

MORAL LUCK AND THE PROBLEM OF THE INNOCENT ATTACKER

Daniel Statman

Abstract

The purpose of this paper is to explore the relation between the right to self-defense against an innocent attacker and the notion of moral luck. It argues that those who accept the existence of such a right rely on the assumption that mere agency makes a significant moral difference – which is precisely the assumption that underlies the view held by believers in moral luck. Those who believe in the right to self-defense against innocent attackers are thus committed to the idea of moral luck much more than they usually acknowledge. The paper also argues that the arguments offered in support of moral luck, in particular the one based on the relation between agency and self-identity, might help to shed light on the rather puzzling above right.

I. Introduction

Almost everybody agrees that a potential victim ('Victim') has a right to self-defense even if her attacker ('Attacker') is not morally responsible for the threat that he poses to her, say, because he is very young, suffering from a psychotic attack, or innocently ignorant of the relevant facts (hereafter, the 'Standard View').¹ However, given that the posing of the threat is not Attacker's fault, it seems unfair that he should be killed in order to save Victim's life. The fact that, on the Standard View, Victim is not merely permitted to kill IA in self-defense, namely, has a *liberty*-right to do so, but also has a *claim*-right to do so, just as she has vis-à-vis a culpable attacker, only adds to the puzzle. It means that Attacker is not allowed to respond with violence to Victim's defensive acts, and that third parties are not allowed to obstruct these acts in order to help Attacker. The innocent attacker is morally vulnerable not only in the sense that Victim is permitted to kill him, but

¹ One clear exception is Michael Otsuka who argues that "with few exceptions, it is wrong to kill each of two types of dangerous persons: an Innocent Aggressor and an Innocent Threat" (1994, p. 74).

in the sense that (a) anybody who volunteers to kill him on Victim's behalf may do so and (b) he is morally barred from taking measures to defend himself from such (counter-) attacks.²

The fundamental moral intuition that underlies this objection to the Standard View is familiar from the debate on moral luck. It is the Kantian intuition which most participants in this debate seem to support, that moral status cannot be determined by factors over which an agent has no control.³ As Williams explains in his classic piece on the topic, this anti-luck position has an "ultimate form of justice" at its heart (Williams 1993, p. 36) because justice resists the idea that moral status should depend on luck. What follows is an apparent conflict between the Standard View and –

No-luck: Moral status is determined only by factors over which the agent has control.

'Moral status' might mean different things; being a proper object for self and other blame and praise, being an object for social sanctions or for state punishment, and also – pertinent for the present context – being liable to defensive killing, namely, being a *morally legitimate target* for such killing. *No-luck* assumes that a person cannot become such a target on the basis of factors over which he or she has no control.

In other words, since the Standard View turns attacker into a legitimate target to defensive killing merely on the basis of the threat he poses notwithstanding his complete innocence in its regard, this view seems to be committed to –

Moral Luck: Moral status is determined, inter alia, by factors over which the agent has no control.

Quite surprisingly, this relation between the Standard View and *Moral Luck* has been overlooked in the extensive literature on the right to self-defense. In section II, I critically explore possible ways for the Standard View to avoid *Moral Luck*. In section III, I elaborate on the common roots of the Standard View and *Moral Luck*

² Cf. (Fabre 2012, p. 59).

³ My estimation is that most participants in the debate about moral luck *reject* the idea. See, e.g., the chapters by Richards, Thomson, and Jensen in (Statman 1993), and also (Domskey 2004) and (Enoch & Marmor 2007).

and show how arguments in favor of the latter can shed light on the former. In Section IV, I offer a few concluding remarks.

II. The Standard View and Justice

This section examines the question of whether the Standard View can endorse the right to self-defense against an innocent attacker without committing itself to acceptance of *Moral Luck*. To do so, the Standard View would have to show that, in spite of Attacker's innocence (in the relevant sense), justice nonetheless requires that it is he, rather than Victim, who must bear the cost of the tragic situation and die.

One way of doing so might be to rely on a Thomsonian understanding of the right to self-defense, according to which a person becomes liable to defensive killing merely because he poses an unjust threat to another (Thomson 1991). Since in all the cases mentioned at the outset – the psychopath, the young child and so on – the attackers pose such a threat, there is a moral asymmetry between Attacker and Victim, an asymmetry which implies that Attacker cannot complain when he is required to bear the burden that he posed. Justice requires, or definitely allows, that, in a forced choice between lives, the one who unjustly creates the choice pays the price rather than the one who is unjustly forced into it.

