


# Is Morality Immune to Luck, after All? Criminal Behavior and the Paradox of Moral Luck

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**Abstract:** Both the genetic endowment we have been equipped with, and the environment we had to be born and raised in, were not – and never are – for us to choose; both are pure luck, a random ticket in this enormously inventive cosmic lottery of existence. If it is luck that has makes us the persons we are, and since our decisions and choices depend largely on the kind of persons we are, it seems that everything we do or fail to do may only be attributed to luck. This paper focuses on criminal behavior, with special emphasis on Tarde’s and Lombroso’s views, to discuss free will and agency, and their interplay with moral luck, that is, the fixed boundaries set by our nature and the circumstances that surround us.

**Keywords:** moral luck; free will; agency; Gabriel Tarde; Cesare Lombroso; Bernard Williams; Thomas Nagel

## I. Introduction

**W**hat makes us be what we are, and do what we do? Is it our unique genetic endowment, is it the environment we live in, or is it the choices we make – choices dependent only upon free will and deliberation? No doubt the question is misleading. Probably we become – or, better, keep becoming – the persons we are, and do what we do due to a unique for each one of us interplay of all these factors, and maybe even due to some

further ones. “No man is an island entire of itself,”<sup>1</sup> as John Donne famously put it; Donne’s concern was hardly moral luck, of course; still, his aphorism perfectly fits the discussion. We are by all means endowed with the genetic allowances and limitations our progenitors have passed on to us; this means that we can only have specific features, capabilities, tendencies etc., and not those of other people with different genomic constitutions; next to this, even from the womb and as long as we live, we exist as a part of a specific natural, historic, cultural, and social environment; the environment has a decisive say on us by providing allowances and imposing restrictions of its own, allowances and restrictions that can chisel raw genetic material into shape, personality and character. Both the genetic endowment we have been equipped with, and the environment we had to be born and raised in, were not – and never are – for us to choose; both are pure luck, a random ticket in this enormously inventive cosmic lottery of existence. If then it is mere luck that has made us the persons we are, and since our decisions and choices depend largely on the kind of the persons we are, it seems that everything we do or fail to do can only be attributed to luck; this is what Thomas Nagel<sup>2</sup> and Bernard Williams<sup>3</sup> call *moral luck*, and their view is a rather frustrating one, especially for ethicists: admitting moral luck into agency makes moral accountability an impossible enterprise, a *flatus vocis* totally devoid of any possible meaning. What is more frustrating, is that this view seems to be also in line with some key recent findings of the sciences.

<sup>1</sup> “No man is an Iland, intire of itselfe; every man is a peece of the Continent, a part of the maine.” John Donne, *Devotions Upon Emergent Occasions and Seuerall Steps in my Sicknes*, ed. John Sparrow, with a bibliographical note by Geoffrey Keynes (Oxford: Oxford University Press, 1923), Meditation XVII [old English].

<sup>2</sup> Thomas Nagel, “Moral Luck,” in *Mortal Questions*, ed. Thomas Nagel, 24–38 (Cambridge: Cambridge University Press, 1979).

<sup>3</sup> Bernard Williams, *Moral Luck* (Cambridge: Cambridge University Press, 1981).

## II. The stuff criminals are made on

Cesare Lombroso, the founder of positivist criminology, and Gabriel Tarde, in his time among the most prominent figures of social criminology, are commonly taken to be in direct opposition to each other, at least as far as their views concerning the origins and the causes of criminal behavior are concerned: contrary to Tarde, who stressed the effect that various environmental factors may have on the formation of the criminal personality, Lombroso famously claimed that criminal behavior is owed to spontaneous genomic expression, the atavistic revival of an once dominant, but since long obsolete and now unwanted genetically imposed behavior that is connected with – and manifest in – certain bodily features.<sup>4</sup>

Cesare Lombroso in his *The Criminal Man* introduced the notion of *born* – or, *congenital* – criminals; such individuals personify, in Lombroso's view, “an anomaly, partly pathological and partly atavistic, a revival of the primitive savage.”<sup>5</sup> Lombroso invested substantial effort to provide an impressively detailed and documented examination of both social evolution and personal development with regard to criminal behavior; this examination lead him to conclude that criminal behavior is only due to a certain evolutionary stage, one that in certain cultural and social environments – as well as in the early stages of psychological and moral development of any individual – is anticipated as normal. In Lombroso's words,

[...] children manifest a great many of the impulses we have observed in criminals; anger, a spirit of revenge, idleness, volubility and lack of affection. We have also pointed out that many actions considered criminal in civilised communities, are normal and

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<sup>4</sup> Cesare Lombroso, *The Criminal Man*, briefly summarized by his daughter Gina Lombroso Ferrero, with an introduction by Cesare Lombroso (New York and London: G. P. Putnam's Sons, 1911), especially chapter “Origins and causes of crime,” 125ff.

