Why Two Recent Attempts to Rescue Constitutive Luck Do Not Work

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According to Rescher, luck is chancy, but constitution is not, and, thus, constitutive luck is a contradiction in terms. In this paper, I look at two recent attempts to controvert this argument. According to the first, constitution is not chancy, but neither is moral luck, because moral luck is not a species of luck. According to the second, moral luck is chancy, but constitution is too, because the comparative class is not the agent herself but rather the population at large. I argue that neither of these attempts is successful. I begin by explaining the importance of constitutive luck and the context in which Rescher's claim arises.

Section 1: The Moral Luck Regress Argument

In Nagel's famous article on moral luck, he introduces a four-way distinction between resultant luck, circumstantial luck, constitutive luck, and causal luck.[1] One reason why this classificatory scheme makes sense is that it seems to offer a mutually exclusive and completely exhaustive way to carve moral luck at its joints.[2] Resultant luck is future-oriented; it is when there is legitimate moral assessment based on the un/lucky results of an agent's actions. Circumstantial and constitutive luck are present-oriented; the former is when there is legitimate moral assessment based on an agent's un/lucky circumstances, and the latter is when there is legitimate moral assessment based on the un/lucky constitution that is acted out in those circumstances. Causal luck is past-oriented; it is when there is legitimate moral assessment based on the causal antecedents of an agent's actions.

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[1] Thomas Nagel, *Mortal Questions* (Cambridge: Cambridge University Press, 1979).

[2] It is worth noting that there is pushback about this. Those who doubt whether Nagel's classifications are mutually exclusive usually argue that causal luck is redundant, exhausted by constitutive and circumstantial luck (Dana Kay Nelkin, 'Moral luck', *The Stanford Encyclopedia of Philosophy* (Winter 2013 Edition), edited by Edward N. Zalta, section 4.2.2.1; but see Samuel Kahn, 'Kant's Philosophy of Moral Luck', *Sophia* 60 (2021), pp. 365-387, at note 31). Those who doubt whether the scheme is exhaustive usually propose new categories of moral luck, such as associative luck (e.g., Daniel Telech, 'Relation-Regret and Associative Luck', in *Agency, Fate and Luck*, edited by Andras Szigeti and Talbert Matthew (Oxford: Oxford University Press, 2022, pp. 236-267); but see Samuel Kahn, 'The Thirsty Traveler and Luck-Free Moral Luck', *Problemos* 105 (2024), pp. 102-115).

But, there is another reason why this classificatory scheme makes sense: it falls out of the regress argument, a mainstay of those who defend the existence of moral luck.[3] To see how this argument works, we can begin with a classic case of resultant luck:

> Driver-luck: Audrey is driving home late at night. She is drunk. As she rounds the corner to her house, a child darts into the road in pursuit of a firefly. Audrey slams on the breaks, but her reaction time is depressed on account of the alcohol. Her car slams into the child.

Those who affirm the existence of moral luck argue that, on the one side, Audrey is to blame for hitting the child and, on the other side, the fact that she hit the child is a matter of luck. This latter fact may be seen by imagining Audrey's luckier counterpart, Aubrey, who does everything that Audrey does but makes it home without incident (perhaps the firefly goes in the other direction) and, therefore, is not to blame for hitting the child.

Those who deny moral luck generally dispute the differential moral assessments in cases of resultant luck (Audrey v. Aubrey). One of the most popular strategies is to argue that it is only through the results of an agent's actions that we gain epistemic access to her intentions, which, unlike the actual consequences of those intentions, are the proper object of moral assessment.[4] So (the argument goes), Audrey is no more or less blameworthy than Aubrey, really—it is just that we do not know about Aubrey's blameworthy intention to drive drunk; we only know about Audrey's. And it is in response to this that those who affirm the existence of moral luck take the first step in the regress argument.

Moral luck affirmers argue that it is easy to come up with examples in which an agent's intentions are merely a matter of luck. We can imagine a judge who, as a matter of luck, is offered a bribe.[5] If the judge takes the bribe, we find her more blameworthy than another judge who is just as disposed to take a bribe but, as a matter of luck, never is offered one and, therefore, never forms the intention to do so. Or, to stick with the theme of Driver-luck, we can imagine Audrey's other counterpart, Audrun, who is struck by lightning while standing outside at the party. Whereas Audrey and Aubrey both drive home drunk, Audrun is taken by ambulance to the hospital shortly before she would have formed the intention of driving drunk.

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[3] See Joel Feinberg, 'Problematic Responsibility in Law and Morals', *The Philosophical Review* 71:3 (1962), pp. 340-351, section III; Nagel, *Mortal Questions,* 1979, p. 35; John Greco, 'A Second Paradox Concerning Moral Luck', *Metaphilosophy* 26:1/2 (1995), pp. 81-96, at pp. 87-89; Robert Hartman, *In Defense of Moral Luck* (New York: Routledge, 2017), chapter 1 section 3; Andrew Latus, 'Moral and Epistemic Luck', *Journal of Philosophical Research* 25 (2000), pp. 149-172, section III; Andrew Latus, 'Constitutive Luck', *Metaphilosophy* 34:4 (2003), pp. 460-475, at pp. 461-462; David Enoch, 'Moral Luck and the Law', *Philosophy Compass* 5:1 (2010), pp. 42-54, at p. 45; Sergi Rosell, 'Moral Luck and True Desert', in *Agency, Freedom, and Moral Responsibility*, edited by Andre Buckareff, Carlos Moya, and Sergi Rosell (New York: Palgrave Macmillan, 2015, pp. 116-133); and Andrew Latus, 'Nagel and Williams on Moral Luck', in *The Routledge Handbook of the Philosophy and Psychology of Moral Luck*, edited by Ian Church and Robert Hartman (New York: Routledge, 2019, pp. 105-112), section III, among others.
[4] See Nicholas Rescher, *Luck* (Pittsburgh: University of Pittsburgh Press, 1995), chapter VII, section 4; Norvin Richards, 'Luck and Desert', in *Moral Luck*, edited by Daniel Statman (New York: State University of New York Press, 1993, pp. 167-180); Brian Rosebury, 'Moral Responsibility and "Moral Luck"', *The Philosophical Review* 104:4 (1995), pp. 499-524; Judith Thomson, 'Morality and Bad Luck', in *Moral Luck*, edited by Daniel Statman (New York: State University of New York Press, 1993, pp. 195-216); David Enoch and Andrei Marmor, 'The Case Against Moral Luck', *Law and Philosophy* 26 (2007), pp. 405-436, at pp. 415-416 and 422-424; and Enoch, 'Moral Luck and the Law', p. 47, among others.
[5] This example is from Judith Thomson, 'Morality and Bad Luck', *Metaphilosophy* 20:3/4 (1989), pp. 203-221.

Luck deniers again generally take aim at the moral judgment in such cases. This time, however, instead of appealing to epistemic access to intuitions, luck deniers generally appeal to epistemic access to the dispositions that underlie those intentions.[6] Of course, these dispositions might be latent. But, the argument goes, it is the dispositions that are morally basic, and the only way to determine what someone is truly responsible for is, in fact, by means of precisely the kind of counterfactual reasoning that moral luck affirmers use in order to motivate the existence of moral luck.

