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MORAL LUCK AND EQUALITY OF MORAL OPPORTUNITY

‘Since virtue is to do with feelings and actions, and since voluntary feelings and actions are praised and blamed ... presumably anyone considering virtue must determine the limits of the voluntary and the involuntary.’ (Aristotle)

‘[W]e should recognize, and we can perfectly well recognize, that the idea of the voluntary is essentially superficial.’ (Bernard Williams)

I

The Problem. In recent times, the issue of moral luck has come to the attention of philosophers primarily through a debate between Bernard Williams (1981) and Thomas Nagel (1979). The philosophical elements of the problem, however, were in place at least as early as the Hellenistic period, and the problem itself was fully recognized by Abelard.¹ By the eighteenth century, Adam Smith was in a position to state it as follows (Smith 1982, II.iii.intro.1-5):

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...

That the last two of these three circumstances cannot be the foundation of any praise or blame is abundantly evident... The external action or movement of the body is often the same in the most innocent and in the most

¹ See Kidd 1978, esp. pp. 247-8, 257; Macintyre 1981, pp. 156-9; Abelard 1971, 48.13-30; King 1995.

blameable actions... The consequences which actually, and in fact, happen to proceed from any action are, if possible, still more indifferent either to praise or blame, than even the external movement of the body. As they depend, not upon the agent, but upon fortune, they cannot be the proper foundation for any sentiment, of which his character and conduct are the objects. ... To the intention or affection of the heart, therefore ... all praise and blame ..., which can justly be bestowed upon any action, must ultimately belong.

When this maxim is thus proposed, in abstract and general terms, there is nobody who does not agree to it. Its self-evident justice is acknowledged by all the world But how well soever we may seem to be persuaded of the truth of this 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.

Now consider the following case, adapted from Nagel (1979, p. 25):

The reckless drivers. Two drivers, through culpable lack of attention, fail to notice a red traffic light. The unlucky driver kills a pedestrian who has started to cross the road. The lucky driver does not, but only because there is no pedestrian for her to hit. All else is equal.

As Smith implies, in this case the unlucky driver would in fact be blamed a good deal more than the lucky one, and this greater degree of blame would not be thought inappropriate or undeserved. Since in general degree of blame tracks degree of wrongness, it seems that what we might call our *result-sensitive sentiments* incline us to the view that the unlucky driver has committed a significantly greater wrong than the lucky one. And we expect that the unlucky driver will, quite reasonably, be

wracked with guilt, while the lucky one – if she becomes aware of what she has done – will feel if anything merely a twinge of guilt, mixed with relief. Hence the problem of moral luck: these views about blameworthiness, wrongness, and guilt appear to be in straightforward contradiction with Smith’s ‘equitable maxim’, according to which blame should depend only on the ‘intention or affection of the heart’. We have to choose, and if we select the equitable maxim then we must conclude that our everyday responses to cases like that of the Reckless Drivers are deeply and worryingly mistaken.

Smith’s own solution to the problem is essentially consequentialist (1982, II.iii.3.2-6). If we resented all intentions equally, regardless of their success, we would descend into a culture of deep and invasive blame and punishment, in which not even the most innocent conduct would be safe, since bad intentions might still be suspected. Further, rewarding actual success more than merely intended success will encourage people to try harder to succeed, and punishing actual harm more than merely intended harm will motivate agents to take greater care than they otherwise would to avoid bad outcomes, such as unintended killings.

Whether or not Smith is right about the benefits that flow from this ‘irregularity of sentiments’ is by the by, since his solution faces problems independent of that claim. Smith’s position is that genuinely just praise and blame correlate with intentions rather than outcomes, but that to promote human happiness overall we should allow ourselves to praise and blame outcomes rather than intentions.² Smith’s only (implicit) argument for the view that justice is

² I agree with Hankins (2016, p. 728) that Smith is not merely ‘apologizing’ for the irregular sentiments, but believes judgements based on them to be appropriate. But they are appropriate only in so far as they are practically justified; in themselves, as the equitable maxim makes clear, they are not ‘fitting’, but indeed ‘irregular’. As Hankins goes on to note, Smith’s impartial spectator endorses these views. But the same question arises for the spectator concerning the priority given to utility over justice. I cannot agree with Hankins’s suggestion (2016, p. 734) that, according to Smith, ‘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’, unless the kind of blameworthiness Hankins has in mind is to be understood in terms of mere practical appropriateness. As we have seen, Smith thinks it ‘abundantly evident’ that only an agent’s intentions can be the ground for blame.

trumped by utility here is that, since our sentiments are as they are, we can assume that they are evidence of God's intentions, and so in line with moral truth. But many theists will jibe at the idea of God as a promoter of injustice.³ And many, whether theist or not, will refuse to give up the thought that the difference in our responses to each of the two reckless drivers is neither unjust nor unreasonable, independently of consequences.

