in the intention of the heart, from which he acted. To the intention or affection of the heart, therefore, to the propriety or impropriety, to the beneficence or hurtfulness of the design, all praise or blame, all approbation or disapprobation, of any kind, which can justly be bestowed upon any action, must ultimately belong. (TMS II.iii.intro.3)

When the EM is proposed "in abstract and general terms," Smith suggests that, "there is nobody who does not agree to it," and even goes as far as to suggest that the justice of the principle is 'self-evident' (TMS II.iii.intro.4). As his subsequent discussion makes clear, however, our sentiments rarely conform to this maxim:

> How well soever we may seem to be persuaded of the truth of this

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particular judgments we make and the principles we endorse stems in part from the difficulty we sometimes have in distinguishing between judgments of merit and propriety.

[99] TMS II.iii.intro.2

equitable maxim, when we consider it after this manner, in abstract, yet when we come to particular cases, the actual consequences which happen to proceed from any action, have a very great effect upon our sentiments concerning its merit or demerit, and almost always either enhance or diminish our sense of both. (TMS II.iii.intro.5)[100]

Smith refers to this tendency as 'our irregularity of sentiment.'[101] Arising in cases where the outcome of an action is uncertain or influenced by circumstances beyond an agent's control, the irregularity is importantly not empirical. As Smith's comments clearly suggest – and recent work in psychology has confirmed – the irregular sentiments arise reliably in response to a wide variety of circumstances.[102] Of these, two cases stand out. The first is where the sense of merit (or demerit) aroused by actions arising from laudable (or blamable) intentions is diminished because the anticipated effects of those actions fail to occur.[103] The second is where we find in ourselves or others a 'shadow of merit or demerit' – the latter being more common and involving our tendency to judge actions with bad outcomes to be worse than the motives from which they proceed.[104] As we saw in section I.i – recall Nagel's lorry driver – the problem in the latter case is that we tend to treat the person at whom our blame is directed as if they had bad intentions even when this is not true. At a more basic level, though, the problem with both variants

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[100] See also his later discussion at TMS II.iii.3.1

[101] TMS II.iii.2.1

[102] As we discussed in chapter 1, Fiery Cushman, for instance, finds that consequences influence judgments of blameworthiness and susceptibility to punishment independently of their influence on judgments pertaining to the wrongness of an action. See his "Crime and Punishment: Distinguishing the Roles of Causal and Intentional Analyses in Moral Judgment," *Cognition* 108, no. 2 (August 2008): 353–80. And for related findings see Fiery Cushman et al., "Accidental Outcomes Guide Punishment in a 'Trembling Hand' Game," *PLoS ONE* 4, no. 8 (2009): 1–7; Fiery Cushman and Joshua Greene, "Finding Faults: How Moral Dilemmas Illuminate Cognitive Structure," *Social Neuroscience* 7, no. 3 (2012): 269–79; Liane Young, Shaun Nichols, and Rebecca Saxe, "Investigating the Neural and Cognitive Basis of Moral Luck: It's Not What You Do but What You Know," *Review of Philosophy and Psychology* 1, no. 3 (2010): 333–49; and Shaun Nichols, Mark Timmons, and Theresa Lopez, "Ethical Conservatism and the Psychology of Moral Luck," in *Empirically Informed Ethics: Morality between Facts and Norms*, ed. M. Christen et al. (Switzerland: Springer International Publishing, 2014), 159–76.

[103] Smith discusses these cases in TMS II.iii.2.2-5

[104] Smith discusses these cases in TMS II.iii.2.6-10

of irregular sentiment is that they exhibit the influence of considerations not licensed by the EM. This, of course, raises the question of whether Smith might have more accurately characterized the sentiments in question as 'inequitable.' As our discussion in subsequent sections will make clear, though, the irregular sentiments really are irregular insofar as there are no general principles that can cleanly distinguish the cases in which they are and are not liable to arise.[105]

I.iii   A First Pass at Smith's View

Having described the tension between the EM and our irregular sentiments we're now in a position to offer a more complete, albeit still preliminary characterization of Smith's view. That view is that the EM provides the true standard of moral worth and so, when our particular judgments conflict with the EM, they ought not to be endorsed. Approbation or disapprobation, in other words, is deserved only to the extent it reflects an agent's intentions or quality of will. Or, to put things in terms of Smith's distinction between propriety and merit, his view seems to be that the two ought not come apart, at least insofar as the appropriateness of the latter depends on the former.

Counting in favor of this characterization of Smith's view is his formulation of the EM where he suggests that all praise or blame 'belong to' the propriety or impropriety of an action. Also relevant is his tendency to distinguish our 'real demerit' from the sort that is founded on our irregular sentiments, and to sometimes characterize the latter as our 'unjust resentment.'[106] Indeed, the view just described is more or less the view that both Paul Russell and Chad Flanders attribute to Smith.[107] On this view moral

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[105] I thank an anonymous referee for pressing me to say something about why Smith uses the term 'irregular' rather than something like 'inequitable.'

[106] TMS II.iii.2.4

[107] Flander's writes: "I believe, that the true standard of moral worth for Smith is ultimately what he calls the 'equitable maxim', which is that we should not be judged based on 'those events that did not depend upon our conduct'" ("This Irregularity of Sentiment," 216). Similarly Russell argues that: "Smith's naturalistic account of the influence of fortune on our moral sentiments suggests that we are so constituted that we naturally and inevitably punish and approve of punishments that are nevertheless, on Smith's own admission, inconsistent with the demands of justice" ("Smith on Moral Sentiment and Moral Luck," 43).

worth reflects our character which in turn manifests itself in the intentions we form or are likely to form, and, as Flanders points out, on this reading Smith seems to simply deny the problem of moral luck if by this we mean that "our moral worth can be contingent on the things we cause but do not intend to cause."[108] Of course, luck may still have some influence on our moral judgments to the extent that it can lead us to withhold praise or blame in cases where an agent's actions fail to produce their intended result. In these cases, though, luck does not influence our judgments of propriety, and it remains the case that we cannot deserve praise or blame for things that we do not intend to do.[109] To put Flanders's point in terms of the distinction made in section I.i, what Smith denies is not that luck has a pervasive and frequently problematic influence on our moral judgments, but rather that this influence threatens to undermine the coherence of our judgments.

This preliminary reading of Smith has advantages. Contra Nagel, Smith is suggesting that the intuitive conditions for moral judgment *don't* threaten to leave us trapped in paradox. Read against the backdrop of the moral luck literature, the advantage of Smith's view lies in the rich conception of moral agency it provides. As Russell in particular emphasizes, by focusing on the intentions of agents broadly construed Smith is able to stave off the skeptical worry that plagues those who adopt the more restrictive view embodied by the control principle. More specifically, by identifying agency with our intentions rather than something more primitive like control, Smith sidesteps the worry that in the end we might not have control over anything and so might not be morally accountable for very much at all. Of course, that a view like his is able to avoid the paradox of moral luck in this way is unlikely to do

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[108] Flanders, "This Irregularity of Sentiment," 216.

[109] For Smith judgments of propriety reflect the permissibility of an action and are rooted in our ability to sympathize with the intentions of the actor. Judgments of merit, on the other hand, are indirect sources of approbation that reflect our sympathy for the individuals affected by an agent's actions. That it can sometimes be appropriate to withhold judgments of merit or demerit in cases where an agent's actions don't produce their intended results, then, is a consequence of the lack of affected parties with whom we can sympathize. I thank an anonymous referee for pressing me to clarify this point.

much to sway anyone that remains unconvinced that our intentions are the locus of agency and responsibility. Nevertheless, it is an advantage, and it becomes more attractive the more weight one gives to our psychological disposition to identify one's agency with one's intentions.

And yet, if for Smith the problem of moral luck does not take on its second and more serious form, accepting the problem in its first form is troubling enough. As Russell points out, Smith remains saddled with the conclusion that we are "incapable of keeping our retributive attitudes and practices within the bounds of the requirements of justice," and although this need not threaten the coherence of our concept of morality, it clearly threatens our practices.[110] Furthermore, as Flanders points out, "to regard the problem of moral luck as raising a problem only if luck affects our moral credit and demerit *directly* seems to take an unhelpfully narrow view of what that problem can involve."[111] Flanders's point is that even if our moral worth is not contingent in the particular way that Smith denies that it can be, there may still be a problem in the way our irregular sentiments bear on our attitudes towards ourselves and others. In other words, the irregular sentiments might be worrisome not just because they conflict with the EM, but because they encourage us to think about ourselves in ways that don't reflect our true moral worth.

II.   A Closer Look at Smith's Account of Moral Luck

Although many of the problems that Russell and Flanders pose for the view they attribute to Smith are indeed pressing, on closer inspection it's not clear that Smith means to defend that view. On one hand Smith's endorsement of the EM is more nuanced than either Russell or Flanders allows. On the other hand Smith seems to endorse our irregular sentiments, suggesting that there are circumstances in which the judgments rooted in them may be appropriate even though they don't cohere with the

[110] Russell, "Smith on Moral Sentiment and Moral Luck," 43–44.

[111] Flanders, "This Irregularity of Sentiment," 216.

EM. This section develops these claims by distinguishing between three ways of reading Smith's discussion of the irregular sentiments. Each of these readings revolves around two main claims – one concerning the scope of the EM, the other the status of our irregular sentiments – and, as we will see, by advancing different views of the scope of the EM and the status of the irregular sentiments each reading suggests a different take on the problem of moral luck.

The first and least nuanced reading of Smith is the view sketched in section I on which he seems to accept the problem of moral luck in its first form. As we've seen, on that reading: (a) the EM is the principle which ought to govern all attributions of responsibility, and (b) our irregular sentiments are a problem to the extent that they conflict with the EM. The second reading, maintains the first's view of the scope of the EM, but offers a slightly more complicated take on the status of the irregular sentiments. On this view: (a) the EM is still the principle which ought to govern attributions of responsibility, but (b) a broadly consequentialist justification of our irregular sentiments is available. As we will see, this reading suggests that we need not despair at the influence the irregular sentiments have on our moral judgments, but also suggests that Smith accepts the problem of moral luck in something like its second, paradoxical form. Finally, on the third and most sophisticated reading of Smith: (a) the EM is not the only principle which ought to govern attributions of responsibility, and (b) our irregular sentiments can be endorsed (i.e. they are often appropriate). Ultimately I will argue that it is this third reading that best captures Smith's settled view and that, on this view, Smith seems to deny that there is a problem of moral luck.

II.i Smith's Qualified Endorsement of the Equitable Maxim

The first reason to think that Smith's view is not the one sketched in section I is that there are several places where Smith's affirmation of the EM is hedged. Smith's first hedge comes in the paragraph where he first points out that many of our judgments conflict with the EM. There Smith prefaces his comments with the observation that we all "*seem* to be persuaded of the truth of this equitable maxim . . ." (TMS II.iii.intro.5,

emphasis added). One can only give so much weight to a single word, but Smith's comment clearly allows for the possibility that we are not all actually persuaded by the truth of the EM. Indeed, Smith makes similar hedges throughout the TMS, often invoking the language of seemings to indicate that the impressions which arouse our sentiments are merely apparent, and such hedges are significant in light of Smith's fascination with the role that illusions and deception play in our lives.[112]

More significant than his hedges, however, is the fact that Smith never says that the EM ought to govern our particular judgments. Although other commentators have taken this claim to follow implicitly from Smith's concern for the ways in which our irregular sentiments lead us astray of the EM, all Smith clearly commits himself to is the much weaker claim that we all accept the EM *when it is presented in abstract and general terms*.[113] This of course is consistent with the view that the EM is *not* supposed to govern all of our particular judgments, and given the skepticism of reason and philosophy that Smith expresses at various points throughout the TMS it would not be surprising if this were his view.[114] Moreover, if this is in fact a feature of Smith's view, it serves to further

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[112] For examples of similar hedges see: TMS II.i.3.4, where he suggests that our sympathy for the distress of someone injured by another seems to serve only to animate our resentment for the offender despite the fact that Smith elsewhere suggests that this sympathy also drives us to help alleviate the suffering of the victim; TMS I.i.2.4 where he suggests that our sympathy with the sorrow of others seems to us to alleviate their sorrow, but actually tends to compound their grief; TMS I.iii.3.8 where he suggests that glory seems to surround our heroes, when in fact the heroes themselves are plagued by shame and remorse; and TMS II.ii.3.5 where he invokes the language of seemings in the context of discussing why reductive explanations of the efficient causes of natural phenomena are attractive, but sometimes misleading. And for discussion of Smith's fascination with illusions and deception see Eric Schliesser, "Adam Smith's Theoretical Endorsement of Deception," *The Adam Smith Review* 2 (2006): 209–14; Ryan Patrick Hanley, *Adam Smith and the Character of Virtue* (Cambridge: Cambridge University Press, 2009), especially 102–103; and N. Ashraf, C. Camerer, and G. Loewenstein, "Adam Smith Behavioral Economist," *The Journal of Economic Perspectives* 19, no. 3 (2005): especially 138–140.

[113] TMS II.iii.intro.5 and II.iii.3.1. Geoff Sayre-McCord is an exception here. See his "Sentiments and Spectators: Adam Smith's Theory of Moral Judgment," in *The Philosophy of Adam Smith*, ed. Vivienne Brown and Samuel Fleischacker, vol. 5, The Adam Smith Review (New York: Routledge, 2010), 140, where he calls attention to this fact.

[114] Smith's skepticism of philosophy has been much discussed. See e.g. the observations he makes at TMS I.iii.2.3, and for discussion of this Griswold, *Adam Smith and the Virtues of Enlightenment*,

distinguish his view from those of philosophers, like Nagel, who clearly think that the abstract principles we accept ought to constrain our particular judgments.[115]

II.ii   An Intermediate View: The Utility of Our Irregular Sentiments

Acknowledging that the textual evidence cited above is by no means conclusive, I want to turn to two more substantive arguments that show why the reading sketched in section I is inadequate. The first, which I develop in this section, concerns Smith's discussion of the utility of the irregular sentiments, and motivates the move from the first to the second reading we sketched.

Smith's arguments for the utility of the irregular sentiments are offered at the end of a discussion of the way we respond to accidents which are interesting in large part because they provide particularly clear examples of cases where fortune influences our judgments of merit or demerit. These cases are also interesting, though, for what they tell us about the relationship between our sentiments and the social norms that structure our practices, which in turn helps to explain why luck has the influence on our judgments that it is does. Before turning to Smith's arguments for the utility of the irregular sentiments, then, it will be helpful to say something about this relationship.

On Smith's view our sentiments are related to norms in two ways, each of which can be explained by the role sympathy plays in driving us to converge on norms. On one hand, our sentiments are sensitive to social norms insofar as norms help determine the content of our reactive attitudes, as well as the sorts of situations that are liable to arouse our sentiments. On the other hand, our sentiments themselves play an important role in

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especially chap. 4 sec. 2, and also pp. 23–25.