And now we take the next step in the regress argument: moral luck affirmers maintain that it is easy to come up with examples in which an agent's dispositions are merely a matter of luck. Imagine two twins, separated at birth in the 1920s. One grows up in Germany and becomes a Nazi. The other grows up in Argentina and becomes an upstanding member of the community.[7] If it is merely a matter of luck which twin went to which family, then it is, arguably, merely a matter of luck that one developed to be a morally abhorrent monster whereas the other developed to be the opposite.[8] Alternatively, to return to Driver-luck, we can imagine another of Audrey's counterparts, Reydau, whose parents, as a matter of bad luck, are killed in a car accident with a drunk driver and who, consequently, does not share Audrey's (or Aubrey's—or Audrun's) disposition to drink and drive. Thus, moral luck affirmers conclude, precisely because an agent's dispositions depend, to some extent, on developmental cues in the agent's environment, and precisely because these cues (and the environment more broadly) can be subject to luck, an agent's dispositions arguably can be subject to luck, and the luck denier's attempts to evade moral luck come up short once again.[9]

Thus far we have regressed from resultant luck to synchronic circumstantial luck and from synchronic circumstantial luck to diachronic (developmental) circumstantial luck.[10] But, we are not quite done. Luck deniers once again deny the moral side of things.

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[6] See Michael Zimmerman, 'Luck and Moral Responsibility', in *Moral Luck*, edited by Daniel Statman (New York: State University of New York Press, 1993, pp. 217-234); 'Taking Luck Seriously', *The Journal of Philosophy* 99:11 (2002), pp. 553-576; 'Moral luck', *Canadian Journal of Philosophy* 36:4 (2006), pp. 585-608; or 'Denying Moral Luck', in *The Routledge Handbook of the Philosophy and Psychology of Moral Luck*, edited by Ian Church and Robert Hartman (New York: Routledge, 2019, pp. 216-226).

[7] This example, a standard one in moral luck debates (see note 10 below), can be grounded in the real-life case of Stöhr and Yufe, a standard example in twin studies (Constance Holden, 'The Genetics of Personality', *Science* 237:4815 (1987), pp. 598-601).

[8] Concealed in the word 'arguably' is a debate about the heritability of luck. See Jennifer Lackey, 'What Luck is Not', *Australasian Journal of Philosophy* 86:2 (2008), pp. 255-267; Neil Levy, 'What, and Where, Luck Is', *Australasian Journal of Philosophy* 87:3 (2009), pp. 489-497; E.J. Coffman, 'Strokes of Luck', *Metaphilosophy* 45:4/5 (2014), pp. 477-508; and E.J. Coffman, *Luck* (New York: Palgrave Macmillan, 2015).

[9] See note 8 above.

[10] The term 'developmental luck', as far as I am aware, was coined by Athanassoulis. However, Athanassoulis thinks that (i) "Nagel does not seem to be aware of (or possibly interested in) the possibility of developmental luck" (Nafsika Athanassoulis, *Morality, Moral Luck and Responsibility* (New York: Palgrave Macmillan), 2005, 177n1), and (ii) "Nagel's original discussion [of circumstantial luck] is slightly narrower...I think the term "developmental" luck, with its broader connotations, captures more of the diverse factors which, along with the situations we come across, shape who we become"(Nafsika, Athanassoulis, 'Aristotle on Constitutive, Developmental, and Resultant Moral Luck', in *The Routledge Handbook of the Philosophy and Psychology of Moral Luck*, edited by Ian Church and Robert Hartman (New York: Routledge, 2019), pp. 13-24, p. 17). But both of these claims are false. Against (i) it will suffice to point out that, in his original moral luck article, Nagel illustrates circumstantial luck with a brief discussion of how life might have gone differently for an officer in a concentration camp "if the Nazis had never come to power" and, correlatively, how someone "who

They might argue that we can distinguish, if not in practice then in principle, between genetic dispositions and non-genetic dispositions.[11] The former, despite being called genetic, need not be biologically encoded. The point, rather, is that the former are essential to an agent's identity, whereas the latter are not, and, on this view, it is the former that ground moral judgment, not the latter. And this prompts the final step in the regress, the appeal to constitutive luck.

Moral luck affirmers argue that agents' constitutions are just as much a matter of luck as the environment in which they develop, the problems and situations they face at any given time, and the results of their actions, and so, once again, the luck denier's attempt to come up with a luck-free zone for moral appraisal has failed. Moreover, in part because of the presence of causal luck in the antecedents of our actions, moral luck affirmers maintain that the very project of excluding luck from morality is foredoomed—in Nagel's memorable words, "[t]he area of genuine agency, and therefore of legitimate moral judgment, seems to shrink under this scrutiny to an extensionless point."[12]

However, luck deniers take a different strategy in response to the appeal to constitutive luck. Instead of denying the moral judgments in constitutive luck (as luck deniers do in response to the other kinds of luck appealed to above), luck deniers take aim at the luck judgments in constitutive luck, denying that agents' constitutions are subject to luck. That is, luck deniers concede that agents' constitutions are the subject of (legitimate) moral appraisal. If, for example, one person is constitutively temperate whereas another is not, then, says the luck denier, the former might be justly praised, and the latter justly censured, on account of this. However, luck deniers point out that, because an agent's constitution is essential to her identity, if we imagine someone with a different constitution, then, ex hypothesi, we are imagining a different person. We cannot imagine a person who is constitutively temperate as intemperate: we might think that we can imagine this, but any such imagining is confused. As Rescher so pithily puts it, "identity precedes luck," for, as the argument goes, an agent can be lucky in regard to something only if that something could have turned out differently, and an agent's constitution—her essential dispositions—cannot have turned out differently. But, if Rescher is right about this, then

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led a quiet and harmless life in Argentina" might have become a Nazi officer had he not emigrated for business reasons in 1930 (Nagel, *Mortal Questions*, 1979, p. 26). Against (ii) it is worth noting that synchronic circumstantial luck, like that involved in the case of the bribe-accepting-judge, need not be developmental. So, developmental luck is a subspecies of circumstantial luck, not the other way around. One last thing: Athanassoulis attributes the term 'situational luck' to Nagel to refer to circumstantial luck. But this attribution is mistaken. The term 'situational luck' is due to Zimmerman, who uses it to refer to non-resultant luck (i.e., the conjunction of circumstantial, constitutive, and causal luck) (Michael Zimmerman, 'Luck and Responsibility', *Ethics* 97:2 (1987), pp. 374-386, at p. 376; Zimmerman is followed in this by Daniel Statman, 'Moral and Epistemic Luck', *Ratio* 4:2 (1991), pp. 146-156, at p. 147).

[11] I should note that, as far as I am aware, the distinction between genetic (in this context: essential) and non-genetic (in this context: non-essential) dispositions is not made, explicitly, in the moral luck literature, which is (sometimes frustratingly) imprecise at this juncture (indeed, some might say that constitutive luck subsumes both genetic and non-genetic dispositions, not merely, as I have it in the main text above, the former). However, I have taken the liberty of imposing this distinction here for three reasons. First, I think that some such distinction is not merely useful, but necessary for the sake of philosophical precision. Second, this kind of distinction seems to be presupposed by Athanassoulis' notion of developmental luck, which applies only to non-genetic dispositions (see note 10 above and the paragraph to which it is appended). Third, my query in this article is Rescher's "identity precedes luck" argument, and this argument, as we shall see in the final paragraphs of this section of the article, gains traction only if we are talking about essential dispositions.