II

The Scope of the Problem. Smith, as we have seen, is in the end quite relaxed about moral luck. Williams and Nagel are significantly less so.

According to Williams:

The attempt [to escape luck] is so intimate to our notion of morality ... that its failure may rather make us consider whether we should not give up that notion [i.e. morality] altogether. (Williams 1981, p. 22)

Williams goes on, however, to allow that, though we have to give up the idea that morality is immune to luck (1981, p. 21), and hence the equitable maxim, we can retain a narrower – and less clearly bounded -- conception of morality which will sit alongside other sources of justifications for action, themselves vulnerable to luck.⁴

Nagel's conclusion is more pessimistic:

I believe that in a sense the problem has no solution, because something in the idea of agency is incompatible with actions being events, or people being things. But as the external determinants of what someone has done are

³ Even if any mundane injustice will be compensated for in the afterlife, as Smith believed it would be.

⁴ Williams 1981, esp. 39. It is interesting to note that Williams appears unsettled by his own conclusions. At p. 21 he admits that he finds the truth that morality is subject to constitutive luck a bitter one.

gradually exposed, in their effect on consequences, character, and choice itself, it becomes gradually clear that actions are events and people things. 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. (Nagel 1979, p. 37)

One reason Williams and Nagel are more worried than Smith about moral luck is that they see the scope of the phenomenon itself as being significantly wider. Both of them correctly cite Kant as another defender of a version of the equitable maxim (Williams 1981, pp. 20-22; Nagel 1979, pp. 24-5):⁵

The good will is not good because of what it effects or accomplishes or because of its adequacy to achieve some proposed end; it is good only because of its willing, i.e., it is good of itself... Even if it should happen that, by a particularly unfortunate fate or by the niggardly provision of a step motherly nature, this will should be wholly lacking in power to accomplish its purpose, and if even the greatest effort should not avail it to achieve anything of its end, and if there remained only the good will (not as a mere wish but as the summoning of all the means in our power), it would sparkle like a jewel in its own right, as something that had its full worth in itself. Usefulness or fruitlessness can neither diminish nor augment this worth. (Kant 1964, sect. 1, para. 3; quoted by Nagel at 1979, p. 24)

Smith's primary concern is with what Michael Zimmerman has called 'resultant luck' (1987, p. 376), with, as Nagel puts it, 'luck in the way one's actions and projects turn out' (1979, p. 28).⁶ The reference in the first sentence of this

⁵ This may, however, be a version limited only to the good will: see Gardner 2004, pp. 63-6.

⁶ Smith recognizes the influence of circumstantial luck on a person's achievements, describing the case of a general prevented by the envy of others from gaining a great victory (1982, II.iii.2.3). The role

passage to what the good will can accomplish suggests that Kant also is speaking here of resultant luck, and indeed Williams sums up Kant's view as that 'in action it is not changes actually effected in the world, but intention' that counts (1981, pp. 20-1). But Williams goes on immediately to suggest that Kant's view commits him also to the idea that there is no 'constitutive' luck, the luck that the ancients believed one had if one were a sage and so able to achieve happiness, because '[t]he capacity for moral agency is supposedly present to any rational agent whatsoever'. It is not clear, however, that the problem Smith was discussing arises in the case of constitutive luck, that is, luck in the kind of person one is. Consider the following case:

The reckless driver and the careful driver. Two drivers approach different red lights. One, through culpable lack of attention, fails to notice the light and kills a pedestrian who has started to cross the road. The other, who would otherwise have killed a pedestrian, stops in time. All else is equal.

Imagine that the careful driver has a naturally attentive disposition, strengthened through excellent training, while the reckless driver lacks both disposition and training. Even if we assume that the reckless driver is not responsible for her being the kind of person she is, with the kind of training she has, we are not moved by the equitable maxim to judge the actions of both drivers as morally equivalent in all relevant respects. The case is quite different from one in which, for example, the killer is as well trained and usually as careful as the non-killer, but is driving badly as a result of being hypnotized against her will.⁷

In his own discussion of Kant, Nagel also moves beyond resultant luck. Having offered the case of the reckless drivers, he continues:

of luck in achievement receives far less attention in the literature than moral luck, though it is central to Williams's famous discussion of the artist he rather misleadingly calls 'Gauguin'.

