

Julian Nida-Rümelin, München

There is no Moral Luck

ABSTRACT:

Most present day philosophers assume that chance or luck is morally relevant. That it makes a moral difference whether an action of mine has, by chance, good or bad consequences. I will defend the opposing view: There is no moral luck, luck is morally irrelevant. The examples which are taken to show that there is moral luck rest on conceptual confusions. The confusion between reasonable bad sentiments and moral responsibility (sec II), the confusion between ex ante rationality and ex post assessment (sec III), the confusion between epistemic and normative assessment (sec IV), the confusion between ideological interpretation and moral judgement (sec V). The canonical account according to which action is intentional behaviour, that the agent controls and for that she is responsible, can be defended (sec VI) if one discriminates moral from other forms of responsibility (VII).

KEY WORDS: Moral Luck, Responsibility, Free Action, Practical Rationality, Reasons, Probability

I. The Problem

Sometimes you are lucky, sometimes you aren't. Sometimes you may do something with good intentions, but it turns out that what you did had quite bad consequences. Then you feel you should have done something else. Sometimes you act in a way which you yourself find morally doubtful. But then it turns out that what you did had no bad consequences. In a way you were lucky. In such a case you may feel relieved afterwards and you may say: "I was lucky: as it turned out, what I did was ok."

Immanuel Kant took the philosophical position that luck is morally irrelevant, that luck should not influence our moral judgement of actions and persons, that there is no such thing as *moral luck*. I think he was right. Thomas Nagel, who is himself in many respects a Kantian, argued that Kant was wrong and that common moral sense was right, in other words: there is moral luck, that luck is morally relevant. Since the publication of Nagel's influential article "Moral Luck", there are not many philosophers left who doubt that luck is morally relevant. But if they are right, freedom of choice and responsibility for what we do would be disentangled. I think they are wrong.

I am convinced that luck is morally irrelevant, and I also think that freedom and responsibility regarding ones own actions are most closely related to each other. Any

philosophical strategy which tries to disentangle these two normative concepts must fail. In this article, however, I want to argue exclusively in favour of the first assumption: luck is morally irrelevant, there is no (genuine) moral luck.

If my argument is valid, one element of common-sense morality will have been defeated, i.e. that luck can have moral relevance, and it would strengthen another element of common-sense morality, namely that people cannot be morally assessed for what is beyond their control. If my argument is correct, freedom, rationality and control remain crucial for moral assessment and responsibility.

There can be no doubt: whether we succeed or fail often depends on factors beyond our control. Even the adequate individuation of action depends on external factors. Whether A helps B depends not only on what he did but also on those external factors which determine the consequences of what he did. If B is better off after A's action, he might have been helped. If this is not the case, we rarely would say A had helped B. If to help others is a moral duty, it seems that whether I fulfil my moral duty is dependent on external facts.

On the other hand, if I did the best I could do under the given circumstances, it would seem unfair to blame me for the fact that I did not succeed in helping due to some unforeseeable external factors. Put in more general terms: The moral duty to help others if they need help and I can provide it, should be formulated more precisely as: Do that of what you can rationally expect that it helps those in need of help!¹

To be sure, there is a difference between "rescuing someone from a burning building and dropping him from a twelve-storey-window while trying to rescue him." And there is a difference between "reckless driving and manslaughter. But whether a reckless driver hits a pedestrian depends on the presence of the pedestrian at the point where he recklessly passes the red light."² The essential question is, however, whether this difference is a moral one, as Nagel and most other present day philosophers assume.

The question is whether there exists genuine moral luck, i.e. whether our moral judgement of a person's action depends on factors beyond the control of the person. From a more general perspective, the question is whether the assumption that someone is morally responsible for what he does depends on the fact that he controls what he does, which indeed "behold[s] most of the moral assessments you find it natural to make."³

¹ We leave out constraining conditions like that. It is possible for you to do what you rationally expect will help others in need of help without severe disadvantages for yourself, or only if those in need of help cannot help themselves, or that they have not provoked their need of help, etc.

