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A Defense of the Luck Pincer

Why Luck (Still) Undermines Moral Responsibility

Gregg D. Caruso

The contemporary literature on moral luck began in earnest with the now classic pair of papers by Thomas Nagel (1979) and Bernard Williams (1981). The problem of moral luck arises because we seem to be committed to two contradictory tendencies regarding moral responsibility. On the one hand, we generally subscribe to a Control Principle (CP) on moral responsibility that holds that an agent is morally responsible, in the praiseworthy and blameworthy sense, only to the extent that what she is morally judged for depends on factors under her control. If an action is not under an agent's control we are not inclined to praise or blame the agent for the action in question. Examples include actions or behaviors produced by involuntary movements, physical force, or ignorance of the circumstances (Nagel, 1979, p. 25). At the same time, we consistently ignore this principle in our practices of moral evaluation. Nagel, for instance, famously identifies four different kinds of luck—*resultant*, *circumstantial*, *constitutive*, and *causal*—where we tend to morally judge agents for things that depend on factors that are not in their control. These contradictory tendencies are what constitute the problem of moral luck. We can say that *moral luck* occurs when an agent is justifiably treated as an object of moral judgment, despite the fact that a significant aspect of what she is assessed for depends on factors beyond her control.



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For many philosophers the problem of moral luck constitutes a “paradox” (Nagel, 1979, p. 34) since both the Control Principle and existence of moral luck seem intuitive. Perhaps this is why Williams writes, “when I first introduced the expression *moral luck*, I expected to suggest an oxymoron” (1993, p. 251). In an attempt to resolve these contradictory tendencies, three distinct strategies have emerged (cf. Nelkin, 2013; Hartman, 2017).¹ The first, which we can call the *skeptical view*, maintains that moral luck does not exist because luck universally undermines responsibility-level control (Levy, 2011; Strawson, 1994; Waller, 2011). The second, the *counterfactual view*, also holds that moral luck does not exist, but rather than deny moral responsibility, proponents of this view categorically deny extant moral luck in a way that preserves (or leaves open) morally responsible agency (Zimmerman, 1987, 2002; Enoch, 2012; Enoch and Marmor, 2007; Peels, 2015).² The final strategy, the *moral luck view*, maintains that genuine cases of moral luck exist (see Greco, 1995; Hartman, 2016, 2017; Moore, 1997) and that “the way in which luck affects an agent’s voluntary actions and the consequences that she foresees or could reasonably be expected to foresee can partially determine her praiseworthiness and blameworthiness” (Hartman, 2017, p. 10).³

In this paper, I will take the road less traveled and defend the skeptical view that no one is ever morally responsible in the basic desert sense since luck universally undermines responsibility-level control. I begin in Section 1 by defining a number of different varieties of *luck* and examining their relevance to moral responsibility. I then turn, in Section 2, to outlining and defending what I consider to be the best argument for the skeptical view—the *luck pincer* (Levy, 2011). I conclude in Section 3 by addressing Robert Hartman’s (2017) numerous objections to the luck pincer. I argue that while they represent some of the most powerful and sophisticated objections available, the luck pincer emerges unscathed and the pervasiveness of luck (still) undermines moral responsibility.

1. Varieties of Luck

To begin, it is important to note that the kind of moral responsibility I am concerned with here is *basic desert* moral responsibility—the kind that would make us truly deserving of praise and blame, punishment and reward (see Pereboom, 2001, 2014; Caruso and Morris, 2017; Levy, 2011). The question I am interested in is whether luck undermines such moral responsibility—i.e., whether agents are ever truly deserving of praise and blame if everything they do is a matter of luck. Second, “luck” is traditionally defined as something that occurs beyond an agent’s control (see, e.g., Nagel, 1979; Zimmerman, 1987; Hartman, 2017; Nelkin, 2013). It is sometimes added that it must also have significance for the agent since trivial or insignificant events are generally not

considered matters of luck (Levy, 2011, p. 13). On this definition, something that occurs as a matter of luck with respect to some individual P is something that occurs beyond P’s control and has significance for P (see Zimmerman, 1987, p. 376, fn.8). Later I will argue that adopting a modal account of luck provides a better definition, but this preliminary definition should suffice for the moment.

Consider now the significant role luck plays in our lives. First, there is the initial “lottery of life” or “luck of the draw,” over which we have no say. Whether we are born into poverty or affluence, war or peace, abusive or loving homes, is simply a matter of luck. It is also a matter of luck what natural gifts, talents, predispositions, and physical traits we are born with. Beyond this initial lottery of life, there is also the luck of what breaks one encounters during one’s period of self-formation and what environmental influences are most salient on us. Combined, these matters of luck determine what Nagel famously calls *constitutive luck*—luck in who one is and what character traits and dispositions one has. Since our genes, parents, peers, and other environmental influences all contribute to making us who we are, and since we have no control over these, it seems that who we are is at least largely a matter of luck. And since how we act is partly a function of who we are, the existence of constitutive luck entails that what actions we perform depends on luck (Nelkin, 2013).

Some philosophers, myself included, believe that constitutive luck raises serious problems for moral responsibility, but not all philosophers agree. Dennett, for example, writes:

Suppose—what certainly seems to be true—that people are born with noticeably different cognitive endowments and propensities to develop character traits; some people have long lines of brilliant (or hot-blooded, or well-muscled) ancestors, for instance, and seem to have initial endowments quite distinct from those of their contemporaries. Is this “hideously unfair”—to use a phrase of Williams (1981, p. 228)—or is this bound to lead to something hideously unfair? Not necessarily [1984, p. 95].