⁷ This is not to say that a hypnotized driver who kills may not feel 'agent-regret', on which see below.

What we do is also limited by the opportunities and choices with which we are faced, and these are largely determined by factors beyond our control. Someone who was an officer in a concentration camp might have led a quiet and harmless life if the Nazis had never come to power in Germany. And someone who led a quiet and harmless life in Argentina might have become an officer in a concentration camp if he had not left Germany for business reasons in 1930. (Nagel 1979, pp. 25-6)

This is what Nagel calls 'circumstantial luck', luck in 'the kind of problems and situations one faces' (1979, pp, 28; 34, n. 9).⁸ He discusses it along with resultant luck because he sees both as ruled out by the 'intuitively plausible' view that 'people cannot be morally assessed for what is not their fault, or for what is due to factors beyond their control' (1979, p. 25). I am not sure whether to take Nagel's 'or' here as epexegetic. Some evidence for its being so is provided by his going on, without reference to fault, to characterize moral luck as arising in cases in which we treat someone as an object of moral judgement when a significant aspect of what he does 'depends on factors beyond his control' (1979, p. 26). But morally assessing someone for something that is not their fault is only one kind of morally assessing someone for something due to a factor beyond their control.⁹ Just as in the case of constitutive luck we will not accept the plea of the reckless driver that she should be judged no more harshly than the careful driver, so will we not allow a Nazi off the moral hook because he is not responsible for the rise of Nazism.

It is true that thoughts such as 'There but for the Grace of God go I' occur to many of us in such cases. These thoughts do sometimes mitigate our responses; but they do not entirely undermine them. They may also support the attribution of equality of moral worth between oneself and others, such as the reckless driver or

⁸ If one's being a certain kind of person counts as one's being in a situation, then constitutive luck turns out to be a form of circumstantial.

⁹ See Russell 1999, p. 49.

even the Nazi : ‘if I’d been in his position, I might well have done the same’. But equality of moral character does not imply equality of moral status in actual decisions, intentions, or actions. The equitable maxim cannot be extended to these cases, because morality concerns itself directly with an agent’s decisions in the circumstances in which she finds herself.

III

Volitionalism. The traditional problem of resultant luck remains, and this kind of luck is indeed central in Williams’s discussion. In a later ‘Postscript’ to his original paper, Williams suggests that an ‘Aristotelian emphasis in ethics’ would not run into the same difficulties with moral luck (1993a, p. 252). Might that be a reason for developing such an emphasis?

Aristotle certainly allows for circumstantial moral luck. Though strictly only the virtuous man should be honoured, a virtuous man who is also well-born, powerful, or wealthy is thought more worthy of honour (Aristotle 1894, 4.3, 1124a20-6). (I take it that Aristotle is endorsing this thought, since he explicitly rejects the idea that non-virtuous people with these advantages should be honoured.) Honour can be compared to a ‘prize’, justly won by the virtuous man for his noble deeds (8.14, 1163b2-4). Aristotle also permits constitutive luck. Being born non- Greek, or suffering from disease or disability, can make one brutish, and hence incapable of virtue or indeed vice.¹⁰

But what about resultant luck? As Anthony Kenny notes (1992, pp. 78-9), Aristotle seems never explicitly to consider it. That is one reason to think he would not have found it problematic. Another is the analogy between nobility and a prize. Prizes are not usually awarded for effort. As Nagel puts it, ‘The Nobel prize is not awarded to people who turn out to be wrong, no matter how brilliant their

¹⁰ 1894, 7.1, 1145a30-2. I take it that because the state of a god, with superhuman virtue, is more honourable than the possession of mere virtue, so brutishness is more dishonourable than mere vice.

reasoning' (1979, p. 36, n. 11). As we saw, Smith recognized the equitable maxim in theory, but recommended that we ignore it in practice; Aristotle does not even recognize it in theory. One way to avoid running into a problem is to ignore it; but that does not make the problem go away.

Aristotle recognized the importance of voluntariness in any plausible account of acting virtuously or viciously, rightly or wrongly. What he failed to note in the *Nicomachean Ethics* was that the focus of ethical judgements is not actions which are willed, but willing, in a broad sense, itself.¹¹ Morality, as a rational enterprise, is best understood as volitional – as focusing on what Strawson called the 'quality of others' wills towards us' – where the relevant quality is the wrongness or the rightness of the willing in question.¹² And the quality of will we find in the case of each reckless driver is exactly the same.