² Nagel, Thomas: Moral Luck, in: Gary Watson (ed.): *Free Will*. Oxford: Oxford University Press, 1982, 174-186, 175

³ Nagel (Fn. 2), 176

The arguments for the existence of genuine moral luck, i.e. for the assumption that luck is morally relevant although it is out of the agent's control, seem to me to be astonishingly weak. However, when outstanding thinkers, among them Bernard Williams⁴ and Thomas Nagel, adopt an obviously wrong position presenting weak arguments in favour of it, it is not enough simply to show that the position is wrong and the arguments are weak. In such cases one should additionally try to explain why they adopted that position and why they thought their arguments were good arguments. In fact, I try to do both in this article. I intend to show that the position is wrong and that the arguments in favour of them are weak on the one hand, and explain why this position is so attractive that even weak arguments seem to justify it.

II. The Argument

The arguments in favour of genuine moral luck have the following simple structure: Give an example in which luck (or chance) is responsible for how an action is morally assessed. Since chance, i.e. the concrete results and consequences of what I do are beyond my control, it seems that the moral assessment of what I do is dependent on something beyond my control: Chance.

Consider the following situation: You drive slowly keeping to the traffic rules, you are not drunk, you are fully concentrated, but nevertheless a horrible accident takes place because a child you could not have seen in advance runs out into the street from behind a group of parked cars. It is impossible for you to stop before your car hits the child. The child dies.

After such an accident, anyone would feel terrible. It is most natural in such a case to deliberate on what one should have done differently in order to avoid that accident. If only you had kept to your original plans to have breakfast first and then start the journey, you probably would not have run into the child. It should be clear that considerations of this kind, natural as they might be, have no moral relevance. In fact, many things out of your control led to that horrible accident and caused the death of that child which have no moral relevance whatsoever. To blame yourself for not having had breakfast before you started, on the grounds that you probably would have avoided the accident in doing so, is plainly irrational. The generalised normative assumption is that if an agent is without moral fault in performing an action, he remains without moral fault even if it turns out that he, contrary to the expected outcome, caused some bad event to occur. If an event brought about by a morally sound

⁴ Bernard Williams: "Moral Luck", *Proceedings of the Aristotelian Society*, Supplementary Vol. 1. London: Methuen & Co. Ltd. in association with the Aristotelian Society, 1976, 115-135. Williams (1976, 115-135). Thomas Nagel's "Moral Luck" was originally a reply to Williams.

action is disastrous, as in our example, one might call it a tragic event. It is the causal chain between a morally right action and bad consequences which constitutes tragedy. People experiencing a tragedy feel miserable, but they are not morally guilty. Someone is morally guilty only if what he has done not merely caused some bad event but was in itself wrong.

Whereas most ethicists, including Nagel, agree on that point, they differ from my point of view if we change the example a bit. Let us modify the situation in introducing only one additional element: you drove carelessly, for example too quickly given the situation. The child runs into the street, you cannot stop your car. The child dies. You feel as miserable as you would have felt miserable in the first case, but now you are aware of the fact that if only you had driven carefully instead of carelessly, the child would probably still be alive. To make this point a bit more precise: let us assume that if you had driven 10 mph more slowly you could have stopped before the car hit the child, and given the situation there, careful driving in general would require one to drive 10 mph less. Nagel's position is that in such a case it makes a moral difference whether you hit the child or not. Careless driving gives reason to blame oneself *slightly*, but if careless driving results in the death of a child, it gives reason to blame oneself greatly. Since the driver has no control over whether his careless driving results in an accident or not, this seems to be an example of genuine moral luck, i.e. an example for the assumption that luck or *chance is morally relevant*.

But is this argument sound? What counts intuitively against the argument is that there is not just *good* and *bad*, *right* or *wrong*. Some actions seem to be perfectly fine under a moral perspective. Other actions seem to some to be slightly deviant, though others consider them acceptable. Some comply with juridical laws, but seem dubitable, at least from a moral perspective. Yet others are in conflict with juridical rules and at the same time seem to be morally acceptable or even obligatory. In short: There is a *continuum* between absolutely right and outrageously wrong. To assert that at one end of the spectrum chance has no moral relevance whatsoever, and that if one deviates even the slightest degree from that point, chance then gains a tremendous moral relevance, is inadequate.