<sup>5</sup> *Ibid.*, “Introduction,” xii.

legitimate practices among primitive races. It is evident, therefore, that such actions are natural to the early stages, both of social evolution and individual psychic development. In view of these facts, it is not strange that civilized communities should produce a certain percentage of adults who commit actions reputed injurious to society and punishable by law. It is only an atavistic phenomenon, the return to a former state.<sup>6</sup>

It is obvious that to Lombroso the tendency towards criminal behavior is one among the most persistent characteristics in the evolutionary history of the human species; however, through cultural evolution and individual development this feature can either be annihilated or rendered idle; that is, as far as the species in general is concerned. But when it comes to single individuals, there is still room for spontaneous occurrences of atavistic recurrence. This is what criminal behavior is all about, according to Lombroso's account: the random, atavistic manifestation of genetically-driven tendencies and traits that belong to earlier evolutionary stages of the species, and are always indicative of defective or degenerated individuals that could barely be classified as humans, since certain phenotypic features that are common to such individuals are reminiscent of – and much closer to – those “found in the lower types of apes, rodents, and birds.”<sup>7</sup> Anomalies of this kind are usually connected to certain psychological defects such as moral insanity, epilepsy, melancholia, hysteria, etc.<sup>8</sup> In a nutshell, according to Lombroso's social-Darwinist account, criminal behavior can be reduced to the defective genetic outset shared by – and common to – almost sub-human, degenerate individuals; it follows that, in Lombroso's view, certain physical characteristics like the size of the skull, the shape of the nose, height, and others as such, are indicative of potentially criminal personalities. The upshot

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<sup>6</sup> *Ibid.*, 134.

<sup>7</sup> *Ibid.*, 6.

<sup>8</sup> See *ibid.*, Part III, Chapter II.

is that, in one way or another – and contrary to what ethicists who insist that morality is utterly dependent on agency and free will claim – in the light of Lombroso’s account the perpetrators of criminal acts are merely the victims of our species’ genetic evolutionary history that is not at all linear after all, at least as far as individuals are concerned.

Contrary to Lombroso, Gabriel Tarde provides a much more nuanced explanation of antisocial activity. Better versed into philosophical ethics than Lombroso, and an ardent ontological determinist, Tarde chose to target the very foundations of ethics, that is, agency and free will. Tarde’s argument no doubt would sound familiar to the ears of any Spinozist:

Can God create a free being? [...] “No,” for he would not know how to create an uncreated being. In fact, to be an absolute and first cause to one’s acts one has to be eternal from at least one aspect.<sup>9</sup>

Since it is only God, however, that is by definition eternal, and nothing apart from God, it follows that the individual may only be allowed the *false impression*, or a *veneer* of freedom. This metaphysical viewpoint finds an unexpected ally in contemporary science: “To sum up, the great objection to free will was formerly based upon the divine prescience, and is today based on the conservation of force.”<sup>10</sup> Far from being free, individuals according to Tarde are only the *loca* for the manifestation of eternal forces that operate repeatedly according to stable patterns; that is, assuming that there are indeed individuals after all: “The great question [...] is not whether the individual is free or not, but whether the individual is a reality or not.”<sup>11</sup> In the light of the above

[...] one is perfectly right in affirming the existence of a universal predetermination, and in denying the actual am-

<sup>9</sup> Gabriel Tarde, *Penal Philosophy*, trans. Rapelje Howell, with an editorial preface by Edward Lindsay, and an introduction by Robert H. Gault (Boston: Little, Brown and Company, 1912), §3, 17.

<sup>10</sup> *Ibid.*, 23.