Yet this reliance on Thomson is more a restatement of the Standard View than a demonstration of its assumed justice. It was taken for granted above that the attack on Victim is unjust. The point I was making was that insofar as Attacker is not *to blame* for posing the threat – insofar as posing the threat is not his *fault* – it is unfair to demand that he, rather than Victim, should be the one to die. Thomson provides no relief to this sense of unfairness which is close to the sense of unfairness that arises in cases of punishing the innocent. Just as it is unfair to punish innocent wrongdoers in spite of their actual involvement in the wrong doing, it is also unfair to hold innocent attackers liable to defensive measures in spite of their active involvement in posing an unjust threat to others. And the reason in both cases is anchored in the same moral principle, namely, in *No-luck*: Sans moral responsibility (in the standard sense of control) for a person's involvement in an unjust act, he should not suffer the burdens associated with it.

A more promising way of reconciling the Standard View with *No-luck* would be to argue that, although in some sense innocent attackers are fully innocent, in a different sense they are not, hence they cannot complain when required to bear the cost of the unjust attack they pose. What I have in mind is a well-known argument proposed by McMahan to explain how combatants who are fully excused for their participation in unjust wars might nevertheless be liable to killing. The argument relies on the following example:

A person keeps his car well maintained and always drives cautiously and alertly. On one occasion, however, freak circumstances cause the car to go out of control. It veers in the direction of a pedestrian whom it will kill unless she blows it up by using one of the explosive devices with which pedestrians in philosophical examples are typically equipped (McMahan 2005, p. 393).

On this occasion, the driver is not morally responsible for the lethal threat that he poses to the pedestrian. McMahan believes that nonetheless the pedestrian may blow up the driver in order to save her life. Given that the driver we are dealing with is a conscientious one, how could this be compatible with justice? Here is McMahan's answer:

What makes him liable is that, as a morally responsible agent, he voluntarily chose to set a couple of tons of steel rolling as a means of pursuing his ends, knowing that this would involve a tiny risk that he would lose control of this dangerous object that he had set in motion, thereby imperiling the lives of the innocent . . . [He is] liable because he voluntarily engaged in a risk-imposing activity and is responsible for the consequences when the risks he imposed eventuate in harms (ibid. p. 394).

The moral intuition that underlies this judgment is the same as that which underlies the acceptance of option luck in luck egalitarianism. According to luck egalitarians, although the distribution of goods should not be influenced by brute luck, i.e. by factors beyond our control, once the initial distribution is just, there is nothing unfair in gaps created by the way the players choose to use their resources. Similarly in the present context. If, at t₁, a person voluntarily chooses to engage in an activity which

imposes risks on others, she might become liable to defensive measures for a threat that she imposes at t_2 even if at t_2 she would be fully excused for the posing of this threat.

Let's use this argument to shed light on the example of posing a lethal threat while being innocently ignorant of the relevant facts. Suppose that John belongs to an elite unit whose task is to locate and kill some arch-terrorist. Suppose that doing so is morally justified. However, because of poor intelligence, the unit attacks the terrorist's twin brother who has nothing to do with his brother's activities. John had no reason to suspect the information he got from the intelligence sources. He was fully excused for killing this innocent man. Nevertheless, this man, or anybody acting on his behalf, would surely have a right to attack John in order to prevent the killing. According to the proposal at hand, the reason is that by voluntarily joining the army and then undertaking this specific mission, John undertook the risk that he might impose unjustified risk upon others and become liable to defensive killing as a result. The fundamental anti-luck intuition is preserved by identifying a different moment in Attacker's past in which he *was* morally responsible for what he did and which is properly connected to the later threat for which he is indeed not responsible. What makes the connection proper is that the threat posed at t_2 is causally related to Attacker's decision at t_1 and that its occurrence could have been foreseeable at that point in time.

