



Against Resultant Luck in the Legal System

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The legal system frequently holds people accountable for actions that are partially outside the control of the person in question. This essay will examine the particular case in which people are held accountable for the results of the action even though these results were not entirely within the person's control (this is referred to as resultant luck). Some have argued that resultant luck should not be accepted by the legal system, and instead that people should only be held accountable only for aspects of the act which are within their control. There is however a problem in the literature of proposing an acceptable definition of "control". It will be argued that a more compelling case can be made against the resultant luck if results are understood in terms of "moral skill" instead of simply "control". Moral skill requires that the person in question is capable of recognizing the morally right action and the ability for the person to act on this knowledge. The essay will contend that resultant luck lacks the proper relation to moral skill and thus should not be incorporated into the legal system.

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Moral luck occurs when a person is treated as the proper object of praise and blame, despite the fact that a significant portion of the act in question is beyond the person's control.¹ Current legal systems accept moral luck, and consequently punish people despite the fact that they have been morally lucky or unlucky. There are many different kinds of moral luck, such as circumstantial luck, constitutive luck, casual luck, and resultant luck. This essay is concerned with resultant luck and whether the legal system should seek to eliminate it. As will be elaborated upon later, resultant luck pertains to the contingent consequences which follow an action. I will begin my discussion by presenting an overview of the debate and where the controversies lie. I will then proceed to analyze some arguments in the literature both for and against the acceptance of resultant luck in the legal system. I will argue that none of the arguments withstand careful scrutiny. I will then propose my own argument in which I will contend that the legal system should be revised to remove the role of resultant luck.

Despite controversy regarding resultant luck, there is some agreement that can be found between the opposing positions. Michael S. Moore (who argues in favour of resultant luck) and Larry

¹ Nelkin, Dana K., "Moral Luck", The Stanford Encyclopedia of Philosophy (Winter 2013 Edition).

Alexander and Kimberly Ferzan (who argue against resultant luck) agree on some initial starting points on the issue. Importantly they all agree that resultant luck is really an issue regarding causation.² It is a question of whether "the causation of harm increases moral blameworthiness".³ Some of the causal factors which contribute to harm appear to be partially outside the agent's control. For example someone could attempt a murder by firing a gun at moderate range. The success or failure of the murder will depend on factors such as if the gun was properly manufactured or not. These factors could cause the bullet not to fire, or could cause the gun to be so inaccurate that the murder fails. This raises the question of the moral relevancy of results – as the causation of these results is at least partially outside the agent's control. Furthermore the authors agree that causation is neither necessary nor sufficient for responsibility. In the case of conduct crimes (such as drunk driving) the agent is culpable, even if no harm resulted. Consequently the causing of harm is not necessary for culpability. Furthermore they agree that causing of harm is not sufficient for culpability. However, it is necessary that one possess the requisite mens rea for a crime to have been committed (setting aside cases of strict liability in tort law). Rather the role of resultant luck is more complex, as it currently acts as an aggravating factor. Drunk driving is a culpable act subject to criminal penalties, but drunk driving causing death is an act subject to more severe penalties. Thus the causation of harm increases the punishment, typically by doubling the sentencing.⁴

As a result, the debate centers on whether it is just to punish people more severely due to factors which can be categorized as involving resultant luck. Those in favour of accepting resultant luck advocate for a continuation of the current legal system with regards to the matter, as it does not make accommodations for resultant luck. Those against resultant luck seek to remedy the system by proposing that all crimes should be inchoate crimes.⁵ These "crimes of attempt, attempt-like crimes with specific-intent, and crimes of risk creation".⁶ On this view one would be charged with attempted murder - even if one was successful in completing the murder. Likewise with acts that involve risk creation, such as drunk driving. The crime involved with drunk driving would not depend on facts of harm caused by the drunk driving (such as vehicular manslaughter), it would depend purely on the choice to engage in driving while intoxicated. Before presenting my own argument, I will present an overview of some arguments both for and against permitting resultant luck within the legal system.