[115] Note that the reading I am defending here does leave us with an interesting puzzle, namely how a principle (like the EM) can be so 'abundantly evident' when presented in abstract and general terms that no one would deny it, and yet not be appropriate as a constraint on the judgments we make in particular cases. There is however persuasive experimental evidence that individuals are prone to make (and approve of) particular judgments that conflict with the general principles they accept in precisely this sort of way. See Chris Freiman and Shaun Nichols, "Is Desert in the Details?," *Philosophy and Phenomenological Research* 82, no. 1 (2011): 121–33, which focuses on desert judgments that are in many cases closely related to blame/praise-worthiness.

shaping the content of our norms. In the first case, the sympathetic pleasure we enjoy when our sentiments or judgments concord with those of others (and the displeasure we get when this is not the case) conditions our sentiments to be aroused only in cases likely to arouse the sentiments of others.[116] In the second case, the content of our norms is constrained by the fact that we are only likely to converge on norms that reliably arouse our sentiments.[117]

Both aspects of the relationship between our sentiments and norms are nicely depicted in Smith's discussion of negligence. With respect to the first, consider Smith's account of the reasons we blame and punish those who are guilty of gross negligence:

> The person who has been guilty of [gross negligence], shows an insolent contempt of the happiness and safety of others. There is real injustice in his conduct. He wantonly exposes his neighbour to what no man in his senses would chuse to expose himself, and evidently wants that sense of what is due to his fellow–creatures which is the basis of justice and of society. (TMS II.iii.2.8)

Of note here is Smith's observation that what makes gross negligence blameworthy – in his words, "what chiefly enrages us" – is not so much the ill effects of negligence, as it is

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[116] For Smith, like Hume, sympathy is the capacity that allows us to share the sentiments of others. The distinctive aspect of Smith's account of sympathy, though, is that the empathic aspect of sympathy is accompanied by an innate desire that one's sentiments be in accord with the sentiments of others, where this desire is explained in terms of the 'sympathetic pleasure' we get when our sentiments concord with those of our fellows. For more on the role that sympathy plays in driving us to converge on norms and judgments of other sorts see Schliesser's discussion in "Reading Adam Smith after Darwin: On the Evolution of Propensities, Institutions, and Sentiments," *Journal of Economic Behavior and Organization* 77, no. 1 (January 2009): 14–22. and Otteson's in *Adam Smith's Marketplace of Life* (Cambridge: Cambridge University Press, 2002), chap. 1., and for more general discussion of Smith's account of sympathy see Bence Nanay's "Adam Smith's Concept of Sympathy and Its Contemporary Interpretations," in *The Philosophy of Adam Smith*, ed. Vivienne Brown and Samuel Fleischacker, vol. 5, The Adam Smith Review (New York: Routledge, 2010), 85–104, and Remy Debes's "Which Empathy? Limitations in the Mirrored 'Understanding' of Emotion," *Synthese* 175, no. 2 (2010): 219–39.

[117] This dynamic is characterized in evolutionary game theory as co-evolution. For an example of how something like this likely contributed to the evolution of cooperation see Robert Boyd and Peter Richerson, *Not by Genes Alone: How Culture Transformed Human Evolution* (Chicago: University Of Chicago Press, 2005), and for an account of how a wide range of norms are practices are able to co-opt our evolved psychology see Fiery Cushman, "Punishment in Humans: From Intuitions to Institutions," *Philosophy Compass* 10, no. 2 (2015): 117–33.

the sense that negligence betrays an agent's lack of concern for what is owed to others. In such cases Smith suggests that, when we express our resentment, what we principally desire is to bring the offender "back to a more just sense of what is due to other people" (TMS II.iii.1.5). For Smith, though, our resentment doesn't merely express this desire. Rather, it provides us with a mechanism for bringing it about. Indeed, so important is this latter fact that Stephen Darwall has suggested that we read Smith as defending a view on which the distinctive characteristic of sentiments like resentment and indignation is the interpersonal demands they embody.[118] More specifically, on Darwall's reading of Smith, the demand that reactive attitudes like resentment embody is that individuals afford each other the respect that they warrant in virtue of their human dignity, and in making this demand the reactive attitudes presuppose that those at whom they are directed are responsible moral agents.[119] We will return to this point in subsequent sections. What is important for the moment, though, is simply that, on Smith's view, our norms play a role in determining when our sentiments are aroused, while the sentiments themselves provide the principal mechanism for holding one another to account when these norms are violated.

Turning to the role the sentiments play in constraining the content and application of our norms, we see Smith point to this in the sentences that immediately follow the passage quoted above. There Smith notes that, although we are apt to treat agents whose negligence leads to real harm "as if [they] had really intended those consequences," in cases where harm doesn't arise we don't do this (TMS II.iii.2.8). Indeed, Smith suggests that nothing could "appear more shocking to our natural sense of equity" than for a man to be punished as if he brought about harm when, in fact, he

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[118] See Darwall's discussion in *The Second-Person Standpoint: Morality, Respect, and Accountability* (Cambridge, MA: Harvard University Press, 2006) at pgs. 84 and 178-180, where he draws on the very passage quoted above.

[119] See also Stephen Darwall, "Sympathetic Liberalism: Recent Work on Adam Smith," *Philosophy and Public Affairs* 28, no. 2 (April 1999): 139–64. Here Darwall echoes a view defended by Charles Griswold in *Adam Smith and the Virtues of Enlightenment*, especially 235–239, which has been defended more recently, and at greater length, by Remy Debes in his "Adam Smith on Dignity and Equality," *British Journal for the History of Philosophy* 20, no. 1 (2012): 109–40.

did not (TMS II.iii.2.8). Of course, this isn't to say that those who avoid causing harm despite their negligence are immune from criticism, but rather that the degree of punishment they warrant is less (and perhaps also of a different sort) than it would be had they caused real harm. In other words, our desire to bring the negligent actor back to a more just sense of what is due to others is mitigated in such cases by our general aversion to entering into the unsocial or malevolent sentiments.[120] When an agent's actions do produce suffering or damages, however, our sympathy with the victims allows us to overcome this aversion, and, as Smith's discussion of the minor species of negligence makes especially clear, because this sympathy tends to overwhelm our sense of the propriety (or impropriety) of the agent's actions, our judgments in cases with bad outcomes tend to reflect the token consequences of the agent's actions (rather than the agent's intentions as the EM would prescribe).[121]

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[120] See TMS II.iii.2.7. As we will soon see, our hesitancy to blame in such cases is also explained by the problems that would accompany the 'inquisition of the heart' that would be likely to arise if we focused only on intentions, the most significant of which is the disrespect that a general suspicion of the motives of others is likely to manifest itself as.

[121] Smith identifies four distinct species of negligence. The first and most serious is *gross negligence* which encompasses those actions that result in harm to another and reveal the negligent actor's contempt for the safety and happiness of his fellows. For Smith this contempt for the interests of others is found in the fact that the negligent agent treats others as he would not treat himself (we see this in the quotation above from TMS II.iii.2.8). A second and slightly weaker species of gross negligence is found in cases where an agent's actions do not result in harm to another, but because his actions expose his fellows to such great risks the agent's actions are still said to reveal his contempt for the interest of his fellows. Smith also discusses this in TMS II.iii.2.8, where he discusses the case of someone blindly throwing heavy rocks over a wall and into a crowded street. The third species of negligence Smith identifies involves cases where the negligent agent treats others as he treats himself, but where he is nevertheless not "so careful and circumspect in his conduct as he ought to be" (TMS II.iii.2.9). Smith identifies this species of negligence with the latin term *culpa levis* which translates roughly to 'negligence of a smaller degree'. In the Roman civil law (which Smith is drawing on here) the person guilty of culpa levis was responsible for compensating those he harmed. Interestingly, Smith argues that because this degree of negligence involves no injustice the person guilty of it deserves no punishment (apart from compensating his victim), although he does still deserve "some degree of blame and censure." The fourth and last species of negligence Smith identifies however doesn't involve violating any duties of care at all. Smith identifies this with the latin *culpa levissima* (which translates to 'the least negligence') and as we will see in section II.iv his discussion of this species of negligence is especially interesting. See also his discussion in the *Lectures on Jurisprudence*, ed. R. L. Meek, D. D. Raphael, and P. G. Stein, Glasgow Edition of the Works and Correspondence of Adam Smith

Having said something about the source of our sentiments' irregularity, we're now in a position to sketch Smith's arguments for their utility. Indeed, so substantial are the benefits of the irregular sentiments that Smith attributes their final cause to a divine and benevolent 'Author of nature.'[122] Whether one gives much weight to the language of final causes, or not, though, what matters for our purposes is that it's clear that Smith thinks that the irregular sentiments provide us with certain useful impulses and help to constrain other less useful tendencies, and we see this in the four distinct utilitarian justifications for the sentiments that he suggests.[123]

Smith's first attempt to justify our irregular sentiments concerns cases where our sensitivity to outcomes leads agents with similar intentions to be treated differently depending upon the consequences of their actions. In these cases, Smith argues that our eye towards consequences insulates our thoughts from the 'tyranny' of public inspection.[124] This is valuable for at least two reasons. First, insulating our thoughts from public scrutiny is valuable in its own right if we attach considerable importance to freedom of conscience, as Smith suggests we do. Second, even if we did not attach intrinsic value to freedom of conscience, insulating our thoughts from the scrutiny of others would still be valuable in light of the human tendency to attribute bad motives to

(Indianapolis: Liberty Fund Inc., 1982), especially volume ii, p. 89 of the Report of 1762-3 and p. 182 of the Report dated 1766.

[122] See TMS II.iii.3, aptly titled "Of the final cause of this Irregularity of Sentiments," especially paragraph 2, and also TMS II.iii.intro.6. For more extensive discussion of the place of the author of nature in Smith's theory see Richard Kleer, "Final Causes in Adam Smith's Theory of Moral Sentiments," *Journal of the History of Philosophy* 33, no. 2 (1995): 275–300, and for an alternative view that recognizes the place of final cause explanations in Smith's theory but which emphasizes his explanations in terms of efficient causes and which also tries to offer alternatives to the theological understanding of the final cause that Smith most clearly suggests see Campbell, *Adam Smith's Science of Morals*. However, see Spencer J. Pack and Eric Schliesser, "Smith's Humean Criticism of Hume's Account of the Origin of Justice," *Journal of the History of Philosophy* 44, no. 1 (2006): 47–63, for an argument that cautions against taking the language of final causes too seriously.

[123] Note that the notion of 'utility' that Smith invokes is more capacious than the notion typically invoked in the philosophy literature post-Bentham, and also less closely associated with the particular consequences of an action.

[124] See TMS II.iii.3.2-3

even the most innocent conduct.[125] Here, in other words, Smith's concern is with the social costs associated with a general suspicion of others, including the affront to our dignity that is likely to accompany such distrust.[126]

Smith's second and third justifications also concern the sensitivity of our sentiments to outcomes. On one hand, Smith suggests that it is the emphasis we place on consequences that encourages men to act rather than to be satisfied with mere possession of good will.[127] On the other hand, he argues that by attaching blame and punishment to the consequences of our actions "man is thereby taught to reverence the happiness of his brethren" (TMS II.iii.3.4). Here Smith notices that, although our attention to consequences sometimes leads us to blame agents who bring about harm accidently, this blame, however undeserved, also encourages us to take precautions in order to avoid causing harm to others. It is our irregular sentiments, in other words, that encourage us to act, but also to be careful and to take account of the risks and costs that we impose on others when we do act.

Finally, Smith realized that the reverence for the happiness of others pointed to above also imbues man with the motivation needed to solve one of the most significant problems of social life, viz. how to deal with the myriad externalities associated with our

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[125] Smith's rhetoric here is striking: "If the hurtfulness of the design, if the malevolence of the affection, were alone the causes which excited our resentment, we should feel all the furies of that passion against any person in whose breast we suspected or believed such designs or affections were harboured, though they had never broke out into any action. Sentiments, thoughts, intentions, would become the objects of punishment; and if the indignation of mankind run as high against them as against actions; if the baseness of the thought which had given birth to no action, seemed in the eyes of the world as much to call aloud for vengeance as the baseness of the action, every court of judicature would become a real inquisition. There would be no safety for the most innocent and circumspect conduct. Bad wishes, bad views, bad designs, might still be suspected; and while these excited the same indignation with bad conduct, while bad intentions were as much resented as bad actions, they would equally expose the person to punishment and resentment." TMS II.iii.3.2

[126] Debes has also drawn on these passages in highlighting Smith's tendency to caution against overvaluing the authority of reason in matters of morality. See his "Adam Smith on Dignity and Equality," 128.

[127] TMS II.iii.3.3

actions, including especially the costs imposed on victims of accidents. As Smith observes towards the end of his discussion of negligence:

> Nothing, we think, can be more just than that one man should not suffer by the carelessness of another; and that the damage occasioned by blamable negligence, should be made up by the person who was guilty of it. (TMS II.iii.2.9)

I will eventually argue that the principle expressed here plays at least as important a role as the EM in filling out Smith's account of moral responsibility. For now, though, what's important is that it's our irregular sentiments that help to make the principle efficacious. In particular, it is our concern for the token consequences of actions that makes us sensitive to the needs of victims, and it is our sentiments that encourage us to actually take responsibility for the harm we cause.

Having sketched Smith's arguments for the utility of the irregular sentiments we are finally in a position to sketch the intermediate view that captures the second step in Smith's attempt to grapple with the problem of moral luck. On this view the EM is still the principle against which our praise and blame of others ought to be assessed, but Smith can now be seen to be an apologist for our irregular sentiments. In other words, Smith remains committed to the idea that it's a mistake to blame (or praise) others on account of the token consequences of their actions. However, as an apologist for the irregular sentiments he is simultaneously committed to the view that, because we benefit from holding others accountable in this way, it is in some sense a good thing that our irregular sentiments lead us to blame those who do not deserve to be blamed.[128]

Taking stock, of where this reading leaves things, on one hand it has the obvious advantage of making sense of Smith's extensive discussion of the utility of the irregular sentiments. On the other hand, though, Smith now seems committed to embracing the problem of moral luck in something closer to its second, more serious form. More specifically, he seems committed to accepting that there is real (and perhaps even

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[128] Note that this view is compatible with the idea that one of the good consequences that the irregular sentiments promote is that they make us more likely to treat one another in ways that are synonymous with the respect we warrant in virtue of our dignity.

irresolvable) tension between the particular judgments we countenance and the more general principles we endorse. This is not an easy view to embrace. As Russell and Flanders both argue, this reading makes Smith's view look schizophrenic, and this worry is serious enough that it leads both to deny that we should follow Smith in apologizing for our irregular sentiments.[129] As we will see in the next section, though, Smith says several things that suggest that his endorsement of the irregular sentiments is more thoroughgoing than this intermediate view suggests.

