

- **Author:** Robert J. Hartman
- **Author Orcid ID:** 0000-0002-5115-7636
- **Email:** roberthartman122@gmail.com
- **Affiliation:** Ohio Northern University, The School for the Humanities and Global Cultures
- **Address:** 525 South Main Street, Ada, OH 45810
- **Abstract:** The received view of Kant's moral philosophy is that it precludes all moral luck. But I offer a plausible interpretation according to which Kant embraces moral luck in circumstance and constitution. I interpret the unconditioned nature of transcendental freedom as a person's ability to do the right thing no matter how she is inclined by her circumstantial and constitutive luck. I argue that various passages about degrees of difficulty relating to circumstantial and constitutive luck provide a reason to accept a pro-moral luck interpretation of Kant.

Circumstantial and Constitutive Moral Luck in Kant's Moral Philosophy

The received view in the moral luck literature, and elsewhere, is that Immanuel Kant's moral philosophy rules out the possibility of moral luck. "Kant's moral philosophy is one of grandest attempts in Western philosophy to banish any form of luck from the realm of morality" (Vaida 2014: 124); "the Kantian [moral] position is presented as entirely incompatible with the possibility of luck" (Athanassoulis 2005: 100; see also Nagel 1979; 1986; Walker 1991: 22; Williams 1981; 1985).

But there is a plausible interpretation according to which Kant allows luck in circumstance and constitution to positively affect how much praise or blame a person deserves.¹ First, I define and illustrate these contemporary categories. Second, I offer an alternative interpretation of a crucial passage on free will that appears to indicate that Kant denies the possibility of circumstantial and constitutive moral luck. Third, I argue there is a plausible interpretation according to which Kant allows for the possibility of circumstantial and constitutive moral luck by highlighting passages in *The Metaphysics of Morals* on degrees of difficulty. If I successfully argue that there is a plausible

¹ In Hartman (2019a), I argue that Kant does not deny that lucky *consequences* can affect how much praise or blame a person deserves (see also Moran 2019).

interpretation on which Kant embraces circumstantial and constitutive moral luck, Kantian philosophers who deny moral luck have an occasion to re-check their reasons.

Defining and Illustrating Moral Luck

Moral luck occurs when factors outside of an agent's control positively affect how much praise or blame she deserves (Hartman 2017: 23).² Kinds of moral luck are differentiated by the source of lack of control including consequences, circumstances, constitution, and causal determination (Nagel 1979: 28). In this paper, I focus exclusively on moral luck in circumstances and constitution.

Circumstantial moral luck occurs when it is outside of an agent's control whether she faces a morally significant challenge or opportunity, and that challenge or opportunity positively affects her degree of praiseworthiness or blameworthiness. For example, consider two persons with identical character traits who go to the beach. Long Way Out, our first character, looks up to see a stranger drowning a long way out in the water. Long Way Out springs into action, swims the long distance, and saves the day. Near The Shore, our second character, looks up to see a stranger drowning near the shore. Near The Shore runs to the drowning stranger and saves them without endangering herself. Suppose that Near The Shore would, or would very probably, have saved the stranger in the same way as Long Way Out if the drowning stranger had been a long way out instead of near the shore. The salient difference between them is a matter of circumstantial luck: whether their opportunity for beneficence was difficult. If Long Way Out is more praiseworthy than Near The Shore, then circumstantial moral luck exists in this comparative case, because luck in opportunity can make a difference with respect to how much praise each deserves. If, however, they are equally praiseworthy, circumstantial moral luck does not exist in this case.

² The standard definition of 'luck' in 'moral luck' is the lack of control account of luck (Hartman 2017: 23). For a defense of this standard definition, see Hartman (2017: 23-31), Anderson (2019), and Statman (2019); for an argument against it, see Levy (2019).