More importantly, there is an alternative account which renders the moral situation transparent. If your car hit the child but you cannot be blamed for having done anything wrong, you nevertheless feel miserable. This feeling seems to be a natural one. I cannot see any good reason to argue that such a feeling, although it is natural and most of us would have it, nevertheless is irrational. If you see a child dying you feel miserable. And if accidentally you are closely involved, you feel even more miserable. Why should that be irrational?

If you drove too fast and your car hit the child causing its death, you feel miserable because you observed the death of a child and, additionally, because you were closely involved, and in addition, because you know you should have driven more slowly—if you had obeyed the speed limit, the child would not have died. In that case you are to be blamed morally for not driving carefully. But the moral blame that we can rationally place upon you does not differ depending on chance, i.e. the actual consequences of that.

III. The Analogy of Prudence

That the argument in favour of moral luck fails might become more apparent if we compare the *moral* question with the *prudential* one. In cases of prudential choice, it is obvious that chance is *irrelevant* for prudential assessments. If an action is prudent, it is prudent irrespectively of what its consequences are. If it were rational to expect a rise in interest rates and you were correspondingly advised by your bank to buy a real estate property, this action remains prudent even if it turns out that the expected rise in interest rates never occurs. It remains prudent under the condition that your expectation was rational or that it was rational to follow the advice of your bank. The fact that some expected event in the future does not take place, gives reason to question the expectation itself. But as probability theory shows, high probability for some event is compatible with the fact that this event might never take place.

Prudential choice can be defined in the following way: A decision is prudential if its expected value regarding my personal interests is larger than that of any other action which I could have carried out at that moment. Or shortly: The prudential choice has maximal expected value regarding my own interests. A decision is prudential if and only if its expected value with regard to my personal interests is maximal at the time I make the decision, whatever its consequences. Therefore, we judge an action to be prudential given the probabilities and given the preferential situation at that moment. It is a specific form of irrationality confronted with probabilistic phenomena that one take the real consequences of a decision into account. What counts is the *probability* of a decision's consequence, not the consequence itself. This is undoubtedly true in cases of prudential decisions. If a decision is prudential at the time I made it, it remains prudential forever.

Some might be tempted to think otherwise because they confuse the epistemic and the probabilistic aspects. If a certain type of decision yields negative consequences again and again whereas the expectation was that it had positive consequences, then this fact should

raise doubts as to whether the probability estimations were adequate. This is an epistemic question. Certainly it may turn out that the epistemic basis of my decision was inadequate. But in cases where the estimation was right and the methods adequate, there is no reason to doubt the prudence of some action merely because it has yielded negative consequences. Chance is irrelevant to prudence. *There is no prudential luck.*

The fact that I feel miserable if I loose a fortune although I decided prudentially about it, does not threaten this assumption. Chance remains morally irrelevant although I have bad feelings if some of my prudential choices in fact have bad consequences. Rationally, it makes no sense to blame myself of having decided imprudently. This is quite important because my self-image, my self-esteem, my self-criticism should not depend on chance. Prudence and morality constitute a good part of my self-image, my self-esteem, and self-criticism. Prudence and morality should therefore be independent of chance. And, in fact, there are no good arguments that prudence or morality depends on chance.