II.iii   Smith's Settled View: The Impartial Spectator's Approval of the Irregular Sentiments

The previous section concluded with the observation that the utility of the irregular sentiments provides some reason to endorse the irregular sentiments, but cannot fully justify the judgments rooted in them as long as we remain committed to the EM. As we saw in section II.i, though, there is some reason to think that Smith qualifies his commitment to the EM. This section builds on that argument by drawing attention to a number of places where Smith seems to endorse the judgments rooted in our irregular sentiments despite their apparent conflict with the EM. When combined with Smith's arguments for the utility of the irregular sentiments, these passages suggest that Smith is not merely apologizing for the irregular sentiments, but is instead suggesting that the

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[129] Russell suggests that Smith's utilitarian justifications of our irregular sentiments don't stand up to scrutiny and argues that he overlooks important distinctions between various sorts of mental states that potentially bear on our moral culpability. Particularly important on Russell's view is the distinction between intentions and desires which engage the will and those which are merely entertained in passing. While it makes sense to insulate the latter from public scrutiny, Russell suggests that the former ought not to be (see "Smith on Moral Sentiment and Moral Luck," 41–43). On the other hand, Flanders suggests that while Smith's arguments do serve to justify our irregular sentiments, they do so *indirectly*, by illustrating a number of constraints on moral agency. Whether Smith's arguments for the utility of the irregular sentiments go through then is of little consequence. Instead, Flanders suggests, that we read Smith's arguments as "showing us a truth about our nature as finite and imperfect agents" (see "This Irregularity of Sentiment," 198–203). Note, however, that, in many cases, Smith clearly anticipates some Russell's criticisms. And, for similar reasons, I think Flanders is wrong to draw our attention away from Smith's consequentialist arguments. Instead, it seems more appropriate to read Smith as offering a conception of moral agency that is built up from considerations regarding the sorts of practices that serve our ends given the relatively fixed motivational constraints that individual agents face as actors, and the epistemic constraints they face as moral judges.

judgments rooted in them are appropriate. As we will see, Smith's endorsement is rooted in two things. First, the fact that many of the judgments (and the sentiments they are rooted in) are endorsed by the impartial spectator. Second, the fact that the impartial spectator's sympathy for the irregular sentiments is widespread.

In a fascinating passage towards the beginning of his discussion of moral fortune Smith observes that we often feel gratitude and resentment oriented towards inanimate objects.[130] This is significant because such objects are pretty clearly inappropriate objects of moral assessment. Smith, for instance, lays out three conditions that must be met for something to count as a proper object of gratitude or resentment. First, the object must be the cause of pleasure or pain, and, second, it must be capable of feeling pleasure or pain itself. Something can only be the 'complete and perfect' object of our gratitude or resentment, though, if it is conscious that its reward or punishment is (a) due to its past conduct, and (b) deserved.[131] Clearly things which are incapable of forming intentions, like inanimate objects, fall short along many of these dimensions, and, as Smith notes, in most cases the deviant sentiments directed towards these objects are easily correctable.[132] In cases involving great harms, however, Smith observes that this is not always the case:

> The object which caused [great harm] becomes disagreeable to us ever after, and we take pleasure to burn or destroy it. We should treat, in this manner, the instrument which had accidentally been the cause of the death of a friend, and *we should often think ourselves guilty of a sort of inhumanity, if we neglected to vent this absurd sort of vengeance upon it.* (TMS II.iii.1.1, emphasis added)[133]

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[130] "The causes of pain and pleasure, whatever they are, or however they operate, seem to be the objects, which, in all animals, immediately excite those two passions of gratitude and resentment. They are excited by inanimated, as well as by animated objects. We are angry, for a moment, even at the stone that hurts us. A child beats it, a dog barks at it, a choleric man is apt to curse it." (TMS II.iii.1.1)

[131] See TMS II.iii.1.4

[132] TMS II.iii.1.1

[133] In the next paragraph Smith describes a parallel case involving gratitude as opposed to resentment: "We conceive, in the same manner, a sort of gratitude for those inanimated objects, which have been the causes of great, or frequent pleasure to us. *The sailor, who, as soon as he got ashore, should mend his fire with the plank upon which he had just escaped from a shipwreck, would seem*

Smith's language here is telling. Although he refers to our resentment as 'absurd,' the claim that we should think of ourselves as other than human if we didn't feel it suggests that the reactive attitude in question is, at the very least, to be expected, and perhaps even appropriate. Of course, there are important differences between these two views that Freud and Nietzsche among others were especially attuned to. When the passage is read alongside analogous claims Smith makes, however, there is good reason to think that he is staking out the normative position that the judgments rooted in our irregular sentiments are *in fact* appropriate.

Among the passages that lend support to the claim that Smith endorses the irregular sentiments are his observations about the independent weight that achievements merit in both our moral and aesthetic judgments. Here, Smith observes that "the superiority of virtues and talents has not, even upon those who acknowledge that superiority, the same effect with the superiority of achievements" (TMS II.iii.2.3), and of the person who intends to benefit us but fails to do so that, while we may "esteem him," he is "owed nothing" (TMS II.iii.3.3). Nor are these judgments merely the provenience of unreflective judges. As Smith notes, they are made by "even the most intelligent" observers, and endorsed too by the impartial spectator.[134] What makes the observations especially significant, though, is what they tell us about the role utility plays in eliciting our sympathy. Although Smith spends considerable time arguing that utility cannot be the sole source of our sympathy, he clearly thinks that it has some influence on our sense of approbation or disapprobation.[135] The special praise bestowed

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to be guilty of an unnatural action. We should expect that he would rather preserve it with care and affection, as a monument that was, in some measure, dear to him." (TMS II.iii.1.2, emphasis added).

[134] For the former see TMS II.iii.2.3, and the latter TMS II.iii.2.2.

[135] The whole of Part IV of the TMS is devoted to exploring the effect of utility on approbation, and while Smith's emphasis there is on aesthetic judgment, it is clear from his discussion elsewhere that he also thinks that utility is an important elicitor of the sentiments which ground moral judgment. See especially TMS I.i.4.4 where he argues that the utility of a quality is not the original source of our approbation, but that recognition of a quality's utility gives it a new value which enhances our approbation, and his later discussion at TMS VII.iii.3.17 where in discussing the role in moral judgment that might be attributed to a moral sense he suggests that when we

upon achievements is an example of this. Indeed, the praise bestowed on achievements suggests that the utility of an action sometimes contributes to our assessment of its merit independently of our judgments of its propriety. This is important. Among other things it suggests that approbation or disapprobation need not imply anything about propriety, and pausing to reflect on this fact allows us to paint the irregular sentiments in a light that makes their conflict with the EM less serious.

As we saw in his discussion of negligence, Smith diagnoses the irregularity of our sentiments by pointing to the tendency of our sympathy for those affected by an agent's actions to overwhelm our sense of the propriety (or impropriety) of the agent's actions. In cases where this diagnosis is correct we tend to blame agents to a degree that is not deserved. Smith also identifies a second and more benign source of irregularity, though. That source lies in the fact that we are prone to mistake our sympathy for the utility of an action with our sympathy (or lack of sympathy) for the motives of the actor. As Smith points out, we make this mistake because in typical cases our sentiments are initially aroused by a sense of propriety, but this is not what happens in cases where the sentiments display their irregularity. In these cases, it tends to be the consequences of actions and their immediate utility or disutility that is first apparent to us. As a result, our approbation or disapprobation in such cases mainly conveys our sympathy with those who stand to benefit (or bear some cost) as result of the action in question.

Notice that both of Smith's diagnoses of our irregular sentiments leave us with judgments that conflict with the EM. The conflict is less threatening in the second case though. This is because in the second case our approbation (or disapprobation) does not conflict with the EM by conveying mistaken judgments about the propriety of the an agent's actions. Instead the conflict lies in the fact that the irregular sources of praise and

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approve of any character or action the sentiments we feel are derived from four sources: 1) the motives of an agent, 2) the gratitude of those who benefit from an action, 3) whether the conduct being considered conformed to the general rules that govern our sentiments, and 4) whether the actions contribute to a system of behavior which promotes the happiness of either the individual or society.

blame include considerations besides an agent's propriety. Accordingly, if Smith's endorsement of the EM is qualified along the lines I suggested in section II.i, the irregularity of the sentiments need not present any real threat to the appropriateness of our moral judgments.

The considerations sketched above suggest that the conflict between the irregular sentiments and the EM may not be as serious as it initially seemed. It is in Smith's discussion of the self-directed sentiments, though – things like guilt, regret, and our tendency to blame ourselves for the things we do – where we most clearly see Smith endorse the judgments rooted in the irregularity of our sentiments. Especially illuminating is a passage near the end of Smith's discussion of negligence where he introduces a species of negligence that is interesting in part because it is arguably not an example of negligence at all. The discussion is nuanced enough that it is worth quoting in its entirety:

> There is another species of negligence, which consists merely in a want of the most anxious timidity and circumspection, with regard to all the possible consequences of our actions. The want of this painful attention, when no bad consequences follow from it, is so far from being regarded as blamable, that the contrary quality is rather considered as such. That timid circumspection which is afraid of every thing, is never regarded as a virtue, but as a quality which more than any other incapacitates for action and business. Yet when, from a want of this excessive care, a person happens to occasion some damage to another, he is often by the law obliged to compensate it. Thus, by the Aquilian law, the man, who not being able to manage a horse that had accidentally taken fright, should happen to ride down his neighbour's slave, is obliged to compensate the damage. When an accident of this kind happens, we are apt to think that he ought not to have rode such a horse, and to regard his attempting it as an unpardonable levity; though without this accident we should not only have made no such reflection, but should have regarded his refusing it as the effect of timid weakness, and of an anxiety about merely possible events, which it is to no purpose to be aware of. *The person himself, who by an accident even of this kind has involuntarily hurt another, seems to have some sense of his own ill desert, with regard to him. He naturally runs up to the sufferer to express his concern for what has happened, and to make every acknowledgment in his power. If he has any sensibility, he necessarily desires to compensate the damage, and to do every thing he can to appease that animal resentment, which he is sensible will be apt to arise*

in the breast of the sufferer. (TMS II.iii.2.10, emphasis added)[136]

We will explore the significance of the first half of this passage shortly. First, however, we must attend to the latter half of the passage. Echoing Smith's third and fourth utilitarian justifications for the irregular sentiments, this part of the passage highlights the role that the self-directed sentiments play in motivating us to act cautiously, show concern for others, and ensure that, when accidents happen, victims are responded to appropriately. This role is rooted in our desire to avoid or quell the negative feelings associated with guilt and sentiments like it. Compensating those we harm, or at least apologizing for what we have done, is one way of doing this. More importantly, though, it is one's sense of her own ill desert that makes doing so seem appropriate.

Also significant here is that we again see Smith pulling apart judgments of merit and propriety. As Smith's discussion of the desire to apologize makes clear, one need not think she has done something wrong in order to feel a sense of ill desert. Rather, she simply needs to recognize that her actions call out for a response of some sort in virtue of their relationship to an untoward event. This brings us to the first half of the passage quoted above. As Smith points out, when a person is unable to control a horse that takes fright we are apt to think that she ought not to have been riding the horse at all. More important, however, is his observation that to refuse to ride a horse because one is worried about the possibility that she might not be able to control it in every circumstance betrays an excessive timidity that renders one unfit for social life. Smith's concern here is with the costs of being paralyzed by anxiety about 'merely possible events.' What he recognizes is that life is inherently risky, and although we are often able to limit the risks we face (and impose on others), we cannot eliminate risk entirely. As a result, getting along in the world requires us to embrace the fact that our actions will sometimes have unintended consequences. The irregular sentiments are important, then, not just because they encourage us to be cautious, but because they ensure that we aren't

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[136] The Aquilian law Smith references was a Roman legal code introduced in 286 BC dealing primarily with tort law that eventually formed the foundation of much of the Roman civil law, and, later, the English common law.

too cautious. More specifically, they prepare us to accept responsibility for the unintended consequences of our actions, and they do so in a way that doesn't leave us afraid to be held to account for what we do.[137]

Although the motivational role of the self-directed sentiments is important, more important for our purposes is what Smith has to say about the impartial spectator's indulgence of the irregularity of guilt, regret, and the like. This is important for two reasons. The first is related to the non-motivational role that the self-directed sentiments play in making our practices possible. We see this in the sentences that conclude the paragraph quoted above:

> To make no apology, to offer no atonement, is regarded as the highest brutality. Yet why should he make an apology more than any other person? Why should he, since he was equally innocent with any other bystander, be thus singled out from among all mankind, to make up for the bad fortune of another? This task would surely never be imposed upon him, did not even the impartial spectator feel some indulgence for what may be regarded as the unjust resentment of that other. (TMS II.iii.2.10)

Having surveyed the utility of our tendency to let bad consequences drive our practice of blaming those who cause harm, here Smith tells us that the self-directed sentiments are what allow us to sustain this practice. They do so by generating psychological uptake within the agents being blamed. It's not just the immediate psychological uptake by the agent being held responsible that plays this role, though. What really matters is that the uptake is stable upon reflection. This happens when the impartial spectator is capable of endorsing the resentment of others, and, as Smith argues at length, it is not our sympathy with the blame of others that provides this endorsement, but rather a sense of our own blameworthiness.[138] The self-directed sentiments are important, then,

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[137] Note that if treating oneself as an accountable moral agent involves acknowledging the relationship one bears to various events, then this observation fits nicely with the Darwall/Griswold/Debes reading of Smith on which the reactive attitudes reflect a deontic commitment to respecting others holding one another to account when they fail to accord others the respect they warrant. We will develop this point in greater detail in sections II.iv and III.ii.

[138] See TMS III.i.2

to the extent that they imbue agents with the sense of blameworthiness that allows the impartial spectator to sympathize with the resentment or disapprobation of others. Moreover, the irregular expressions of these sentiments are particularly important to the extent that blaming individuals for harms they do not intend to bring about is likely to be especially divisive in the absence of guilt or something else like it.[139]

That one feels guilt or one of the other sentiments however does not entail that she ought to (even if doing so would be socially useful). This, then, brings us to the second lesson to draw from the impartial spectator's indulgence of our irregular sentiments. That lesson is that, to the extent that the impartial spectator is able to sympathize with the irregular sentiments, we have good reason to think that they (and the judgments founded on them) are appropriate. The appropriateness of these judgments stems from the fact that, for Smith, the impartial spectator provides the principal mechanism for assessing our moral judgments. I will defend the idea that the impartial spectator plays this role in section III.i. For now though one characteristic of the impartial spectator's endorsement of the irregular sentiments is particularly significant. That characteristic is that the sympathy of the impartial spectator is general. Although Smith points out that we all seem to accept the EM when it is presented in abstract and general terms he never identifies any instances in which we fail to sympathize with judgments rooted in the irregular sentiments *because* they conflict with the EM.

At last then we are in a position to sketch the view of the relationship between the EM and our irregular sentiments that best captures the subtleties of Smith's position. This view is characterized by two features. First, the utility of the irregular sentiments when combined with the fact that these sentiments are endorsed by the impartial

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[139] While it is easy enough to sustain blame in particular cases where the blamed party lacks any sense of remorse or otherwise fails to acknowledge that the blame is deserved, it is hard to take up this stance with respect to whole classes of individuals who fail to recognize that they are appropriately subject to censure. Recall Smith's observation that to be a perfect object of blame (or praise) one must appreciate that the blame (or praise) is deserved.

spectator serves to fully justify them. Second, and as a consequence of the first feature, we must accept the fact that the influence of luck on our lives is so pervasive that, in some cases, causal responsibility by itself can be enough to make us blameworthy.