<sup>11</sup> *Ibid.*, 18.

biguity of a certain future. [...] Thus, predetermination in the last analysis means the same thing as repetition.<sup>12</sup>

The ontological and metaphysical views endorsed by Tarde, of course, leave no room for any kind of freedom, including freedom of the will: “Thus the preposition that freedom of the will is the cornerstone of morality cannot be sustained.”<sup>13</sup> Instead, in Tarde’s view, the concept of free will is an “[...] essentially Christian principle” only purposed to establish “[...] the idea of personal responsibility as a substitute for the idea of family or genetic responsibility.”<sup>14</sup> It is the interplay of forces that are beyond our control that should be held responsible for every human action, and this applies equally to criminal acts:

The criminal act, like every other act committed in the midst of a society, is the combination of two combinations which are themselves combined together: one combination of physiological and psychological attributes accidentally met with and transmitted by heredity, the character, and one combination of examples crossing one another, the social surroundings.<sup>15</sup>

Tarde calls this process *imitation*, as it consists in the repetition of preexisting examples that are dominant within the vital circle of the agent. Examples as such are at some point of time *invented* by individuals, or, better, *in* individuals. As I implied above, Tarde seems to perceive the individual only as the *medium* for the actualization – or substantiation – of collective powers that far exceed its grasp. That is, while to the common understanding the theory of communism was *conceived* (or, in Tarde’s idiom, *invented*) by Karl Marx, which makes Marx its necessary cause, to

<sup>12</sup> Ibid., 20.

<sup>13</sup> Ibid., 19.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid., 31.

Tarde communism was *conceived in* Marx, that is, Marx has been merely the *means*, or the *locus* for its emergence. This, however, doesn't mean that Tarde endorses the view that ideas exist independently of the human intellect. As Tonkonoff pinpoints in the illuminating analysis he provides,

Imitation is a key notion in this sociology, as the way that this 'becoming similar' takes place is linked to the elemental social action of repeating an example. Here the language, the nation, the economic market and the government are nothing but imitative networks. And, as we shall see, the same can be said of the practices of fraud, robbery and murder. But in no case is the individual the final cause of these phenomena. According to Tarde, the imitable and the imitated are not so much a person as the beliefs and desires that a person bears or produces – whether she or he wants to or not, whether consciously or otherwise. Where, then, do these imitated beliefs and desires come from? The answer is in the concept of invention. Tarde (1902: 563) understands that all forms of doing, feeling, or thinking spring from an invention and have the tendency to propagate as fashion and take root as custom. All invention is individual, but once again, the individual is not its source: what is new happens in an individual, but she is not exactly its origin. The individual is a place of passage and sedimentation of collective desires and beliefs that repeat themselves in the form of judgments, will, memory and habits.<sup>16</sup>

Any behavior, any pattern of action, once *invented in* an individual, will find its place in the vast network of human and social interaction; through *imitation* it will be established as dominant within a certain social environment, and it will henceforth *de-*

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<sup>16</sup> Sergio Tonkonoff, "Crime as Social Excess: Reconstructing Gabriel Tarde's Criminal Sociology," *History of the Human Sciences* 27, no. 2 (2014): 62-63.

*termine* the decisions and actions of those who belong to this environment. In Tarde's words, "Socially, everything is either invention or imitation."<sup>17</sup> After all, "[...] a society is a group of people who display many resemblances produced either by imitation or by counter-imitation."<sup>18</sup> For Tarde, imitation in its positive as well as its negative form, that is, counter-imitation, is analogous to heredity with regard to physical expressions; invention, in turn, is analogous to the spontaneous emergence of a new species.

And now my readers will realise, perhaps, that the social being, in the degree that he is social, is essentially imitative, and that imitation plays a role in societies analogous to that of heredity in organic life or to that of vibration among inorganic bodies. If this is so, it ought to be admitted, in consequence, that a human invention, by which a new kind of imitation is started or a new series opened, the invention of gunpowder, for example, or windmills, or the Morse telegraph, stands in the same relation to social science as the birth of a new vegetal or mineral species (or, on the hypothesis of a gradual evolution, of each of the slow modifications to which the new species is due), to biology, or as the appearance of a new mode of motion comparable with light or electricity, or the formation of a new substance, to physics or chemistry.<sup>19</sup>

In the light of the above, criminal behavior – exactly as any other behavior – is the outcome of either a certain paradigm, or the interplay of several paradigms, that are prevalent or, at least,

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<sup>17</sup> Gabriel Tarde, *The Laws of Imitation*, trans. Elsie Clews Parsons, with an introduction by Franklin H. Giddings (New York: Henry Holt and Co., 1903), 3.