Deontologists usually assume that the criteria of morality have a fundamentally different nature from those of prudence. I disagree with that assumption, not because I question the deontological nature of morality, but because I question the deontological nature of prudence.⁵ Prudential reasons are one kind of reasons. Moral reasons are another kind of reasons. In the end these two kinds of reasons cannot exist independently of one another. If a person thinks about what he should do, he has to deliberate about prudential and moral reasons alike. In some cases reasons of the prudential kind collide with reasons of the moral kind, and in these cases deliberation requires weighing them against each other. It may be that the adequate weighing procedure is such that in case of conflicts moral reasons always win. But even if this is the case (which seems doubtful), some form of integration of prudential and moral reasons is required in order to determine whether a decision is the right one. The integration of all different kinds of reasons requires coherence. Coherent deliberation of practical reasons, prudential and moral alike, results in coherent preference relations. If a preference relation is coherent, it can be represented by an ordered pair of functions, one function representing the agent's subjective probabilities and the other function representing the agent's subjective values including the moral rules the agent accepts. Probabilistic considerations play an important role for rational deliberation, be it in the moral or in the prudential sphere. In order to arrive at the right decisions, it is necessary to have adequate

⁵ See also Julian Nida-Rümelin: Rationality: Coherence and Structure, in: Julian Nida-Rümelin and Wolfgang Spohn (eds.): *Rationality, Rules, and Structure*. Dordrecht: Kluwer Academic Publishers, 2000, 1-16. Julian Nida-Rümelin: *Strukturelle Rationalität*. Stuttgart: Reclam 2001. Ders.: "Why rational deontological action optimizes subjective value", *Protosociology* (21) (2005), 182-193.

probability estimates, adequate personal and moral values and to follow the adequate rules that constitute a good and moral life. These are the ingredients of good decision-making. If some decision is right, given the accepted values and rules, given the probability estimates, this decision remains right whatever its consequences. "Right" in the sense that the agent cannot be blamed for having taken it. Probabilities are prudentially and morally relevant. Chance or luck remains irrelevant.

IV. Epistemic and Normative Assessment

If you drive too fast on a curvy road your friend in the car might admonish you by saying, "Don't drive so fast: it's dangerous here." You might answer, "I am not driving too fast, I have my car under control." Obviously there is a disagreement about whether you can be blamed for driving too fast. If you then have an accident, your friend might say "Look, I was right: you drove too fast." This is not a normative but an epistemic disagreement. You and your friend agreed that one should not drive dangerously, but you disagreed whether you drove dangerously. Your friend took the accident as evidence for the fact that your driving was indeed reckless. Whether the accident showed that you drove dangerously is an open question which can be answered only by an analysis of its causes.

We should stick to the moral irrelevance of chance but take into consideration that normative judgement is not independent of epistemic judgement. In many cases a seemingly normative disagreement is in fact an epistemic disagreement. In the middle range of concrete norms and values there is a broad normative agreement. However, there are wide-ranging disagreements concerning how these norms and values should (and could) be embedded in an all-comprising normative view (*Weltanschauung*, "world view").

Let this case serve as an example: At first glance it seems that there is a normative disagreement about what you should do. You think it's all right that you drive as fast as you do. Your friend thinks that you should slow down. But you probably both agree that everybody should drive slowly enough that he does not endanger himself and others. The disagreement thus seems not to be a normative one, but an epistemic one: Is it the case that (at this velocity) you are not endangering yourself and others? Your friend doubts that. Saying that you endanger yourself and others he endorses a probabilistic proposition which is difficult to make explicit. Endangering others means something like 'there is an unacceptably high probability for causing an accident.' The probability can be quite low, and yet be unacceptably high, say 0.1%. You, the driver, are instead convinced that you have everything under control and that the probability of an accident is much lower: say, below 0.0001%. If an

accident then in fact ensues, your friend will probably take this as a proof that he was right and you were wrong: that his probability estimate was better than yours. To be sure, the fact that the accident occurred is not a proof that your friend was right, but on closer examination it may indeed deliver good evidence for his probability estimate.

It is not necessary to explore further details of such examples in order to draw the conclusion that there is indeed a way in which chance is relevant to moral judgement. This relevance, however, is not a genuine moral one, it is confined to the epistemic dimension of moral judgement. This role of chance does not make you, as the driver, any guiltier if you have an accident than you were if you had none. You are to be morally blamed to exactly the same degree, but an epistemic disagreement between you and your friend may be settled in favour of your friend. That is, your friend was right when he said (before the accident took place) that you were driving too fast. It is morally unacceptable in any case – whether the accident takes place or not. The accident's having taken place does not make the action less acceptable; nor is the action any more acceptable if no accident occurs. If indeed there is this kind of life-world irrationality of moral judgement, no jury should adopt it.