One question remains however. That question is whether the apparent conflict between the irregular sentiments and the EM should still bother us? This question is important because its answer determines whether Smith is committed to thinking that the existence of moral luck is a problem. More specifically, if Smith accepts the idea that we should worry about this conflict, then he is left with a view like Nagel's or Williams's on which the influence of luck on our lives embeds us in a set of moral practices that are paradoxical. As will see in the next section, though, Smith clearly thinks that the conflict between the irregular sentiments and the EM shouldn't bother us.

II.iv   Rounding Out Smith's View: Piacular Guilt and the Limited Scope of the Equitable Maxim

To see why the conflict between the EM and the irregular sentiments need not bother us we must return to Smith's distinction between merit and propriety and his suggestion that all 'real' praise and blame ought to conform to the EM. The latter claim in particular is important as it leaves open two possibilities. On one hand, is a view on which the EM ought to govern all forms of approbation and disapprobation. As I suggested above, on this view Smith's endorsement of the irregular sentiments suggests that he accepts the problem of moral luck in its 'hard,' paradoxical form. On the other hand, though, is a view on which the EM ought to govern some, *but not all* forms of approbation and disapprobation. On this view – which I think is Smith's – paradigmatic instances of praise and blame will conform to the EM, but certain attributions of praise and blame can be appropriate even though they don't conform to the EM. This is where Smith's distinction between merit and propriety is helpful. We might say that 'real' praise or blame reflects the propriety or impropriety of an action, and this is why the EM is appropriate principle for evaluating judgments of merit and demerit. To the extent that approbation (or disapprobation) convey our sympathy (or lack of sympathy) for an

agent's decision to act, it ought to reflect the consequences of the action only to the extent that these were intended (or could have been anticipated). In cases where our approbation is meant to convey other things though – e.g., our sympathy with the suffering of those affected by an accident, or the expectation that one acknowledge her relationship to an event in some way – it is perfectly appropriate for our judgments to reflect the unintended consequences of an agent's actions. Insofar as the irregular sentiments fall into this latter category, then, they do not actually conflict with this more nuanced understanding of the EM. However, because the irregular sentiments are sufficiently like their regular counterparts, the two are easily mistaken for one another. Smith thus offers an attractive diagnosis of why the problem of moral luck appears to take its paradoxical form, while also providing us the resources for resisting the claim that it is paradoxical.[140]

Unfortunately, although this understanding of the scope of the EM allows us to avoid the schizophrenia that plagued the intermediate view sketched in II.ii, it may face a difficulty of a different sort. That difficulty is that it appears to conflate a general concept of responsibility (and blameworthiness) with the concept of moral responsibility. On this view, Smith's discussion of our irregular sentiments, although insightful, does not necessarily speak to the questions of most interest to philosophers concerned with the nature of moral responsibility and the problem that moral luck poses.

The objection just described is motivated in part by the observation that the irregular sentiments can often become pathological. Consider the unlucky bystander who fails to control the horse that takes fright. Although his sense of ill desert may allow us to efficiently distribute the costs associated with his accident, if he were to be racked

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[140] Although I have argued that we can make sense of the appropriateness of the irregular sentiments by leaning on the distinction between merit and propriety, it's worth noting that Smith says some things that suggest that circumstances beyond our control can also leave us blameworthy in the sense that reflects the propriety of our actions. We see this, for example, in Smith's discussion of the ideal of perfect propriety which no person could ever realize, but which we are all in some sense blameworthy for falling short of. See TMS I.i.5.9.

by guilt, unable to get on with his life, we would tend to agree that something had gone terribly wrong. At the very least, we would be hesitant to take his guilt as a clear indication of his moral culpability. One thing this example illustrates is why it is important to distinguish between the various self-directed sentiments. The unlucky bystander may (appropriately) accept that he is blameworthy for what he has done, but it may be wholly inappropriate for him to feel guilty (particularly if he was not especially negligent). In fact, Smith anticipates this thought, and in doing so draws our attention to the proposed reading of the EM. The primary passage of interest is where Smith extends his analysis to purely accidental harms:

> A man of humanity, who accidentally, and without the smallest degree of blamable negligence, has been the cause of the death of another man, feels himself piacular, though not guilty . . . and during his whole life he considers this accident as one of the greatest misfortunes that could have befallen him. (TMS II.iii.3.4)

The importance of this passage and of the discussion which follows for fleshing out Smith's settled view is suggested by the fact that it was among the additions that Smith made to the sixth (and final) edition of TMS. Here, as in the other cases we have considered, Smith goes on to note that our self-directed sentiments play an important role in encouraging us to ensure that the accident is responded to in an appropriate manner.[141] This case differs from those previously considered in two ways though.

First, as Smith is careful to point out, there is a sense in which the man who accidentally causes the death of another is not blameworthy if he acts without any degree of negligence. Accordingly, we do not (or at least should not) hold him responsible for compensating those that he harms. That said, a certain sort of response is

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[141] Smith makes this clear in the latter half of the paragraph: "If the family of the slain is poor, and he himself in tolerable circumstances, he immediately takes them under his protection, and, without any other merit, thinks them entitled to every degree of favour and kindness. If they are in better circumstances, he endeavours by every submission, by every expression of sorrow, by rendering them every good office which he can devise or they accept of, to atone for what has happened, and to propitiate, as much as possible, their, perhaps natural, though no doubt most unjust resentment, for the great, though involuntary, offence which he has given them." (TMS II.iii.3.4)

still expected from the person who causes harm. The appropriate sentiment is not guilt or even a sense of ill desert, but rather to feel piacular, a sentiment akin to what Bernard Williams has called agent's regret.[142] The contrast between these sentiments is important. As A. L. Macfie and D. D. Raphael point out in their commentary on the TMS, the word 'piacular' is derived from the Latin 'piaculum' which referred to both the act of trespass on sacred ground prohibited by religious law in Ancient Rome and the act of expiation required to atone for such trespass.[143] Smith's idea is that although an agent who causes harm or misfortune to someone else may not be blameworthy, he ought to feel a sense of remorse or regret for what he has done, and an attendant desire to apologize or atone in some way. Furthermore, because this regret is not simply associated with observing harm or distress, but rather with having played a part in bringing it about, this sort of regret has important parallels to blame and should carry a special significance. It makes sense, in other words, to characterize instances of piacular guilt or agent's regret, as examples of individuals *blaming* themselves for what they have done, even if this sort of blame doesn't involve the doubt about the propriety of one's actions that characterizes paradigmatic instances of blame and guilt.[144]

Smith's discussion of the piacular is important because it highlights the significance of expressing the appropriate sort of sensitivity to the things that we have done, even when the quality of our will isn't suspect. When we accidentally cause harm,

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[142] Williams's richest discussion of agent's regret is found in his *Shame and Necessity* (Berkeley: University of California Press, 1993), 69–74.

[143] See their commentary in footnote 1 at Smith, *The Theory of Moral Sentiments (6th Edition)*, 1982, 107.

[144] When one is responsible for bringing about harm to another it is typically not enough to express his condolences for the harm having occurred, rather he must apologize for having been the one who brought about the harm. For an interesting discussion of the piacular and its relation to Smith's account of how we see ourselves as causes see Schliesser, "The Piacular." Schliesser's account of the piacular differs from my own in that he likens it to shame, where I draw the analogy to agent's regret. Schliesser's account is incisive, and he is certainly right that there are parallels between the piacular and shame. However, I believe my analogy to be stronger insofar as shame typically leads individuals to withdraw from social situations in order to insulate themselves from criticism, whereas piacular guilt, like agent's regret, typically leads individuals to approach others in order to atone or make amends.

we often incur a responsibility to respond to this fact in some way. The moral luck skeptic maintains that this sort of responsibility does not constitute a distinctly *moral* brand of responsibility.[145] Taking this position, however, ignores the magnitude of the obligations that the responsible party bears. To be responsible for having caused harm in this putatively non-moral sense opens one up to the demands of others. It creates an expectation, for instance, that she apologize or express the appropriate degree of regret in some other way. Furthermore, if she fails to meet these expectations she is often left vulnerable to social sanction, and, given the extent to which these sorts of sanctions have the ability to shape our lives, it is hard to deny that the associated demands are part of our moral discourse.[146]

Of course, this only gets us so far. If our tendency to feel piacular in response to causing harm provides the foundation for a set of practices that look distinctly moral, the question remains whether we ought to embrace these practices. As Chad Flanders suggests, one reason to think so is that if someone didn't feel piacular in the sorts of cases Smith discusses "we would suspect that something was missing that ought to be there."[147] The difficult question, though, is why we think such an agent is missing

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[145] Judith Thomson, Norvin Richards, Susan Wolf, Brian Rosebury, David Enoch, and Andrei Marmor all defend views of responsibility like this. On each of their views luck influences the extent to which we are appropriately subject to blame, but we must distinguish between moral and non-moral senses of blameworthiness. As Rosebury argues, on this sort of view the problem of moral luck is that we do not *deserve* to be held accountable for many of the things that we are appropriately held accountable for by others. See: Judith Jarvis Thomson, "Morality and Bad Luck," *Metaphilosophy* 20 (1989): 203–21; Norvin Richards, "Luck and Desert," *Mind* 95 (1986): 198–209; Susan Wolf, "The Moral of Moral Luck," *Philosophic Exchange* 31 (2001): 4–19; Brian Rosebury, "Moral Responsibility and 'Moral Luck,'" *Philosophical Review* 104, no. 4 (1995): 499–524; and David Enoch and Andrei Marmor, "The Case Against Moral Luck," *Law and Philosophy* 26 (2007): 405–36.

[146] One might ask whether we really do place demands on morally unlucky agents in this way. Susan Wolf for instance has argued that there is a nameless virtue which drives individuals to apologize and to make amends for what they have done 'as if they were guilty' even if 'strictly speaking' they aren't guilty. Wolf's view suggests that the piacular responses I have identified are not in fact required of us, and this in turn puts pressure on the idea that this sort of responsibility is paradigmatically *moral*. The worry with Wolf's view, however, is that it understates the extent to which we do in fact expect others to respond to accidents in this way.

[147] Flanders, "This Irregularity of Sentiment," 212.

something that *she ought to have*? Here the broadly consequentialist justification of the irregular sentiments sketched in previous sections provides one such reason. However, Smith also suggests that our self-directed sentiments – including their irregular expressions – are important because they allow us to be sensitive to things of great value in the world and help to ensure that we relate to one another in the right sort of way. It is "by the wisdom of Nature," he writes, that:

> The happiness of every innocent man is, in the same manner, rendered holy, consecrated, and hedged round against the approach of every other man; not to be wantonly trod upon, not even to be, in any respect, ignorantly and involuntarily violated, without requiring some expiation, some atonement in proportion to the greatness of such undesigned violation. (TMS II.iii.3.4)

In other words, Smith seems to think that what imbues persons with the special moral status they have are two things. First, our propensity to treat harms to them as significant, i.e. as the sort of thing that require atonement when we bring them about. Second, our willingness to hold ourselves and others accountable for actually doing so.[148] And, as the passage above suggests, the irregular sentiments play an important role in operationalizing both of these things.

Mirroring the two sources of moral status identified above, there are two reasons, then, that apologies are important in cases where we accidentally cause harm. First, they remedy a problem caused by the opacity of our intentions. When we apologize, one thing we are often doing is clarifying that we did not in fact bear ill will towards the

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[148] As Darwall points out, this view is nicely expressed by Smith in a passage that appears in the first five editions of TMS, but which was omitted from the sixth edition: "A moral being is an accountable being. An accountable being … is a being that must give an account of its actions to some other, and that must regulate them according to their good-liking." See Darwall, *The Second-Person Standpoint*, 101. As Knud Haakonssen explains in his editorial comments on the edition of *The Theory of Moral Sentiments* that he edited, the passage appears in the first edition of TMS at part III, chapter 1, paragraph 4, and at various other points in the chapter in subsequent editions before being eventually omitted. There is some question as to how significant this omission is. Arguably, however, the omission doesn't reflect Smith's desire to back away from the importance of accountability, but rather the idea that accountability ought to be understood primarily in relation to God which is what we see in the rest of the paragraph in question. See Adam Smith, *The Theory of Moral Sentiments (6th Edition)*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 2002), 130.

person to whom we are apologizing. Second, even when the quality of our will is not in doubt, apologies serve as a way of acknowledging the distinctive relationship we bear to actions that affect others, and of expressing concern for those with whom we share the world. Furthermore, notice that while it is easy to imagine someone being wracked by an excessive sense of guilt, and her life suffering as a result, this is less easy to imagine in the case of piacular guilt or agent's regret. As Smith observes, it seems appropriate that someone who accidentally causes great harm to another should thereafter consider her role in bringing about the harm to be one of the great misfortunes in her life. This isn't to say that such regret can't pathologically develop into something worse, but there doesn't seem to be anything deeply troubling about agent's regret as such. By drawing a distinction between the piacular and full-blown guilt, then, Smith leaves us with a view on which luck's influence on our lives can leave us vulnerable to something very much like blame even when we haven't done anything wrong. However, this vulnerability is neither problematic, nor paradoxical – even if it sometimes appears to be.

III.   Moral Luck, Moral Sentiments, and the Moral Community

Having surveyed Smith's account of the irregular sentiments I want to conclude by turning our attention to where his discussion leaves us vis-à-vis the problem of moral luck, while also saying something about how the discussion of luck and the irregular sentiments ties together some of the enduring themes of his work. To do so I'll begin by offering a few thoughts about what Smith's discussion suggests about how we ought to approach theorizing about moral responsibility. I'll then turn to what it suggests about the concepts of moral responsibility and moral agency. Finally, I'll conclude with some thoughts on how we ought to interpret Smith's discussion of virtue.

III.i   Three Ways of Theorizing About Moral Responsibility

We can distinguish between three different approaches to theorizing about moral responsibility:

   i) those that begin with the *idea of being responsible* and then develop out of

that an account of when it's appropriate to hold someone responsible,

ii)   those that begin with the *idea of holding responsible* and then develop out of that an understanding of what it is to be responsible, and

iii)   those views that begin with our *practice of holding responsible* and then build up an account of what it is to be responsible and when it's appropriate to hold responsible (by getting critical leverage on our practices).

Although the second and third approaches are importantly different they are not often distinguished from one another. Perhaps this is because the third is seldom defended. Smith pretty clearly adopted something like the third approach, though, and one thing that makes his discussion of the irregular sentiments important is that it illustrates the difference between the second and third approaches.[149]

Smith was attracted to this third approach largely because he was skeptical of the idea that there is an objective, impersonal conception of morality against which we can assess our moral practices. Instead, for Smith, it is the impartial spectator that provides us with the principal mechanism for checking the appropriateness (and especially the partiality) of our moral judgments. This is why the impartial spectator's endorsement of the irregular sentiments is so significant. Importantly, however, Smith's impartial spectator is not an ideal observer. Rather, it is an internal mechanism for checking the partiality of our judgments, and it is Smith's discussion of the self-directed sentiments, especially their irregular expressions, that helps us see this.[150] As Smith's discussion makes clear, the self-directed sentiments do not merely track the other-directed

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[149] The important point here is that for Smith our psychology does not just constrain the moral concepts we have, rather our moral concepts are to some extent built up from our psychology. Samuel Fleischacker has also emphasized this in his treatment of Smith. See e.g. his discussion in "Adam Smith's Moral and Political Philosophy," ed. Edward N. Zalta, *The Stanford Encyclopedia of Philosophy*, 2013, http://plato.stanford.edu/archives/spr2013/entries/smith-moral-political/.