Does this move enable the Standard View to steer clear of *Moral Luck*? I don't think so. I'll concede, just for the sake of argument, that in cases like the pedestrian vs. the driver, the threat blamelessly posed by the attacker at t_2 could be related back to a voluntary choice at t_1 , hence satisfy the *No-luck* requirement that moral status should not depend on factors beyond our control. But, for this claim not to be empty, it must be limited to practices which could be defined in a way that would make it meaningful to speak of voluntarily *joining* them; of voluntarily undertaking to abide by the rules that govern them. Thus the special force of practices like driving or fighting (soldiering) which require a formal procedure to join, passing a driving test or enlisting in the army. But it would be meaningless to say that by engaging in the "practice of walking" I thereby undertake the risk that one day I might become liable to defensive killing if, in some imaginary scenario, my walking would non-voluntarily threaten the life of some other person. Extending the example of the conscientious driver to cases like walking, talking, eating and so on would leave

us with no threats regarding which one could be said to be genuinely innocent; responsibility could always be pushed back to an assumed voluntary choice to engage in the relevant “practice.”

These brief comments are sufficient to show that even if McMahan’s analysis of cases like the driver vs. the pedestrian is accepted, it offers no remedy to innocent attackers like psychopaths or very young children. Since the threat that they pose cannot be pushed back to an earlier (voluntary) choice to join some defined practice, we are left with their unqualified innocence. And given this innocence, they could rightly complain about the injustice done to them; about being selected to die on the basis of factors which were beyond their control.

As a last resort, supporters of the Standard View might concede the unfairness of killing an innocent attacker, but claim that it would be no less unfair for his potential *victim* to be killed. Precisely because *neither* of them has done anything by virtue of which they could be said to have lost their fundamental right to life, they are in a symmetrical situation; hence the innocent attacker cannot complain if he ends up paying the price of this tragic situation (nor, admittedly, can Victim complain if Attacker kills *her*). But this is a shaky resort to solve the problem at hand. First, it assumes that Victim has only a liberty-right against Attacker, not a claim-right, which is a big concession for the Standard View. Second, and more importantly, the fact that two innocent people are trapped in a situation in which one of them must die does not in itself provide a justification for one to actively kill the other. Neither of them is permitted to take action in order to shift the threat posed to him or her onto the other.

Or maybe they are? Some writers have recently suggested grounding the Standard View in the right to be partial. If either Attacker or Victim must die, Victim may prefer her own life. As Fabre puts it, ‘agents may not be expected to sacrifice their lives for the sake of not bringing about the death of another person when they have done nothing to warrant the threat which he poses to them’ (Fabre 2012, p. 57).⁴ The problem with this suggestion is that one can *sacrifice* only what one has an entitlement to, but whether one is entitled to kill an innocent person in order to save one’s life is precisely what needs to be established. Until it is, it makes much more sense to say that when Victim refrains from killing Attacker she is simply complying with the fundamental

⁴ See also (Quong 2009, p. 512).

moral requirement not to intentionally kill the innocent than to say that she is sacrificing her life for his sake.

At this point, writers such as Fabre and Quong might wish to rely on Quinn's distinction (Quinn 1993) between eliminative and opportunistic action and argue that when the defensive killing of the innocent attacker is eliminative, it is permitted.⁵ But while intentionally killing the innocent is less wrong when it is eliminative than when it is opportunistic,⁶ it is not for that reason *permissible*. Without relying on something like *Moral Luck*, Victim's permission to actively and intentionally kill an innocent person in order to save her own life remains a mystery.

III. Moral Luck, the Standard View and the Importance of Agency

If the argument of the previous section is sound, then, if the right to self-defense against innocent attackers is to be sustained, it must presuppose the rejection of *No-luck*, or, to put it positively, it must presuppose *Moral Luck*. If this is the case, it might be expected that the arguments made in support of *Moral Luck* would be helpful in substantiating the Standard View as well. The present section develops this idea.

What is the debate on moral luck ultimately about? As emphasized by several writers in the field, it is about the role of agency in moral judgment.⁷ Supporters of moral luck, led by Williams and Nagel, contend that the moral status of agents is determined by what they *actually do* and not merely by their (assumingly free) intentions, or by what they would have done had the circumstances been different. In contrast, objectors to moral luck believe that actual behavior is morally relevant only insofar as it indicates

⁵ See (Fabre 2012, p. 122), and (Quong 2009). For critical discussions of the use of the eliminative-opportunistic distinction in the context of self-defense, see (Hanna 2012) and (Kessler-Ferzan 2011).

⁶ For the view that the distinction between eliminative and opportunistic killing concerns only the degree of wrongness, cf. (Rodin 2011, p. 94): 'Quinn suggests that harm inflicted through opportunistic agency is *more difficult to justify* because it involves using a person in a more objectionable way than harm inflicted through eliminative agency' (italics added).