At this point, a defender of traditional act-based morality may object along the following lines to Smith's original argument. Smith excludes bodily movement from the focus of morality because allegedly objectionable bodily movement is often innocent: 'He who shoots a bird, and he who shoots a man, both of them perform the

¹¹ For an argument that Aristotle's position in the *EN* allows less room for moral luck than writers such as Williams have claimed, see Farwell 1994. Farwell suggests (p. 46) that, since a virtuous action is a *praxis*, an end in itself, its success need not be understood retrospectively. But Aristotle might have claimed that what kind of *praxis* some action is depends on events beyond the agent's control.

Interestingly, in the *Eudemian Ethics*, usually considered an earlier work, Aristotle does appear to offer something closer to a form of volitionalism:

[W]e all offer praise and blame looking more at the choice than the actual deeds (though, even so, the actual exercise of the virtue is more worth having than the virtue itself), because men do bad acts when forced to do so, but no one chooses under those conditions. Another thing is that it is because it is not easy to discern what sort of choice it is that we are forced to judge from the deeds what sort of person someone is. So the activity is more worth having, but the choice is commended more. (Aristotle 1992, 2.11, 1228a11-18)

Aristotle does not seem here to have resultant luck in mind. The main claim of the chapter closed by this passage is that virtue and vice are a matter of a person's final end, and he is adducing to support that claim the fact that our praise and blame focus on people's choices rather than their deeds. But the example he gives is not that of resultant luck, but of involuntary bad actions that do not result in our blaming the agent. Nevertheless, the volitionalism expressed here could be used as the basis for accepting Smith's equitable maxim. Such an Aristotelian position of course will not enable us to avoid the problem of moral luck.

¹² Strawson 1982, p. 70; see Wallace 1994, p. 128.

same external movement: each of them draws the trigger of a gun' (Smith 1982, II.iii.intro.2) . But Smith is ignoring the plain fact that actions can be described in many ways, and it is no objection to claiming a moral difference under one description that there is some other description without a difference. Indeed Smith's own example illustrates this: one pulling of the trigger is the shooting of a bird (permissible), while the other is the shooting of a man (impermissible).

This objection is a good one. But it is not a serious problem for Smith, since his argument against a focus on consequences – that they depend not on the agent, but on luck – works equally well against a focus on bodily movement, however described. If I fully intend to shoot some innocent person, and will the pulling of the trigger of my gun, that does not guarantee that the trigger will be pulled or the person murdered, since I may, for example, be struck by sudden paralysis. Wrongness and rightness are a matter of what is up to me, and only my will is subject to the relevant kind of control.

But here another objection arises. Inner states, such as an intention or a willing, are themselves just as subject to luck as external bodily movements or consequences. As Nagel puts it: 'Factors beyond the agent's control, like a coughing fit, can interfere with his decisions as surely as they can with the path of a bullet from his gun'.¹³

Note, however, that this is a matter of circumstantial luck, analogous to that of the potential Nazi who moved to Argentina. Morality, as far as blameworthiness is concerned, focuses on what an agent wills in the circumstances in which she finds herself, and the only way in which those circumstances can be brought within the scope of morality is if the will of the agent has played a part in bringing them about. The person who fails to will to murder another because she sneezes at the crucial moment is just as bad a person as she would have been had she not sneezed, and just as bad as a successful murderer, since their moral dispositions are identical. But she

¹³ Nagel, 1979, p. 32; Nagel refers to Feinberg 1962, p. 349.

has not committed the particular wrong of willing a killing, and so cannot be blamed for that (though other of her willings will almost certainly be appropriate objects of blame).¹⁴

Volitionalism, then, involves denying Williams's claim, on its most straightforward interpretation, that 'it is in the nature of action ... that one's life could not be partitioned into some things that one does intentionally and other things that merely happen to one' (1993b, p. 70). Williams is here speaking of the regret an agent herself may feel for the way she acted, even if she deliberated as well as she could beforehand. So it may be that his 'could' here is a reference to psychological possibility: given the nature of our sentiments, the unlucky driver will be quite unable to view her action in the same light as the lucky driver views hers. This may be so, though it is surely equally true that our sentiments are open to moderation through reflection, and that the unlucky driver's sentiments of guilt may sit alongside rational acceptance of the volitionalist position on her situation. But this fact about the sentiments would anyway be merely an interesting fact about human beings, telling us nothing about how it is reasonable to view our actions.