[12] Nagel, *Mortal Questions,* 1979, p. 35.

constitutive luck is an oxymoron, and with it falls one of the main arguments for the existence of moral luck.[13] That is, if constitutive luck is incoherent, then the final step in the regress argument is blocked, and the regress argument collapses, leaving the moral luck affirmer without support.[14] From this we can see how important Rescher's denial of constitutive luck is to the moral luck debate. As Latus puts it:

> If Rescher [and those who follow him] are right that there is no such thing as constitutive luck, it may turn out that the move to basing moral status on character presents us with a luck-free basis of morality after all. If they are right, the sort of luck it seemed might operate at the level of character turns out to be nonexistent. Thus, if their claim about the incoherence of constitutive luck is correct, there may be a solution to the problem of moral luck after all.[15]

It is because of this that moral luck affirmers have tried to respond to Rescher.

In the next two sections of this article, I am going to assess the two main responses to Rescher that have emerged. In section 2, I examine Hartman's argument that, although, as Rescher maintains, constitution is not chancy, moral luck is also not chancy, because moral luck is not a species of luck. In section 3, I examine Latus' argument that, although, as Rescher evidently thinks, moral luck is chancy, constitution is too, provided we have the right comparative class. I maintain that neither of these arguments is successful.

To summarize: Nagel distinguishes four kinds of moral luck: resultant luck, circumstantial luck, constitutive luck, and causal luck. This four-way division falls out of the regress argument, one of the most popular arguments used to show that moral luck is a genuine phenomenon, not conceptually confused or extensionless. In the regress argument, moral luck affirmers maintain that, if someone tries to deny differential moral assessments on the basis of luck in the results of people's actions, then we can regress to differential moral assessments on the basis of luck in people's circumstances; and if someone tries to deny differential moral assessments on the basis of luck in people's circumstances, then we can regress to differential moral assessments on the basis of luck in people's constitutions. Luck deniers, however, try to put a stop to this regress: after denying that we can make legitimate differential moral assessments on the basis of luck in results or circumstances, luck deniers argue that a person's constitution is immune to luck because, to appeal once again to Rescher's words, "identity precedes luck." There have been two recent attempts to rebut Rescher's regress-stopper. One (Hartman's) focuses on the luck part of "identity precedes luck"; the other (Latus') focuses on the identity part of "identity precedes luck." I am going to argue that both strategies fail.

Section 2: Is Moral Luck Non-Chancy?

Hartman maintains that the answer to Rescher's objection is to adopt a control account of moral luck. According to a control account, moral luck involves moral appraisals that are based on things that are outside of an agent's control. Control accounts of moral luck may

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[13] Nicholas, Rescher 'Moral Luck', in *Moral Luck*, edited by Daniel Statman (New York: State University of New York Press, 1993, pp. 141-166), at p. 155; see also his *Luck*, 1995, p. 30 and pp. 156-157.

[14] I am not suggesting, nor should I be read as suggesting, that there are no other arguments, other than the regress argument, that can be given for moral luck, and, indeed, I gesture toward some such arguments at the end of section 2 of this article.

[15] Latus, 'Constitutive Luck', 2003, p. 462.

be contrasted with chanciness accounts, which either build on modal fragility or on probability conditions.[16] Modal accounts say that something is lucky only if it is modally fragile, and probability accounts say that something is lucky only if it is improbable.[17] Control accounts come apart from chanciness accounts when there are events that are outside of an agent's control but not chancy (i.e., that are either modally stable or highly probable) or conversely.

As Hartman argues, adopting a control account of moral luck rescues constitutive luck because, although an agent's constitution is not chancy—that an agent has her essential properties is, by definition, neither improbable nor modally fragile—an agent's constitution is (except, perhaps, in the case of a triple-o God) outside of her control. So, if, as suggested in the previous section of this article, the luck denier concedes that there are legitimate moral appraisals on the basis of agents' constitutions, and if moral luck is understood in terms of lack of control, then even the luck denier must concede the existence of constitutive moral luck.

To see where the problem arises for Hartman, we can begin by noting that control accounts of luck fall prey to the sunrise objection.[18] That is, the sunrise is outside of my

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[16] It is worth pointing out that there are other accounts of luck, other than control accounts and chanciness accounts. For example, Rescher suggests, in some places, that luck should be analyzed in terms of whether something came about by accident, not by design (Rescher, 'Moral Luck', 1993, p. 145, p. 146; *Luck*, 1995, p. 6, p. 32), and, in other places, he suggests that luck should be analyzed epistemically, in terms of whether something is foreseeable (*Luck*, 1995, p. 20, p. 24, p. 25, p. 35, p. 59, p. 62). Teigen suggests that one factor associated with luck "may be undeservedness" (Karl Teigen, 'Luck', *Scandinavian Journal of Psychology* 37 (1996), pp. 156-171, at p. 169), and Levy maintains that the appeal of luck egalitarianism derives from precisely this factor: "Luck egalitarianism is an attractive account of distributive justice because it reflects the extent to which ordinary people tend to think of luck and desert as anticorrelated" (Neil Levy, 'Putting the Luck back into Moral Luck', *Studies in Philosophy* 43 (2019), pp. 59-74, at p. 60); see also Julia Driver, 'Luck and Fortune in Moral Evaluation', in *Contrastivism in Philosophy*, edited by Martijn Blaauw (New York, Routledge, 2013, pp. 154-172), p. 163 and 170n1—I return to luck egalitarianism in section 3 of this article).

[17] According to Hales, "[t]he probability analysis of luck is dominant among mathematicians and scientists" (Steven Hales, 'A Problem for Moral Luck', *Philosophical Studies* 172:9 (2015), pp. 2385-2403, at p. 2387; see also his 'Why Every Theory of Luck is Wrong', *Nous* 50:3 (2016), pp. 490-508, at p. 419). It also can be found among philosophers: McKinnon defends a probability account of luck on the grounds that it can explain various common quips concerning luck (Rachel McKinnon, 'You Make Your Own Luck', *Metaphilosophy* 45:4/5 (2014), pp. 558-577), and, although Rescher bounces around quite a bit in his earlier work (see note 16 above), in his most recent, and most explicit, analyses, Rescher argues that the luckiness of an event is inversely proportional to its probability and directly proportional to its significance (Nicholas Rescher, 'The Machinations of Luck', *Metaphilosophy* 45:4/5 (2014), pp. 620-626, at section 6, esp. p. 620 and p. 621; 'The Probability Account of Luck', in *The Routledge Handbook of the Philosophy and Psychology of Moral Luck*, edited by Ian Church and Robert Hartman (New York: Routledge, 2019, pp. 136-147), p. 136. This account is not entirely new for him-it is also present in his earlier work (see, e.g., *Luck*, 1995, p. 141)).

Pritchard is the most prominent defender of a modal account of luck (Duncan Pritchard and Matthew Smith, 'The Psychology and Philosophy of Luck', *New Ideas in Psychology* 22 (2004), pp. 1-28; Duncan Pritchard, 'Epistemic Luck', *Journal of Philosophical Research* 29 (2004), pp. 191-220; Duncan Pritchard, *Epistemic Luck* (Oxford: Oxford University Press, 2005); Duncan Pritchard, 'Moral and Epistemic Luck', *Metaphilosophy* 37:1 (2006), pp. 1-25; Duncan Pritchard, 'The Modal Account of Luck', *Metaphilosophy* 45:4/5 (2014), pp. 594-619; Duncan Pritchard, 'Modal Accounts of Luck', in *The Routledge Handbook of the Philosophy and Psychology of Moral Luck*, edited by Ian Church and Robert Hartman (New York: Routledge, 2019, pp. 115-124). For some subtleties about Pritchard, see note 34 below.