In favour of the acceptance of resultant luck Moore proposes an experiential argument.⁷ He begins by stating that the first person perspective is privileged when considering ethical judgments. From this perspective he argues that people have different emotional responses after engaging in reckless behaviour which depends on the role of resultant luck. In the case where reckless

² Alexander, Larry, and Kimberly Ferzan. *Crime and Culpability: A Theory of Criminal Law*. 2009. 173; Moore, Michael S. *Causation and Responsibility An Essay in Law, Morals, and Metaphysics*. 2009. 23.

³ Moore, Michael S. 23.

⁴ *Ibid.*, 22.

⁵ *Ibid.*, 21.

⁶ *Ibid.*, 21.

⁷ *Ibid.*, 29-31.

behaviour (distracted driving) results in no harm (fortunately swerving out of the way at the last moment to avoid a pedestrian) the person is likely to feel relief, and focus on improving themselves for next time. However in the case where a reckless act (such as distracted driving again) results in harm (such as the death of the pedestrian) the person is likely to be overcome with guilt and regret for the harm they caused the other person. Moore contends that the person will feel more guilty because they are in fact more guilty. His argument could be framed as follows:

(1) In cases of actual harm (relative to cases where they are morally lucky and avoid the harm), the perpetrator experiences increased feelings of guilt

(2) This increased feeling of guilt is evidence that the person is in fact more guilty

(1) seems to be true based on general observations about human psychology. (2) makes the inference from psychological experience of guilt, to actual moral standing of guilt. It is important to recognize that the word "guilt" is ambiguous between actually being guilty of some act, and of some emotional feeling. Moore tries to go from one type of guilt to the other, but there is no necessary connection between them. Nonetheless this is just an accident of language that "guilt" is used in these two different senses – he requires this argument to be successful in order to connect these two senses. He concludes, on the basis of this argument, that there is a principled reason for believing that resultant luck should play a role in the judgment of a person's guilt.

Setting aside potential complexities regarding the privileging of the first person perspective, the argument may be subject to the following counter-argument (which is a modified version of Alexander's and Ferzan's response to Moore): the intuition that results matter is very important in some regards, just not with respect to judgments of moral blameworthiness.⁸ The general strategy of this argument takes this form:

(1*) In cases of actual harm (relative to cases where they are morally lucky and avoid the harm), the perpetrator experiences increased feelings of guilt

(2*) This increased feeling of guilt is evidence only that harm ought to be avoided (and consequently is not evidence for culpability)

(1*) is in agreement with Moore's psychological observation (1), which appears to be true. (2*) contends that the feeling of guilt is actually evidence for another conclusion, namely that harm ought to be prevented. It also contains the negation of Moore's conclusion. The general argumentative strategy here is to take the same data as Moore, but to construct a rival conclusion on the basis of the same evidence. Alexander and Ferzan remark that "Criminal law... is about reducing harm because the occurrence of harm itself is not irrelevant to us. In some sense it is all that matters... The difference between murder and attempted murder is quite simply the difference

⁸ Alexander, Larry, and Kimberly Ferzan. 176, 177.

between death and life... it certainly matters whether actors succeed or fail".⁹ People feel guiltier when harm actually occurs because harm is something which ought to be avoided. Harm simply matters – whether culpably caused or not. When people suffering due to a natural earthquake, this matters. The harm that these events cause is very important, even if there are no culpable actors. We experience sympathy for people who are harmed, and attempt to prevent future harms to them and to aid them in recovering. These emotions and feelings towards the victims of harm, however, do not necessarily entail anything about culpability. To illustrate this I will use an example from Alexander and Ferzan in which they consider a person who tries to rescue their friend from drowning.¹⁰ If the person fails to rescue their friend from drowning (perhaps they simply lacked the elite level of swimming skill needed to successfully pull off the rescue), they may feel overwhelmed with guilt over the event. They may look back on the event for years to come and regret the fact that they could not have done more (despite the fact that they could have done nothing more). Yet, I take it as obvious that no one would blame the person for letting their friend drown, despite these feelings of guilt and remorse. An extremely unfortunate outcome has occurred and the person has reacted with feelings of guilt, yet they are non-culpable. This case clearly illustrates that the experiential feeling of guilt does not entail any actual culpability. The person's emotions reflect not his guilt, but the recognition of the negative effective of harms that resulted. Moore has attempted to link feelings of remorse to actual culpability. This explanation, however, is implausible in these cases. The person's guilt is better explained by the fact that humans react with negative emotions to actual harm because harm is a bad thing to be avoided. Thus this example increases the plausibility of (2*) and illustrates its superiority to (2).