A passage in 'Moral Luck', however, suggests that Williams's view is a deeper one, concerning the very nature of rationality and agency. In response to the suggestion that the sentiments of the rational person will respond only to what that person intended, Williams suggests:

To insist on such a conception of rationality, moreover, would, apart from other kinds of absurdity, suggest a large falsehood: that we might, if we conducted ourselves clear-headedly enough, entirely detach ourselves from the unintentional aspects of our actions ... and yet still retain our identity and

¹⁴ There may be some difficult boundary cases, in which a person's forming an intention is itself interrupted. I am tempted by the view that the strongest form of volitionalism will limit the scope of morality to the initiating of a willing, if such an initiation can occur at a single moment and hence be uninterrupted. But since such boundary problems arise within act-focused ethics also, they can be set aside for the present. See the conclusion of Nelkin 2013.

character as agents. One's history as an agent is a web in which anything that is the product of the will is surrounded and held up and partly formed by things that are not, in such a way that reflection can go only in one of two directions: either in the direction of saying that responsible agency is a fairly superficial concept, which has a limited use in harmonizing what happens, or else that it is not a superficial concept, but that it cannot ultimately be purified — if one attaches importance to the sense of what one is in terms of what one has done and what in the world one is responsible for, one must accept much that makes its claim on that sense solely in virtue of its being actual. (Williams 1981, pp. 27-8)

Let us assume that we are not speaking of psychological possibility, and that the unlucky driver could indeed fully internalize the volitionalist position on what she has done. The volitionalist position implies a certain view of the identity and character of any agent: that our being agents consists in our capacity for willing. In other words, Williams here appears merely to be objecting to volitionalism that it cannot allow for non-volitionalist positions on rationality, agency, identity, and character. But perhaps these non-volitionalist positions are obviously more attractive? This, as we have seen, cannot be merely asserted, even with appeal to Aristotelian authority, because they involve the denial of the equitable maxim.

Consider Williams's dilemma concerning the direction of reflection. The volitionalist will prefer the first horn, on which agency is 'purified' of elements independent of the agent's will. Williams objects that such a conception of agency will be superficial, since it is not helpful for 'harmonizing what happens'. In cases of resultant luck, however, harmony between the equitable maxim and the views of responsibility implied by our result-sensitive sentiments is impossible, since they are contradictory. We have to choose between them, and in the following section I shall argue that a case can be made for rejecting views based on these sentiments in favour of the equitable maxim.

IV

Agent-regret and the Piacular. Morality is best understood as volitional, as a set of norms governing willing, construed broadly to include relevant forms of intending, deciding, choosing, and so on. And on this conception, the two reckless drivers have acted equally wrongly and are hence equally blameworthy. But the fact remains that this conclusion is radically at odds with our result-sensitive sentiments. Those sentiments have evolutionary, cultural, political, and other histories. One possible source of legitimacy for the equitable maxim might be the failure of result-sensitive sentiments to stand up to scrutiny of their origins.

Note first that earlier forms of morality incorporated within them significant elements of strict liability. So it would be not be surprising to find the remnants of such elements within our morality which have not yet been expunged. Consider what Williams called ‘agent-regret’, an idea also recognized by Smith:¹⁵

A man of humanity, who accidentally, and without the smallest degree of blameable negligence, has been the cause of the death of another man, feels himself piacular, though not guilty. During his whole life he considers this accident as one of the greatest misfortunes that could have befallen him. 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

¹⁵ Williams 1981, pp. 27-8. Eric Schliesser (2013, p. 169) distinguishes Williams’s notion from Smith’s, since the piacular involves a kind of shame. But Williams nowhere dissociates agent-regret from shame. One might anyway wish to keep the notions of both piacularity and agent-regret separate from that of the shameful.

much as possible, their, perhaps natural, though no doubt most unjust resentment for the great, though involuntary, offence which he has given them.¹⁶

The piacular is what requires expiation or atonement, and the passage above resonates with what Smith elsewhere says about ‘the violations of chastity in the fair sex’, which could be seen perhaps, as far as the victim’s point of view is concerned, as a case of ‘patient-regret’:

Breach of chastity dishonours irretrievably. No circumstances, no solicitation can excuse it; no sorrow, no repentance atone for it. We are so nice in this respect that even a rape dishonours, and the innocence of the mind cannot, in our imagination, wash out the pollution of the body.¹⁷