Constitutive moral luck occurs when an agent's dispositions or capacities are possessed due to factors outside of her control, and they positively affect her degree of praiseworthiness or blameworthiness for a trait or an action. Consider Long Way Out in comparison with a third character: Scarred Childhood's father drowned at the beach when she was a youth, and, as a result, she developed aversions to getting in the water even though she is a good swimmer. So, when Scarred Childhood looks up from her towel to see a stranger drowning a long way out in the water, she experiences aversions that make it much more difficult for her than for Long Way Out to save the stranger. Scarred Childhood overcomes those fears and does so. Of course, it is outside Scarred Childhood's control that she has those aversions, and it is outside of Long Way Out's control that she never developed those aversions in that way. If Scarred Childhood is more praiseworthy than Long Way Out, then constitutive moral luck exists in this comparative case, because their constitutive luck makes a difference to their degree of praiseworthiness. If they turn out to be equally praiseworthy, there is no constitutive moral luck in this case.

An Alternative Interpretation

A major motivation for the received view that Kant denies all moral luck is that transcendental freedom³ is unconditioned such that no free agent is disadvantaged by bad circumstantial or constitutive luck. Nafsika Athanassoulis (2005: 104, 112) interprets Kant in that way in this passage from the first *Critique*:

Now even if one believes the action [a malicious lie] to be determined by these causes, one nonetheless blames the agent, and not on account of his unhappy natural temper, not on account of the circumstances influencing him, not even on account of the life he has led previously; for one presupposes that it can be entirely set aside how that life was constituted, and that the series of conditions that transpired might not have been, but rather that this deed could be regarded as entirely unconditioned in regard to the previous state, as though with that act the agent had started a series of consequences entirely from himself. This blame is grounded on the law of reason, which regards reason as a cause that, regardless of all the empirical conditions just

³ Transcendental freedom is the freedom from one's self to produce an act in the phenomenal world (Pereboom 2008: 542).

named, could have and ought to have determined the conduct of the person to be other than it is. ... it is entirely his fault (Kant 1998: 544, A555/B583).⁴

This passage suggests that Kant denies the possibility of circumstantial and constitutive moral luck, because circumstantial and constitutive luck appear to be unable to affect the exercise of noumenal free agency, which implies that there are no partial or full excuses from, for example, a bad upbringing or difficult circumstances.⁵ But this excuse-free account of free agency contradicts the intuitive idea that bad upbringings and difficult circumstances can be at least partial excuses. And since I argue in the next section that Kant himself aims to make sense of the possibility of that intuitive idea, the principle of charity motivates an alternative interpretation.

A more modest interpretation is that free agents are unconditioned in the sense that they are able always to do the right thing no matter how they might be inclined. This idea is described by the incompatibilist dictum that various circumstantial and constitutive features outside of the agent's control can incline without necessitating (1996b: 375, 6:213-214). This interpretation of the unconditioned nature of free choice is consistent with its being harder and easier to do the right thing due to circumstantial or constitutive luck.

⁴ References to Kant are given first by translation and page number separated by a colon, and then by the Akademie edition following a comma.

⁵ Christine Korsgaard (1992: 319) embraces this interpretation but attempts to reintroduce excuses into Kant's moral theory in two ways. First, Korsgaard (1992: 322-323) recognizes that Kant believes that empirical influences such as a good political constitution and moral education can benefit an agent's character. But even if she is right about these influences upon the agent's character—and I think she is—these admissions support neither partial nor full excuses for an agent's moral responsibility, because character evaluation is distinct from responsibility evaluation (Blöser 2015: 190; cf. Hartman 2017: 124-127; 2019a: 138-140). Second, Korsgaard (1992: 323-324) mentions that Kant thinks that we should be generous in our interpretation of others' behavior, because we do not know the maxims on which they act. But this idea cannot help to reintroduce excuses either, because it is about the ethics of blame in cases of uncertainty and not the degree of an agent's blameworthiness. Thus, neither of Korsgaard's proposals succeeds.

From Degrees of Difficulty to Moral Luck

Kant asserts that certain kinds of lucky circumstantial and constitutive factors can make it more or less difficult to do the right thing, and they can affect the degree of a person's moral praiseworthiness and blameworthiness:

Subjectively, the degree to which an action *can be imputed* (*imputabilitas*) has to be assessed by the magnitude of the obstacles that had to be overcome. - The greater the natural obstacles (of sensibility) and the less the moral obstacle (of duty), so much the more merit is to be accounted for a *good deed*, as when, for example, at considerable self-sacrifice I rescue a complete stranger from great distress.