[150] See especially his initial account of the impartial spectator sketched in TMS I.i.3-4 and the subsequent discussion of self-approbation and disapprobation in TMS III.i.1, of the influence of praise and blame as compared to praiseworthiness and blameworthiness in TMS III.i.2, and of the authority of conscience in TMS III.i.3.

sentiments of our neighbors, nor do they simply reflect the evaluative judgments of the impartial spectator regarding the propriety of the approbation and disapprobation directed at us. Instead, they provide an independent contribution to the deliberation of the impartial spectator so that the sense of praise- or blame-worthiness that the 'man within our breast' arrives at reflects our own sentiments as well as those of our fellows.[151] Our moral judgments, then, are undergoing a process of continuous evolution as our judgments (and the judgments of those around us) change, while our psychology combined with facts about the norms that allow us to live well in community with others provide fixed points that constrain this process.

Pausing to reflect on the status of the irregular sentiments, what Smith leaves us with is a view on which these sentiments help to constrain the abstract principles that we are often inclined to endorse, and in doing so prevent us from extending these principles too far.

III.ii   Smith's Rich Accounts of Moral Agency and Moral Responsibility

Turning our attention away from what Smith's discussion suggests about the way we ought to theorize about moral responsibility and towards the particular account of responsibility he develops, two features of Smith's account are noteworthy. First, it reflects more than just considerations about the ways in which we exercise our agency. Second, his account of the utility of our irregular sentiments, along with his extensive discussion of negligence, suggests that his view is driven primarily by problems of social morality (i.e. problems concerning the formal and informal norms that we direct at one another and which are required to facilitate social cooperation and other aspects of social life).

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[151] Note that Smith's account of the impartial spectator also distinguishes his view from views that locate the importance of the sentiments in their ability to 'track' the moral truth. Arguably some of Smith's fellow moral sense theorists, Hutcheson and Reid chief among them, held views like this. David Norton, for instance, attributes a view like this to Hutcheson. See his "Hutcheson's Moral Sense Theory Reconsidered," *Dialogue* 13, no. 1 (1974): 3–23, and "Hutcheson's Moral Realism," *Journal of the History of Philosophy* 23, no. 3 (1985): 397–418.

For Smith moral responsibility is rooted in an account of moral personality, and while the concept of moral agency is an important part of this account, it is only one part. We see this, among other places, in his account of the conditions that make something an appropriate object of gratitude or resentment. Although the conditions he lays out make reference to a person's actions, this concern isn't limited to the aspects of one's conduct that express her will. So too, as his discussion of the irregular sentiments makes clear, we're often willing to accept responsibility for the consequences of our actions in cases where these consequences aren't closely tied to our intentions. Most important, however, is that even Smith's account of what makes someone a 'complete and perfect' object of gratitude or resentment focuses less on what makes one deserving, and more on our capacity to know and appreciate why we are the object of the reactive attitudes of others.

Similarly, by distinguishing between merit and propriety, and by also drawing a distinction between 'real' blame and other forms that may nevertheless be appropriate, Smith allows us to see that holding an agent responsible need not be thought of as an indictment of her character or the quality of her will. Instead, sometimes responsibility simply reflects facts about our history and in doing so tells us about the obligations that circumstances have foisted upon us. Perhaps the main lesson to be learned from Smith's discussion of moral luck, then, is that morality is about more than moral worth. While this idea would have been familiar to Smith's contemporaries, it is something that we have arguably lost sight of as the influence of Kant (among others) has turned our attention to questions related to individuals' moral assessments of themselves and of the quality of their wills. Indeed, we see this even in the work of scholars like Darwall and Debes who, I think rightly, emphasize the tight connection between respect and dignity in explaining Smith's account of the role the sentiments play in expressing our commitment to treating one another as responsible moral agents, but who unfortunately ignore the ways in which, for Smith, such a commitment requires us to look beyond the quality of the will.

In fact, to return to the text, the emphasis on the ways in which responsibility reflects more than just considerations about moral worth is precisely what we see in the paragraph with which Smith concludes his discussion of luck. Again Smith's discussion is interesting enough to quote at length:

> Notwithstanding, however, all these seeming irregularities of sentiment, if man should unfortunately either give occasion to those evils which he did not intend, or fail in producing that good which he intended, Nature has not left his innocence altogether without consolation, nor his virtue altogether without reward. He then calls to his assistance that just and equitable maxim, that those events which did not depend upon our conduct, ought not to diminish the esteem that is due to us. He summons up his whole magnanimity and firmness of soul, and strives to regard himself, not in the light in which he at present appears, but in that in which he ought to appear, in which he would have appeared had his generous designs been crowned with success, and in which he would still appear, notwithstanding their miscarriage, if the sentiments of mankind were either altogether candid and equitable, or even perfectly consistent with themselves. The more candid and humane part of mankind entirely go along with the effort which he thus makes to support himself in his own opinion. They exert their whole generosity and greatness of mind, to correct in themselves this irregularity of human nature, and endeavour to regard his unfortunate magnanimity in the same light in which, had it been successful, they would, without any such generous exertion, have naturally been disposed to consider it. (TMS II.iii.3.6)

Interestingly, Russell and Flanders both take this paragraph to be evidence that Smith ultimately did not want to endorse our irregular sentiments.[152] A more careful reading of the paragraph, however, only commits Smith to the view that the EM ought to regulate our assessments of moral worth, or, as I suggested in II.iv, that the EM may be appropriate in matters of propriety, but not merit. Smith's conclusion, in other words, is that we can look to the EM as a corrective when our practices of holding one another responsible for certain things lead us to mistakenly think we are also impugning one

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[152] Pointing to this paragraph, Russell writes: "In the final analysis, it seems fair to conclude, that Smith is never entirely convinced by his own effort to rationalize the irregularities in moral sentiment in the way that he describes" ("Smith on Moral Sentiment and Moral Luck," 43). Similarly Flanders concludes: "this shows, I believe, that the true standard of moral worth for Smith is ultimately what he calls the 'equitable maxim'" ("This Irregularity of Sentiment," 216).

another's characters. Aaron Garrett, for instance, suggests that the EM is important in part because it prevents guilt over the unintended consequences of our actions from becoming neurotic.[153] That we look to the EM as a corrective in this way, though, in no way undermines the appropriateness of our practices of holding one another responsible for the things that we do, but do not intend to do.

III.iii   Social Virtues: Towards a Solution to the Problem of Moral Luck

Having said that Smith appreciated the many ways in which morality is about more than moral worth, two questions remain. The first concerns what we're to make of Smith's extensive discussion of character and virtue. The answer to this is I think clear, and has recently received much attention. For Smith the virtues are not inward-looking but outward-looking. They are about making us fit for social life so that we might reap the tremendous benefits that commercial society offers. As I suggested above this reading of Smith is not new – it is the view that Charles Griswold, James Otteson, Ryan Hanley, and Dennis Rasmussen, among others, have all defended.[154] The point I am making here is simply that Smith's discussion of our irregular sentiments may reflect this more clearly than anything else he says. Moreover, given how prevalent unintended consequences are in Smith's work, a compelling account of how our sentiments shape our responses to cases where our actions have unintended effects is absolutely critical if the various elements of his work are to hang together, and, if I am right, Smith's discussion of the irregular sentiments provides this as well.

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[153] See Garrett, "Adam Smith on Moral Luck," 174–176.

[154] See Griswold's *Adam Smith and the Virtues of Enlightenment*, Otteson's *Adam Smith's Marketplace of Life*, Hanley's *Adam Smith and the Character of Virtue*, and Rasmussen's *The Problems and Promise of Commercial Society: Adam Smith's Response to Rousseau* (State College, PA: Pennsylvania State University Press, 2008). This reading of Smith is also important for the answer it suggests to the infamous 'Das Adam Smith Problem' viz. how we are to reconcile the apparently very different projects Smith sets himself in *The Theory of Moral Sentiments* which emphasizes the importance of sympathy and concern for others and *The Wealth of Nations* which famously defends the social utility of something like selfishness. The answer to that problem suggested by the reading I have proposed is that the *Wealth of Nations* provides us with an account of the benefits of commercial society, while *The Theory of Moral Sentiments* provides us with an account of how commercial society is possible.

Finally, the question remains where all of this leaves us vis-à-vis the problem of moral luck? Here, I think, the answer is that the problem is not as severe as others have supposed. If, following Smith, we embrace a concept of moral responsibility that is concerned with more than just the quality of an agent's will, the existence of moral luck need not threaten the coherence of our concept, nor does it impugn our practices. This isn't to say that our irregular sentiments will never lead us astray, or that the influence of luck on our moral judgments is never a problem. They almost surely do, and it may well be. What Smith shows us, though, is that the problem of moral luck, if there is one, lies not in luck's influence on our moral judgments, but rather in our imperfect ability to distinguish between the ways in which it should and shouldn't influence our assessments of ourselves and others.

RESPONSIBILITY WITHOUT CULPABILITY
Blame, Blameworthiness, and the Expectation of Apology

Accidents happen all the time. More often than not they are innocuous. If two individuals bump into each other on a crowded sidewalk neither is likely to give the incident much thought. Sometimes, though, accidents can be serious, and the costs associated with them more substantial. This paper explores our responses to accidents with an eye towards what they can tell us about the nature of moral responsibility. As we will see, of particular interest is what our responses to accidents suggest about the possibility of causal responsibility (sometimes) being sufficient for moral responsibility. In the pages that follow I will argue that our responses to accidents shed light on a surprising array of cases where we hold individuals morally responsible for events simply in virtue of their having played a role in bringing them about, and I will show that we often do this even when we don't think that, in bringing these events about, the relevant individuals have done anything wrong. Furthermore, I will show that the sense in which we can be morally responsible for these sorts of things is intimately bound up with blame and the reactive attitudes. And, more controversially, I will argue that in the sorts of cases we will discuss not only is blame to be expected, it is appropriate. In other words, I will argue that the sort of moral responsibility capable of being generated by mere causal responsibility is associated with (a certain kind of) *blameworthiness*, and this is true even though the fact of our moral responsibility need not implicate the quality of our will in any way.

The paper proceeds in three parts. I begin in section I by using our responses to accidents involving negligence to illustrate a distinction between two ways in which we talk about moral responsibility. The first of these is concerned with the myriad obligations (and expectations of other sorts) that individuals have in virtue of their relationship to various persons or events. The second is bound up with our reactive attitudes and is typically thought to be concerned primarily with what an individual's actions tell us about the quality of her will (and perhaps other aspects of her character).

Having drawn this distinction, I then sketch a framework for making sense of the types of responsibility associated with these two ways of talking, including the relationship they bear to one another. In section II, I turn towards our responses to genuine accidents in order to show that the two types of responsibility distinguished in section I are more closely related than has often been appreciated. In particular, I argue that the although blame and the reactive attitudes are often aroused by appraisals of an agent's quality of will, and typically play the role of conveying such appraisals to others, this is not all they do. Finally, building upon this argument, section III explores the role that blame plays in conveying information about what is expected of us and defends the idea that blame need not indict the quality of the will of the person being blamed. As I show, this means that we can sometimes be blameworthy for things even when we've not done anything wrong, and, as a result, there is a meaningful sense in which we can sometimes be morally responsible for things simply in virtue of having brought them about.

I.   Accidents, Apologies, and Two Kinds of Moral Responsibility

The language of moral responsibility is invoked in many contexts. Sometimes we use it to draw attention to the obligations that individuals incur in virtue of their relationships to various persons or events. For instance, we often say that parents are morally responsible for their children, and when we say this what we usually mean is that parents have duties to care for their children or, alternatively, that they are liable for what their children do. At least since P.F. Strawson wrote "Freedom and Resentment," though, philosophers have by and large been engaged in a different way of talking about moral responsibility.[155] More specifically, philosophers interested in the nature of moral responsibility have focused their attention on the set of practices bound up with our reactive attitudes and through which we bestow praise and blame on individuals. Of particular interest to these philosophers has been the conditions that make an individual an appropriate target of resentment (or one of the several other reactive

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[155] Strawson, "Freedom and Resentment."

attitudes). These philosophers, in other words, have used the language of moral responsibility to refer to what it is that makes an individual *blameworthy* (or praiseworthy) and, *pace* Strawson, most of them have explicated this in terms of what an agent's actions say about the quality of her will.

I am interested in the relationship between the two ways of talking described above. More specifically, I'm interested in how unpacking this relationship helps to motivate the various theses I laid out in the introduction.[156] For ease of exposition let us call the sort of responsibility associated with the first way of talking *obligation bearing responsibility*, and the sort associated with the second *blame warranting responsibility*.[157] The first sort of responsibility is fairly familiar. Let us say that an individual *I* is *obligation bearing responsible* if *I* has a moral obligation to perform some action / duty φ. Or, to make our definition a little more capacious, let us say that *I* is *obligation bearing responsible* just in case *I* is obligated to φ, *or* there is an expectation (that doesn't rise to the level of obligation, but is sufficiently weighty) that *I* perform some action φ. Obviously this definition could be fleshed out in more detail, but for our purposes this will suffice.

Harder to specify in a way that captures everything we want, but more important for our purposes, is what it is for an individual *I* to be *blame warranting responsible*. Note that I've chosen this label to emphasize the tight connection between

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[156] Proceeding in this way presumes, of course, that these two ways of talking tracks an important distinction. There seems to be widespread agreement, however, that this is the case. Less clear is whether the types of responsibility associated with the two ways of talking are related to one another in ways that are capable of being specified with any degree of precision. I think they are. As we will see, however, the relationship between the various types of responsibility at hand is also messy, in part because the distinction between the two ways of talking is itself messy.

[157] At this point, some readers may be wondering why I have introduced these labels when I could have simply borrowed existing terminology from other authors who have drawn similar distinctions between ways of talking about moral responsibility. Michael Zimmerman, for instance, uses the labels *prospective* and *retrospective* for what I am calling *obligation bearing* and *blame warranting* responsibility (see e.g., his *An Essay on Moral Responsibility*, chap. 1.1.). As we will see, however, Zimmerman's terminology, while intuitive in some sense, often proves to obscure more than it illuminates. My hope is that the labels I've chosen will provide a more helpful framework for the discussion that follows.

the second way of talking about moral responsibility and the notion of *blameworthiness*. Drawing on the conditions that most accounts of moral responsibility seem to agree are necessary for an individual to be blameworthy, let us initially say that an individual *I* is *blame warranting responsible* for an action *A* if and only if (something like) each of the following three conditions obtain:[158]

(1) It was wrong for her to act in this way.

(2) She acted freely (or at least had sufficient control over how she acted).[159]

(3) She knew, or should have known, that acting in the way she did was wrong.[160]

This definition doesn't capture everything that various authors have thought to be distinctive about (or necessary for) this kind of responsibility. It does capture an important part of the core of the concept, though, and, in any case, we will introduce a fourth condition to round things out shortly.