⁷ See (Nagel 1993, p. 66): 'We judge people for what they actually do or fail to do, not just for what they would have done if circumstances had been different'; (Walker 1993, p. 241): '[moral luck appears to be] a fact of our moral situation and our human kind of agency.'

a moral failure on the part of its agent for which the agent was morally responsible, namely, *was within her control*. In the absence of such failure, no moral stain is listed in the agent's moral record and consequently no change in her moral status.

Those who accept *Moral Luck* do not deny that responsibility plays an important role in morality. They just deny its imperialistic aspiration to govern the entire normative domain, to be the sole factor determining moral status. In their view, the very fact that we are the agents of some unwanted state of affairs taints our moral record, definitely in comparison to others who did everything they could to bring about the same unwanted state of affairs, but *Fortuna* intervened in their favor and made their attempt futile.

But why accept these widespread intuitions about the importance of agency? Why not insist, a la Kant, that the good will "sparkles like a jewel in its own right," while bad will has the converse effect? According to Williams and Nagel, it is because purifying morality from luck⁸ would leave us with no self. Since so much of who we are, and so much of what we do, depends on elements which are beyond our control, subtracting them for the purpose of moral judgment would mean that 'the area of genuine agency, and therefore of legitimate moral judgment, seems to shrink . . . to an extensionless point' (Nagel 1993, p. 66). Since such shrinking is literally unthinkable, we must extend "the area of genuine agency" to include aspects of our life and behavior for which we are only partially responsible (in the ordinary sense of having control over them), or even not being responsible at all.

The literature on moral luck abounds with examples purporting to show how actual implication in unwanted states of affairs is sufficient to lower a person's moral status even when such implication is due to factors beyond his or her control. Here is a more mundane one: A slips in the street through no fault of his own and crashes into some pedestrian, P. As a result, P falls down and his belongings are scattered on the pavement. Most people would agree that although A is in no way blameworthy for this result, and although there are other people around who could assist P, it is A to whom the moral call for help is especially addressed (though these other people ought not to turn their backs on P). If A protests by saying, "Why me?" the answer would not be, "Because it was your fault", but simply: "Because it was you who brought

⁸ I borrow this term from (Walker 1993).

about the harm.” Merely being the agent of the harm to P is enough to make the duties incumbent on A wider than those incumbent on other potential addressees to the call to help P. Similarly with the famous example of the two equally negligent drivers. The very fact that one was unlucky and hit a child while the other ended his journey safely is sufficient to taint the moral record of the former (in comparison to the latter), although the difference between them was merely a matter of luck.

Back to self-defense: If merely doing X can affect an agent’s moral status, that is, can affect the set of rights, obligations, privileges and entitlements that he had prior to X-ing, then it no longer seems mysterious that Attacker might be morally vulnerable to defensive killing merely for posing an unjust threat to Victim even though doing so was not within Attacker’s control and therefore not something for which he was morally responsible in the ordinary sense of the term.

The notion of agency merits more elaboration than can be offered here. For the sake of the present discussion let me just say that the notion is not limited to actions (or better: to body movements) involving a significant degree of awareness or intentionality, or any degree at all. The negligent driver in the above case might have fallen asleep when he hit the child, but he – as well as third parties – would nonetheless say that *he ran over the child*; that, in an important sense, he was the agent of this action. The same with the other case I mentioned: A did not form an intention to bump into P, he just slipped and crashed into him. Nonetheless, A would see the harm to P as something that *he* – not merely his *body* – brought about and therefore would rightly feel a moral need to offer help and compensation. But, of course, we don’t own, as it were, everything that happens through our bodies in this way. If I am thrown against my will at some innocent person, I probably would not feel that this is something that I did (but see below), and the same would be true if somebody were to bump into a tree as a result of staring at my blue eyes; I would not say that it was *me* who caused this accident.

That the boundaries of agency cannot be defined in any precise manner is only to be expected given the argument cited above from Nagel. Extending the area of genuine agency to aspects of our lives over which we have no control is critical to enable a significant sense of self. But how many of such aspects must be allowed to facilitate this sense is impossible to determine a priori. What can be said is only the following:

We are unable to view ourselves simply as portions of the world, and from inside we have a rough idea of the boundary between what is us and what is not, what we do and what happens to us, what is our personality and what is an accidental handicap . . . We cannot simply take an external evaluative view of ourselves – of what we most essentially are and what we do. And this remains true even when we have seen that we are not responsible for our own existence, or our nature, or the choices we have to make, or the circumstances that give our acts the consequences they have (Nagel 1993, p. 68).