<sup>18</sup> *Ibid.*, xvii.

<sup>19</sup> *Ibid.*, 11-12.



present in any given social environment. The freedom of the will seems to be, after all, just a comforting illusion, a concept that flies in the face of reality: it is the environment that sets the rules, and agents just have to play along. The criminal man was never free to choose; at the end of the day the only crime one could be held responsible of, is that the sets of rules that happened to apply within one's environment and shaped one's moral character and personality, turned out to be far from favorable by some particular society.

Both Lombroso's and Tarde's accounts of antisocial and criminal behavior intent to provide a causal explanation of the phenomenon; although their views seem to be contrary to each other, since while Lombroso considers genetic atavism as the main cause for criminal behavior, to Tarde the only relevant factor in the establishment of any criminal personality is the environment(s) the criminal has found himself in, both approaches have a major implication in common: criminal behavior can be reduced to external factors and, hence, it is open to prediction and causal explanation. Crime is neither a *lapsus* of reason, nor an *anomaly*, as ethicists had been so eager to assume so far; instead, it is the offspring of the peculiar interplay of random factors that are external to the agent, independent of the agent's will and far beyond one's control, be it a traceable set of genetically inherited predispositions and tendencies, or the particular environment that has shaped the personality and the character traits of the criminal. In any case, in the light of Lombroso's and Tarde's views, what has always been the cornerstone of ethics, the possibility of free will – as well as everything that comes along with it, that is, moral judgement, responsibility and accountability, are being questioned; morality, after all, might be as dependent on contingency as anything else in the domain of human affairs.

### III. Morality as immune to luck

What Tarde and Lombroso seem to advocate is a germinal version of the concept of *moral luck*, to wit the assumption that specific aspects of our moral personality and behavior have been

formed in ways that are beyond our control, and, instead, are totally dependent upon contingency. Traditional ethicists, no doubt, would disregard such a claim as utterly unsubstantiated or, even better, as the most impossible of all oxymora,<sup>20</sup> since, as Daniel Statman puts it:

...there is at least one area where luck seems to be lacking or irrelevant, that is, the area of morality. The idea of one's moral status being subject to luck seems almost unintelligible to most of us, and the expression *moral luck* seems to be an impossible juxtaposition of two altogether different concepts.<sup>21</sup>

Statman here summarizes a view that not only lies at the very core of ethics as a concept, but also – and most importantly – makes possible all moral evaluation. Unlike what applies to any other area in the domain of human affairs, morality is acknowledged a unique kind of immunity to luck, since the agent's will is unanimously considered to be invulnerable to the capriciousness of fate. In Adam Smith's words it is “[...] the sentiment or affection of the heart, from which any action proceeds, and upon which its whole virtue or vice depends [...]”<sup>22</sup> Smith further elaborates in this view:

<sup>20</sup> Bernard Williams himself, who spared no pains to challenge morality's alleged immunity to luck, confessed: “When I first introduced the expression moral luck, I expected to suggest an oxymoron.” See Bernard Williams, “Postscript,” in *Moral Luck*, ed. D. Statman (Albany: State University of New York Press, 1993), 251.

<sup>21</sup> Daniel Statman, “Introduction,” in *Moral Luck*, ed. D. Statman (Albany: State University of New York Press, 1993), 1.

<sup>22</sup> Adam Smith, *The Theory of Moral Sentiments*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 2002), II, i, 2, 78. See also *ibid.*, II, ii, 1, 108: “Whatever praise or blame can be due to any action, must belong either, first, to the intention or affection of the heart, from which it proceeds; or, secondly, to the external action or movement of the body, which this affection gives occasion to; or, lastly, to the good or bad consequences, which actually, and in fact, proceed from it.”