This first pass at things lets us provide a preliminary characterization of the distinction between the two kinds of responsibility and the relationship they bear to one another. Counting in favor of the distinction is the fact that the two are not extensionally equivalent. One can clearly be obligation bearing responsible without being blame warranting responsible. To say that someone is responsible for her children in the first sense is not to say that she has done anything objectionable. Moreover, this is true even when what we mean to be saying is not that a mother is responsible for caring for her

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[158] Different views will cache out these conditions in different ways, but for our purposes the precise formulation of each condition is not particularly important.

[159] The sort of responsibility that is typically at stake when we talk about responsibility in the way I am now trying to characterize is typically an individual's *direct* responsibility for an action. However, I have tried to formulate this condition in such a way that, read broadly enough, it can accommodate the notion of an individual being *indirectly* responsible for an action in virtue of her having acted freely (in suitably proximate circumstances) to put herself in a position where she would no longer be capable of *freely* acting, but would nevertheless be responsible for her actions.

[160] Note that I have formulated this condition in this way in order to accommodate cases involving *culpable ignorance*, as well as (the perhaps more central cases) where one knowingly acts wrongly.

children, but rather that she is responsible *for what her children do*. This, of course, is because the fact that one's child has acted badly does not mean that one has herself done anything wrong (although in some cases this may well be the case).

Turning to the relationship between the concepts, there are at least two relationships they sometimes bear to one another. First, consider that the retrospective fact of one's blameworthiness often makes one responsible in the prospective sense of now having various obligations to discharge. Here, in other words, it is an individual's blame warranting responsibility that explains her obligation bearing responsibility. On the other hand, there are cases where the relationship between the two concepts runs the other way. One of the many (wrong) things that one can do to make oneself blame warranting responsible, for instance, is to fail to fulfill an obligation that she has. Here, in contrast to the first sort of case, it is one's obligation bearing responsibility, along with the fact that she failed to fulfill one of the obligations or expectations she had, that explains why she is blame warranting responsible.

Of course, just because the two senses of responsibility are often related to one another, does not mean that they always are. Nor does it mean that the relationship between them, when it obtains, tells us anything about the nature of one (or both) concepts. Michael Zimmerman, for instance, suggests that despite appearances, there are, in fact, "no interesting, strictly logical ties" between the two types of responsibility, and he begins his important book on moral responsibility with the caveat that it is only the blame warranting sense (what he calls *retrospective responsibility*) that is at stake in books like his.[161] Even if Zimmerman is right that the two senses of responsibility are not related to one another as a matter of logic, though, the relationship between them can still tell us quite a bit. Indeed, I think it's impossible to offer a complete accounting of the

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[161] Zimmerman, *An Essay on Moral Responsibility*, 4–5. As Zimmerman point out, this is because, while it is true that we often incur prospective obligations in virtue of being blame warranting (or retrospectively) responsible, this is not always the case. Similarly, although failing to fulfill our obligations typically makes us blame warranting responsible in the retrospective sense of being blameworthy, this too is not always the case.

blame warranting sense of responsibility (that Zimmerman focuses on) without making sense of its relationship to the obligation bearing sense. Moreover, as I will also argue, focusing on the role that blame warranting responsibility sometimes plays in explaining obligation bearing responsibility will allow us to diagnose and resolve a difficulty that has plagued traditional approaches to making sense of the sort of responsibility associated with blameworthiness.[162]

Having said something about the distinction between the two senses of responsibility and the relationship they bear to one another we can now turn our attention to how our responses to accidents help to illuminate things. The first thing to note is that when we are involved in accidents we almost always incur obligations of various sorts. The nature of these obligations depends upon our relationship to the accident as well as to the parties affected by it. If I have caused the accident I may have an obligation to compensate the victim (or victims) for any harms or costs I have imposed on them. Quite apart from this I may have an obligation to apologize, or at least to acknowledge the role I played in causing the accident. In these cases, and others like them, I am obligation bearing responsible, and it is the significance of the obligations that makes this a distinctly moral brand of responsibility. As a result of what I have done, or at least as a result of my relationship to some unfortunate event, I owe various things to other people. Furthermore, I will be vulnerable to criticism or punishment of various sorts if I fail to fulfill these obligations, although there may be cases where no one is actually in a position to criticize or punish me (say because no one is in a position to know that I have violated one of the obligations I bear).

That I can be responsible in the sense described above, however, doesn't yet

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[162] Note, too, that although we will not focus on the role that obligation bearing responsibility plays in explaining blame warranting responsibility, there are several authors who appear to be implicitly (if not explicitly) committed to thinking that the a full accounting of the latter requires us to understand the former (and the relationship it bears to the latter). Here I have in mind Stephen Darwall and R.J. Wallace who both suggest that the sort of moral responsibility associated with blameworthiness is exclusively concerned with deontic evaluations. See Darwall, *The Second-Person Standpoint*, and Wallace, *Responsibility and the Moral Sentiments*.

suggest that I am (or even could be) responsible in any richer sense of the sort that says something about the kind of person I am. Sometimes, though, our actions violate norms of proper conduct, and, in doing so, betray our ill will. It is in these cases that philosophers have tended to agree that it makes sense to say that we are morally responsible in the blame warranting sense. In other words, as a result of our negligence we are blameworthy for what we have done, and, although philosophers may disagree about exactly what makes us blameworthy in this sort of case, they tend to agree that this says something about who we are (or at least who we were in the moment we acted).[163] It may be, for instance, that our negligence betrays the lack of regard we have for others, and it is in virtue of this that we are blameworthy. In this case, an individual's blameworthiness might indicate that it is (or would be) appropriate to hold her accountable for what she has done.[164] Alternatively, it could be that an individual's negligence reveals the poor judgment that informed (or failed to inform) her decision to act. Here, to say that an individual is blameworthy is to say that she can (and should) answer for her poor judgment. She should, in other words, be willing to justify her actions to others, or at the very least to explain them, and when she can't do this she should be prepared to acknowledge this fact.[165] Finally, it could be that an individual's negligent actions reveal some more durable quality of her character – including, perhaps, the fact that she is prone to act "out of character" – and it is in virtue of *this* that

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[163] The fact that blame warranting responsibility is backwards looking in this way is why Zimmerman refers to it as *retrospective responsibility*, which he contrasts with *prospective responsibility* (his term for obligation bearing responsibility). As I first suggested in note 3, however, the labels are confusing insofar as obligation bearing responsibility is also backwards looking insofar as the obligations that one (prospectively) incurs are typically incurred because of something that one *has* done.

[164] See for example treatments by Michael McKenna in his *Conversation and Responsibility* and Stephen Darwall in his *The Second-Person Standpoint*. Both McKenna and Darwall take themselves to be developing (with some modifications) the view of responsibility found in Strawson's "Freedom and Resentment."

[165] See e.g. the views defended by Angela Smith, T.M. Scanlon, and R.A Duff. Smith, "On Being Responsible and Holding Responsible"; Smith, "Control, Responsibility, and Moral Assessment"; Scanlon, *What We Owe to Each Other*; Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame*; and Duff, "Strict Responsibility, Moral and Criminal."

she is blameworthy. In this case, blameworthiness suggests that it is fair to attribute the thing for which an individual is blameworthy to *her*, and, as a result, to expect her to respond in certain ways.[166]

In light of the considerations sketched about, we can now introduce a fourth condition that is necessary in order for blame warranting responsibility to be appropriate:

(4) An individual's action (or inaction) is indicative of the quality of her will, character, or   judgment.[167]

On our revised understanding of things, then, an individual *I* is *blame warranting responsible* for an action *A* just in case *A* is *objectionable* (in virtue of satisfying condition 1), and, in performing *A*, *I* satisfies: a *freedom* condition (condition 2), an *epistemic* condition (condition 3), and a *quality of will* condition (condition 4). Furthermore, in addition to these conditions on *when* one can be morally responsible in the blame warranting sense, we can also say something more about *what* is distinctive about being morally responsible in this way. That distinctive feature is the appropriateness of the reactive attitudes.

However one wants to make sense of blameworthiness and the sort of moral responsibility associated with it – in other words, whether one understands blame warranting responsibility as accountability, as answerability, as attributability, or as some combination of the three[168] – in each of these cases an individual's

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[166] For discussion of this sort of view see e.g. Gary Watson who emphasizes the importance of the 'deep self' or Nomy Arpaly and Mark Schroeder who emphasize the 'whole self.' Watson, *Agency and Answerability*, chap. 9 "Two Faces of Responsibility," and Arpaly and Schroeder, "Praise, Blame, and the Whole Self."

[167] I've formulated this condition as broadly as possible in order to try to accommodate each of the three dominant views sketched above of what it is that makes us blameworthy.

[168] David Shoemaker is the clearest proponent of the latter view, having defended in various places the idea that moral responsibility sometimes takes each of the three forms described above. See e.g. his "Moral Address, Moral Responsibility, and the Boundaries of the Moral Community"; "Attributability, Answerability, and Accountability: Toward a Wider Theory of Moral Responsibility"; and *Responsibility from the Margins*.

blameworthiness either makes certain reactive attitudes appropriate or will be symptomatic of this fact.[169] For instance, when someone negligently causes harm to someone else it may be fitting for her to feel guilt or remorse as a result. In this case, the agent's guilt is typically assumed to reflect her recognition that she has done something wrong. Guilt is not the whole story, though. If an agent's negligence is particularly egregious – something of the sort that betrays a callous disregard for the welfare of others – then the individuals impacted by the agent's negligence may feel indignant or resentful, and will almost surely direct these attitudes towards her. Indeed, although it may be the appropriateness of an agent's guilt that is most indicative of her blameworthiness, and we can sometimes make sense of the idea of an individual "blaming" herself, it is the cluster of reactive attitudes directed at a responsible agent by affected parties that provide us with the paradigmatic instances of blame. The impetus for these feelings is likely to be the lack of regard that the negligent actor showed her victims, or, at the very least, the poor judgment she displayed. As Zac Cogley has nicely described, though, whatever its impetus, blame is important to our responsibility practices is at least three ways.[170] First, blame plays a role in appraising agents (as either acting or having acted wrongly). Second, it plays a role in communicating these appraisals (usually to the perceived wrongdoer, but sometimes also to others for whom the appraisal may be relevant). Third, it plays a role in sanctioning individuals (who have been appraised as having acted wrongly).[171]

Cogley argues that the three ways in which blame is bound up with our responsibility practices can each tell us something different (and important) about those

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[169] Note that the latter position is what views that hold that moral responsibility is essentially interpersonal tend to maintain. On these views what it is to be morally responsible depends in large part on our practice of holding responsible and these practices consist, among other things, in deployments of the reactive attitudes.

[170] Cogley, "The Three-Fold Significance of the Blaming Emotions."

[171] Note that this role is distinct from the role that blame plays in communicating that one deserves to be sanctioned in some way. More specifically, blame is capable of itself acting as a sanction insofar as individuals tend to dislike being blamed, and so blaming places a direct cost the party being blamed.

practices.[172] I agree. At the end of the day, though, it is the communicative role of blame that is, I think, most important. Or, rather, it is the communicative role that I think plays the greatest role in informing the blame warranting sense of moral responsibility, and it is on that role that I will focus.[173] In doing so, I take myself to be in good company. Michael McKenna, for instance, has argued that moral responsibility in its blame warranting sense is best understood through the lens of conversation.[174] Where McKenna (like most others) emphasizes the tight connection between blameworthiness and the quality of will (judgment or character), though, I think that unpacking the communicative role of blame actually shows that this connection is less tight, albeit still crucial. More specifically, I think that further unpacking the communicative role of blame will reveal that blame need not involve assessing those who are being blamed as having ill will (or as having exercised poor judgment or having expressed a poor character trait). In order to see this, however, we need to draw a further distinction between the types of information that blame conveys in its communicative role.

Among other things, the attitudes associated with blame convey the anger that the aggrieved parties might justifiably feel. More importantly, they convey why the aggrieved parties feel the way they do, and also that certain responses are expected of the party being blamed (because of what she has done). For example, when directed at someone who has acted recklessly, blame might convey to the negligent actor that she ought not to have done what she did and that, as a result, she should feel guilty (and perhaps should apologize). Of course, the precise information blame conveys will vary

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[172] On Cogley's view, in its appraisal role blame tells us something about when blame is fitting. In its communicative role it tells us something about when moral address is appropriate, and here Cogley notes that moral address will not always be appropriate even when the appraisal conveyed by blame is fitting. And, in its sanctioning role blame tells us something about when blame is deserved.

[173] Here I part ways with Cogley who suggests that the only considerations about the blaming emotions that ultimately inform the concept of moral responsibility are what they tell us about the fittingness of appraisals because these circumscribe the concept of blameworthiness. See Cogley, "The Three-Fold Significance of the Blaming Emotions," 216. Although, as Cogley acknowledges, he provides no argument for this latter claim

[174] See McKenna, *Conversation and Responsibility*.

from case to case, as will the composition of the cluster of attitudes that characterizes it. Notice, however, that in every case the information blame conveys will fall into one of three categories. The first is *identificatory* and associates an agent with an action (and in the typical case, with the action's consequences). The second is *prescriptive* and says something about how the agent should now act. And the third is *evaluative*, and implies that what the agent did was wrong (and, when this is indicative of an agent's ill will or poor judgment, indicates that this is the case).

In paradigmatic cases blame conveys all three types of information. The critical reader may thus want to object that the three-fold distinction I've drawn is much ado about nothing insofar as the three sorts of information hang together. However, drawing the distinction helps us to see the mechanism through which blame warranting responsibility can give rise to obligation bearing responsibility – namely through the role blame plays in prescribing how one should respond to what she has done.[175] Furthermore, as we will see in the next two sections, it's not always the case that blame conveys all three types of information. In particular, blame does not always carry with it the evaluative claim that the agent being blamed did something wrong. Before turning our attention to the cases that will help us to see that this is the case, though, it will be helpful to say something about why blame's role in conveying the expectation that one apologize is especially important.

When we blame someone in the wake of an accident, one of the things we are often doing is indicating that they ought to apologize for what they have done. In the case where an individual has been negligent, this will likely be because she ought to have been more careful. In other words, blame conveys both forward-looking information about the prospective obligation that one has incurred, and backward-looking information about why the prospective obligation was incurred. This backward-looking information, in turn, typically includes both the identificatory claim that the

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[175] Here it's also worth noting that in describing the role the blaming emotions play in communicating appraisals Cogley associates appraisals with the identificatory and evaluative types of information, but importantly he ignores the second.

person being blamed has in fact done something that warrants our concern, and the evaluative judgment that what they did was wrong (and perhaps even the sort of thing that casts doubt on the quality of her will).