V. Life-World Irrationality and Ethical Theory

Indeed, if the Decembrists had succeeded in overthrowing Nikolaus I in 1825 and establishing a constitutional regime, they would be heroes. If the American Revolution had been a bloody failure resulting in greater depression, then Jefferson, Franklin and Washington would still have made noble attempts, and might not have even regretted it on their way to the scaffold; but they would also have had to blame themselves for what they helped to bring upon their compatriots. If Hitler had not overrun Europe and exterminated millions, but instead had died of a heart attack after occupying the Sudetenland, Chamberlain's action at Munich would still have utterly betrayed the Czechs, but it would not have become the great moral disaster which stained his name forever. Thomas Nagel gives these examples to show that moral assessment depends heavily on chance.⁶

We merely have to broaden the scope of the argument in the last section in order to see that these examples do not demonstrate what Nagel pretends they do. That so-called national histories resemble stories more closely than historical science, is a truism. Who counts as a hero in national history depends more on political interests and ideological points of view than on the facts. The instrumentalisation of moral assessment for political and ideological ends is so common that examples of this type are unable to show anything for ethical theory.

⁶ Nagel (Fn 2), 178

To me it seems almost hopeless to use examples of this kind within an ethical argument. If the opponent insisted on using arguments of this type, I would advise him to take a closer look. Chamberlain probably did not expect that Hitler and Nazi-Germany would overthrow a good part of Europe only shortly thereafter. He probably took the rhetoric Hitler used in those days much too seriously. Like numerous others including many Germans, Chamberlain and his officials, if informed at all, probably thought that the general account of Hitler's political aims which he had quite explicitly written down some years ago in "Mein Kampf", had become obsolete after the overwhelming political success of the NSDAP.

In order to undertake a serious assessment of Chamberlain's action in Munich, we have to analyse whether the assumptions on which Chamberlain's indulgence was based were rational, not whether they turned out to be true later on. If I pass a green traffic light and it later turns out that it was out of order, I cannot be blamed for an accident resulting from that behaviour because I could expect that a green traffic light indicates that I can pass. It would be unfair, to say the least, if people, knowing that the traffic light was out of order, were to blame me for not having stopped. The analogy is applicable to the Chamberlain case, as well. If Chamberlain indeed had good reason to assume that Hitler, after succeeding in the Sudetenland, would turn to a more cooperative and peaceful political strategy, then Chamberlain could still be blamed for not taking the national interests of the Czech population into account, but he could not be blamed for encouraging Hitler to overthrow a good part of Europe and murdering most European Jews. On the other hand, if there was good evidence that the aggressive aims would continue to frame Nazi-politics in the future, then indeed Chamberlain could be blamed for not taking this into account. The fact that afterwards it turned out that Hitler had not given up a single point of his program can be taken as evidence for the assumption that the peaceful rhetoric Hitler used during a certain period was designed to defeat the European public. In this sense there is an epistemic, but not a moral relevance to what actually happened after the Munich conference.

Life-world moral judgements play an important role in ethical theorising because there is no archimedean point from which ethical theory can be started. We have to check the normative implications of ethical theory against life-world moral assessment. An ethical theory that is in clear and deep conflict with the central elements of our life-world moral assessment cannot be upheld. On the other hand, ethical theory is a means of criticising life-world moral judgement. A good ethical theory is able to systematise the central elements of life-world moral assessment, and qua systematisation, ethical theory can help make our life-world moral judgement more coherent. Not every intuitive moral judgement is beyond ethical

critique. Ethical theory cannot be checked against life-world moral judgements which themselves are the result of ideology and political strategy, as is the case in these examples. Some widespread intuitive moral judgements are quite obviously irrational. Ethical theory would too easily be infected by this irrationality if we allowed every widespread intuitive moral judgement to become a part of ethical theory. The irrationalities of moral assessments within national histories are an exemplification of that point.