Furthermore, it is consistent to affirm the importance of harm, while denying its relevance to culpability, which can be understood within the $P \propto W \times R$ framework.¹¹ Just because harms are important to consider and ought to be avoided, does not have any straight-forwarded implications for culpability. It might be thought that if $P \propto W \times R$, and $W = \text{actual harm}$, then surely P is higher in cases of actual harm (i.e. accepting resultant luck). I however propose that $P \propto W \times R$ can still be accepted without this implication. On this view $W \neq \text{actual harm}$, but rather $W = \text{expected harm}$.¹² In these terms, the person's experience of guilt is not reflective of P , but of actual harm (which is not a part of the $P \propto W \times R$ relation). Moore maintains the experience of guilt is evidence of actual culpability. I however, have contended on the basis of the thought-experiment that guilt provides evidence that harm is something that ought to be prevented, and is, in fact, poor evidence of actual culpability).

At this point Moore could probably propose another counter-example which may favour (2) instead of (2*). In response I could think up another example and a series of counter-examples

⁹ Ibid., 177.

¹⁰ Ibid., 177.

¹¹ Under this framework $P = \text{deserved punishment}$, $W = \text{wrongdoing}$, and $R = \text{blameworthiness}$. In other words, the deserved punishment is proportional to the wrongness of an act and the agent's responsibility for that action.

¹² Later in this essay I will discuss moral skill, and in those terms $W = \text{The lack of moral skill displayed in an act}$, but "expected harm" will suffice for discussion now.

could take place. However it was never my intent for this argument to be my primary argument in favour of rejecting moral luck. Rather I was simply trying to create an equally plausible argument to act as a counter-weight against Moore's proposal. If two equally plausible rival conclusions can be constructed on the basis of the same evidence, then belief ought to be withheld regarding the entailments of the evidence in question. Thus nullifying the effects of both arguments. I am content with this result because I intend to propose a stronger argument later in the paper on the basis of different evidence. For now it is sufficient for my purposes to cast doubt upon the opposing position's argument. I will now examine the reasons in favour of the rejection of resultant luck.

Moore contends that the usual argument for rejecting resultant luck takes the following form:¹³

First premise: It is only fair to morally blame an agent for what is under that agent's control

Second premise: People do not have control over the results of their actions

Conclusion: Therefore people are not blameworthy for the results of their actions

The first premise draws on the intuition that people are not morally blameworthy for things (e.g. the weather). The second premise draws on the intuition that results appear to be beyond the realm of control of individuals, as a gun may malfunction and change the results of a murder. On the basis of these premises the conclusion seems to validly follow.

Moore contends that the argument rests on an equivocation on the word "control".¹⁴ He argues that the first premise is true only on a compatibilist reading of control, and the second premise is only true on an incompatibilist reading of control. Thus leading to no consistent way of reading the argument in which it is valid. Let us begin by analyzing an incompatibilist reading of the argument. This sense of control is very strong, requiring the ability to do otherwise in a deep sense. This deep sense requires that the agent could have acted otherwise given the antecedent conditions. First of all, this means that the agent has the ability to do so – where ability is understood to rule out the possibility that indeterminacy could be responsible for the change in action. Secondly, it maintains that even if antecedent conditions are held identical, the person could have done otherwise. This is a denial of determinism. Thus it is not surprising on this very strong reading of control it is certainly true that people do not have control over the results of their actions, rendering premise two true. However Moore rejects the first premise on this reading.¹⁵ His worry can be framed roughly as:

¹³ Moore, Michael S. 24.

¹⁴ Ibid., 24, 25.

¹⁵ Ibid., 25.