The fact that being responsible in the blame warranting sense often obliges one to apologize is not the only way in which apologies are bound up with this sense of responsibility, though. Consider that when one fails to apologize this doesn't merely reflect poorly on her because she failed to meet this expectation. Instead it suggests that her actions were more callous than we may have initially supposed. This is because the urge to apologize is often indicative of guilt, or, at least, one's recognition that she has done something that gives others reason to question her conduct. More importantly, apologies are often the first step in making amends because they provide the guilty party with a way of retroactively showing victims and other affected parties the respect they deserve.[176] When someone causes harm to someone else, then, and doesn't apologize, this suggests that she is unconcerned with (or at least unaware of) the effects that her actions have on others.[177] Moreover, because the way we respond to what we have done is largely a dispositional matter, a failure to apologize is not just indicative of one's unwillingness to *now answer (or be held to account)* for what she has done. Instead, it speaks to what was almost surely her unwillingness *all along* to justify her actions to others (or at least to consider their interests and the impact of her actions on them in the course of deciding how to act). In other words, whatever blameworthiness is indicative of – be it one's poor character, her unwillingness to answer for what she has done, or the

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[176] Of course, an apology cannot always undo what one has done, nor should we expect it too. A sincere apology, however, can go a long way towards revealing that one does in fact appreciate that she has acted badly. Similarly, an effective apology can show others that, as much as one's prior actions may have suggested otherwise, she really does take their interests seriously, and this can be crucial in cases where the members of one's community might otherwise be hesitant to continue associating with the person who acted badly.

[177] Patrick Dunlop and colleagues have found that the proclivity to apologize, as measured by both self-report and evaluations from knowledgeable observers, is strongly correlated with humility and honesty. See Dunlop et al., "Please Accept My Sincere and Humble Apologies: The HEXACO Model of Personality and the Proclivity to Apologize."

lack of regard she has for others – when one isn't prepared to apologize for the harms she negligently brings about this not only makes her blameworthy for failing to apologize, but arguably more blameworthy than she otherwise would be *for whatever it is she ought to apologize for*.

II.   Regret and Regard for Others in Our Responses to Genuine Accidents

The idea that the degree to which we are blameworthy for things that we've done might be impacted by our readiness to apologize for those things strikes me as an important and underexplored aspect of our responsibility practices. Rather than say more about this here, though, I want to instead focus on the similarities between our responses to genuine accidents and our responses to accidents involving negligence. As we will see, our responses to genuine accidents are particularly emblematic of the role that blame plays in indicating that certain things, like apologies, are expected of us. This is important for two reasons. First, it helps to illustrate the fact that while blame often conveys information about the quality of one's will, in some sense its most distinctive characteristic is the prescriptive role it plays. Second, it illustrates the fact that in many cases blame's function is probative rather than evaluative. In other words, blame often presents a *pro tanto* appraisal of an agent that is better interpreted as the opening of a dialogue with the party being blamed, as opposed to an *all things considered* evaluation of the party (to which she might or might not be invited to respond).

When someone accidentally causes harm to someone else without being even the slightest bit negligent, ex hypothesi she hasn't done anything wrong. Moreover, setting aside questions about what one's readiness to apologize might indicate, her actions do not implicate the quality of her will in any (other) way. This is why, on the standard view, it doesn't make sense to say that she is responsible in the blame warranting sense. Nevertheless, many of the very same responses described in section 1, or at least responses very similar to them, are often appropriate. As Bernard Williams and others have pointed out, when individuals accidentally cause harm to others something very

much like guilt, namely agent's regret, is often appropriate even when guilt is not.[178] Unlike guilt, agent's regret is not associated with a belief or feeling that one has done anything wrong. It is, however, characterized by a deep regret for what one has done. Nor does this sort of regret extend just to the fact that something bad or unfortunate occurred. Rather, it reflects the role that the individual played in bringing the bad about. It's not uncommon, for instance, for persons who cause accidents to wish that they would have done something, anything, differently so that they might have avoided bringing about the bad, sad, or unfortunate consequence of their accident. What is particularly distinctive about agent's regret, though, is that it is typically felt *even when an individual knows that nothing she did violated any plausible norms of proper conduct*.

Of course, what makes agent's regret appropriate is not just that it is a regular feature of our psychology. It's not uncommon for individuals who cause harm to others to be plagued by pathological guilt and self-loathing, but this is both misguided and regrettable. Just as guilt reflects one's appreciation that she has acted badly, though, agent's regret reflects the fact that one played an integral role in bringing about harm (or something else of comparable moral significance). This is not something that should be swept aside. At the very least, as Adam Smith observed in his brief, but important discussion of the influence of fortune on our lives, individuals who accidentally cause great harm to others should be expected to look upon such events as among "the greatest misfortunes" that could befall them.[179] What Smith is pointing to is not just that one's involvement in an accident is likely to make her life worse (although it may do that). Rather, his point is that, much like guilt, the presence of agent's regret is an indicator that one takes the interests of her neighbors seriously. If someone is instrumental in bringing about harm to someone else and feels no special regret over this fact, this betrays a callous indifference to the suffering of others.

The parallels between our responses to accidents that respectively do and don't

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[178] Williams's richest discussion of agent's regret is at *Shame and Necessity*, 69–74.

[179] Smith, *The Theory of Moral Sentiments (6th Edition)*, II.iii.3.4.

involve wrongdoing do not end with the self-directed sentiments like guilt or regret, though. Consider again the expectation that one apologize. As was the case with guilt, the presence of agent's regret is often synonymous with the urge to apologize, and, indeed, when someone causes an accident it is often incumbent upon her to apologize *even when she has not done anything wrong.* Moreover, in such cases the blaming emotions are often implicated in conveying this expectation. Here, however, the point of the apology is not necessarily for the party being blamed to admit fault, but rather to simply acknowledge the part she played in bringing about certain events. T.M. Scanlon refers to the standpoint adopted in cases like this as *objective stigma*, which he distinguishes from the standpoint of moral blame.[180] The distinction, according to Scanlon, is that the latter, but not the former, involves a judgment of wrongdoing. More specifically, on Scanlon's view, blaming an individual for an action involves taking the action to indicate something about the individual's attitudes that impairs one's relationship with her. In other words, blame consists in an evaluation paired with a revised understanding of one's relationship given what they have done.[181] So, while objective stigma may be appropriate when an individual does something without malice (or any of the other traditional prerequisites for culpability) that impairs her relationship with another, moral blame is appropriate only when an individual violates a standard having to do with "the kind of concern that we owe to one another."[182]

Scanlon is certainly right that there is an important difference between cases where the second personal demands we place on others are attached to evaluations of

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[180] See Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame*, 124–126 and 148–150.

[181] As Scanlon notes, strictly speaking, on this understanding, wrongdoing is neither necessary, nor sufficient for blameworthiness. This is because blameworthiness depends on reasons for action in a way that wrongness doesn't, so actions can be wrong, but not blameworthy. On the other hand, it can be appropriate to blame an individual for an action that isn't impermissible if the action was done for bad reason.

[182] Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame*, 124. Scanlon also distinguishes moral blame, from non-moral blame. Here the distinction is that where the former involves agents failings to meet standards having to do with the kind of concern we owe to each other, the latter concern agents failing to meet standards of other sorts, e.g. norms of performance in sports.

their reasons for action, and cases where they aren't.[183] Notice, however, that when it comes to allowing the parties affected by an accident to move on, acknowledging the role one played in bringing an event about can be just as important as admitting fault. Indeed, as anyone who has ever been married will surely recognize, two parties need not agree on who is at fault, or whether anyone is at fault at all, in order to put things behind them. Sometimes, all that is necessary is that someone is willing to accept responsibility for what has happened. This happens for any number of reasons. In some cases it may be that it's simply not worth adjudicating wrongdoing. Perhaps the costs of fighting are too high, or the chances of a resolving a dispute too low. In other cases, it may be that there is insufficient information available to determine culpability. We see this frequently with accidents where it's often impossible to tell whether negligence was a factor or not. In many cases, though, whether someone was at fault (and if so who) is simply not what is at stake. Instead, what matters *just is* how the affected parties are going to move forward. In these cases, expressing one's regret for what happened (or indicating that one is willing to do what it takes to ensure that those affected by an accident can get back on their feet) is often enough to assure others that one takes both their interests and complaints seriously.

Note too that apologies of the sort I've been talking about – those involving neither an admission of wrongdoing nor an expectation that one admit wrongdoing – really are pervasive. Recall the example with which the paper began. When two individuals bump into each other on a crowded sidewalk, often both will apologize. Usually this doesn't amount to much more than saying something along the lines of "excuse me, I didn't see you," but even a case as seemingly trivial as this is interesting for a couple reasons. First, note how striking it is for two individuals to apologize to each

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[183] Although I've focused on Scanlon's distinction between blame and objective stigma here, I take it that Scanlon's view is representative of the dominant view in the moral responsibility literature, namely that blame is always evaluative (in some way). And even those who allow that blame need not be evaluative in every instance are careful to distinguish between causal or explanatory blame and the sort of blame that is associated with interpersonal accountability. See e.g. Kenner, "On Blaming," and Hart, *Punishment and Responsibility*.

other for the very same thing. Normally we would expect one or the other to be at fault, in which case one would apologize and the other would accept the apology (or, more likely, excuse the guilty party). Of course, there may be instances where both parties are preoccupied – looking down at their phones, say – in which case both parties may be at fault and it's perfectly appropriate for both to apologize. Even when this isn't the case, though, the mutual apology is fitting, if not required.[184] To see why, imagine how awkward it would be for just one of the parties to apologize. In this case, the party who apologized, call her Jane, is likely to think that the other person (who doesn't apologize), call him Bob, is a jerk. Indeed, the fact the Bob doesn't apologize suggests that he probably is a jerk. What we see here is a clear case where the guilt or wrongdoing of the involved parties is not really at issue, and yet, whether the parties apologize really does matter. Furthermore, it matters because the willingness to apologize tells us something about their concern for others. Although Jane might not normally give Bob's failure to apologize a second thought, if it turned out that Bob was on his way to interview for a job with Jane, she might be perfectly justified in passing him over for the job. Here, whether Bob should (or even could) have avoided bumping into Jane on the sidewalk isn't at stake at all. *All that matters* is that Bob failed to take responsibility for something that he had done, and in doing so revealed himself to be the sort of person one might rather not work with.[185]

Of course, none of this is meant to suggest that admitting wrongdoing doesn't matter. As we saw in section 1, it often does. What is particularly interesting about the expectation of apology, though, is that even when individuals know that someone hasn't done anything wrong the expectation that they apologize is often still bound up with the reactive attitudes. Again Smith's observations about the role of fortune in our lives are instructive. There he remarks of accidents involving no obvious negligence that:

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[184] Unless of course one is in Manhattan, in which case both parties should probably just expect to go on their way without saying anything.

[185] Jane might worry, for example, that if she hired him, Bob could only be counted on to do what was explicitly required of him.

The person himself, who by an accident of this sort has involuntarily hurt another, seems to have some sense of his own ill desert, with regard to him. He naturally runs up to the sufferer to express his concern for what has happened, and to make every acknowledgment in his power. If he has any sensibility, he necessarily desires to compensate the damage, and to do every thing he can to appease that animal resentment, which he is sensible will be apt to arise in the breast of the sufferer. To make no apology, to offer no atonement, is regarded as the highest brutality.[186]

Having already discussed the role that agent's regret plays in driving individuals to apologize, what makes Smith's comments here especially prescient are his observations about the role that is played by the desire to appease the resentment or anger that is likely to be felt by the victim. As Smith recognizes, this is one of the chief motives for apologizing. What makes this motive interesting in cases involving no negligence, though, is that the victim's resentment is misplaced. If someone really hasn't been negligent, then the role they may have played in bringing about an accident is not indicative of the quality of their will. This is arguably what Smith means when he describes the victim's resentment as animalian. It arises reliably and perhaps even automatically, but it's not stable on reflection and has trouble standing up to scrutiny. Nevertheless, the sense of ill desert felt by the accident's cause seems to excuse the victim's resentment, and, even if it doesn't, as Smith notes, to make no effort to appease the misguided resentment is rightly regarded as the highest brutality.

To see why it really would be terrible for someone to make no effort to appease the misguided resentment of others consider the following example:

Neighbor's Dog: Joe gets into his car in the morning to drive to work as he does every day. As he is backing out of his driveway, though, his neighbor's dog darts out behind his car and Joe runs it over. Let us assume that Joe was not being reckless. He was driving slowly and looking where he went. Furthermore he had no reason to anticipate the dog being there. The neighbor's yard is fenced and the dog had never been loose before. On this day, however, the dog managed to jump the fence, and even though Joe was backing out slowly the dog managed to

[186] Smith, *The Theory of Moral Sentiments (6th Edition)*, II.iii.2.10.

sustain life threatening injuries. In fact the dog's life could only be saved via a very expensive operation which neither Joe, nor his neighbor could afford.

Here it's easy to imagine Joe's neighbor, Mary, being extremely upset about the events that transpired. Indeed, Mary might blame Joe for the accident, and it would not be surprising if this manifested itself in her being angry with him, and perhaps even resentful. She might, for instance, demand that Joe apologize and ask that he pay for the dog's surgery even though she knows he couldn't possibly afford it. These feelings would be understandable. People often have deep bonds with their pets and Mary's reactions can be easily explained by the sudden and unexpected loss she is now facing. That her feelings are understandable, though, doesn't justify them. Her anger and resentment are inappropriate and she should not expect that Joe pay for the surgery. After all the dog got out of her yard, and Joe wasn't doing anything wrong. And yet, Joe should still apologize. Moreover, it is fair for Mary to expect him to do so (even if she shouldn't demand that he do so). Certainly, Joe should not respond to the accident by telling Mary how inappropriate it would be for her to be upset with him or by reminding her that there was almost surely more that she could have done to prevent the accident. Those sorts of reminders, if they are appropriate at all, would be best left to a third party, perhaps a friend of Mary's. Indeed, if Joe tried to immediately pin the blame for the accident on Mary, we would likely think him to be a sort of moral monster.

What we see in the *Neighbor's Dog* case are a constellation of responses from the involved parties, some of which are appropriate, and some of which aren't. More importantly, though, what we see is that the relationship between the two is complicated. There are better and worse ways to respond to reactions that are inappropriate. Some inappropriate reactions should be coddled, others excused. This is one of the things that the expectation that Joe apologizes reflects. Joe *should* apologize. Moreover, his apology should take a certain form. He shouldn't simply tell Mary that he is sorry that her dog died (or is likely to die). Instead he should tell her that he is sorry *that he hit the dog*. Although he need not admit wrongdoing, acknowledging the role that

he played in the accident is crucial. One of the things this does is to help to diffuse Mary's inappropriate but understandable anger. It does this by showing her that he recognizes the impact that his actions have on others, and that he is sensitive to their interests. Furthermore, it's important that Joe apologize without being prompted to do so, and this is true even though it would be inappropriate for Mary to demand that Joe apologize. In fact, this is one of the things that makes it inappropriate for Mary to demand that Joe apologize. Just as apologizing is a way for Joe to convey to Mary that he recognizes the role he played in causing her suffering and that he takes her suffering seriously, giving Joe the opportunity to apologize without demanding this of him is a way for Mary to show that she respects him and considers him to be a responsible moral agent who will do what is required of him.