VI. In Defence of the Canonical Account

That which I want to call the *canonical account* can be characterised by the following propositions: (1) action is intentional behaviour; (2) the agent has control over his actions; (3) the agent is morally responsible for his actions.

The argument in favour of genuine moral luck is thought to show that this canonical account cannot be upheld. But as we have seen, the argument itself is extremely weak. It is much too weak to be able to overthrow the canonical account. The latter account is not only an explicit or implicit part of most ethical theories beginning with Aristoteles until present-day Kantians and Utilitarians, it also frames decision and game theory and most philosophical, psychological and sociological theories of action. The canonical account can be understood as a *metaphysics of ethics*. It contains the basic presuppositions which we accept in our life-world moral praxis and in ethical theorising alike. Those who challenge this account presumably are not fully aware of what that means. In fact, I am convinced that even those who challenge this canonical account do not take that challenge seriously. They continue to theorise about ethics, and they hold to their life-role morals as if this challenge did not exist. Confronted with the question of whether the canonical account is right or wrong, one should take a Wittgensteinian position: there is no interpretation possible which renders a challenge of the canonical account reasonable. Every kind of reasoning comes to an end. There are rules of reasoning – in this case moral and ethical reasoning – which cannot be given up since this would mean to end the moral practise *in toto*. There are constitutive rules of moral and ethical reasoning. The canonical account is an essential part of that.

I never felt it necessary to answer the radical philosophical sceptic. The radical sceptic doubts the metaphysics of epistemology, he doubts that anything is reliable. If we took the sceptical position seriously, epistemic reasoning would come to an end. There would be no space left for epistemic reasoning confronted with the radical sceptic. It is even impossible to show that the radical sceptic is wrong: he would reject every argument you would develop because he does not accept the presuppositions of your argument as reliable. If no

presupposition of any argument is accepted, no argument is possible anymore. Those who challenge the metaphysics of ethics and not of epistemology may see themselves as positioned in a more comfortable situation. Challenging the metaphysics of ethics could threaten the ethical project, i.e. the project of giving good arguments for and against moral rightness of action. But since this project seems dubious to many philosophers, much more dubious than the project of giving good arguments for empirical judgements, the philosophical costs of such an undertaking seem to be acceptable. This discrimination is even most likely in line with the thinking of Ludwig Wittgenstein. But however that may be, this discrimination cannot be upheld. The moral point of view, the life-world moral practice and ethical theorising which stems from it is as essential as our life-world epistemic reasoning and epistemology and science, which grows forth from it. It is plainly inconceivable to challenge the most basic rules on which these two kinds of reasoning (which are closely related anyhow) are based.

In order to get a better picture of the metaphysics of ethics which are at stake here we draw some implications from (1), (2) and (3). We are morally responsible for that and only that which is under our control. Action is exactly that part of our behaviour which is under control. Therefore, we are morally responsible for our actions, not for other parts of our behaviour. To be in control of an action requires that it is our intention which determines what happens. If some part of our behaviour is not determined by our intention, we are not responsible for that part and we should not call that part an action of ours. The notion of *freedom* comes into play when one tries to interpret the essential element of *control*. What does it mean 'to have control of ...'? It means that it is our intention which decides whether it happens or not. Compatibilists think that this is possible even if the state of the world, say 2000 years ago, together with the laws of nature determine what I do at every point of time. Non-compatibilists think that this is not the case, because if the state of the world, say 2000 years ago, together with the laws of nature determines what I do, it is not my intention which determines what I do, because what I do is determined independently from my present intention.⁷

Whether compatibilism is conceivable can be left open here. It should be noted, however, that the driver example and other examples of that kind do not give any plausible account of moral responsibility for events beyond our control. These examples do not mark the path to a broader theory which disentangles control and responsibility. *Without control*

⁷ See Peter Van Inwagen: *An Essay on Free Will*, Oxford: Clarendon Press, 1983. Tommis Kapitan criticises this incompatibilist argument in: "A master argument for compatibilism?" in Robert Kane (ed.): *The Oxford Handbook of Free Will*, Oxford: Oxford University Press, 2002, 127-157.

there is no moral responsibility. It has not been shown by the opponents that this element of the canonical account had to be given up. The concepts of *action, control, intention, freedom* and *responsibility* are closely and – as it seems to me – inextricably interlinked.