[18] The objection is generally attributed originally to Latus, 'Constitutive Luck', 2003, p. 467, although it has been adopted by others (e.g., Lee John Whittington, 'Getting Moral Luck Right', *Metaphilosophy*

control, and yet it is not a matter of luck for me that the sun rose this morning. From this it follows that lack of control cannot be sufficient for luck.

The most obvious answer to the sunrise objection, and a popular one in the luck literature, is to say that luck, unlike the sunrise, is chancy, and to adopt a hybrid account of luck.[19] Hartman is sympathetic to this answer.[20] But, this leaves Hartman with a conundrum: on a hybrid account of luck, constitutions are no longer lucky—on a hybrid account of luck, the luck denier's regress stopper ("identity precedes luck") is vindicated, and Hartman's response to Rescher is foiled. So, Hartman has to explain how lack of control is sufficient for moral luck even though it is not sufficient for luck simpliciter, and I am going to argue that it is precisely Hartman's solution to this conundrum that gets him into trouble.

Hartman maintains that the sunrise objection is not a problem for him because moral luck is not a species of luck and, thus, although luck might be chancy, moral luck is

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45:4/5 (2014), pp. 654–667, at p. 657). Levy attempts to provide an alternative example to demonstrate the same thing. According to Levy, if someone deliberately drives recklessly down a street where a parade is happening, it is not in that person's control whether they hit anybody, but it is nonetheless not a matter of luck whether they do so, "since hitting someone is the expected upshot of driving like that in conditions like those" (Levy, 'Putting the Luck back into Moral Luck', 2019, p. 61). I think that Levy's example does not work. I agree that it is not a matter of luck whether someone who drives "like that in conditions like those" hits anybody. But, I think that deliberately driving recklessly down a street on which a parade is happening is one way for an agent to exert control over hitting somebody, much like shooting a gun at random into a crowd. Of course, it is possible to drive deliberately down a parade street (or to shoot a gun at random into a crowd) without injuring somebody. But, control does not entail success. If I am right about this, then Levy has failed to provide an alternative to the sunrise objection (i.e., an example of an event that is not a matter of luck even though it is not in a person's control).

[19] For hybrid accounts, see Latus, 'Constitutive Luck', 2003, pp. 466-468; E.J. Coffman, 'Thinking About Luck', *Synthese* 158:3 (2007), pp. 385-398, esp. pp. 385-386; Laura Ekstrom, 'Luck and Libertarianism', in *The Routledge Handbook of the Philosophy and Psychology of Moral Luck*, edited by Ian Church and Robert Hartman (New York: Routledge, 2019, pp. 239-247), pp. 240-242; Zimmerman, 'Denying Moral Luck', 2019, p. 216; Rik Peels, 'The Mixed Account of Luck', in *The Routledge Handbook of the Philosophy and Psychology of Moral Luck*, edited by Ian Church and Robert Hartman (New York: Routledge, 2019, pp. 148-159), p. 149; or Levy, 'Putting the Luck back into Moral Luck', 2019, p. 60.

[20] Lang, in contrast with Hartman, thinks that the sunrise objection does not pose a problem for moral luck because the sunrise has nothing to do with morality: "Counter-examples to the Lack of Control Account such as the sunrise case do not damage the application of the Lack of Control Account to moral luck. This is because the very restriction to the moral domain ensures that we will be talking about morally appraisable items—acts, intentions, and so forth—that relate to moral agents, and what matters here is the degree of control that agents enjoy over these items." (Lang, 2021, 5)

But, Lang is mistaken. Even if we accept that moral luck is not a species of luck (something I am going to challenge in the main text of this article), as will be seen below (at the end of the main text of this section of the article), the sunrise objection can be tweaked in order to make it apply to moral luck directly (rather than merely indirectly, via luck simpliciter).

Riggs, by way of contrast with Lang and Hartman both, proposes to supplement a lack of control account with an exploitation condition rather than a chanciness condition, basing his argument, in part, on the idea that non-chancy astronomical events, like eclipses, can be lucky, provided they are not exploited ('Luck, Knowledge, and Control', in *Epistemic Value*, edited by Adrian Haddock, Alan Millar, and Duncan Pritchard (Oxford: Oxford University Press, 2009, pp. 204-223); 'The Lack of Control Account of Luck', in *The Routledge Handbook of the Philosophy and Psychology of Moral Luck*, edited by Ian Church and Robert Hartman (New York: Routledge, 2019, pp. 125-135)). I cannot address Riggs' claim that non-chancy events can be lucky here. I note merely that such an account will not help in the present context, for agents do seem to exploit, in Riggs' sense, their own constitutions, whence it follows that Riggs' account undermines constitutive luck every bit as much as a hybrid account does.

not. He defends this claim by appeal to the seminal 20th century literature on moral luck, the Williams-Nagel dialogue:

> [T]he assumption that an adequate account of luck in moral luck must map onto all of our ordinary uses of 'luck' is a false assumption, because the moral luck debate is about not luck per se but a tension in our ordinary thinking about moral responsibility. One way to see this is to go back to the foundational essays on moral luck. After all, Williams...coined the term 'moral luck' to refer to an "incoherent" mixture of concepts in our conception of morality. And Nagel...uses the term 'moral luck' to denote a "paradox" in our conception of moral responsibility. In these inaugural essays, a tension in our conception of morality is center stage, but a fully adequate account of luck is not on stage at all...The important lesson to draw from these original formulations of the problem [of moral luck] is that an adequate account of luck in moral luck must generate at least an apparent paradox in our conception of morality, but it need not capture all of our common uses of the term 'luck.'[21]

According to Hartman, Williams coined the term 'moral luck' to refer to a paradox in our conception of morality, and Nagel followed suit. Thus, Hartman infers, any account of moral luck must generate at least an apparent paradox, and if this means that moral luck is not a species of luck, so be it. Hartman then argues that only the control account of moral luck generates an at least apparent paradox without generating other problems, whence he infers that moral luck is not a species of luck.[22] So, it looks like Hartman has managed to thread the needle: on the one hand, he can affirm constitutive luck (contra Rescher), because moral luck need not be chancy; and, on the other hand, he can avoid the sunrise objection, because, although this objection suggests that luck is chancy, moral luck is not a species of luck. Other philosophers have begun to follow Hartman's lead.[23]

I think there are three main problems with Hartman's argument. The first is exegetical. As noted above, Hartman defends his claim that moral luck is not a species of luck by appeal to the Williams-Nagel luck articles. But, if we examine closely the work of Williams and Nagel, it may be seen that both take moral luck to be a species of luck; the apparent paradox in our conception of morality that they are exploring is supposed to be one that arises from the ways in which moral appraisals can depend on luck, and the term, 'moral luck', is coined to refer to precisely this phenomenon—the intersection of moral appraisal, on the one side, and luck, on the other.[24] For example, in characterizing Kant, whom he takes to be the archetypal moral luck denier, Nagel says that "a course of action that would be condemned if it had a bad outcome cannot be vindicated if by luck it turns

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[21] Hartman, *In Defense of Moral Luck*, 2017, p. 24.

[22] Hartman, *In Defense of Moral Luck*, 2017, chapter 2 sections 2-4.

[23] Consider: "Hartman's observation that 'the moral luck debate is about not luck per se but a tension in our ordinary thinking about moral responsibility 'seems perfectly correct" (Lang, 2021, 8). See also: "Hartman argues that lack of control is both necessary in order to generate the paradoxicality of the issue [of moral luck] in the first place and sufficient to generate a problem. I endorse both Hartman's conclusion and his argument" (Mark Anderson, 'Moral Luck as Moral Lack of Control', *Southern Journal of Philosophy* 57:1 (2019), pp. 5-29, 6n2).