- (1) Assumption for Reductio: It is only fair to morally blame an agent's control for what is under an agent's control (in the incompatibilist sense)
- (2) In the incompatibilist sense nothing is under an agent's control (i.e. determinism is true)
- (3) It follows that agents are not blameworthy for any actions
- (4) This is an unacceptable conclusion (i.e. agents are blameworthy at least sometimes)
- (5) Therefore (1) is false

The justification for (2) relies on the fact that because of factors such as constitutive luck and circumstantial luck, this type of freedom is simply not possible. (4) does not require a justification, it is essentially a denial a hard determinism. Moore's opponent (the anti-luck proponent) is clearly trying to draw a less extreme conclusion than this, and would thus would accept this premise. While (2) is undoubtedly controversial, Moore notes that the truth of it will likely just collapse into the free-will debate.¹⁶ Requiring a proof of libertarianism strikes me as a strong mark against any attempt at an argument in favour of massive legal reform. For this reason I agree with Moore's dismissal of this reading, and instead turn to a weaker compatibilist reading - as it is less controversial.

On this reading Moore contends that while premise one may be true (it is only fair to blame an agent for what is under their control), premise two is now supposedly false (namely that people do not have control over the results of their actions). He contends what will be required is a principled difference between choices and results that will rest on a compatibilist notion of control.¹⁷ Alexander and Ferzan attempt to provide just such an account. They argue that choices are reason-responsive (and thus within an agent's control) and that results are not reason-responsive (and thus not under an agent's control).¹⁸ This emerges from a discussion in which they attempt to separate resultant luck from other types of luck (such as constitutive luck). They argue that what is relevant is that choices, while they may be the result of constitutive luck, are reason-responsive, and this is what accounts for their being within the control of an agent.¹⁹ Moore consents to this and agrees that choices and actions are within an agent's control. However he disagrees that results are not reason-responsive.²⁰ Consider someone who is plotting the murder of their rival at work. They break into the person's house and proceed to locate their rival and shoot them multiple times, causing their death. Moore agrees that the decision to murder them was indeed reason-responsive, but

¹⁶ Ibid., 25, 26.

¹⁷ Ibid., 26, 27.

¹⁸ Alexander, Larry, and Kimberly Ferzan. 190.

¹⁹ Ibid., 190.

²⁰ Moore, Michael S. 28.

contends that the resulting death was likewise reason-responsive.²¹ He contends that surely if the person did not have reasons to kill the rival, then the rival would not have died. He concludes that the result was indeed reason-responsive.²² He clearly has in mind some sort of counterfactual understanding of reasons responsive where it means roughly that "If the reasons had been different, then X would not have occurred", where X is some event - whether it be a choice or a result. For the purposes of argument, I will grant this point to Moore.

Moore anticipates some objections to his argument and prepares some responses. First he considers the objection that the reason-responsiveness needs to be direct.²³ He questions whether many choices are even direct. He considers the person who needs to drink alcohol before he can muster the courage to make some future choice. This future choice is indirectly caused by his earlier drinking, and he contends it fails to meet the direct cause criteria. Furthermore he contends that such a strong notion of control will lead to the conclusion that we do not even control any non-mental activity, such as undertaking a bodily movement.²⁴ Consequently he dismisses this understanding of control.

Moore then considers the suggestion that what separates the control of choice from the lack of control is the degree of control present.²⁵ He contends that this distinction will fail because there is no significant difference in the degrees. He states that the amount of contingency in a result is often overemphasized. In choosing to fire a gun at someone the person has a very significant amount of control over their death. Likewise he contends that while some choices have a high probability, some choices have a low probability.²⁶ This is supposedly because given the type of character that a person has a certain choice may be low probability for them (perhaps because of their malicious nature they are unlikely to give to charity). He concludes that choices and results both vary widely in the degree of control the agent has over them.

His first response that control does not require direct causation, seems fairly plausible. Since bodily movements are indirect (as they have intermediary factors such as neurons transferring neural impulses), it is far-fetched to think these movements are not under our control. If this was the case then it is hard to see how people could even be held responsible for attempts. An attempt to murder is going to require taking actions in preparation, however if these actions are under the person's control (as they would not be under this strict definition), then it appears they might not be able to be even held responsible for the attempt. This is an unrealistically restrictive sense of control. Consequently this response seems well founded.