Note: While we have – and can't imagine not having – an idea of this boundary between what is us and what is not, it is only a *rough* idea. This provides at least part of the explanation for the unending debates on matters for which people should be held morally and legally responsible.

Back, again, to self-defense. The foregoing comments about agency and moral luck help to understand how an innocent attacker is liable to defensive killing although he is not responsible for the unjust threat that he poses. The posing of threat is part of his agency, just as the hitting of the child is for the sleepy driver. In a world of 'impure agency,' the moral status of people is often determined by factors over which they have only limited control, and this status includes liability to defensive attack. Or I can't see why it shouldn't.

Thinking of self-defense through the prism of the debate on moral luck also sheds light on two central distinctions in the field, that between innocent attackers and innocent threats and that between innocent attackers and innocent bystanders. With all three – attackers, threats and bystanders – the situation is such that (a) Victim is under a lethal threat and (b) she can save her life only by killing one of the above; the (innocently hypnotized) attacker who's pointing a knife at her ('Attacker'), the person who is falling upon her ('Threat'), or the bystander who is innocently blocking her route of escape ('Bystander').⁹ Almost everybody agrees that Victim has a right to kill Attacker, while virtually nobody believes that she may kill Bystander. Given that both are morally innocent, what might explain this great difference in

⁹ See the example provided in (Zohar 1993, p. 612).

judgment? A natural explanation would run as follows: If Attacker is not stopped he will be the direct and active cause of Victim's death. He will *kill* Victim unless defensive measures are taken. None of these descriptions apply to Bystander, who would not be the agent of the harm visited upon Victim, could not be said to be the active and direct cause of her death, and would not be regarded by himself or by others as the one who *killed her* if the threat to Victim materialized. In terms of Nagel's argument, while Attacker could not conceptualize his killing of Victim (if not stopped) as something that merely *happened* to him, such conceptualization seems natural for Bystander. It would be rather bizarre if Bystander perceived Victim's death as something that *he* brought about by unknowingly preventing her from escaping. It would be bizarre if Bystander "owned" this outcome instead of seeing it as something that just happened to him (or as something that merely happened that had some relation to him).

Turn now to the distinction between Attacker and Threat. Probably in the case of the latter too, most philosophers, together with most laypeople, would support a right to self-defense against him,¹⁰ though many would 'downgrade' the right from a right-claim to a right-liberty, which means, in less technical terms, that although Victim would be allowed to kill Threat, Threat would also be allowed to kill her if necessary to protect his life. Victim may defensively shoot at the falling man, but the latter may shoot back to prevent her from doing so.¹¹ Why this difference between Attacker and Threat? After all, both are equally innocent and, unlike Bystander, both are directly implicated in the causal chain that will lead to Victim's death if they are not stopped. Again, the above comments on the relation between agency and self-identity help to make sense of this difference. If, by a completely innocent mistake, a person intentionally kills an innocent person, the killer could not avoid regarding the killing as something that *he* did, which is how his action would be regarded by others as well. He 'owns' the killing in a clear sense and cannot shake off its normative ramifications by telling himself that he was innocent in carrying it out. *Mutatis mutandis*, this applies also to cases in which he intends to kill the innocent but hasn't yet done so. His active

¹⁰ See (Clark 2000, p. 145), who estimates that with regard to innocent threats "the dominant view in the philosophical literature seems to be in favor [of the right to kill them in self-defense]."

¹¹ See (Benbaji 2008, p. 477) and (Fabre 2012, p. 59).

involvement in posing such a threat changes his moral status and makes him morally vulnerable to defensive killing. The same applies – though less clearly – to the threats posed by the very young child and the psychopath. Their agency is less implicated in the threat they pose than in the case of the ignorant killer, but it is definitely more implicated than in the case of Bystander. While with Bystander, nobody would say that it is he who killed Victim (by unknowingly blocking her route of escape), with these two attackers it would be natural to say that it is they who caused Victim's death (if not stopped). Probably they too would relate to the killing in this way once they grow up (in the case of the child) or once they overcome (if they do) their mental breakdown (in the case of the psychopath).