[24] In saying this, I am also disagreeing with Anderson, who maintains that "[w]hen Thomas Nagel coined the expression "moral luck" in the 1970s, he used the term "luck" to mean lack of control...This use was a matter of stipulation, as Nagel's target had little to do with the nature of luck itself" (Anderson, 'Moral Luck as Moral Lack of Control', p. 5). A further problem that arises for Anderson (but not for Hartman) is that Anderson seems unaware that Nagel was writing in response to Williams, and it is the latter, not the former, who coined the expression "moral luck"—it is not up to Nagel to stipulate the meaning of the term in this way.

out well."[25] So, according to Nagel, someone who denies the existence of moral luck would say that a condemnable action cannot be pardoned if, by luck (sans phrase), it has a good outcome. Similarly, in discussing a driver who accidentally runs over a child but who is "entirely without fault," Nagel remarks that, because the agent is beyond reproach, this is "not yet a case of moral bad luck."[26] The emphasis in the previous quotation is in the original, whence it may be seen that, according to Nagel, the distinction between a case of bad luck and a case of bad moral luck is that the latter involves legitimate reproach that arises, in part, from the agent's bad luck. Finally, consider how Nagel characterizes different species of moral luck:

> Another category is luck in one's circumstances...The other two [categories] have to do with the causes and effects of action: luck in how one is determined by antecedent circumstances, and luck in the way one's actions and projects turn out.[27]

Nagel uses the term 'luck' (simpliciter) in this passage. That is, according to Nagel, one kind of moral luck involves luck in one's circumstances, and so on.

Similarly, we find Williams characterizing moral luck in terms of the ways in which luck can influence the objects of moral judgments:

> Even if moral value were radically unconditioned by luck, that would not be very significant if moral value were merely one kind of value among others. Rather, moral value has to possess some special, indeed supreme, kind of dignity or importance. The thought that there is a kind of value which is, unlike others, accessible to all rational agents, offers little encouragement if that kind of value is merely a last resort, the doss-house of the spirit. Rather, it must have a claim on one's most fundamental concerns as a rational agent, and in one's recognition of that one is supposed to grasp not only morality's immunity to luck, but one's own partial immunity to luck through morality. Any conception of 'moral luck', on this view, is radically incoherent.[28]

Williams puts things in the same terms in a later retrospective when, reflecting on his original moral luck article, he maintains that "[t]here is something in our conception of morality...that arouses opposition to the idea that moral responsibility or moral merit or moral blame should be subject to luck," or, as he says on the next page, "the resistance to luck is not an ambition gratuitously tacked onto morality: it is built into it."[29] On Williams' account, moral luck is defined as the kind of luck that morality is subject to, and Williams thinks that, because morality is opposed to luck, moral luck is an oxymoron. In other words, not only is Hartman mistaken in thinking that, for Williams, moral luck is something sui generis, not a species of luck, but, more, the very paradox that Hartman wants to make central to the concept of moral luck cannot be understood, on Williams' account, unless we take moral luck to be a species of luck.

Further issues arise for this part of Hartman's argument from the fact that at least some in the moral luck debate do not take moral luck to be paradoxical. For example, Coyne argues that moral luck "is not at all (inherently) contradictory, or even contrary, or

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[25] Nagel, *Mortal Questions,* 1979, p. 24. Recent work overturns Nagel's characterization of Kant (Kahn, 'Kant's Philosophy of Moral Luck', 2021).

[26] Nagel, *Mortal Questions,* 1979, pp. 28-29.

[27] Nagel, *Mortal Questions,* 1979, p. 28.

[28] Bernard Williams, *Moral Luck* (Cambridge: Cambridge University Press, 1981), p. 21.

[29] (Williams, 1993, 251, 252).

even surprising."[30] Indeed, Hartman's insistence on the paradox condition creates tension internal to his own considered position: Hartman's goal is to develop a non-revisionary, coherent (and non-paradoxical) account of moral responsibility that is consistent with moral luck. The tension comes to the fore when Hartman explains the paradox condition: moral luck is supposed to generate an apparent, rather than a genuine, paradox.[31] From this I conclude that Hartman's paradox condition, as well as his argument for the paradox condition, should be rejected: the originators of the moral luck debate explain moral luck as about cases in which moral appraisal is based on something subject to luck, showing that they define moral luck, first and foremost, to be a species of luck (pace Hartman); and not all within the moral luck take the phenomenon to be paradoxical—indeed, Hartman himself takes the paradox to be merely apparent, not genuine.

The second problem with Hartman's argument is philosophical. Suppose that my readings of Williams and Nagel are rejected, and suppose that, as Hartman argues, their discussions are about a paradox first and luck second. Hartman gets from there to the claim that moral luck should be interpreted in terms of lack of control with the following bridge premise: widespread lack of control, but not widespread chanciness, would generate an apparent paradox for morality.[32] The problem for Hartman is that this bridge premise is mistaken—widespread chanciness would undermine morality every bit as much as widespread lack of control. To see this, we can look at the example that Hartman uses to try to demonstrate otherwise:

> Suppose that Jim tells a lie in the actual world, and a bolt of lightning strikes some place nearby. But in a broad range of close possible worlds, Jim's friend is located in that nearby place, and Jim is struck by lightning while he is telling a lie. Thus, his action is interrupted in those possible worlds, and he does not lie. In that case, the modal account implies that Jim's actually telling a lie is lucky, because it occurs in the actual world but not in a broad range of close possible worlds in which the relevant initial conditions are the same. Nevertheless, we do not think that Jim even appears to be less than fully morally responsible for his telling a lie, because he plausibly exercises responsibility-level control over that event...So, the fact that Jim's lying is modally fragile is not even apparently at odds with his being blameworthy for lying, and the same conclusion applies even if we make this kind of modal fragility ubiquitous. Thus, the modal conception of luck fails to satisfy the paradox criterion.[33]

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[30] Margaret Coyne, 'Moral Luck?' *The Journal of Value Inquiry* 19 (1985), pp. 319-325, at p. 319. For further discussion, see (Nelkin, 'Moral luck', 2013, section 4.2).

[31] See note 32 below.

[32] In Hartman's words, whereas "luck as lack of control at least appears to undermine widespread satisfaction of the Control Condition...the modal conception of luck...does not even appear to generate the paradox" (Hartman, *In Defense of Moral Luck*, 2017, pp. 25-26). Hartman explains the Control Condition as follows: "attributions of a person's praiseworthiness and blameworthiness should be confined to features that reflect only her agency" (Hartman, *In Defense of Moral Luck*, 2017, p. 4). Hartman repeats this idea in his 2019: Even if an account of luck other than the lack of control account best captures our ordinary usage of the term "luck" or even if there is no good account of the way we use the word "luck," the puzzle to which Feinberg, 'Problematic Responsibility in Law and Morals', 1962, Thomas Nagel (1979), and Williams (1981) point us remains, because ubiquitous lack of control continues to be in tension with the control condition that is part of our conception of morality. (Robert Hartman, 'Accepting Moral Luck', in *The Routledge Handbook of the Philosophy and Psychology of Moral Luck*, edited by Ian Church and Robert Hartman (New York: Routledge, 2019, pp. 227-238), p. 228.)