However, his second remark about the degrees of control is a bit more problematic. He

²¹ Ibid., 28.

²² Ibid., 28.

²³ Ibid., 29.

²⁴ Ibid., 28.

²⁵ Ibid., 29.

²⁶ Ibid., 29.

maintains that some choices are low probability in light of the characteristics of the person in question. Even if this is true it seems to miss the mark a bit. The concern is not with the probability that one will make a certain choice, but rather with the degree of control the agent has with respect to making that choice. Perhaps the person was feeling uncharacteristically malicious one day and makes the decision to assault someone. The choice was low probability with respect to the stable character traits the person has, but they still seemed to possess a high degree of control with respect to the choice. However there are other reasons that Moore does not discuss which could justify his response. For the control of choices actually varies widely depending on a variety of factors. Consider someone who is angered very easily and loses his ability to think straight when enraged. Such a person has diminished control over their choices. Likewise a person with an addiction to some substance may have substantially diminished control over their choices with regards to the substance. This is sufficient for Moore's point that there is no bright line distinction between results and choices in terms of degrees of control. Some choices allow a person relatively high degrees of control (such as stabbing a defenseless sleeping person) and some choices allow a person for relatively less control (such as getting into a fight while lacking complete volitional control).

Moore's main point throughout his objections is that "[c]ontrol does not distinguish choices from results".²⁷ Any proposal to eliminate resultant luck from the legal system requires a principled way to distinguish between choices and results, and furthermore this proposal needs to demonstrate that this distinction is morally relevant. Moore gives good reason to think that control is not the right property to motivate this distinction. While it *prima facie* may look promising, it falls to his scrutiny.

I will attempt to modify the control argument in such a way that it maintains its general form, while changing some details so that it is not susceptible to Moore's criticisms. However I would like to first discuss the inspiration for my argument which originates in decision and game theory. In "An Introduction to Decision Theory", Martin Peterson discusses the distinction between rational decisions and right decisions. "[W]e say that a decision is right if and only if its actual outcome is at least as good as that of every other possible outcome. Furthermore, we say that a decision is rational if and only if the decision maker chooses to do what she has most reason to do at the point in time at which the decision is made".²⁸ Right decisions are judged in hindsight, based on how the world happened to turn out, whereas rational decisions are judged from the perspective of the agent at the time. Decision and game theory focuses on rationality "because theories of rationality operate on information available at the point in time the decision is made, rather than on information available at some later point in time".²⁹

An example of this distinction is apparent when considering a Texas Hold 'em player who is

²⁷ Ibid., 29.

²⁸ Peterson, Martin. *An Introduction to Decision Theory*. 2009. 5.

²⁹ Ibid., 5.

dealt a 2 and a 7 (off-suit). This is the worst possible starting hand in terms of probability of winning given the information at the time. Imagine such a player going all-in after receiving such a hand (and full well knowing that that it is a poor hand). Furthermore assume he is the first to bet, and consequently he had no insight into other player's hands as they did not have the opportunity to bet or check (and thus attempting to "buy the pot" at this stage would be an erroneous decision). As it so happens a few people at the table go all in, and against all odds our lucky protagonist manages to win the hand. From the perspective of decision and game theory this person has behaved irrationally and is not deserving of praise. The results were not a display of skill, but were rather the result of luck.

I propose that similar line of reasoning should be adopted with regards with resultant luck within the legal context. I propose the following argument:

First premise: Choices reflect the moral skills of agents

Second premise: Results do not capture the moral skills of agents

Third premise: Our practices of moral praise and blame should reflect the moral skills that the agent displayed

Conclusion: Therefore results are not relevant to the practice of blaming

This argument takes a similar form to the 'control' argument proposed earlier, however it is now cast in terms of an agent's moral skill (perhaps moral skill is a specific form of control, or perhaps not, either way it should not have any impact on the soundness of my argument). This is a somewhat odd terminology choice, but I believe it will help illuminate the issue more clearly. What exactly does it take to have moral skill? Before answering this question I want to arrive at a more general account of skill by looking at skill in different domains. I will select examples that are structurally similar to moral scenarios. Sports (such as baseball) make for closer analogies because they have an element of luck when it comes to results. This is not so clear in competitions like chess, where (at least at the high level) there is much less luck involved when determining results. My examples will attempt to keep the analogy as close as possible.