The only consequences for which he can be answerable, or by which he can deserve either approbation or disapprobation of any kind, are those which were someway or other intended, or those which, at least, show some agreeable or disagreeable quality in the intention of the heart, from which he acted. To the intention or affection of the heart, therefore, to the propriety or impropriety, to the beneficence or hurtfulness of the design, all praise or blame, all approbation or disapprobation, of any kind, which can justly be bestowed upon any action, must ultimately belong.<sup>23</sup>

Immanuel Kant is probably the most iconic advocate of the view that it is only the ‘intention of the heart’ that is relevant when it comes to moral approbation – only that in Kant’s words it is the ‘good will’ that shines. The following passage from the *Groundwork for the Metaphysics of Morals* bears striking resemblance to Smith’s:

The good will is good not through what it effects or accomplishes, not through its efficacy for attaining any intended end, but only through its willing, i.e., good in itself, and considered for itself, without comparison, it is to be estimated far higher than anything that could be brought about by it in favor of any inclination, or indeed, if you prefer, of the sum of all inclinations. Even if through the peculiar disfavor of fate, or through the meager endowment of a stepmotherly nature, this will were entirely lacking in the resources to carry out its aim, if with its greatest effort nothing of it were accomplished, and only the good will were left over (to be sure, not a mere wish, but as the summoning up of all the means insofar as they are in our control): then it would shine like a

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<sup>23</sup> Ibid., II, iii, 3, 109.

jewel for itself, as something that has its full worth in itself. Utility or fruitlessness can neither add to nor subtract anything from this worth.<sup>24</sup>

What both Adam Smith and Immanuel Kant stress has always been considered as the cornerstone of ethical reasoning: morality is within the agent's grasp irrespective of the circumstances, even against any possible 'peculiar disfavor of fate' and all 'meager endowments of a stepmotherly nature.' In that sense, any external explanation of criminal behavior, such as those introduced by Tarde and Lombroso, can only be seen as a superficial, simplistic, reductionist analysis, that fails to take into account the unique character of morality: unlike anything else, morality is grounded – and, hence, dependent – solely upon reason; it is reason that makes agents capable of determining the golden mean between deficiency and excess, or making out what duty commands, or telling which decision seems more likely to maximize utility. This means that, as far as one partakes in reason, one should be acknowledged equal access to morality as any other, regardless of one's circumstances, external or internal – and, of course, be held equally accountable for one's deeds. In a sense, *morality is the only area where everybody is equal to any other*: while it is not entirely up to us if we live long or brief lives, acquire wealth, enjoy a good reputation, or stay healthy, our moral personality still remains entirely within our control, as long as we are rationally capable of either distinguishing the golden mean, or deciding where the best possible consequences are most possible to result from, or, finally, understanding what duty compels us to do. Since reason is an inherent part of ours that is absolutely immune to all external factors, and since morality is conceived as dependent on reason alone, it follows that morality should be absolutely immune to luck. What Tarde and Lombroso assume, to wit that under specific circumstances rational agents may have

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<sup>24</sup> Immanuel Kant, *Groundwork for the Metaphysics of Morals*, ed. and trans. Allen W. Wood (New Haven and London: Yale University Press, 2002), 4:394.

no control on their moral behavior, would sound as absolutely preposterous to all ethicists who, following Kant, believe that a good will may still shine even in spite of any disfavours of fate or the meager endowments of nature.

#### IV. The paradox of moral luck

Against this all-pervasive, dominant view, Bernard Williams and Thomas Nagel set out to shew that morality is not at all immune to luck, after all; on the contrary, according to them, luck has the power to affect decisively one's moral decisions, judgements and standing. This is what the notion of *moral luck* is about: what we decide to do as well as what we eventually do is largely dependent upon contingency, therefore it cannot be "the proper object of moral assessment, and no proper determinant of it, either."<sup>25</sup> According to Williams,

One's history as an agent is a web in which anything that is the product of the will is surrounded and held up and partly formed by things that are not, in such a way that reflection can go only in one of two directions: either in the direction of saying that responsible agency is a fairly superficial concept, which has a limited use in harmonizing what happens, or else that it is not a superficial concept, but that it cannot ultimately be purified – if one attaches importance to the sense of what one is in terms of what one has done and what in the world one is responsible for, one must accept much that makes its claim on that sense solely in virtue of its being actual.<sup>26</sup>

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<sup>25</sup> Bernard Williams, *Moral Luck: Philosophical Papers 1973-1980* (Cambridge: Cambridge University Press, 1981), 20.

<sup>26</sup> Bernard Williams, "Moral Luck," in *Moral Luck*, ed. Daniel Statman, 35-55 (Albany: State University of New York Press, 1993), 44-45; initially published in Bernard Williams, *Moral Luck* (Cambridge: Cambridge University Press, 1981), chapter 2.