Dennett proceeds to give the example of a footrace where some are given a head start based on when they were born (an arbitrary fact). He argues that this would be unfair if the race were a hundred yard dash but *not* if it is a marathon: “In a marathon such a relatively small initial advantage would count for nothing, since one can reliably expect other fortuitous breaks to have even greater effects” (1984, p. 95). According to Dennett, “A good runner who starts at the back of the pack, if he is really good enough to deserve winning, will probably have plenty of opportunity to overcome the initial disadvantage” (ibid.). Since life is more like a marathon than a sprint, Dennett maintains that “luck averages out in the long run” (1984, p. 95).

While this folksy example may have intuitive appeal for some, it is demonstrably false. Luck does *not* average out in the long run. Those who start from

have offsetting luck later in life. The data clearly show that early inequalities in life often compound over time rather than average out, affecting everything from differences in health and incarceration rates (Caruso, 2017a) to success in school and all other aspects of life. Malcolm Gladwell (2008), for example, documents the rather strange fact that there are more players in the National Hockey League born in January, February, and March than any other months. His explanation is that in Canada, where children start playing hockey at a very young age, the eligibility cutoff for age-class hockey programs is January 1. At the ages of six and seven, being ten or eleven months older gives one a distinct advantage over one's competitors. Since the older players tend to do better, they end up getting more playing time, and as they progress through the ranks they are selected for better teams and more elite programs, receive better coaching, and play more games against better competition. What begins as a small advantage, a mere matter of luck, snowballs and leads to an ever-widening gap of achievement and success.

This kind of phenomenon can be found throughout society. Studies show, for instance, that low socioeconomic status (or SES) in childhood can affect everything from brain development to life expectancy, education, and income (Farah, 2012; Avants, et al. 2012; Mariani, 2017; Nobel et al., 2005; Farah et al., 2006; Nobel et al., 2007; Caruso, 2017). Educational inequity also has a snowball effect. As Bruce Waller writes, "the child of a wealthy family who receives the benefits of excellent (and expensive) preschools also has the benefits of superb prep schools..., more advanced placement courses, tutors for the SAT, and probably a legacy advantage in applying to the most selective universities" (2015, p. 68). Dennett is simply mistaken then in thinking that luck averages out in the long run—it does not. His marathon example also suffers from the fact that it focuses only on constitutive luck, but there are additional kinds of luck that need to be considered—for example, resultant, circumstantial, and causal luck (Nagel, 1979).

Resultant luck is luck in the way things turn out. Examples of resultant luck include the drunk driver who hits a pedestrian when his car swerves on to the sidewalk versus the drunk driver who does not. While both engaged in the same reckless behavior, it is a matter of luck that only the former can be held morally and legally accountable for manslaughter. *Circumstantial luck*, on the other hand, is luck in the circumstances in which one finds oneself. As Nagel states, "[t]he things we are called upon to do, the moral tests we face, are importantly determined by factors beyond our control" (1979, p. 33). Nagel provides the example of Nazi collaborators in 1930s Germany:

Ordinary citizens of Nazi Germany had an opportunity to behave heroically by opposing the regime. They also had the opportunity to behave badly, and most of them are culpable for having failed this test. But it is a test to which the citizens of other countries were not subjected, with the result that even

like circumstances, they simply did not and therefore are not similarly culpable [1979, p. 34].

Circumstantial luck again highlights the fact that "one is morally at the mercy of fate" (Nagel, 1979, p. 34), and not only with regard to factors that form our characters and the consequences of our actions but also with the circumstances with which we are confronted. While it is easy to want to morally judge and blame those who are tested morally by circumstantial factors and fail, there is also truth to the old proverb, "There but for the grace of God (or circumstantial luck), go I."

The last of Nagel's four kinds of luck is *causal luck*, or luck in how one is determined by antecedent circumstances. This kind of luck is essentially the traditional problem of free will. As Nagel puts it:

If one cannot be responsible for consequences of one's acts due to factors beyond one's control, or for antecedents of one's acts that are properties of temperament not subject to one's will, or for the circumstances that pose one's moral choices, then how can one be responsible even for the stripped-down acts of the will itself, if *they* are the product of antecedent circumstances outside of the will's control? [1979, p. 35].

Nagel fears that the more we examine the problem the more the "area of genuine agency, and therefore of legitimate moral judgment, seems to shrink under this scrutiny to an extensionless point" (1979: 35). While some philosophers may think this problem arises only if determinism is true, this is not the case. As Dana Nelkin notes, "Even if it turns out that determinism is false, but events are still caused by prior events according to probabilistic laws, the way that one is caused to act by antecedent circumstances would seem to be equally outside of one's control" (2013; see also Pereboom, 2001, 2014; Caruso, 2012).

In what follows, I will cease talking about resultant, circumstantial, and causal luck and talk instead of only two kinds of luck: *present luck* and *constitutive luck*. I will set aside any further consideration of resultant luck since it goes beyond the question I am interested in here. And causal luck, on this classification, becomes redundant since what it covers is completely captured by the combination of constitutive and present luck. While constitutive luck remains the same, *present luck* (Mele, 2006; Levy, 2011) is the luck at or around the moment of a putatively free and morally responsible action or decision. While present luck may include features of circumstantial luck, it is a much broader concept. It also includes any genuine indeterminism that may exist in the proximal causal chain leading to action, as libertarians posit, as well as any circumstantial or situational influences that may affect an agent's choice or action in a way that is outside her control. It can also include features of what Heather Gert (2017) calls *awareness luck*—luck in how aware we are of the

morally significant features of our surroundings. As she points out: “individuals placed in the same situation will often notice different aspects of it. Some will notice more of what matters morally, while others notice less” (2017).⁴

2. The Luck Pincer

I will now argue that regardless of the causal structure of the universe, free will and basic desert moral responsibility are incompatible with the pervasiveness of *luck* (see also Levy, 2009a, 2011; cf. Haji, 2016). This argument is intended not only as an objection to event-causal libertarianism, as the *luck objection* is,⁵ but extends to compatibilism as well. At the heart of the argument is the following dilemma: either actions are subject to *present luck* (luck around the time of the action), or they are subject to *constitutive luck* (luck that causes relevant properties of agents, such as their desires, beliefs, and circumstances), or both. Either way, luck undermines moral responsibility since it undermines responsibility-level control. This is what Neil Levy calls the *Luck Pincer* and it can be summarized as follows (2011, pp. 84–97; as summarized by Hartman, 2017, p. 43):

Universal Luck Premise: Every morally significant act is either constitutively lucky, presently lucky, or both.