The origins of the notion of the piacular are very distant from us, both temporally and culturally, and almost certainly religious. The Old Testament Books of Leviticus and Numbers, for example, contain many references to the need for ritual purification through sacrifice, if, say, one has come into contact with a corpse. Mere contact is enough for pollution: to be wrong, it need not be intentional, voluntary, or negligent. Consider, for example, the Lord’s commands to Moses concerning child-birth:

When a woman conceives and bears a male child, she shall be unclean for seven days, as in the period of her impurity through menstruation... When her days of purification are completed ... she shall bring a yearling ram for a whole-offering and a young pigeon or a turtle-dove for a sin-offering to the

¹⁶ Smith 1982, II.iii.3.5; see also VII.iv.30.

¹⁷ Smith 1982, VII.iv.13. Such patient-regret remains distressingly common, though one hopes that third-party attributions of dishonour in such cases are now rarer. See Lewis 1994, p. 26.

priest ... He shall present it before the LORD and make expiation for her, and she shall be clean from the issue of her blood.¹⁸ (Lev. 12: 1-7, *New English Bible*)

The next chapter goes on to explain how certain kinds of malignant skin-disease are ritually unclean. In general any failure to respect any of the Lord's commands, even if entirely unintentional or indeed unavoidable, is a sin and requires expiation (Num. 15: 22-9). And this will be true of unintentional killing.

Could it really be that the nature of our current sentiments depends on the content of moralities far in the past? In fact, it is hard to see how it could not. Patterns of sentiment once established are, as Williams himself notes, hard, perhaps impossible, to uproot, and this certainly appears to have been the case with those in the western tradition involving pollution.¹⁹ As Mary Douglas pointed out long ago, St Paul's attempt to characterize the Mosaic law as part of the 'old dispensation' and similar moves within the early Church were unable to override the view, strongly supported by sentiment, that bodily states were relevant to ritual. Douglas focuses in particular on the idea of pollution by blood, noting that even the current Roman ritual for purification of a mother probably derives from the kind of Judaic practice outlined above (Douglas 2002: 75-6).

Smith's view, then, is that the apologies and assistance offered to the family of a person one has unintentionally and non-negligently killed are the modern analogue of an animal sacrifice. So Williams is right when he says about the lorry driver in his case of agent-regret:

We feel sorry for the driver, but that sentiment co-exists with, indeed presupposes, that there is something special about his relation to this

¹⁸ *New English Bible* (Oxford and Cambridge: Oxford University Press and Cambridge University Press, 1961), *Lev.* 12.1-7.

¹⁹ There are of course further (often non-competing) accounts available of the evolution of such sentiments themselves, including the emotion often felt at pollution – disgust; see e.g. Guttierrez and Giner-Sorolla 2007, pp. 853-68; Kelly 2013.

happening, something which cannot merely be eliminated by the consideration that it was not his fault.

The special relation in question is most plausibly seen as involving a secularized version of the notion of ritual uncleanness and pollution. And if we accept this account of the origin of our sense of the peculiar in such cases, I take it that many would see it as providing the basis for a debunking argument credible enough at least to put the onus of justification on the defenders of the result-sensitive sentiments in these cases.²⁰ Particularly in the case of patient-regret, perhaps, we will consider any hostile feelings directed at the victim to be, however natural to us, nevertheless inappropriate, unjustified, unjust, and unfair. And this enables us to see that the feelings involved in agent-regret are also inappropriate.²¹

But what about cases such as the Reckless Drivers? The most parsimonious account of the difference in our moral sentiments about the two drivers is that the *same* manifestation of the special relation arises in the case of the unlucky driver as in cases of the peculiar or agent-regret. And that sense is no more defensible here. The question remains why that special relation arose in the first place. The answer is no doubt complex, but will involve explanations of why certain states of the world have been held to *implicate* certain individuals. Just as touching a corpse, for example, may implicate and pollute me, so my action's causing a death – perhaps entirely blamelessly and accidentally -- may do the same. And a structurally similar

²⁰ Scanlon (2008, pp. 128, 148-50) suggests that our responses in cases of agent-regret or moral luck are appropriate, since our relationships with ourselves or the relevant others (such as the killer driver) have changed. But this leaves uninvestigated the prior question whether those changes are themselves appropriate.