VII. Other Kinds of Responsibility

Obviously, there are other kinds of responsibility, non-moral responsibilities, for which this close interlinking of action, intention, control, freedom and responsibility does not hold. We therefore have to check whether this phenomenon does threaten the canonical account. Take e.g. political responsibility. Think of the following example. A higher state official uses the influence of his office in order to foster his private economic interest. It might well be that e.g. the Secretary of Defence is asked to take the political responsibility. How can we understand this kind of responsibility? It is obvious that the Secretary of Defence cannot control every action of every official in his administration. At most there is an indirect genuine responsibility; in so far as he has the possibility to hire and fire, he trusts those who work for him, and if he distrusts some of those who work for him he should fire them. Nevertheless, it seems unfair to hold him responsible for everything that everyone in his administration does in the office, because actual control would neither be possible nor even desirable.

Is the institution of political responsibility therefore unfounded or even irrational? The answer depends on whether we are able to discriminate carefully between *political* responsibility on the one hand and *moral*, i.e. *genuine* responsibility on the other. If the Secretary of Defence has to give up his position because he takes the political responsibility for some act of one of his high-ranking officials, this does not imply that he is to be *blamed morally* for what this high-ranking official has done. He might even say in a television debate that “although I am not responsible for what this person did, because I did not and could not even know of it, I take the political responsibility”. The institution of political responsibility can be rationally justified only if it is kept separate from moral responsibility. Certainly there are many further requirements for the rationality of political responsibility. From among these requirements one seems to be of special relevance: it is the idea that the public controls not the whole of the administration, but concentrates its control on the person who presides over this administration. If everybody knows that it is to a large degree fictitious that an administration acts like one person and that this institutional or corporate ‘person’ is represented by the head of that administration, then it makes sense to establish political responsibility. For the good and the bad the politician on top of the administration takes the

credit and the blame for what the whole of the administration accomplishes. His political orders are binding for every state official in that administration; his political intentions frame its agenda. This singular position reveals the institution of political responsibility. Political responsibility makes sense in the broader framework of democratic control and public discourse. It should not be confounded with moral or genuine responsibility.

The same holds for judicial responsibility. The driver is more or less responsible in the juridical sense depending on whether “a child gets into the path of one’s car.”⁸ If you shoot at your uncle with the intention of killing him because as his heir you expect to get a good share of his fortune, you are a murderer in the legal sense. If in this moment a bird flies into the path of your bullet, you will not be sentenced for murder but merely for attempted murder. The penalty for attempted murder is less than that for successful murder although what you controlled through your intentions remains equivalent. What changed was some event in nature (the bird’s flight), which was not under your control. You could not even foresee such an improbable event, which hindered you from becoming a murderer. Now the question is whether this natural event (a bird flies into the path of the bullet) changes our *moral* assessment of what you did and who you are. In this case as well it seems obvious to me that it would be irrational to change the moral assessment of your deed only because a bird flies into the path of the bullet. I do not think that your friends, when told what happened, would change their minds in assessing your character and motives, just because the bird flew into the path of the bullet. It was mere chance that you did not become a murderer. This chance is morally irrelevant. It is irrelevant for the assessment of your character, your motives and your deed. A rational moral judgement is not dependent on whether the bird flew into the path of the bullet or not.

But you may then ask, what justifies the different legal treatment of attempted and successful murder in this case? The answer to this depends on the theory of legal penalty which you adopt. If legal penalty will be justified merely as a means of giving expression to moral assessment, then the difference between moral and legal responsibility could not be upheld. But most legal theories assume that legal penalty is justified differently. This explains why the legal system is such that agents cannot be punished for every action which is morally repellent. Not inviting a certain neighbour to your summer party with the knowledge that she will suffer greatly, and being motivated by your enjoyment of seeing other persons suffer, is a harmless example for a morally repellent action which is not illegal.