[33] Hartman, *In Defense of Moral Luck*, 2017, p. 26.

Hartman's argument in this passage is as follows: (1) Jim's lying is chancy in this example. But (2) Jim is blameworthy for lying in this example. Therefore, (3) chanciness is not even apparently at odds with blameworthiness in this example. But (4) chanciness is not apparently at odds with responsibility even if it is ubiquitous, therefore (5) chanciness accounts of luck fail to satisfy the paradox criterion.

There are several problems here. One is that premise (1) is false: given that Jim exerts responsibility-level control over his lying, and given how lightning works, Jim's lying is not chancy, at least not in a way relevant to taking on Rescher, in this example.[34]

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[34] As noted at the outset of this section, there are, on the one hand, probability accounts of chanciness and, on the other hand, modal accounts of chanciness. However, there are two different accounts of modal fragility in the luck literature. This makes the explanation of the claim to which this note is appended somewhat complicated, and I have, for that reason, relegated it to a note in order to avoid distraction.

On one account of modal fragility in the luck literature, an event is modally fragile only if it does not occur in a suitable proportion of nearby possible worlds. This account is favored by Pritchard in his early work ('The Psychology and Philosophy of Luck', 2004, p. 195; *Epistemic Luck* (2005), p. 128 and pp. 129-130; and 'Moral and Epistemic Luck', 2006, p. 3) and many in the luck literature follow suit (see Whittington, 'Getting Moral Luck Right', p. 658; Levy, 'What, and Where, Luck Is', 2009, p. 490; and Peels, 'The Mixed Account of Luck', 2019, p. 154). This also seems to be the account Hartman has in mind in the example above (in the second sentence of the block quotation, he alludes to" a broad range of close possible worlds," the same language used by Whittington, Levy, and Peels). Generally speaking, the "suitable proportion" in this first account of modal fragility is taken to be greater than 50%. For example, in Pritchard's 'The Psychology and Philosophy of Luck', 2004 and 'Moral and Epistemic Luck', 2006, it is "most" nearby possible worlds; and in his *Epistemic Luck* (2005), it is "a wide class" of nearby possible worlds, where "a wide class" is said to be at least about half. So, on this account of modal fragility, if an event is modally fragile, then its non-occurrence is modally robust. This asymmetry will become important momentarily.

On the other account of modal fragility in the luck literature, favored by Pritchard in his more recent work ('Modal Accounts of Luck', 2019, p. 117), an event is modally fragile only if it does not occur in suitably proximate possible worlds. Discussions of such accounts usually explicate what counts as "suitably proximate" in terms of the number of changes between worlds. There is also sometimes a gesture toward the magnitude of these changes. In order to make sense of this, we seem to need an explanation, first, of how to individuate changes and, second, of how to measure, or, at least, how to compare, the magnitude of one change with that of another. No such explanation is, as yet, forthcoming. However, I propose to accept, for the sake of argument, that such an explanation can be given. The point I want to make for the present is that distance functions are, all else being equal, symmetric (i.e., the distance between A and B is the same as the distance between B and A). So, on a proximity account of modal fragility, an event E is modally fragile if, but only if, its non-occurrence is modally fragile. From this it may be seen that, all else being equal, a proximity account of modal fragility is not equivalent to a proportionality account of modal fragility: on a proximity account, unlike on a proportionality account, modal fragility is symmetric.

With this by way of background, I can defend the claim in the main text of this article to which this note is appended, namely, that Jim's lying is not chancy in a way that is relevant to responding to Rescher.

The problem for Hartman is that it is only on a proximity account of modal fragility that, without significant retooling, Jim's lying can come out as chancy. To see this, note, first, that it is improbable that Jim is struck by lightning (and, thus, that his lying is interrupted). From this it follows that Jim's lying is not chancy on a probability account. And note, now (second), that lightning strikes are, all else being equal, modally fragile on proportionality accounts: if lightning strikes X in the actual world, then, all else being equal, in a broad range of close possible worlds, X is not struck by lightning, and conversely. This, combined with the asymmetry pointed out above, entails that Jim's not being struck by lightning is modally robust on a proportionality account of modal fragility, whence it follows that, on such an account, Jim's lying is not chancy. So, Jim's lying might come out as chancy on a proximity account (i.e., there might be a suitably proximate possible world in which Jim does not lie). But, it will not come out as chancy on a probability account or on a proportionality account.

However, the problem that I want to focus on here is that premise (4) is implausible.[35] In a world in which all events are like lightning strikes, it is hard to see how there could be any form of responsibility. When someone is struck by lightning, we do not generally praise or condemn her for it: lightning sufferers are not usually held up as morally or intellectually virtuous or vicious, at least not on account of their having been hit by lightning. So, being struck by lightning does not seem to be the kind of thing we hold people responsible for, and that suggests, even if it does not entail, that, if all events were as chancy as lightning strikes, this would undermine responsibility (pace Hartman).

Now, some might concede that widespread chanciness undermines responsibility, but they might argue that this is so only because widespread chanciness undermines the possibility of responsibility-level control—and (they might conclude) widespread control undermines morality, as per Hartman's argument. In support of this objection, it is notable that, although we do not, in general, condemn those who are struck by lightning, we might criticize someone leaning against a large, pointy metal structure in an open field during an electrical storm, as stupid even if not as vicious, and this kind of behavior is one way of controlling whether one is struck by lightning.

But, this objection is pyrrhic: for my purposes, I do not need to take a stand on whether widespread chanciness undermines responsibility directly, or whether widespread chanciness undermines responsibility indirectly (because it undermines control). In either case, if chanciness undermines responsibility directly or indirectly, Hartman's premise (4) is false, and Hartman's motivation for rejecting chanciness accounts of moral luck collapses.

Moreover, even if I am mistaken—even if ubiquitous chanciness does not undermine moral responsibility—it must be conceded that, if ubiquitous lack of control

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Now, it might be thought that, if Jim's lying can come out as chancy on a proximity account of chanciness, that will suffice for Hartman's purposes. However, this thought is mistaken. As seen above (note 17), Rescher advocates a probability account, and, as seen in paragraph 2 of this note, many advocates of modal accounts of chanciness champion proportionality, not proximity. Indeed, as also seen in paragraph 2 of this note, Hartman himself appeals to a proportionality account, not a proximity account, in setting out his example. So, Hartman cannot limit himself to a proximity account of chanciness. On the contrary: because Hartman is trying to defuse Rescher's "identity precedes luck" objection to the regress argument, as well as modal accounts of moral luck more broadly, Hartman must speak to probability accounts of chanciness and to the very account of modal fragility that he gestures to in setting out his example (i.e., proportionality accounts). That is why it is a problem for Hartman that Jim's lying can come out as chancy only on a proximity account of chanciness—and that is why, in the sentence to which this note is appended, I say that Jim's lying is not chancy in a way relevant to taking on Rescher.

Of course, some might object to all of this on the grounds that the example is constructed by Hartman. They might say that Hartman can stipulate that lightning works however he needs it to for the sake of the example. Thus, the objection concludes, Hartman can stipulate that Jim's lightning-miss is improbable and modally fragile (on a proportionality account and a proximity account). However, I find this objection unpersuasive. For one thing, any such attempted stipulation seems incoherent. Perhaps we can stipulate how schmightning works. But, I do not think we can stipulate how lightning works. For another thing, if we want our thought experiments to generate trustworthy intuitions, then such stipulation must be disbarred: this stipulation can rescue premise (1) in my reconstruction only by sacrificing premise (2). I also want to point out that it is prima facie implausible that any single example will be able to handle all three accounts of chanciness, precisely because of their substantive differences (such as symmetry).