²¹ In a fascinating recent paper, Simon Blackburn suggests (2015, p. 231) that in such cases 'the innocent agent of misfortune can regard herself as having been cursed, and feel peculiar, and offer apologies and atonement', and it is clear that he finds such a response reasonable, even though the agent is indeed innocent: 'nobody should be lighthearted about their involvement in bringing misfortune on themselves or others'. The volitionalist is asking us to revise our understanding of just what such 'involvement' consists in, and will also wish to reject Susan Wolf's suggestion (2001, p. 13) that there is virtue in what one might call an 'entangled' agent's taking responsibility for more than she is actually responsible for.

explanation is available also for 'positive' result-sensitive attitudes. There is a positive correlate to negative agent-regret, in what Smith calls 'a shadow of merit' or what we might describe as 'agent-satisfaction'. Consider the following case:

The School Saviour. A driver is backing her car out of her drive when she non-negligently and unknowingly runs over what turns out to be a small electronic detonator. The police find that her action has saved all the children in her local primary school from being killed by a terrorist bomb.

When asked by her partner that evening how her day has gone, this woman might proudly say: 'I saved hundreds of local children!'. If invited to a celebration at the school, she will be treated as a heroine (giving rise, perhaps, to 'patient-satisfaction').

The same kind of implication or entanglement arises also in the relation between our intentions and the world. If I intentionally seek to bring about the death of an innocent person, that willing is forbidden by morality. If the death occurs as a result of my willing, then I am obviously implicated in it. But morality requires us, in assessing the moral quality of actions, to disentangle agents and their intentions from the events in the world arising from those intentions, whether those events be bad or good.

V

Volitionalism: Implications, Objections, Prospects. What follows from a volitionalist conception of morality? We have already seen that its implications for negligence are revisionary: the two drivers are equally in the wrong, and hence equally blameworthy. This will be true also in cases of failed attempts and decisions under uncertainty. Consider:

The Assassins. Two assassins, using pistols, try to kill a democratically elected and virtuous leader. One assassin succeeds; the other fails, because a rock falls between her and the leader, deflecting the bullet. All else is equal.

The Reckless Archers. Two archers test their bows by shooting an arrow into woodland, knowing there is a small chance that they may kill someone. One does kill someone; the other does not, because there is no one in that part of the wood. All else is equal.

Volitional morality also, of course, restricts the scope of direct moral assessments of blameworthiness and praiseworthiness to volitions alone. Aristotle, for example, should not have allowed feelings as objects of strictly moral blame and praise, since feelings themselves can be neither right nor wrong. We may blame a vicious person for having made decisions in the past which have led her now to experience certain feelings that play a role in explaining the decisions she is now making.²² But all she can be blamed or praised for are her decisions, those in the past and those now. This is not to say that feelings, motives, dispositions, attitudes, thoughts, desires, and many other items cannot be criticized. Malevolent feelings or racist thoughts, for example, may be horrible, disgusting, perhaps downright evil. But they are not wrong, and it is a mistake to blame people for them, as opposed to decisions they have made or failed to make in relation to them. Further, such criticism can be deeply hurtful, and anyone employing it should ensure that they are not thereby unjustly punishing the innocent, or at least excessively punishing the guilty.

Should we try to reform our sentiments and attitudes? Certainly not all such reform is to be regretted: consider, for example, the change in our attitudes towards rape victims since the time of Smith. And we should seek to dispel any mistaken

²² See Aristotle 1894: 3.5.

beliefs that may have arisen out of our result-sensitive sentiments. Our two reckless drivers act equally wrongly, and we should believe that.

But how we *express* blame and other sentiments is a separate matter, and there may well be, as Smith himself believed, powerful pragmatic arguments for our retaining the idea of the peculiar and related notions involving an agent's entanglement with the world in some areas of our lives, including the moral assessment of negligence. For example, it may be that there is some kind of consequentialist justification, perhaps based on the value of deterrence, for expecting those who have harmed others, even if entirely innocently, to provide compensation. But such pragmatic arguments do not themselves raise problems of moral luck. Rather, as I noted above in criticism of Smith, they require an account of why utility trumps justice in the cases in question.