The situation is much more ambiguous with regard to Threat. While it is definitely possible for him to feel that he did nothing, that his falling on Victim was just something that happened to him, it is also possible for him to say, "Gee, that's terrible, I just killed a human being," and feel a special kind of regret – "agent-regret" in the famous expression coined by Williams – and a special need (one not shared by others) to offer help or compensation. Since Threat's agency – in a very minimal sense – is involved in posing the unjust threat more than Bystander's, he is liable to defensive killing. But since the involvement is so minimal, Victim's right to kill him is only a liberty-right, and Threat does not lose his own right to defend himself from her. I realize that my use of 'agency' in this context is unusual because Threat cannot be said to have *done* anything to risk Victim's life. What I'm trying to capture by this use is the distinction between what we perceive as "us" and what we perceive as "not us". The point is that the former can include not only actions for which we are fully excused but even non-voluntary self-movements of our bodies – and possibly even outcomes resulting from the use of our bodies by others, as in the case of the falling man.

IV. Concluding Remarks

The purpose of this paper was to highlight the relation between the right to self-defense against innocent attackers and the idea of moral luck. I tried to make two points in this regard, the one more descriptive and the other justificatory. The descriptive point was about the prevalent intuition that, in spite of his innocence, the

innocent attacker is liable to defensive killing. My proposal is that what underlies this intuition is a certain view about the moral relevance of agency, according to which moral status is influenced by what people actually do (or threaten to do) regardless of their moral responsibility for doing so. This view also motivates the belief in *Moral Luck*, namely, the view that factors beyond our control regularly affect our moral status. This means that those who subscribe to the Standard View are much more committed to the idea of moral luck than they'd like to believe.

The reason why this relation between self-defense against innocent attackers and *Moral Luck* is so interesting is that while almost everybody accepts the Standard View on innocent attackers, most people still regard the expression 'moral luck' as an oxymoron and regard holding a person accountable for what was beyond her control as an affront to justice.¹² The tension between these two positions is exemplified by Thomson herself who is, on the one hand, the champion of the right to kill an innocent attacker in self-defense while, on the other, a strong objector to *Moral Luck*.¹³

Now to the justificatory point. I suggested that a good way of substantiating the claim that a person's moral status might change for the bad through no fault of his own is by relying on the arguments made in the debate about moral luck to justify the claim that factors beyond a person's control can affect moral status. One such argument was mentioned above, relying on the devastating effects of a luck-free morality on our self-identity. But, of course, there are other arguments as well.¹⁴ If any of them is successful, that would help to overcome the most natural objection to the Standard View, namely, that regarding Attacker as liable to killing is unfair in cases in which no fault can be ascribed to him.

Note that the acceptance of *Moral Luck* with its emphasis on the importance of agency to moral status does not necessarily entail a right of self-defense against innocent attackers because saying that agency is morally relevant leaves everything open with regard to the sort of normative relevance. But, as just explained, it does help to take care of the main source of resistance to this right, namely,

¹² See note 3 above.

¹³ See (Thomson 1993) who argues that a judge who actually took a bribe ('Actual') and a judge who would take a bribe if offered ('Counterfactual') will be thrown by God into the same circle of hell, and that to say otherwise 'would be rank injustice in Him' (p. 207).

¹⁴ See in particular (Walker 1993).

the thought that mere agency cannot be morally relevant. Once this thought is rejected, the idea that Victim has a right to self-defense against her innocent attacker seems natural.

For those who deny the right to self-defense against an innocent attacker and also reject the idea of moral luck,¹⁵ I have provided no reason for them to rethink their position on either of these issues. The audience I was targeting was that of believers in such a right; believers in what I called here the Standard View. To them I say, first, that this belief almost certainly presupposes a belief in *Moral Luck* and second, that in their attempts to justify defensive killing of innocent attackers and explain the difference between innocent attackers and innocent bystanders, they might benefit from the arguments put forward by friends of moral luck to confirm the inevitable role of luck in morality.