Responsibility Negation Premise: Constitutive and present luck each negate moral responsibility.

Conclusion: An agent is not morally responsible for any morally significant acts.

Let us examine the argument in more detail, focusing first on what exactly is meant by “luck.”

While there are several competing accounts of “luck” in the literature,⁶ I favor the modal account developed by Levy (2011). The modal account defines luck by way of possible worlds without reference to indeterminism or determinism, and it classifies luck as either *chancy* or *not chancy*. An agent’s being *chancy lucky* is defined as follows:

An event or state of affairs occurring in the actual world is chancy lucky for an agent if (i) that event or state of affairs is significant for that agent; (ii) the agent lacks direct control over the event or state of affairs; and (iii) that event or state of affairs fails to occur in many nearby possible worlds; the proportion of nearby worlds that is large enough for the event to be chancy lucky is inverse to the significance of the event for the agent [Levy, 2011, p. 36].

On the other hand:

An event or state of affairs occurring in the actual world that affects an agent’s psychological traits or dispositions is non-chancy lucky for an agent if (i) that event or state of affairs is significant for that agent; (ii) the agent lacks direct control over that event or state of affairs; (iii) events or states of affairs of that kind vary across the relevant reference group, and...in a large enough proportion of cases that event or state of affairs fails to occur or be instantiated in the reference group in the way in which it occurred or was instantiated in the actual case [Levy, 2011, p. 36].

Note that the first two conditions are the same for an agent’s being chancy and non-chancy lucky—i.e., (i) *significance*, and (ii) *lack of direct control*. And we can say that an event is *significant* for an agent if she cares about the event and it can have either good or bad significance for her (Levy 2011: 13). It may, for instance, be chancy whether I have an odd or even number of hairs on my head at 12 noon, but it would be strange to say that this is a matter of luck since we generally reserve the appellation “luck” for events that *matter* (Levy, 2011, p. 13)—i.e., we do not generally speak of entirely trivial events as lucky (i.e., as good or bad for an agent).

With regard to the second condition, we can say that an agent has *direct control* over an event if the agent is able (with high probability) to bring it about by intentionally performing a basic action and if the agent realizes that this is the case (Levy, 2011, p. 19; cf. Coffman, 2007). As Levy puts it, an agent has direct control over *E*’s occurrence when he can bring about *E*’s occurrence, or act to ensure *E*’s non-occurrence, by virtue of performing some basic action which (as he knows) will bring about or prevent *E*’s occurrence (Levy, 2011, pp. 19, 150). This is only a first pass account of direct control and may not be entirely adequate, according to Levy, but it will do for almost all purposes.

To help understand how the third condition differs in the two definitions—i.e., the *modal condition* (chancy luck) and the *uncommon instantiation condition* (non-chancy luck)—let us consider some examples. A paradigmatic example of a chancy lucky event is Louis’s winning the lottery. This is because (i) he lacks direct control over winning the lottery, since there is no basic action that he can perform to bring it about, (ii) the event of his winning the lottery is also at least minimally significant, and (iii)—the modal condition—in most close possible worlds with a small divergence from the actual world, Louis does not win. On the other hand, Elaini may be non-chancy lucky for being a genius with a high IQ in comparison with her peers.⁷ This is because (i) Elaini lacks direct control over being a genius, (ii) it is significant for her, and (iii)—the uncommon instantiation condition—being a genius is not commonly instantiated in that reference group (assuming, of course, that most of her actual peers are not geniuses).

With these three conditions in place, we can now better understand the distinction between *present luck* and *constitutive luck*. We can say that an agent’s decision is the result of present luck if a circumstantial factor outside of the

agent's control at or near the time of action significantly influences the decision. Such circumstantial factors could include the agent's mood, what reasons happen to come to her, situational features of the environment, and the like. For instance: "Our mood may influence what occurs to us, and what weight we give to the considerations that do cross our mind.... Our attention may wander at just the wrong moment or just the right one, or our deliberation may be primed by chance features of our environment" (Levy, 2009a, p. 245; see also 2011, p. 90). In contrast, we can say that an agent's decision is the result of constitutive luck if that decision is partially settled by her dispositional endowment, which is outside of her control. Finally, while present luck is limited to cases of chancy luck, constitutive luck can be a subspecies of both chancy and non-chancy luck since it can refer to a disposition that an agent possesses in either a chancy or a non-chancy way (Levy, 2011, p.87).

Let us now return to the *Luck Pincer* and see how libertarian and compatibilist accounts fare against it. Libertarian accounts famously face the problem of explaining how a decision or action can be free, given the libertarian demand for indeterminacy immediately prior to directly free action. Moral responsibility skeptics and compatibilists alike have long argued that such indeterminacy makes the action unacceptably chancy, in a way that is responsibility-undermining (see, e.g., Levy, 2009a, 2011; Mele, 1999, 2006; Haji, 2002, 2004, 2013, 2016; Pereboom, 2001, 2014; Caruso, 2012). And it is argued that this applies to both event-causal and agent-causal versions of libertarianism (see Mele, 2006; Haji, 2004, 2016; Levy, 2011). The kind of luck that is problematic here is *present chancy luck*, since the agent's putatively "free" decision is chancy (i.e., the same decision would fail to occur in many nearby possible worlds), significant, and the circumstantial factor outside of the agent's control occurs just prior to the decision—(i.e., the indeterminate event[s]).