On the other hand, the less the natural obstacles and the greater the obstacle from grounds of duty, so much the more is a transgression to be imputed (as culpable). - Hence the state of mind of the subject, whether he committed the deed in a state of agitation or with cool deliberation, makes a difference in imputation ... (Kant 1996b: 382, 6:228; italics in original).

To determine whether these passages are plausibly interpreted as Kant's embracing circumstantial and constitutive moral luck, we have to understand what is being asserted by 'imputation of merit and culpability', 'natural obstacle', and 'moral obstacle'. Several Kant scholars agree that imputation of merit and culpability in these passages are sufficient for attributing moral praiseworthiness and blameworthiness, although Kant himself does not make this identification (Reath 2006: 253; Johnson 1996: 312, 327; Blöser 2015: 187). Furthermore, 'natural obstacles' can refer to features external and internal to the agent that can be beyond her control, and so may refer either to circumstantial or constitutive luck. On 'moral obstacle', I follow Claudia Blöser (2015: 191-194) who interprets it to be feelings such as horror or disgust that "hinder" "the omission of the good deed," and such feelings may be constitutively lucky. In light of these clarifications, Kant is plausibly endorsing the commonsense idea that all other things being equal, the more difficult it is to do the right thing, the more praiseworthy a person is for doing it, and the easier it is to do the right, the more blameworthy a person is for violating duty. And since luck in circumstance and constitution often affect the degree of difficulty for various actions, Kant often allows circumstantial and

constitutive luck to make a difference with respect to how much praise and blame a person deserves (see also Heyd 1997; Moran 2019).⁶

Let us make the idea more concrete. It is much easier for Near The Shore to save the drowning stranger than it is for Long Way Out to do so. Thus, according to the above principles of imputation, Long Way Out is more praiseworthy for helping than Near The Shore is. But then, circumstantial factors outside of their control make a difference to how much praise they each deserve; thus, circumstantial moral luck exists in this case. Additionally, it is harder for Scarred Childhood to help than it is for Long Way Out due to Scarred Childhood's aversions, which augments Scarred Childhood's degree of praiseworthiness for helping, according to the above principles of imputation. The upshot is that constitutive factors outside of their control affect their comparative degree of praiseworthiness, and so constitutive moral luck exists in this case.

These kinds of moral luck are compatible even with a robust libertarian interpretation of transcendental freedom.⁷ For example, Eric Watkins (2005) and Benjamin Vilhauer (2004; 2010; 2017) interpret the noumenal realm as standing in a grounding relationship to the phenomenal realm such that noumenal free choices control phenomenal choices by controlling which laws of nature causally determine the phenomenal choices. What laws there are depends on what natures are

⁶ My claim here assumes that degrees of difficulty, praiseworthiness, and blameworthiness are not so fine-grained and contrastively counterbalanced as to provide absolute equality of moral opportunity, as Swenson (2022) and Diamantis (forthcoming) argue. For a preliminary defense of this assumption, see Hartman (2019b: 3189-3190).

⁷ There are, of course, interpretations of Kant's transcendental freedom that rule out these kinds of moral luck. Here are two examples. First, Christine Korsgaard (1992; 1996) interprets Kant's view of transcendental freedom as entirely unaffected by circumstantial and constitutive luck from the practical standpoint. Although freedom is affected by these kinds of luck from the theoretical standpoint, that is not relevant. These standpoints are distinct provinces of explanation (Korsgaard 1996: 173), neither standpoint can be subordinated to the other (Korsgaard 1996: 173), and it cannot sensibly be asked how they relate (Korsgaard 1992: 317-318). As such, exercises of transcendental freedom on this view float free of circumstantial and constitutive luck in the practical standpoint of choice. Second, Ralph Walker (1978: 148-149) suggests that the noumenal realm stands in a grounding relationship to the phenomenal realm in such a way that noumenal free choices control phenomenal choices by bringing about *all* the phenomenal circumstantial and constitutive influences that causally determine the phenomenal free choice; as a result, there is no circumstantial or constitutive *luck or factors outside of our control* (such as the distance of the drowning person from the shore or aversions to swimming) involved in our phenomenal free actions; and thus no circumstantial or constitutive moral luck, according to this interpretation.

instantiated (Watkins 2005: 329-361), and noumenal agents exercise transcendental freedom by making changes in their natures. That is, by changing their natures, they can exercise indirect control over the laws that are applicable in the phenomenal causal series (Watkins 2005: 334-339). If they had freely made different changes to their natures, the laws of nature would have been different and different phenomenal actions would have been causally determined in the phenomenal series. Changes to their natures are also unique enough to ensure the singular application of a law of nature (Vilhauer 2010).