[35] It is also worth noting that, in the context in which it is asserted, premise (4) is, if not question-begging, at least insufficiently supported. Premise (4) is a universal claim; it cannot be based on a single example, and this is so independently of the other problems with the example (see note 34 above).

undermines moral responsibility, then, a fortiori, the ubiquitous conjunction of lack of control and chanciness undermines moral responsibility. This is a problem for Hartman because, first, as noted at the outset of this section, one common response to the sunrise objection is to adopt a hybrid account of luck, and, second, and as also noted at the outset of this section, the conjunction of lack of control and chanciness undermines constitutive luck, vindicating Rescher's "identity precedes luck" objection to the regress argument.[36]

The foregoing argument has been complicated, so let us take stock. I have argued: (1) even if we accept Hartman's argumentative strategy (namely: appeal to the original authors who coined the term 'moral luck'—i.e., nail down the meaning of the term by tracing its etymology), there is positive reason to think moral luck is a species of luck and for rejecting Hartman's paradox condition; and (2) even if we accept that moral luck must be, first and foremost, paradoxical, this does not support a control account of moral luck (pace Hartman), because ubiquitous chanciness appears to undermine responsibility, as does the ubiquitous conjunction of chanciness and lack of control.

I want to conclude this section by considering an objection: what if we do not accept Hartman's argumentative strategy—what if we do not think that appealing to the original authors who coined the term 'moral luck' is a good means of figuring out what the term means? After all, the etymology of a word does not always determine its meaning. Perhaps, if we reject Hartman's argumentative strategy—if, instead, we appeal to the evolving moral luck literature—we might be able to come up with a more successful argument to the conclusion that moral luck is not a species of luck. Thus, perhaps there is an alternate route to Hartman's conclusion that, although luck is chancy, constitutive luck is not, and, so, we can put a stop to Rescher's regress-stopping-response in some other way.

This is not the place for me to survey the massive moral luck literature, nor am I able to respond to all possible arguments for Hartman's conclusion. However, I do want, briefly, to offer some positive reasons for thinking that moral luck is a species of luck, and, thus, to respond to this objection by showing that Rescher's objection to constitutive luck might not be so easy to evade.

First, there is the term itself: 'moral luck' appears to be a compound term, where 'moral' is modifying 'luck'. When the meaning of a compound term is not derived from its constituents, the term is usually a single word, such as pineapple, hotdog, or gumshoe. This is not always so. For example, the bearded tit is neither bearded nor a tit, and the flying lemur neither flies nor is a lemur. However, these examples are disputable. Bearded tits are often said to have mustaches if not beards, and they resemble tits and were originally classified as such by Linnaeus. Flying lemurs glide even if they do not fly, and they resemble lemurs. Moreover, terms of this kind are uncommon and seem to be the exception that proves the rule. So, although language does not force the species-genus

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[36] This also creates a problem for Statman, who makes a slightly weaker argument than Hartman. Hartman's argument for a control account of moral luck is based on the claim that a control account is necessary and sufficient to generate a paradox. Statman's argument, by way of contrast, is based only on the claim that a control account suffices to generate a (sense of) paradox ('The Definition of "Luck" and the Problem of Moral Luck', in *The Routledge Handbook of the Philosophy and Psychology of Moral Luck*, edited by Ian Church and Robert Hartman (New York: Routledge, 2019, pp. 195-205), p. 203). The problem is that, even if (1) a control account suffices to generate a sense of paradox, and even if (2) an account of moral luck must generate a sense of paradox, if, nonetheless, as I argue above, (3) a chanciness or a hybrid account of luck also will suffice to generate a sense of paradox, then (1) and (2) do not suffice to show why we should prefer a control account over one of these other accounts.

relation between moral luck and luck, it suggests that there needs to be some positive argument for denying this relation, especially because only one of the terms ('luck') is disputed—the other ('moral') is accepted. This linguistic consideration, as obvious as it is, has not been discussed in the moral luck literature, perhaps on account of the relative novelty of Hartman's suggestion that moral luck is not a species of luck, but it raises issues that cannot be dismissed by a mere wave of the hand.

Second, the regress argument is not the only argument that luck affirmers appeal to: many in the debate appeal to analogical considerations, arguing from other kinds of luck, like epistemic luck or legal luck, to moral luck. For example, Nagel appeals to epistemic and legal considerations in his original article; Statman makes an argument for moral luck on the basis of epistemic luck; and Hartman himself appeals to epistemic luck when making a case for moral luck.[37] But, if moral, epistemic, and legal luck are not all species of the genus luck, then it is hard to see how these analogical considerations can carry any weight. So, if we are going to appeal to the evolving moral luck literature, there is at least one significant part of it (namely: analogical arguments for the existence of moral luck), a part of it that Hartman himself champions, that presupposes that moral luck is a species of luck (pace Hartman). And from this it follows that if, as discussed above, we accept the sunrise objection as pushing for a chanciness condition in accounts of luck (as Hartman does), then we should accept it also as pushing for a chanciness condition in accounts of moral luck.

Third and finally, the sunrise objection can be modified in order to apply to moral luck directly. To see how, note that most crimes are perpetrated at night, whence it follows that the sunset can be included in the morally unlucky circumstances of an agent who commits a crime if lack of control is sufficient for moral luck (again: we do not control the sunset).

I conclude not only that Hartman's attempt to rescue constitutive luck from Rescher's objection does not work, but, more, if, as Hartman accepts, an agent's constitution is non-chancy, then it is unclear how constitutive luck could be anything other than conceptually confused.

Section 3: Is Constitution Chancy?

Latus takes the opposite approach from Hartman; instead of arguing that constitutive luck is non-chancy, Latus tries to meet the challenge of articulating a chancy account of constitution. The solution, according to Latus, is to change the comparison class. Instead of saying that an agent is lucky with regard to some constitutive trait if but only if it is chancy that she has that trait, Latus argues that an agent is lucky with regard to some constitutive trait if but only if it is chancy that a randomly selected member of the population would have that trait. Thus, an agent's constitution can be chancy once we think about things in the right way. Here is how Latus puts it:

> Rescher et al. are right to think chance is a comparative notion. They simply have the comparison class wrong. We don't have to consider the possibility of you having been constituted differently from the way you are. Instead, what we need to consider is how

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[37] Nagel, *Mortal Questions,* 1979; Statman, 'Moral and Epistemic Luck', 1991; Hartman, *In Defense of Moral Luck*, 2017, chapter 5.

> common it is for a person to be constituted this way (that is, so as to have whatever property we are concerned with).[38]

There is, as far as I can tell, no argument for this position, either in Latus or in those who follow him, beyond the claim that it rescues constitutive luck from conceptual confusion.[39] However, considering that the position is introduced precisely in order to respond to Rescher and to vindicate the relatively widespread intuition that there is constitutive luck, this is, arguably, question-begging. But beyond this kind of burden-shifting consideration, are there any reasons to resist Latus' suggestion? In fact, there are at least two, and I think that these two are quite weighty.