Peter van Inwagen (2000) makes vivid the lack of control a libertarian agent has over genuinely undetermined events by considering what would happen if God rolled back the relevant stretch of history to some point prior to an undetermined event and then allowed it to unfold once more (Levy 2009a, p. 238). Since events would not unfold in the same way on the replay as they did the first time round, since these are genuinely undetermined, and nothing the agent does (or is) can ensure which undetermined possibility is realized, the outcome of this sequence (in this case the agent's decision) is a matter of luck. Such luck, skeptics argue, is responsibility-undermining. Sometimes this is expressed in terms of contrastive explanation—an explanation that explains not only why some event *A* occurred, but why *A* occurred *as opposed to* some alternative event *B*. If an agent's choice cannot be contrastively explained, it is, in some crucial sense, inexplicable, and an agent cannot be responsible for an inexplicable happening since such happenings would be a matter of luck and outside the control of the agent. Since contrastive explanations cannot be offered for causally undetermined events, libertarian accounts introduce luck

of the sort that undermines, rather than enhances, freedom and moral responsibility (see Mele, 1999, 2005, 2006; Almeida and Bernstein, 2003; Haji, 2000, 2001; cf. Elzein, 2018).

Compatibilist accounts of moral responsibility, on the other hand, are vulnerable to their own powerful luck objection. We can divide compatibilist accounts into two main categories: *historical* and *non-historical*. Historical accounts are sensitive to the manner in which an agent comes to be the kind of person she is, in the circumstances in which she finds herself (see Mele, 1995, 2006; Fischer and Ravizza, 1998). If an agent, for instance, decides to donate a large sum of money to Oxfam, historical accounts of moral responsibility hold that it is important how the agent came to have such a generous nature and make the decision she did—for example, did the agent have a normal history and acquire the disposition to generosity naturally, or did a team of neuroscientists (say) engineer her to have a generous nature? Non-historical accounts, on the other hand, maintain that moral responsibility depends instead on non-historical factors—like whether an agent identifies with his/her own desires (Frankfurt, 1988) or the quality of an agent's will (Scanlon, 1998).

The main problem with historical accounts is that they cannot satisfactorily explain how agents can take responsibility for their constitutive luck. The problem here is analogous to the problem raised by manipulation arguments (Mele, 1995, 2006, 2008; Pereboom, 2001, 2014). Manipulated agents are the victims of (very bad) luck—i.e., the manipulation is significant for them, they lack control over its (non-) occurrence, and it is chancy, in as much as there are nearby possible worlds in which the manipulation does not occur (Levy, 2009a, p. 242). The problem of constitutive luck is similar in that an agent's *endowments*—i.e., traits and dispositions—likewise result from factors beyond the agent's control, are significant, and either chancy or non-chancy lucky. A historical compatibilist could respond, as they often do to manipulations cases, that as long as an agent *takes responsibility* for her endowments, dispositions, and values, over time she will *become* morally responsible for them. The problem with this reply, however, is that the series of actions through which agents shape and modify their endowments, dispositions, and values are themselves significantly subject to present luck—and, as Levy puts it, "we cannot undo the effects of luck with more luck" (2009a, p. 244). Hence, the very actions to which history-sensitive compatibilists point, the actions whereby agents take responsibility for their endowments either *express* that endowment (when they are explained by constitutive luck) or reflect the agent's present luck, or both (see Levy, 2009a, p. 247; 2011).

Hence, present luck is not only a problem for libertarianism it is also a problem for historical compatibilism. And while present luck may be a *bigger* problem for libertarians, since they require the occurrence of undetermined events in the causal chain leading to free action, the problem it creates for historical compatibilists is nonetheless significant. With compatibilism, we need

to assess the implications of present luck *in conjunction* with the implications of constitutive luck. When we do, we see that though it might often be the case that the role played by present luck in the decisions and actions of compatibilist agents is relatively small, it is the agent's endowment—directly, or as modified by the effects of present luck, or both—which explains why this is so. An agent's pre-existing background of reasons, desires, attitudes, belief, and values—against which an agent deliberates—is the endowment from constitutive luck, inflected and modified, to be sure, but inflected and modified by decisions which either *express* constitutive luck, or which were not settled by the endowment, *and therefore were subject to present luck* (Levy, 2009a, p. 248). Hence, the Luck Pincer: actions are either the product of constitutive luck, present luck, or both.

Non-historical accounts, on the other hand, run into serious difficulties of their own with the epistemic condition on control over action. The epistemic condition maintains that moral responsibility for an action requires that the agent understands that, and how, the action is sensitive to her behavior, as well as appreciation of the significance of that action or culpable ignorance of these facts (Levy, 2011, ch.5; cf. Rosen, 2002, 2004, 2008; Zimmerman, 1997, 2009). Because the epistemic condition on control is so demanding and itself subject to the Luck Pincer, non-historical accounts of compatibilism (as well as other accounts that may survive the above arguments) face a serious challenge (see Levy, 2011, 2009b). Consider cases of non-culpable ignorance. Imagine, for instance, that a 16th century surgeon operates on a patient without washing his hands or sterilizing his equipment, and as a result his patient gets an infection and dies. The surgeon would not be blameworthy in this situation because he was non-culpably ignorant of the risks of non-sterilization, since germ theory was not established until much later. In this and other cases of non-culpable ignorance, the fact that agents are ignorant of the relevant details is frequently a matter of luck—either present luck or constitutive luck or both.