There are three reasons to think that the free choice to change features of the noumenal self on this interpretation can be more or less difficult based on the agent's circumstantial and constitutive luck. First, features of the phenomenal world are grounded in features of the noumenal world on this interpretation, and so certain features of the phenomenal world give us a window, albeit an imperfect window, into features of the noumenal world. Circumstantial and constitutive luck make choices more or less difficult in the phenomenal world. Second, if noumenal free choices cannot be made more or less difficult by circumstantial and constitutive luck, the passage on degrees of difficulty, praiseworthiness, and blameworthiness would be a description of morality without possible application; but since it is more plausible to suppose that Kant means that passage to have possible application, it is more plausible to think that Kant allows noumenal free choices to be more or less difficult due to circumstantial and constitutive luck.

Third, Kant's own contentions about the importance of a civil society and moral education highlight ways in which circumstantial and constitutive luck affect how difficult it is to do the right thing, which is something that we should expect an account of transcendental freedom to accommodate. On the one hand, a civil society checks unlawful impulses that would otherwise dampen respect for the moral law:

Within each state it is veiled by the coercion of civil laws, for the citizens' inclination to violence against one another is powerfully counteracted by a greater force, namely that of the government, and so not only does this give the whole a moral veneer (*causae non causae*) but also, by its checking the outbreak of unlawful inclinations, the development of the moral predisposition to immediate respect for right is actually greatly facilitated (Kant 1996c: 343, 8:375n; italics in original).

In other words, being born into a civil society itself fosters respect for the moral law, and it thereby increases the pull of the moral incentive, which makes it easier to act for duty from duty (Surprenant 2014: 21-47). On the other hand, the right kind of moral education also makes it easier to do one's duty (Moran 2009). For example, Kant recommends that children should not grow up luxuriously, because it makes fulfilling duty harder in cases in which fulfilling duty stands in opposition to personal comfort: "But if all of their whims are fulfilled in early youth, their heart and their morals are thereby spoiled" (Kant 2007: 452, 9:460). Furthermore, Kant recommends providing examples of good people to increase respect for the moral law:

The predisposition to the good is cultivated in no better way than by just adducing the *example* of good people (as regards their conformity to law), and by allowing our apprentices in morality to judge the impurity of certain maxims on the basis of the incentives actually behind their actions. And so the predisposition gradually becomes an attitude of mind, so that *duty* merely for itself begins to acquire in the apprentice's heart a noticeable importance (Kant 1996a: 93, 6:48; italics in original).

That is, good examples provide young persons the opportunity to judge the impurity of their maxims and thereby increase their respect for the moral law, which increases their incentive to act morally. Importantly, it is a matter of luck whether a person is born into a civil society, accustomed to creaturely comforts, or catechized with good examples, and these kinds of luck can make fulfilling duty more or less difficult. The previously highlighted account of transcendental freedom is consistent with these passages insofar as changes to noumenal natures can be more or less difficult due to such lucky factors.

Conclusion

I have argued that there is a plausible interpretation according to which Kant embraces circumstantial and constitutive moral luck, and this interpretation is consistent even with a robust libertarian interpretation of Kant on free will. In concert with my recent work that Kant's moral philosophy does not rule out moral luck in consequences (Hartman 2019a; see also Moran 2019), this paper about circumstantial and constitutive moral luck in Kant's moral philosophy provides even more reason to challenge the received view that Kant's moral philosophy obviously rules out moral luck, which can provide contemporary Kantian philosophers an occasion to re-check their reasons about why they deny moral luck.⁸

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