Perhaps the most serious objection to volitionalism is that it constitutes a profoundly unfair conception of the moral world; indeed it may be that this is partly what Nagel had in mind in refusing to tolerate circumstantial luck. Imagine, for the sake of argument, that morality consists in a set of divine commands governing the wills of human agents, and that disobeying these commands will be severely punished in the afterlife. If it were equally easy for each human agent to keep the commands, so that each had an equal chance to avoid the punishment, this system could not be criticized on grounds of equal opportunity. But in our world opportunities are far from equal. It was far easier for the German who left his country in the 1930s to remain morally untainted than the one who stayed behind.²³

²³ This is a problem even for a form of the volitionalist view suggested to me by Ralf Bader which seeks to neutralize circumstantial luck by equalizing available moral worth across the option sets open to agents whatever their circumstances (for example, the best option for the agent in Germany – working for the White Rose movement, say – would be morally equivalent to the best option for the agent in Argentina – say, helping with teaching reading at her local school – and the moral value of each option would decrease proportionally the lower its place on the ranking) (we have to assume that the agent in Argentina had a 'quiet life' because she was not in a position actively to oppose the injustice and corruption rife during that country's 'infamous decade'). What is required for true equality of moral opportunity is equal opportunity at equal cost.

The volitionalist need not be silenced by this objection. First, she can make an Aristotelian or indeed Kantian point: it is true, equally true, of each agent that she can make the right choices on each occasion. Second, the difficulties of making certain choices can be taken into account. A harder choice may be more praiseworthy, so to this extent the circumstantial bad moral luck of the man who stayed in Germany was counterbalanced by the greater moral opportunities available to him. And as it becomes more difficult to make the correct choice, so it becomes a lesser wrong not to make it.

Finally, and most importantly, the volitionalist can point to the significance of the distinction between wrongness on the one hand, and blame and punishment on the other. The central claim of volitionalism is that moral principles govern our wills. A secondary claim will be that the sentiment of blame is an appropriate response to wrongness,²⁴ and that degree of blameworthiness tracks degree of wrongness. One important component of blame is a belief attributing wrongness and degree of wrongness, so understanding the tracking relation here is straightforward. But blame can also involve the emotions, and in particular the emotion of anger.²⁵ Here the volitionalist can, though she is not required to, allow that degree of anger-worthiness also correlates with degree of wrongness. Note that so far it could not be said that volitionalism is objectionably violating a principle of equal opportunity.

At this point, we have to consider the punitive aspects of blame and other reactive attitudes to perceived wrongdoers. Here there are different options open to the volitionalist. At one end of the spectrum is the hard-nosed position that moral equality of opportunity is entirely insignificant. There is no 'cosmic justice': any violation of a moral principle demands appropriate punishment, and it was just bad

²⁴ See Wallace 1994, p. 64.

²⁵ Graham (2014, p. 389) claims that blame is 'at its core, an emotional matter'. But since the emotion is itself a response to (perceived) wrongness, it is unwise to give it priority over its object. The word itself developed from the Late Latin *blasphemare*, meaning 'to reproach', and it is interesting to note that the Oxford English Dictionary makes no reference to any emotion or feeling of blame in its definitions of either the noun or the verb, its first definition of the verb being 'to find fault with'. I suggest that any plausible account of the intrinsic appropriateness of the blame-feeling will include a requirement that, other things being equal, it correlate with degree of perceived wrongness.

(non-moral) luck for certain individuals that they found themselves caught up in the Nazi war-machine rather than in Argentina. According to a more moderate position, considerations of equal opportunity have *some* weight in determining the degree of punishment appropriate for any wrongdoing. This is where the thought ‘There but for the grace of God ...’ may have its effect. At the other end of the spectrum is radical rejection of punishment. Return again to the idea of morality as divine command. There is nothing to prevent a volitionalist’s suggesting that the best version of divine command theory will involve God’s making appropriate assessments of wrongness, and feeling appropriate anger, but then, at least partly out of concern for equality of opportunity, being entirely forgiving and merciful to all sinners. And a volitionalist might recommend similar reforms to our judicial and non-judicial punitive practices in secular ethics.

Both the merciful and the moderate position seem to me unattractive, since they allow degree of punishment to depend on an irrelevant consideration – the moral opportunities available to others. So if volitionalism is the best account of morality, and the best form of volitionalism is hard-nosed, one should be a hard-nosed volitionalist -- unless one wants to follow Williams and consider rejecting the very idea of volitionalist morality altogether.^{26,27}

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²⁶ This is, I take it, the natural direction for consequentialists to move in. For them, willings, intentions, actions, and so on will all be events like any other, to be, as Nagel puts it (see above), ‘deplored or celebrated, but not blamed or praised’ (or not blamed or praised except in so far as such blame or praise has good consequences). Consequentialism is a normative theory, but it is not a moral theory like those of, say, Aristotle or Kant.

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