At the heart of Williams' argument there is the connection of moral justification to rational justification. Since rational justification, Williams claims, can only be granted *after* our choices have proven either successful or unsuccessful – but not before that, and since no choice as such provides any guarantee whatsoever either for success or failure, luck should be admitted as a decisive parameter of rational and, therefore, moral justification. In other words, what rationally justifies our choices is the extent to which they succeed or fail; and since human affairs are, to some extent anyway, dependent on luck, luck is after all a decisive variable for the assessment of the moral merit of our choices.

In Thomas Nagel's view the paradox of moral luck consists in that "[...] a significant aspect of what someone does depends on factors beyond his control, yet we continue to treat him in that respect as an agent of moral judgement."<sup>27</sup> Nagel identifies four factors that are external to agents and far beyond their control, yet determine decisively their choices and actions, as well as their overall moral assessment: [a] the random circumstances an agent happens to find himself in, [b] the arbitrary outcome of one's actions, [c] one's temperament, character and personality, and [d] the unique chain of events that precede and determine one's actions. Accordingly, Nagel distinguishes between four types of moral luck, that is, [i] circumstantial, [ii] resultant, [iii] constitutional, and [iv] causal. To the degree one's choices and actions are determined by the factors mentioned above, as Nagel argues, one's morality as well as the moral judgements we may pass on him is not at all immune to luck, since none of these determinants lies within any agent's control. The following thought experiment – one that is nevertheless based on facts – would provide crucial insight on how Nagel's four-dimensional concept of moral luck works in real-life scenarios.

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<sup>27</sup> Thomas Nagel, "Moral Luck," in *Moral Luck*, ed. Daniel Statman, 57-71 (Albany: State University of New York Press, 1993), 44-45; initially published in Thomas Nagel, *Mortal Questions* (New York: Cambridge University Press, 1979), chapter 3.

Consider the case of Al-haji Sawaneh,<sup>28</sup> who was abducted by rebels as a child during the ten-years civil war in Sierra Leone, and was forcefully recruited by the Revolutionary United Force (RUF) as a member of the infamous Small Boys Unit, a tactical force consisting of child soldiers trained as ruthless killers and responsible of numerous despicable crimes.<sup>29</sup> According to Al-haji, in the age of twelve he was issued with a light-weight AK47 automatic rifle, and was commanded to take part in several tactical ambushes; he and his fellow child soldiers had already gone through intensive training so as to develop unquestioned obedience to their superior commanders paired with extreme cruelty towards the enemy, troops and civilians alike. Al-haji reported several instances of overwhelmingly violent crimes perpetrated by child soldiers, including children cutting “pregnant women’s bellies open just to see what the sex of the fetus was.”<sup>30</sup>

Drawing upon this last morbid mention, let us consider now the case of two child soldiers entering an enemy village just seized by their guerilla regiment. Among the captives they spot a woman in advanced pregnancy; they ask her whether the child she is with is a girl or a boy and, when she answers that she couldn’t know, they cut her belly open with their knives to find out themselves, killing thus both the pregnant woman and her fetus. What the two children do may seem despicable and sick, but to Nagel this would have been a rough sketch of his account of moral luck: all his four factors are here at play.

[a] The perpetrators *just happened to be children*; in case they were adults they would probably rape the pregnant woman, or beat her, or just leave her alone. But children are by their nature

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<sup>28</sup> See BBC Worldservice, “The Child Soldiers of Sierra Leone,” [http://www.bbc.co.uk/worldservice/programmes/global\\_crime\\_report/investigation/soldiers1.shtml](http://www.bbc.co.uk/worldservice/programmes/global_crime_report/investigation/soldiers1.shtml).

<sup>29</sup> See Human Rights Watch, “Sierra Leone Rebels Forcefully Recruit Child Soldiers,” May 31, 2000, <https://www.hrw.org/news/2000/05/31/sierra-leone-rebels-forcefully-recruit-child-soldiers>.

<sup>30</sup> Supra note 25.

curious, playful and stubborn when it comes to unanswered questions – but this is never their fault.

[b] The children *just happened to spot the pregnant lady*; if they had spotted a ball instead, or a cute little puppy, or even some fancy clothing, nothing of the kind would have happened.