We can say that non-culpable ignorance is chancy lucky when an agent fails to know that *p* (where *p* is significant for her), lacks direct control over whether she knows that *p*, and in a large proportion of nearby possible worlds does know that *p*. Let us say I drop my daughter Maya off at a friend's house for a play date. She has a peanut allergy and I forget to inform the other parent at the time of drop-off. When I get to the coffee shop, I realize this and immediately text the parent about the allergy, but because I am in a "dead zone" the message does not go through. Not having received my text, the parent proceeds to give the kids a snack with peanut butter in it, resulting in Maya having a near-fatal reaction. The parent's non-culpable ignorance in this case is chancy lucky since in a large portion of nearby possible worlds she would have received the text. The 16th century surgeon example, on the other hand, is better seen as an example of non-chancy luck, since his ignorance is the result of bad luck

inasmuch as beliefs about germs vary across agents in different historical periods (the relevant reference group here), rather than nearby possible worlds.

Since non-culpable ignorance is responsibility-undermining and much more common than philosophers typically think (see Zimmerman, 1997, 2009), it gives additional force to the Luck Pincer. Thanks to luck, distant or present, agents who perform wrongful actions *typically* lack freedom-level control over their actions because they fail to satisfy the epistemic condition on such control (Levy, 2011, pp. 115–16). In cases of unwitting wrongdoing, there often is no plausible candidate for a culpable *benighting* action that could ground blameworthiness (Levy, 2011, p. 131). Furthermore, it is often the case that we cannot reasonably demand of agents that they do not act in ways that express their epistemic vices (Levy, 2011, p. 126). When an agent does not see that she is managing her moral views badly, it would be unfair to blame her for doing wrong, if she had no internal reasons for omitting her bad behavior. This is because, when an agent is managing her moral views badly from the point of view of *objective* morality, it is often the case that her *subjective* moral values and beliefs—which ex hypothesi she does not know are wrong—are governing herself in a perfectly rational and consistent way. Agents cannot govern themselves by the standards of objective morality when they do not accept those standards by way of a reasoning procedure (see Levy, 2011). Since these internal moral values and beliefs are themselves a matter of luck—either present, constitutive, or both—we once again arrive at the Luck Pincer. It would seem, then, that present luck, constitutive luck, or both, swallows all, and both libertarian and compatibilist accounts fail to preserve moral responsibility.

3. Defending the Luck Pincer

Let me now consider some objections to the above argument, focusing on Hartman's (2017) recent defense of moral luck and his criticisms of the skeptical view. Hartman argues that premise (2) of the luck pincer, the responsibility negation premise, is false because "the compatibilist has distinctive resources to show that circumstantial and constitutive luck do not necessarily undermine moral responsibility" (2017, p. 17).⁸ The luck pincer maintains that luck undermines basic desert moral responsibility since it violates the following *principle of fairness*: Agents do not deserve to be praised or blamed, punished or rewarded, in the basic desert sense unless there is a desert-entailing difference between them.⁹ It goes on to argue that since a lucky difference between two individuals is not a desert-entailing difference, luck undermines basic desert moral responsibility. Hartman challenges this claim and instead argues that a lucky difference *can* constitute a desert-entailing difference (2017, p. 51).

He begins by examining the conditions of constitutive and present luck that are supposed to negate praiseworthiness and blameworthiness—i.e., their

control undermining properties. Following Franklin (2015, pp. 755–56), Garrett (2013, p. 212), and Tognazzini (2012, p. 819), Hartman asserts that the significance, modal, and uncommon instantiation conditions appear to be superfluous for the negation of moral responsibility. Furthermore, the direct control condition represents no new challenge to compatibilism since (a) indirect control is often sufficient for basic desert moral responsibility, and (b) if compatibilism is true and “an act’s being causally determined does not even diminish responsibility-level control” (2017, p. 53), then neither does the lack of control intrinsic to the present and constitutive source conditions.

Let me quickly deal with the significance condition, since I am willing to grant that an event’s being significant for an agent—the agent’s caring about the event—“in no way diminishes her responsibility-level control over it” (Hartman, 2017, p. 51). Condition (i) of present and constitutive luck does not mitigate responsibility-level control; rather it is a necessary condition for an event being a matter of *luck* at all. We can therefore set it aside and focus on Hartman’s arguments against the direct control, modal, and uncommon instantiation conditions.

With regard to the lack of direct control condition, Hartman maintains that it is compatible with responsibility-level control. He writes, “Agents have mere indirect control over actions that involve a process, and agents are plausibly morally responsible for at least some of those actions” (2017, p. 52). He provides the following example as evidence:

I do not directly control the event of giving charitably online when I am away from my phone or computer. But there are basic actions that I can perform that culminate in my giving online such as walking to my computational device and punching keys in the relevant order. Since I enjoy direct control over each of these events in the process, it is plausible that I also possess responsibility-level control over giving online. It follows, then, that we may have responsibility-level control with regard to some events over which we lack direct control. Thus, condition (ii) of present and constitutive luck does not itself negate responsibility-level control [2017, p. 52].

In response I would argue that, contra Hartman, either the lack of direct control in the example does undermine moral responsibility, or it is not located in the right place for the counterexample to succeed. Consider the following dilemma: If an agent, let us call him *Bob*, lacks direct control over giving charitably online because he is away from his phone or computer, and *this prevents him from acting on his charitable desire*, then it is reasonable to conclude that Bob is not morally responsible. On the other hand, if there are basic actions that Bob could perform that would culminate in his giving online, and these basic actions were all under his direct control, then Hartman’s objection fails for a different reason—i.e., the lack of direct control is not located in the right place for the counterexample to succeed, since under such a description the agent *would* have direct control over giving charitably online.