⁸ Nagel (Fn. 2), 180

The legal system concentrates on actions that have public and easily definable consequences. It takes into account the interests of those which suffer from the legally wrongful act. In cases of attempted murder, these interests are quite different from those of a successful murder. Legal rules are also different from moral rules in their certistic design. Because the legal system cannot be held responsible for controlling and healing all kinds of socially unacceptable behaviour, it concentrates on clear cases. The established legal practice is not a good starting point from which to grasp the metaphysics of ethics.

REFERENCES:

Van Inwagen, Peter: *An Essay on Free Will*, Oxford: Clarendon Press, 1983.

Kapitan, Tommis: A Master Argument for Compatibilism?, in Robert Kane (ed.): *The Oxford Handbook of Free Will*, Oxford: Oxford University Press, 2002, 127-157.

Nagel, Thomas: Moral Luck, in: Gary Watson (ed.): *Free Will*. Oxford: Oxford University Press, 1982, 174-186.

Nida-Rümelin, Julian: Rationality: Coherence and Structure, in: Julian Nida-Rümelin and Wolfgang Spohn (eds.): *Rationality, Rules, and Structure*. Dordrecht: Kluwer Academic Publishers, 2000, 1-16.

Nida-Rümelin, Julian: *Strukturelle Rationalität*. Stuttgart: Reclam 2001.

Nida-Rümelin, Julian: "Why Rational Deontological Action Optimizes Subjective Value", *Protosociology* (21) (2005), 182-193.

Williams, Bernard: "Moral Luck", *Proceedings of the Aristotelian Society*, Supplementary Vol. 1. London: Methuen & Co. Ltd. in association with the Aristotelian Society, 1976, pp. 115-135.

Endnotes:

¹ We leave out constraining conditions like that. It is possible for you to do what you rationally expect will help others in need of help without severe disadvantages for yourself, or only if those in need of help cannot help themselves, or that they have not provoked their need of help, etc.

² Thomas Nagel: Moral Luck, in: Gary Watson (ed.): *Free Will*. Oxford: Oxford University Press, 1982, 174-186, 175

³ Nagel (Fn. 2), 176

⁴ Bernard Williams: "Moral Luck", *Proceedings of the Aristotelian Society*, Supplementary Vol. 1. London: Methuen & Co. Ltd. in association with the Aristotelian Society, 1976, 115-135. Williams (1976, 115-135). Thomas Nagel's "Moral Luck" was originally a reply to Williams.

⁵ See also Julian Nida-Rümelin: Rationality: Coherence and Structure, in: Julian Nida-Rümelin and Wolfgang Spohn (eds.): *Rationality, Rules, and Structure*. Dordrecht: Kluwer Academic Publishers, 2000, 1-16. Julian

erschienen in: Archives for Philosophy of Law and Social Philosophy (ARSP), Vol. 93, Heft 2, Stuttgart 2007, S.167-177.

Nida-Rümelin: *Strukturelle Rationalität*. Stuttgart: Reclam 2001. Ders.: “Why rational deontological action optimizes subjective value”, *Protosociology* (21) (2005), 182-193.

⁶ Nagel (Fn 2), 178

⁷ See Peter Van Inwagen: *An Essay on Free Will*, Oxford: Clarendon Press, 1983. Tommis Kapitan criticises this incompatibilist argument in: “A master argument for compatibilism?” in Robert Kane (ed.): *The Oxford Handbook of Free Will*, Oxford: Oxford University Press, 2002, 127-157.

⁸ Nagel (Fn. 2), 180

Prof. Dr. Julian Nida-Rümelin

Lehrstuhl für Politische Theorie und Philosophie

Universität München, GSI

Oettingenstr. 67, D-80538 München

Telefon: (089) 2180-9020, Fax: (089) 2180-9022

Email: Sekretariat.Nida-Ruemelin@lrz.uni-muenchen.de