In American baseball the field sizes differ from stadium to stadium. The smallest field size (measured in distance to center field) is Angel Stadium at 121m and the largest is Minute Maid Stadium at 133m. This distance in part determines how hard it is to hit the ball out in center field. Consider two batters who are playing, one in each stadium (the batters are unaware which stadium they are playing in, and cannot adapt accordingly). The first batter hits the ball towards center field: 122m deep, 125m deep, and 128m deep. The second batter hits the ball towards center field: 129m deep, 131m deep, and 135m deep. Assuming that if the ball was hit beyond distance to center field, then the player scored a home-run, then which player had the better results that game based on

these hits? Well that information entirely depends on what field they were in. If the second batter (who consistently hit further) was in Minute Maid Stadium he would have scored zero home-runs, whereas the first batter would have scored three home-runs if he were in Angel Stadium. Yet on the basis of this evidence (and the assumption that there were no other luck factors at play i.e. their hits were reflective of their batting knowledge and their physical capabilities) the second batter still has more skill. Being good at baseball does not mean getting the most points, there are other measures of performance which are more important.

Consider another example from curling. Suppose that a team arrives for an event and do not have time to examine the rink, yet they have no reason to expect any abnormalities. The lead is an expert player in the game and begins to throw the first stone. The stone is delivered in such a way that if the ice was formed in a normal manner, it would result in a perfectly placed first shot. Unfortunately the ice is warped in a slightly strange way (the deformation is only in a very specific spot, and would only matter when hit at a certain angle). It just so happens that the rock hits the deformation and results in a poor position. The opponents take their throw and then the stage is set for the lead to be given another chance (they manage to avoid any abnormal ice patterns). The lead incorporates the knowledge of the ice deformation and plans to shoot around it. He once again know the exact shot to capitalize given the situation in the game. However, as luck would have it, he hits upon another very similar deformation once again disrupting the shot and resulting in a sub-optimal position. The results (sub-optimal shots) are not reflective of the curler's skill. Yet he is still praiseworthy for these shots, as they were reflective of his ability to play the game at an elite level. Given the knowledge that he had, he chose the right way to shoot and correctly acted upon it. The poor results of those two shots do not affect the fact that the lead displayed good curling skill in his shots, and is praiseworthy as a result.

Results may have some correlation with skill, but are not sufficient nor necessary nor do they enhance the achievement. One can lose out to luck and still display their wonderful skill while doing so. This is true in decision and game theory (as showcased in the poker example), and in the sports examples.

To proceed any further it will be necessary to define what constitutes moral skill. I will by establishing a more general account of skill. I propose that there are two components to being skilled in some activity: (1) the ability to identify an optimal choice given the information available at the time, and (2) the ability to act on that choice. The first component is cognitive and involves recognizing analyzing the situation to determine an optimal choices. In the poker case, the player must recognize that their hand has a low probability of winning given the circumstances at hand, and that going all in is likely to have the lowest expected payoff. Likewise since the second batter used his extensive knowledge of batting to hit the ball the far distance, he too displayed the cognitive component of requiring skill. Similarly with the expert curler. The "given the information available at the time" part of the condition is meant to rule out factors that the person could not reasonably foresee (such as what cards the dealer is about to play on the flop, surely those factors