Furthermore, Hartman’s contention that he enjoys direct control over each of the basic actions involved in the process raises questions of its own. If this is meant as a stipulation of the example, then we are back into the dilemma just outlined—since Bob would in fact retain direct control over his ability to give and hence there would be no counterexample. If, on the other hand, it is meant as an empirical claim, I contend that it is highly questionable. This is because it is reasonable to think that at least some of these more basic actions would themselves be subject to either constitutive luck, present luck, or both—in which case, the lack of direct control condition would remain relevant. We can imagine Bob is sitting on his couch, not near his phone or computer, when he is struck with the desire to get up, locate his phone, and give to his favorite charity. A defender of the luck pincer could argue that the decision to act on this desire would either be the result of a long-standing charitable predisposition that was beyond the direct control of the agent (and hence a matter of constitutive luck), the result of present luck (e.g., a commercial that came on the television or some other situational or circumstantial factor), or both. Hartman’s example either begs the question by assuming that direct control is retained throughout the process, or it fails to address why luck would not be a problem at these other moments in the process.

Lastly, it is unclear what Hartman’s argument is actually an argument against. The luck pincer maintains that luck undermines every instance of direct control. Hartman replies by arguing that we can be morally responsible in virtue of exercising indirect control. But everyone accepts that you cannot just exercise indirect control—rather, indirect control is exercised in virtue of some instance of direct control. So saying that we can have indirect control over giving charitably online is just not a response to the argument at all.

Moving on to Hartman’s objection to the modal condition, he argues that “it is implausible that the *mere fact* that an event fails to occur in a broad range of nearby possible worlds itself mitigates the agent’s control over the actual event” (2017, p. 52). He maintains that there is no necessary connection between the satisfaction of the modal condition and an agent having less control over an event. What is of importance, according to Hartman, is not the chanciness of an event, but that it can be *reasonably foreseen*. He writes, “in moral philosophy, there is widespread agreement that an agent is not morally responsible for a consequence of an action that she could not even reasonably have been expected to foresee” (2017, p. 53). So in the case where some indeterminism is introduced into an otherwise deterministic chain of causes, Hartman agrees with Levy that the agent would not be responsible in the basic desert sense. But, Hartman contends, this is because the unforeseeability of the result undermines his praiseworthiness and blameworthiness, not its chanciness. He concludes, “condition (iii) of present luck and chancy constitutive luck do not necessarily even partially mitigate responsibility-level control” (2017, p. 53).

My first reply would be that Hartman’s focus on foreseeability rather than

chanciness or the modal condition may amount to a difference without much of a difference—in which case, moral responsibility may still be threatened by chancy luck but for different reasons. In most cases, an event that is chancy lucky will also be reasonably unforeseeable. While I can hope and even foresee winning the lottery, I cannot reasonably foresee winning. And this is because in most nearby possible worlds I will not win. If it turns out that the satisfaction of the modal condition tracks the lack of reasonable foreseeability, Hartman's shift in responsibility-undermining properties may still fail to save moral responsibility when it comes to chancy luck. For me, however, it is precisely because winning the lottery is chancy lucky that I cannot expect or reasonably foresee winning—that is, the lack of reasonable foreseeability is not what undermines moral responsibility; rather it is parasitic on the chanciness involved. And while I acknowledge that lack of foreseeability can be due to factors other than its chanciness, in such cases I would argue that luck may still be a factor since awareness luck or constitutive features of the agent may be responsible for the lack of foreseeability.

Second, and more importantly, I disagree with Hartman that there is no necessary connection between the satisfaction of the modal condition and an agent having less control over an event. An agent has direct control over *E*'s occurrence if he can bring about *E*'s occurrence by virtue of performing some basic action which (he knows) will bring about *E*'s occurrence. The probability of his basic action having the intended effect need not be 100 per cent, but it should be high (Levy, 2011, p. 19). I would argue that the fact that an event or state of affairs fails to occur in many nearby possible worlds *does* indicate that the agent lacks the direct control needed to bring about that event or state of affairs with high probability. Saying this is still consistent, of course, with the agent being able to *influence* the relative probabilities of some event's occurrence. As Levy writes: "We *can* influence the probability of lucky events. I am lucky if I win the lottery, but I can certainly influence the probability of my winning the lottery: I can buy two tickets, or three, or one hundred" (2011, p. 19). The problem, however, is that it is precisely "because agents can influence the probability of chance events but cannot ensure their occurrence that they lack *direct* control over them" (2011, p. 19). Hartman provides no argument against this other than to say that "it is implausible."

Turning now to the uncommon instantiation condition, Hartman once again maintains that it does not diminish responsibility-level control. He writes:

The way in which a disposition mitigates control over an action is exhausted by the disposition's intrinsic nature, by its being unsheddable, or by its having been acquired non-voluntarily. But the satisfied uncommon instantiation condition refers merely to the fact that a disposition is relatively rare within a reference group. But being rarely instantiated is not an intrinsic property of a disposition. And a disposition's being unsheddable or non-voluntarily acquired has no necessary connection with its being rarely instantiated. So,

then, because the only ways in which a disposition could mitigate an agent's control over the action are not necessarily related to the uncommon instantiation condition, the satisfaction of that condition does not mitigate an agent's responsibility-level control [2017, p. 53].