First, consider the extant literature that focuses on constitutive luck, literature on distributive justice. Luck egalitarians maintain that an agent's natural talents and abilities (or lack thereof) are often due to luck and, therefore, not morally deserved, whence it is supposed to follow that the rewards that accrue (or fail to accrue) to agents on the basis of these natural talents and abilities are due to luck.[40] On the basis of this, luck egalitarians argue that redistribution is necessary as a corrective.[41]

The problem is that, if constitutive luck is understood in terms of rarity (as Latus argues), then it is hard to see why there would be any need for redistribution. For one thing, rarity is consistent with desert. For example, an agent might be among the very few to work hard to cultivate some rare talent, and in that case even a luck egalitarian might concede that the agent deserves to be where she ends up, rarity notwithstanding. Indeed, if this concession is not made, it is because having the trait of working hard is also seen as a matter of luck, not because the hard work or the cultivated trait is rare. But, for another thing, rarity is often seen as necessary for value, whence it follows that, if we understand luck regarding an agent's constitution in terms rarity, this threatens to short-circuit the luck egalitarian argument before it even gets out of the gate. So, Latus' strategy does not vindicate the widespread intuition that there is constitutive luck, at least if we focus on the extant literature that builds on this intuition (namely: the luck egalitarian literature).[42]

Second, as we saw at the end of section 1 of this article, Latus' proposal is intended to shore up the regress argument, a mainstay of moral luck affirmers. But, the problem is

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[38] Latus, 'Constitutive Luck', 2003, p. 472.

[39] Neil Levy, *Hard Luck* (Oxford: Oxford University Press, 2011), p. 36; Gregg Caruso, 'A Defense of the Luck Pincer', *Journal of Information Ethics* 28:1 (2019), pp. 51-72, p. 57. Levy and Caruso both characterize this as a non-chancy kind of luck rather than chanciness about an agent's constitution. The difference is immaterial except insofar as it would undermine the idea that Hartman's and Latus' strategies are opposites, Hartman targeting the chanciness of moral luck and Latus targeting the chanciness of constitution.

[40] For example, consider the following lines from Dworkin: "We want to find some way to distinguish fair from unfair differences in wealth generated by differences in occupation. Unfair differences are those traceable to genetic luck, to talents that make some people prosperous but are denied to others who would exploit them to the full if they had them." (Ronald Dworkin, *Sovereign Virtue* (Cambridge: Harvard University Press, 2000), p. 92; quoted in Hales, 'A Problem for Moral Luck', 2015, p. 2390)

[41] According to Lippert-Rasmussen, "It is often said that justice requires luck to be 'neutralized'" (Lippert-Rasmussen, Kasper. 'Justice and Bad Luck', *The Stanford Encyclopedia of Philosophy* (Spring 2023 Edition), edited by Edward N. Zalta & Uri Nodelman).

[42] Some might object that I am ascribing some sort of redistributive program to Latus. However, this objection is mistaken. The point I am making is that Latus is trying to vindicate the notion of constitutive luck. To succeed as such, his vindication should be consistent with the extant literature on constitutive luck. The extant literature on constitutive luck is the distributive justice literature, and the point of the argument in the main text above is that Latus' concept of constitutive luck is not consistent with this literature. This is so regardless of Latus' own commitments.

that it fails here, too. Latus' idea, again, is that, properly understood, constitution can be chancy: it can be chancy with respect to the population at large even if not with respect to the individual in question. However, if we keep the comparison class constant (comparing the individual with her counterparts) in the move from resultant to synchronic circumstantial luck, and again keep it constant in the move from synchronic circumstantial luck to developmental luck—but then shift the comparison class in the move from developmental luck to constitutive luck (comparing the individual with the population at large rather than with her counterparts), then we are committing a fallacy of equivocation.

To see this another way, note that Rescher might concede that legitimate moral assessment can be based on an agent's constitution even if some of an agent's constitutive traits are rare in the general population while nonetheless denying that differential moral assessment is warranted between an agent and her counterpart when, in the actual world, that constitution is developed in various ways, whereas in a nearby possible world it is developed in other ways: there is nothing absurd about this denial of developmental luck and concomitant affirmation of constitutive luck, and it suffices to stop the regress in the regress argument. Thus, even if we accept Latus' proposal (as stipulative), it does not accomplish what he wants to accomplish: Rescher's denial of moral luck remains coherent, and the move of the regress argument from (developmental) circumstantial luck to constitutive luck remains problematic. I conclude that Latus' proposal fails on its own terms.

Conclusion

In this article, I argued against two attempts to answer Rescher's objection that constitutive luck is conceptually confused.

I began by reconstructing the moral luck regress argument in order to explain the importance of constitutive luck and, more, to explain why Rescher's objection to constitutive luck, "identity precedes luck," has been the subject of attention and recent debate.

The first answer I examined to Rescher's objection, due to Hartman, says that moral luck is not a species of luck and, therefore, moral luck in general, and constitutive luck in particular, is not chancy. I showed that the strategy Hartman used to get to this claim, when examined closely, actually controverts his conclusion and, more, I showed that there are positive reasons, all of which are independent of Hartman's strategy and some of which fall out of Hartman's own larger project, for thinking that moral luck is a species of luck.

The second answer I examined to Rescher's objection, due to Latus, says that our constitutions are chancy, provided we correctly understand the notion of chanciness at stake (because we need to recast the comparison class as the population as a whole rather than the agent alone). I argued that this claim fails on its own terms, undermining both the constitutive luck literature and the regress argument it is designed to save.

So, is constitutive luck confused? It must be admitted that I have not shown as much: even if my rebuttals of Hartman and Latus are accepted, there might be another way of making sense of constitutive luck that works (and allows it to play its assigned role in the regress argument). But, in my view, the prospects are dim. Moreover, I think that there are two obvious error theories that can explain why claims about constitutive luck are tempting: for one thing, it is extremely difficult to distinguish essential from non-essential talents and abilities (and, as seen in section 1 of this article, the latter, even if not the former,

can be chancy); and, for another, even if an agent might not be lucky to have a certain trait, she might be lucky to live in a society in which that trait is rare or highly prized, and those two things are also difficult to distinguish (and luck in the society in which one lives might be sufficient for a luck egalitarian project even with regard to essential properties).[43]

Does this mean that, in my view, the moral luck regress argument fails? Perhaps surprisingly, I think the answer to this question is "no." To be sure, the regress argument would not be able to regress all the way to constitutive luck, and Nagel's talk of extensionless points would have to be regarded as hyperbole. But, observe how much of conventional morality would have to be revised if we were to assert that the only legitimate moral appraisals are those that are based, ultimately, on agents' constitutions. The moral luck denier's position is not rendered irretrievably absurd by the moral luck regress argument, but the argument does reveal how much of a bullet the moral luck denier has to bite—and perhaps that is all that we should ask of a philosophical argument anyway.

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[43] Hales argues against this second strategy for vindicating luck egalitarianism on the grounds that it is not chancy whether, for example, an individual is born into a racist society and, therefore, enjoys corresponding privilege or disadvantage (Hales, 'A Problem for Moral Luck', 2015, p. 2392). But, Hales' argument does not work. To see why, let us accept the following three claims: (1) America is a racist society; (2) America is not as racist today as it once was; and (3) in the future, America might not be as racist as it is today. If we accept all of this (i.e., if we accept that America is racist but that, historically, it has been and is still changing, moving from more racist to less so), then it will suffice for luck egalitarianism for there to be a close possible world in which these changes begin earlier or take place at a faster pace, and it is at least not obvious how to rule this out. From this it may be seen that, even if Hales is right that it is not chancy whether an individual is born into a racist society and, therefore, enjoys corresponding privilege or disadvantage, this does not suffice to show that luck egalitarianism cannot appeal to chanciness when talking about constitutive properties and distributive justice.

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