III.   Probing Sentiments and Blame Without Indictment

By now I've hopefully convinced even the most skeptical reader that apologies can be expected of us even when we've not done anything wrong. Furthermore, I've argued that these expectations are intimately bound up with our reactive attitudes, and although these attitudes will often be inappropriate, they remain an important part of the explanation for why the expectation is appropriate. What, though, should we make of blame? After all, that the reactive attitudes are bound up with the expectation of apology in cases like the ones we have discussed is consistent with Scanlon's distinction between blame and objective stigma. Furthermore, in section 1 I argued that paradigmatic instances of blame involve reactive attitudes like indignation or resentment, and, given that in the discussion of the *Neighbor's Dog* case above I've suggested that reactive attitudes like resentment are inappropriate, this would seem to make blame inappropriate as well. Indeed, this would seem to be especially true given that I also suggested that it would be inappropriate for Mary to demand an apology from Joe. This isn't right, though.

Consider Mary's expectation that Joe apologize. In particular notice that it's

natural to say that Mary expects Joe to apologize *because she blames him for hitting her dog*. Although Joe didn't do anything wrong he played an integral role in causing Mary suffering, and blaming him is a way for Mary to convey this, even if it is only to herself. This is why I think it makes sense to say that blame is primarily characterized by the prescriptive role it plays in conveying information to others about what they should do as a result of what they have done. It also explains why it's not enough for Joe to merely express his regrets about what happened to the dog. The reason Joe must apologize for hitting the dog is that this is what Mary blames him for. If she didn't, then he need not apologize for having done so (although it may still be appropriate for him to do so), and this explains why it's important to distinguish between the identificatory role of blame from its evaluative role. When Mary blames Joe, there's a sense in which she's conveying that he ought not to have done what he did. Things would have been better in some respect had Joe not done what he did, but this doesn't mean that Joe did anything wrong, and Mary's blaming Joe shouldn't be assumed to imply that he did. To see why, consider how Mary might respond when pressed to forgive Joe. Although it may be easy to imagine Mary maintaining that Joe had done something unforgivable if she were particularly attached to her dog, it's just as easy to imagine her admitting that Kelly didn't do anything wrong, but that she blamed her anyway. Moreover, it's easy to imagine the feelings associated with the latter response persisting long after Joe has apologized (assuming, of course, that he has done so). While this response may seem confused, notice that it's really just the second personal analog of agent's regret. Blaming Joe, even after he has apologized, is a way for Mary to indicate that he really should have apologized and that the regret he should feel shouldn't be merely transient.[187] Last, but not least, note that a third party in a situation like this would not normally assume

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[187] Notice that this aspect of Mary's response to the accident also causes trouble for Zimmerman's retrospective/prospective distinction. When Mary continues to blame Joe even after she has apologized this is a way of conveying a retrospective evaluation of sorts, namely that Joe's apologizing was appropriate. On the standard view, though, when blame is deployed retrospectively it is a way of indicating that someone *didn't* do something that was expected of them.

(at least not right away) that a response like Mary's implies that Joe had done something wrong, or that Alice thought she had done something wrong.

If I am right the *Neighbor's Dog* case suggests that blame can be appropriate in cases where no one has done anything wrong. However, the case isn't perfectly clear. For one thing, if indeed it is inappropriate for Mary to demand that Joe apologize, let alone to resent him, then the fact that she blames him for hitting her dog may convey that she expects him to apologize for this, but it doesn't convey it *to him*. This need not be problematic, though. Even if Mary shouldn't confront Joe, it would be perfectly appropriate for her to admit that she blamed Joe for his role in the accident. Moreover, the fact that Mary blames Joe might still be indicative of the fact that he ought to apologize. On the other hand, someone like Scanlon can still argue that the absence of an evaluative component from the sort of 'blame-like' standpoint one adopts in this sort of case I've been describing makes this a clear case of objective stigma as opposed to blame. To see why things are more complicated than this, then, let us turn to a third case with somewhat higher stakes:

> *Tragic Accident*:   Alice and Kelly are neighbors and their children often play together. Kelly has a pool and one day, while Alice was at work, her son Billy was over at Kelly's house playing with Kelly's son in the pool. Kelly watched the kids as they played and occasionally warned them to be careful when they ran too quickly or dove headfirst into the pool. Neither boy was doing anything especially dangerous, though. However, after about an hour, as Billy ran up to the pool to jump in and do a cannonball, he slipped on the wet pool deck and hit his head. Fortunately he didn't seem to hurt himself too badly. There was a small scrape on his knee and a bump on his head, but he didn't lose consciousness or cut his head open. Kelly got him an ice pack and the boys went inside to relax. Kelly kept a close eye on Billy, but he seemed fine. After a few hours he still seemed to be showing no ill effects from the accident and Kelly was relieved that he hadn't hurt himself more seriously. Later that afternoon, though, Billy suddenly passed out. Kelly couldn't wake him up and called an ambulance. The

ambulance got Billy got to the hospital, but he died shortly thereafter. He had suffered an acute subdural hematoma. It's possible that if Kelly had taken Billy to the hospital straightaway doctors would have discovered his injury in time to treat it, but there were no signs or symptoms of his injury. There's no way Kelly could have known he had hurt himself so badly.

The case described above is indeed tragic. Kelly would surely feel distraught and would more than likely blame herself for not having taken Billy to the hospital immediately after his accident. Alice, on the other hand, would almost surely be overcome with grief. Presumably Kelly would feel awful for Alice and would do whatever she could to comfort her. Among other things she would likely apologize profusely for the part she played in Billy's death. It wouldn't be surprising, though, if Alice was extremely upset with Kelly for letting Billy get hurt. In fact she may want nothing to do with her, and Kelly's apologies could easily fall on deaf ears.

As with Mary's response in the *Neighbor's Dog* case, Alice's response would be understandable. Nothing could be worse than losing a child. In fact, if anything, her anger would be even more understandable than Mary's. We might even excuse it. It would be perfectly appropriate, albeit unfortunate, for instance, if Alice's relationship with Kelly was forever changed. If they were once close friends it wouldn't be surprising if they grew apart, and if they were just neighbors their interactions might become less friendly (although Alice would not be excused for allowing these interactions to turn hostile). Whether their relationship should change or not, though, Alice should certainly expect Kelly to apologize. And while it might still be inappropriate for her to lash out at Kelly, and demand that she apologize, it would be appropriate for her to press Kelly in other ways. She might for instance ask why Kelly hadn't taken Billy to the hospital sooner or why she hadn't called her at work after the accident. There are many reasons for Alice to ask these sorts of questions, but among them is that the questions serve as invitations for Kelly to acknowledge her part in the accident, and Kelly should take them.

Notice, then, that *Tragic Accident* differs from *Neighbor's Dog* to the extent that, in the former, it's appropriate for Alice to give voice to her blame.[188] More important, though, is that the discussion above points to a difficulty with Scanlon's distinction between blame and objective stigma. In discussing the role of apology Scanlon points out that sometimes the function of an apology is not to admit fault, but rather to affirm (or reaffirm) that there was no fault.[189] We see this in *Tragic Accident*. What that case also shows us, though, is that the reason one apologizes in this way is often in response to blame (rather than objective stigma as Scanlon's analysis would suggest). Consider that one of the ways in which Alice can blame Kelly, is by asserting that "Kelly should have done more" or "should have known that Billy might have been seriously injured." In the case as I've described it Kelly's ignorance and lack of action are not culpable. In blaming Kelly, however, Alice suggests that Kelly might have been culpable. She offers a sort of *pro tanto* evaluation of Kelly that Kelly's apology might (or might not) successfully rebut. This is what makes the standpoint Alice adopts a clear instance of blame rather than objective stigma. More importantly, at least for our purposes, doing so is perfectly appropriate. Although Kelly is not culpable, this fact is not readily apparent. Blame, in other words, is probative in this case. It initiates a dialogue between Alice and Kelly, that puts them on a path towards reconciling themselves to what has happened, even if things will never go back to the way they were before. Part of initiating this conversation, though, is the *pro tanto* evaluation that blame carries with it, and what makes this necessary is that it's the evaluative aspect that compels Kelly to respond to what she has done. Nor is this conversation only something that has to take place

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[188] Of course, there are limits on the extent to which Alice can give voice to her blame and insofar as she does so at all, this might be regrettable. Notice, however, that if pressed we wouldn't tell Alice that she shouldn't blame Kelly. Rather we would remind her that Kelly hadn't done anything wrong and we would encourage her to forgive Kelly on the grounds that doing so would make both of their lives go better. Eventually, a good friend might tell Alice that she should no longer blame Kelly. Even in this case, though, the friend wouldn't necessarily tell Alice that she shouldn't have ever blamed Kelly. Instead she would simply prod her to move on, or at least to conceal her attitudes going forward.

[189] See Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame*, 150.

between parties. The same dynamic is likely to arise in the internal monologue that Kelly is apt have with herself in such a case. This is because, from her own perspective, Kelly's culpability (or lack thereof) will not be entirely apparent either. It's always possible that she should have done more to prevent Billy's death – certainly she could have – and so when Kelly blames herself it's reasonable to assume that she's offering the very same sort of *pro tanto* evaluation of her actions that Alice is.[190]

Having pointed to the importance of *pro tanto* evaluations in initiating conversations that allow us to reconcile ourselves to accidents, it's important to note that the willingness to subject one's self to scrutiny in this way is indicative of one's status as a mature moral agent who appreciates her moral and epistemic fallibility. The fact that our intentions are often opaque, and that we live in a world where things do not always turn out as might have anticipated, makes this all the more true. If I am right, then, and in the cases described above it is blame and not something else like objective stigma that is appropriate, this suggests that it's a mistake to associate the notions of blameworthiness, in particular, and blame warranting responsibility, more generally, with the all things considered judgment that a blameworthy individual has done something wrong. The argument for this is straightforward. If it is sometimes appropriate for us to blame people like Joe and Kelly, then it makes sense to say that Joe, Kelly, and others like them, deserve to be blamed.

This, of course, is not a necessary or analytical truth. It may be that what it is acceptable for some persons to do to others is not always deserved and, indeed, the problem often thought to be posed by the existence of moral luck is sometimes diagnosed along these lines.[191] Embracing this sort of asymmetry is not easy though. Nor

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[190] The same is likely to be true of Mary. We can imagine her blaming herself, for instance, for not having done more to ensure that her dog didn't get out of the yard, even though she had no reason to think that the dog could (or would) jump the fence. In this case the blame is indicative of the fact that she could have done more – built a larger fence, say – even if she shouldn't have been expected to do so.

[191] See, for example, Brian Rosebury's discussion of moral luck in "Moral Responsibility and 'Moral Luck.'" There Rosebury argues that because our moral practices are imbedded in non-

is it entirely satisfying. Among other things, when the justification of a judgment or attitude like blame depends on the perspective one takes we're left with no final answer to the question of whether blame really is appropriate or not. Also worrisome is that it makes it harder to understand the expectation of apology. While it's easy to see why an individual who is being blamed for an accident would apologize in order to avoid future sanctions, it's hard to see why she *should* apologize if she doesn't actually deserve to be blamed. Given the important role that apologies play in allowing the parties affected by accidents to move on, this an unfortunate result. Furthermore, accepting the idea that blame and blameworthiness can come apart threatens to undermine the ability of apologies to provide individuals with a way of expressing their concern for others in the aftermath of accidents. This is because the drive to apologize would now at least appear to be driven primarily by the desire to appease the affected party and, as anyone who has ever chastised a child will recognize, apologies of this sort tend to ring hollow.

Perhaps most important, though, is that it's hard to deny that individuals who cause accidents deserve to be blamed given that these individuals so often sympathize with the idea that this is something that they do, in fact, deserve. As I suggested in section 2, agent's regret is often called for in the aftermath of serious accidents, and even when it's not it is usually still appropriate. This is significant because, although agent's regret can sometimes degenerate into the sort of guilt that it is easy to say is unwarranted, it's far harder to distance ourselves from the desire to atone and the sense of ill desert that normally characterizes regret. Indeed, as I hope my discussion up to this point has conveyed, to do so would be to reveal one's self to be callous and self-absorbed – someone unmoved by the suffering of others.

And, yet, despite the considerations sketched above, many are likely to protest

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ideal epistemic conditions the problem of moral luck is that the individuals being subjected to moral assessment of various sorts don't always deserve to be assessed in the ways that it is appropriate for others to assess them. While I do not agree with all of the conclusions he draws, Rosebury's argument is also important for its insightful discussion of the importance of reflecting on our own fallibility when we assess the actions of both ourselves and others.

that the view I've defended does violence to the deep-seated intuition that blameworthiness and wrongdoing or quality of will are intimately related. On closer inspection, though, we can see that this is not actually the case. First, notice that when we blame probatively the question at hand is whether one might have done something wrong, and even when we aren't probing it can be hard to distinguish probative blame from the sort of deployment of the blaming emotions that we use to convey that an individual has done something that demands acknowledgement of some sort. Furthermore, as all three of our case studies have illustrated, even when it's clear that one hasn't done anything wrong, one's willingness to accept responsibility for the things that she has done, or that circumstances have conspired to associate her with, is indicative of the regard she has for others. Similarly, accepting the idea that we can be blameworthy without having done anything that implicates the quality of our will need not suggest that we are vulnerable to the full range of reactive attitudes. Nor is this surprising. Even when one is blameworthy in a sense that implicates the quality of her will, the reactive attitudes she is vulnerable to will depend on exactly how her will was defective.[192]

Finally, notice that everything I've said is consistent with the claim that core cases of blame warranting responsibility are still best understood, as traditional views would have it, along the lines sketched in section I. All I have defended here is the claim that the four conditions I laid out in section I are not in fact necessary for blame warranting responsibility. While this is a major departure from traditional views, it is not so large in light of the widespread disagreement among philosophers regarding what the precise necessary (or sufficient) conditions for moral responsibility actually are.[193] With this in mind, in lieu of concluding with a few brief summary remarks, let me instead conclude by noting that carving up the terrain along the lines I have suggested

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[192] This is something that many philosophers writing about moral responsibility have emphasized, but Shoemaker has been the clearest defender of this sort of view.

[193] Bob Adams, for instance, has powerfully argued against control or freedom being a prerequisite for the sort of blameworthiness associated with holding one another accountable. See his "Involuntary Sins."

seems especially unproblematic if one is persuaded by the Strawsonian idea that the reactive attitudes and the practices that subsume them are at least partly constitutive of what it is to be morally responsible. If one takes this idea seriously, then it's certainly reasonable to take the judgments about when blame is appropriate that are implicit in our attitudes and practices to be foundational, and to build up an account of blame warranting responsibility out of this. Strawson, of course, sought to explicate the reactive attitudes entirely in terms of the quality of the will, and so the view of moral responsibility defended here is certainly not his. What Strawson did not sufficiently appreciate, though, was the forward-looking role that blame plays in prescribing how we ought to act as a result of what we have done. In this role blame still draws attention to the will, but it does so only prospectively. In other words, blame serves as a reminder that how one responds to what she has done will reflect the quality of her will. And, if I am right that this is arguably the most distinctive aspect of blame, then it would be surprising if the account of blameworthiness we ended up with didn't make room for the idea that we can sometimes be blameworthy even when the fact of our blameworthiness doesn't implicate our character or the quality of our will in any way.

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