should be excluded from judgments of skill). I also say “an optimal choice” as opposed to “the optimal choice” to lower the standard for skill. It is unreasonable to contend that someone who chooses the second best technique given the circumstances has not displayed skill. One does not need to make the most optimal choice at the time, it just needs to be an optimal choice (and consequently comes in degrees). The second component depends upon the ability to act upon the optimal choice. In poker this might depend upon having the correct body language as to hide a bluff. In baseball and curling it is physically difficult to exercise the optimal choice sometimes. It requires proper training in terms of strength, and also in terms of developing the correct muscle memory. This is necessary because someone who cannot hit the ball far enough in baseball, or cannot throw at the correct angle (despite having the knowledge of what the correct throw would be), is not displaying skill in that area. In some areas of life one component of skill may be much more difficult to satisfy than the other. For example, being skilled in lifting a large amount of weight requires minimal cognitive ability, but may be very difficult to act upon. Contrast this with chess, where it is very easy to physically act and move the pieces, but is very cognitively demanding. I propose that this definition of skill is very plausible given its huge degree of explanatory power.

With skill already defined, it becomes easier to define what is meant by “moral skill”. Moral skill requires: (1) the ability to identify a morally optimal choice given the information available at the time and, (2) the ability to act on that choice. The first requirement involves the cognitive ability to assess the situation and determine what a right thing to do would be. Someone might fail to be morally skilled because they fail to consider the suffering they might inflict by choosing to undergo some course of action (such as deciding to drive home drunk). A person may also fail to be morally skilled because they lack the moral strength to act on the right choice. For example someone might see the wrong they are going to commit and acknowledge a morally better choice (thus satisfying the cognitive component), but for selfish reasons to decide act on the wrong choice. I contend that since the general account of skill was plausible, so too is this specific instance of it.

With this definition established, I now present my first two premises again: Choices reflect the moral skill of an agent, and results do not reflect the moral skill of an agent. In these other areas of life regarding skill, choices and acts capture skill in ways that results do not. Results may be correlated with skill sometimes, but results are not the true measure of skill. Given the definition of skill, this is true. Results often depend upon factors that cannot be considered at the time of the decision, as that information is not available to the agent at the time. There is no reason to think that this does not ring true for morality any differently than in these other similar areas of life that involve luck with regards to results. When someone attempts to murder someone else via gunshot, given the information they have at the time it may be almost certain that the murder will be a success. However, as the agent could not have known, the gun fails to fire, thus preventing the murder. This however has no bearing the moral skill of the person. They still identified a wrong choice, and proceeded to act upon it. This establishes a principled difference between choices and results.

I further contend that it is essential to recognize this distinction for our practices for praise and blame. I once again draw on earlier analogies to justify this point. No one is praising the person who makes an extremely risky and irrational bet and happens to win. If anything they will probably deem him an idiot who simply got lucky. Likewise in sports, just because a player's results (whether in losing the game, or perhaps in their measure of points (the baseball example)) are not as important as their choices and actions. I contend this is true for morality as well. The crazy driver who just happens to narrowly miss killing several people each month deserves a substantive amount of blame, the same amount of blame as if he had killed one or more people. I contend that a principled and relevant distinction exists between choice and results, and it is grounded in the difference of moral skill corresponding to these categories.

On this account, crimes ought to be cast in terms of attempts and reckless behaviour. Those are reflective of the moral skill in of an agent in a way that many current crime laws do not. From the perspective of $P \propto W \times R$, the component W is equal to the lack of moral skill displayed in an act. Acts such as attempted murder are more reprehensible than acts of theft because they display a greater lack of moral skill. Either because the person fails to recognize the possible harms inflicted by the act, or because they fail to act on what they know to be an optimal choice.

A vulnerability of some attempts to eliminate resultant luck can face that charge that there is no principled distinction between resultant luck and constitutive or circumstantial luck. For example, it could be argued that constitutive/circumstantial luck undermine control just as much as resultant luck. However this charge will not be successful against my account. It may be true that circumstances and a person's luck in having their constitution explain why a person is morally skilled, but this hardly undermines their skill. Imagine someone stating that "LeBron isn't skilled, he just had the right characteristics and circumstances to grow up in to become a great basketball player". This is preposterous. It does not matter how someone acquires skill, only that they have it. The only luck that interferes with measures of this skill is resultant luck, and that is why I propose that it is eliminated. Decision and game theory take a similar approach, and legal practice should follow suit.

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