[c] Suppose, and this is a quite plausible hypothesis, that both had already in the past witnessed their parents slaughtered by enemy soldiers the same way they slaughtered the pregnant woman – and tens of people ever since, or any other atrocity of the kind; if this be so, the kids of the narrative hadn't been as lucky, yes, I say lucky, as to have been born, let's say, in Athens to middle class parents who would put them to bed every night whispering sweet kitty; instead, they were born amidst a ferocious civil war to parents who probably would have already killed and raped others, and by the time they slaughtered the pregnant villager and killed her fetus, their parents would have probably also been slaughtered by others who had suffered the same misfortune. This is what Nagel calls resultant moral luck – the fact that it happened to spot a pregnant woman; what Nagel calls circumstantial moral luck is the fact that both happened to be born and raised in the eye of the hurricane; what Nagel calls constitutive moral luck is the fact that the perpetrators just happened to be children. It is clear that nature and its laws, together with a state of affairs – or, better, many states of affairs that had developed through time – that have been absolutely outside of those children's control are a fairly good explanation for what they did, and probably the only one we can have; and this is causal moral luck according to Nagel's account.

Now suppose that both children were lucky enough to stay alive and reach adulthood – just to become accomplished criminals. Would there be any place for moral accountability for whatever they may do? Would morality still be the area where everybody is equal, unlike what applies to any other field of human affairs? Williams and Nagel seem to have a point here; Tarde and Lombroso may, after all, have captured two different aspects of the same truth: agency and accountability do not apply in all cases.



## V. Postscript: A possible line of demarcation

It is hard to deny that cases of moral luck may indeed occur, that is, to disagree with the view that morality may indeed be affected – or even determined to some degree – by factors that are far beyond our reach, most notably the environment we are born and raised in on the one hand, and the genetic traits we are endowed with on the other, but also the random circumstances one may encounter in one's life, together with the random outcome of one's actions. If this is so, if we adhere to the so-called 'control principle'<sup>31</sup> there seem to be instances in which one's actions may indeed not be offered to moral assessment, since what one does depends on factors that are beyond one's control; this seems to be the case with the two child soldiers in the thought experiment above. There are indeed various other circumstances in which moral agency and accountability may be significantly diminished, if not altogether absent: dementia, extreme poverty, living under dehumanizing conditions, just to mention a few of them.

The question, of course, concerns the possibility of drawing any distinct line of demarcation; for it is one thing to assume that there may be cases or circumstances in which agency and accountability do not apply, and a totally different thing to suggest that free will is never possible: the former sounds plausible, the latter more like an arbitrary generalization. While moral intuition tends to accept the view that the two children in the narrative are neither blameworthy, nor culpable, or even responsible for what they did, we would need to go to great pains to assume the same about *any* mentally sane sex offender, or dodger, or someone who knowingly does evil that one could have easily avoided.

The recent findings in the fields of social psychology<sup>32</sup> but

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<sup>31</sup> For an excellent discussion of the control principle see Martin Sand, "A Defense of the Control Principle," *Philosophia* 49 (2021): 765-775. Also, David Enoch, and Andrei Marmor, "The Case Against Moral Luck," *Law and Philosophy* 26 (2007): 405-436.

<sup>32</sup> See, for instance, Stanley Milgram, *Obedience to Authority: An Experimental View* (New York: Harper and Row, 1974); also, Thomas Blass, "Under-

also in genomics<sup>33</sup> imply that there may be no such thing as “pure agency;”<sup>34</sup> after all, it may be true that, although the “will is a species of causality for living beings, insofar as they are rational” indeed, Kant is not absolutely right in claiming that “freedom would be that quality of this causality by which it can be effective independently of alien causes determining it.”<sup>35</sup> Impure agency, however, is still agency, and while moral luck cannot be denied its territory, there definitely have to be boundaries to its domain.

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<sup>33</sup> See, for example, Clare Barker, “Warrior Genes,” *MFS Modern Fiction Studies* 66, no. 4 (2020): 755-779.

<sup>34</sup> The term belongs to Margaret Walker; see Margaret Urban Walker, “Moral Luck and the Virtues of Impure Agency,” in *Moral Luck*, ed. Daniel Statman, 235-250 (Albany, NY: State University of New York Press, 1993).

<sup>35</sup> Kant, 4:446.

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