Here I agree with Hartman that there is no necessary connection between a disposition being rarely instantiated and its being unsheddable or non-voluntarily acquired. But there are two possible replies a skeptic could make here. The first is to argue that Hartman is simply mistaken when he says that "the only ways in which a disposition could mitigate an agent's control over the action" is when the disposition is unsheddable or non-voluntarily acquired. Hartman provides no argument for the claim that these two features exhaust the control-mitigating options. And it seems questioning begging to simply rule out non-chancy luck as possibly relevant here.

Second, a defender of the luck pincer could argue that the uncommon instantiation condition, while a necessary condition for non-chancy luck, does not diminish responsibility on its own. Rather, when a psychological trait or disposition is rarely instantiated it means that non-chancy luck is involved (assuming the other conditions are satisfied), but it is the fact that *constitutive or present factors beyond the direct control of the agent are the source of the trait or disposition* that is responsibility-mitigating. This second reply would concede Hartman's main point but it would not undermine the skeptical view or the force of the luck pincer. Consider, again, the example of Elaini being non-chancy lucky for being a genius with a high IQ in comparison to her peers. We can say that (i) being a genius is significant for her; (ii) she lacks direct control over it, and (iii) being a genius is uncommonly instantiated in her reference group. But we can add that it is the fact that the *source* of this uncommonly instantiated psychological trait is constitutive factors beyond the direct control of the agent that undermines responsibility and praiseworthiness for it. In some cases, such as this one, the constitutive source of the uncommonly instantiated trait or disposition will be indicative of the fact that it was involuntarily acquired. In other cases, the trait or disposition may be acquired voluntarily but only as a result of other features of the agent that are the result of constitutive luck, present luck, or both. Either way, uncommonly instantiated traits or dispositions would remain subject to the luck pincer.

This second reply brings me to Hartman's final objection. Hartman acknowledges that the present and constitutive source conditions "mitigate the agent's control in certain ways," but he also maintains that "the compatibilist should resist thinking that they even partially diminish responsibility-level control" (2017, p. 53). This is because

The compatibilist affirms that past states of affairs and the laws of nature outside of an agent's control can decisively influence which action she performs without even partially attenuating responsibility-level control. And if

causal determinism does not even partially diminish responsibility-level control, then circumstantial factors and constitutive properties outside of the agent's control do not even mitigate responsibility-level control [2017, p. 53].

Hartman offers two interrelated arguments for this conclusion. The first, the *a fortiori* argument, runs as follows:

Assume that compatibilism is true. As a result, an act's being causally determined does not even diminish responsibility-level control. But the lack of control intrinsic to a causally determined act is great (even though it is not great enough even to partially mitigate responsibility-level control), because the agent has no control over the laws of nature or the events prior to her birth that jointly causally determine her actions. In comparison, the lack of control intrinsic to the present and constitutive source conditions is weaker, because each kind of factor outside of agent's control is merely one among many that contribute to her performing an action. Since the greater lack of control does not even partially diminish responsibility-level control, neither does the lesser. Therefore, neither circumstantial factors nor constitutive properties beyond an agent's control that decisively influence her decisions even partially mitigate her responsibility-level control [2017, p. 54].

The second argument, the *proper part* argument, maintains:

The causal deterministic process that produces an agent's causally determined action also generates whatever circumstantial factors or constitutive properties influence her action—that is, the causal deterministic process that is sufficient to bring about an agent's performing an action is also sufficient to bring about her being in a particular circumstance with particular dispositions. We might roughly think of the influence that circumstantial factors and constitutive properties have on one's action as proper parts of the influence that causal determinism has on one's action. But if a proper part of the causally deterministic process even partially rules out responsibility-level control, then an agent cannot be fully morally responsible for a causally determined act. In other words, if the relevant circumstantial or constitutive factors even partially undermine responsibility-level control, then so does causal determinism [2017, p. 54].

He goes on to argue that since “the dialectic of Levy's argument assumes that compatibilism is true”—and “causal determinism's decisive influence on an agent's decision does *not* even partially mitigate responsibility-level control”—the circumstantial factors and constitutive properties that decisively influence an agent's decision “do not even partially diminish responsibility-level control either” (2017, p. 54).

While the *a fortiori* argument and the proper parts argument may have some force against Levy's own particular set of views, they beg the question against incompatibilists like myself. Levy may be willing to assume the truth of compatibilism as part of his dialectic but I am not. I have elsewhere argued that both determinism and indeterminism are incompatible with free will and basic desert moral responsibility, and as a result we should adopt the skeptical

perspective (see Caruso, 2012, 2018; Pereboom and Caruso, 2018). While my argument here is independent of those arguments, neither of Hartman's arguments are effective against my view, since I do not concede their main assumption—the truth of compatibilism. Hartman begins with the truth of compatibilism and then proceeds to argue that if the lack of control in the case of determinism does not undermine responsibility, neither does it undermine responsibility in the case of present and constitutive luck. I go in the opposite direction. I contend that the control in action required for basic desert moral responsibility is undermined by *both* determinism—see, e.g., the manipulation argument (Mele, 1995, 2006, 2008), Pereboom's four-case argument (2001, 2014), van Inwagen's consequence argument (1983), etc.—and the luck pincer.

On the view I have defended elsewhere, the lack of control intrinsic to a causally determined act *is* enough to threaten responsibility-level control. Consider, for instance, Pereboom's famous four-case argument against compatibilism. In it, he describes three different examples of actions that involve manipulation where an agent, Plum, decides to murder White for the sake of some personal advantage. Each of the cases, beginning with the most radical sort of manipulation, is progressively like a fourth in which Plum's action is causally determined in a natural way. The challenge is for the compatibilist to point out a relevant and principled difference between any two adjacent cases that would show why the agent might be morally responsible in the latter example but not in the earlier one. Pereboom argues that this cannot be done and that the best explanation for Plum's non-responsibility in all four cases is that, in each, he is causally determined by factors beyond his control to decide as he does (see Pereboom, 2001, 2014). While there has been much debate about this argument, I find it convincing and agree that, whether it be a team of neuroscientists or natural causes, if an agent is causally determined by factors beyond her control, even if all other compatibilist conditions are satisfied, moral responsibility is undermined (see Caruso, 2014, 2018; Pereboom, 2014).