Finally, if I'm right about the connection between moral luck and the right to kill innocent attackers, we have good reason to be skeptical about attempts to ground this right in *justice*. In his essay, Williams refers to the "ultimate form of justice" that lies at the heart of the idea about the immunity of morality to luck (Williams 1993, p. 36). The justice he has in mind is the equal ability of all human beings, regardless of factors which are beyond their control, to realize good will in their lives and to attain moral value. However, says Williams, the "bitter truth" is that morality cannot be purified from luck. This means – though Williams does not say so explicitly – that it has an ultimate form of *injustice*, or of unfairness, at its heart, in the sense of holding people accountable for what was not under their control. The aim of the philosophical project undertaken by Williams and Nagel is not to explain away this injustice, but to show that we have no choice but to admit it.¹⁶ Given the connection between *Moral Luck* and the right to kill innocent attackers, this bitter truth applies to the latter as well. This right similarly does not have "an ultimate form of justice at its heart." It does not express a distribution of harm in accordance with genuine moral merit, nor does it aspire to the infliction of harm according to what its addressee morally deserves. Rather, the right to kill innocent attackers in self-defense is a corollary of a general moral outlook which assigns crucial importance in the

¹⁵ Such as Mike Otsuka whose denial of a right to self-defense was already mentioned earlier (see note 1) and who also denies the existence of (brute) moral luck (Otsuka 2009).

¹⁶ Not all supporters of moral luck agree that the fact that moral status is affected by luck is a case of injustice or unfairness. See especially (Hanna 2012).

evaluation of people to what they *actually* do, rather than to what they would do, or would have done, had they or the world been different.¹⁷

University of Haifa
Haifa 31905, Israel
dstatman@research.haifa.ac.il

References

- Benbaji, Yitzhak. (2008). 'A Defense of the Traditional War Convention.' *Ethics* 118.
- Clark, Michael. (2000). 'Self-Defense Against the Innocent.' *Journal of Applied Philosophy* 17.
- Domszy, Darren. (2004). 'There is No Door: Finally Solving the Problem of Moral Luck.' *Journal of Philosophy* 101.
- Enoch, David & Marmor, Andrei. (2007). 'The Case against Moral Luck.' *Law & Philosophy* 26.
- Fabre, Cecil. (2012). *Cosmopolitan War*. Oxford: Oxford University Press.
- Hanna, Jason. (2012). 'The Moral Status of Non-responsible Threats.' *Journal of Applied Philosophy* 29.
- Hanna, Nathan. (2012). 'Moral Luck Defended.' *Noûs*.
- Kessler-Ferzan, Kimberly. (2011). 'Self-Defense, Permissions, and the Means Principle: A Reply to Quong,' *Ohio State Journal of Criminal Law* 8.
- McMahan, Jeff. (2005). 'The Basis of Moral Liability to Defensive Killing.' *Philosophical Issues* 15.
- Nagel, Thomas. (1993). 'Moral Luck.' In *Moral Luck*, ed. Daniel Statman. Albany, NY: SUNY Press.
- Otsuka, Michael. (1994). 'Killing the Innocent in Self-Defense.' *Philosophy & Public Affairs* 23.
- (2009). 'Moral Luck: Optional, Not Brute.' *Philosophical Perspectives* 23.
- Quinn, Warren. (1993). 'Actions, Intentions, and Consequences: The Doctrine of Double Effect.' In Warren Quinn, *Morality and Action*. Cambridge: Cambridge University Press.
- Quong, Jonathan. (2009). 'Killing in Self-Defense.' *Ethics* 119.
- Rodin, David. (2011). 'Justifying Harm.' *Ethics* 122.
- Statman, Daniel. Ed. (1993). *Moral Luck*. Albany, NY: SUNY Press.
- Thomson, Judith Jarvis. (1991). 'Self-Defense.' *Philosophy & Public Affairs* 20.
- (1993). 'Morality and Bad Luck.' In *Moral Luck*, ed. Daniel Statman. Albany, NY: SUNY Press.
- Walker, Margaret. (1993). 'The Virtues of Impure Agency.' In *Moral Luck*, ed. Daniel Statman. Albany, NY: SUNY Press.
- Williams, Bernard. (1993). 'Moral Luck.' In *Moral Luck*, ed. Daniel Statman. Albany, NY: SUNY Press.
- Zohar, Noam. (1993). 'Collective War and Individualistic Ethics.' *Political Theory* 21.

¹⁷ For helpful comments on earlier drafts I am greatly indebted to Yitzhak Benbaji, Cecile Fabre, David Heyd, Mattias Iser, Seth Lazar, Saul Smilansky, and Guy Sela. Thanks also to Zohar Idelson for his research assistance.