To be clear, my point is not that one needs to be an incompatibilist to find the luck pincer convincing. Rather, it is that the lack of control involved in present and constitutive luck resembles the lack of control involved in the manipulation argument. Hence, both the *a fortiori* argument and the proper parts argument are question begging since they assume the truth of compatibilism. What Hartman needs is an independent argument for why the lack of control intrinsic to present and constitutive luck are not a threat to moral responsibility, one that does not assume the very thing under debate. He has not provided that.

4. Conclusion

I have here argued that the skeptical view remains the most justified position to adopt and that the pervasiveness of luck (still) undermines free will

and moral responsibility. In Section 1, I began by examining the different varieties of luck. I then turned in Section 2 to the luck pincer and argued that actions are either subject to present luck, constitutive luck, or both—either way, luck undermines moral responsibility since it undermines responsibility-level control. I concluded in Section 3 by responding to several recent objections to the luck pincer. I argued that, although Hartman's objections are probably the most powerful and sophisticated in the literature, the luck pincer emerges unscathed since each objection can be satisfactorily dealt with. While some philosophers may find the skeptical view unacceptable on practical grounds since they fear that it would have dire consequences for our interpersonal relationships, society, morality, meaning, and the law, I have elsewhere argued that these concerns are overblown. In fact, I have argued that there are distinct advantages to adopting the skeptical perspective (see Caruso, 2016, 2017a, 2017b, 2018, forthcoming; see also Pereboom, 2001, 2014; Waller, 2011, 2015; Pereboom and Caruso, 2018). Nevertheless, both libertarians and compatibilists need to take luck seriously since the luck pincer remains a powerful argument against basic desert moral responsibility.

Notes

1. I will here adopt Hartman's (2017) terminology and taxonomy of views.
2. As Hartman describes, "On this view, the ubiquity of luck and the idea that luck is irrelevant to moral responsibility generate a luck-free account of moral responsibility that both deflates and inflates the commonsense scope of praiseworthiness and blameworthiness" (2017, p. 9).
3. Hartman (2017) also identifies a fourth view, which he calls the *asymmetry view*. This view treats the various kinds of luck differently, claiming, for instance, that resultant moral luck does not exist but circumstantial and constitutive moral luck does (see Rivera-Lopez, 2016). As he describes, "On this view, there is a morally significant difference between the kind of luck that operates *after* two agents perform the same action and the kind that *precludes* two agents from performing the same action" (2017, p. 10). For present purposes, however, I will treat the asymmetry view as a subspecies of the moral luck view.
4. It is important to note that awareness luck has both occurrent and dispositional forms. As Gert describes: "A person might merely be more aware than others of the morally relevant aspects of a particular situation. But he might also have the disposition to be unusually aware of what matters morally. Although it is possible to be especially aware in a particular situation without having this general disposition, for ease of exposition I will assume that individuals who exhibit exceptional awareness in specific cases do so because they are so disposed" (2017). It is only the occurrent form of awareness luck that can be considered a form of present luck. Dispositional awareness luck, on the other hand, would fall more properly under constitutive luck.
5. See Mele, 1999, 2005; Pereboom, 2001, 2014; Waller, 1990, 2011; Levy, 2008, 2011; Haji, 2001.
6. cf. Pritchard, 2005, 2014; Driver, 2012; Levy 2011; Hales, 2016; Latus, 2000, 2003; Hartman, 2017; Zimmerman, 1987, 2002; Coffman, 2007.
7. This is an altered example from Hartman (2017, pp. 44–46).

8. I should note that Hartman begins by arguing that the Universal Luck Premise is subject to three classes of counterexamples. I will not discuss these counterexamples here, however, since Hartman himself offers a more modest version of premise (1) that is able to circumvent the supposed counterexamples (see 2017, pp. 46–51). See also Levy (forthcoming) for a detailed reply to these counterexamples. Since it is Hartman's objections to premise (2) that are intended to establish that the luck pincer is "unsound," I will focus my attention on these.

9. Levy provides the following similar principle: "[A]gents do not deserve to be treated differently unless there is a desert-entailing difference between them" (2011, p. 9). Our principles are essentially the same, since basic desert for me is what would justify any deserved difference in treatment, but I prefer my formulation, since it retains the language of basic desert.

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A Moral/Pragmatic Defense of Just Deserts Responsibility

John Lemos

We do not know whether human beings have the kind of free will which is the basis of moral responsibility in the just deserts sense. It remains an open question whether or not we have this kind of free will. This presents us with a kind of dilemma regarding how we should respond to those who engage in wrongdoing and who violate laws. Should we abstain from blaming and punishing them for their wrongdoing, since we do not know whether they have the kind of free will which is necessary to make them responsible in a way which could justify such harsh treatment? Or should we go ahead and regard people as morally responsible in the just deserts sense and engage in blame and punishment despite our lack of knowledge regarding the existence of desert grounding free will? In what follows, I will argue that even though we lack sufficient empirical, logical, or metaphysical evidence for the existence of free will and the just deserts responsibility it supports, there are nonetheless good moral reasons for us to uphold belief in such free will and to live and act as if we have it.

Some Definitions and an Initial Challenge: The Problem of Hardheartedness

Determinism is the view that all events which occur, including all human actions and decisions, are the necessary consequences of the joint effects of the



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