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A NOTE FROM THE EXECUTIVE EDITOR

Welcome to Issue 4, Volume 1 of the Journal of the TTU Ethics Center. The authors of the included articles were participants in the 2019 Student, Staff, and Faculty Ethics Symposium. Their work can be seen to stimulate thought as well as action by spotlighting conduct that doesn't uphold ethical values and lifting up conduct that is consistent with ethical behavior. These articles advance the center's efforts to foreground multi-disciplinary awareness about pressing, contemporary issues. The Ethics Center sees as its role, to influence awareness of matters of ethics through workshops, symposiums, and seminars. The importance of multi-disciplinary engagement is that it makes it possible to present the best research information to support addressing problems in the learning community and hopefully, ultimately, with the aim of transforming the world.

The Journal of the TTU Ethics Center brings together a variety of perspectives in community scholarship that has been created out of the dynamics of the intellectual shifts that affect the governance of knowledge and how those shifts influence learning communities and the world. The cross-section of scholars presented in this volume of the journal should help to serve to document and enhance our understanding of the changing world. The addressed topics review profound questions and encourage affirmative reasoning so that we, as a society, can find new approaches to manage climate change, gender issues, health deserts, food insecurity, and battle fatigue. No concern is so elementary that it doesn't deserve to be regarded with an ethical lens.

A handwritten signature in black ink, appearing to read 'Ralph Ferguson', with a large, stylized 'X' or 'F' shape above it.

Ralph Ferguson, Managing Director, TTU Ethics Center

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ADMINISTRATIVE ETHICAL PRINCIPLES GUIDING A REDESIGN OF A FIRST-YEAR WRITING PROGRAM

Dr. Michael Faris, Assistant Chair, Department of English
(First-Year Writing), Texas Tech University

Program administration, I suggest, is necessarily an ethical enterprise. This statement likely comes as no surprise to many of my colleagues, who as administrators are deeply committed to the success and futures of their students, to the ethical working conditions of teachers and staff, to meaningful pedagogy, and to building sustainable and ethical infrastructures for their programs. But administrative work is all too often invisible to our students, who see microscopic effects of administrative work in their courses and advising but often don't see the larger, macroscopic picture. And in many disciplines, programmatic administrative work is invisible as intellectual work, not discussed in disciplinary journals and conducted behind the scenes with little attention from other faculty (except perhaps when things go awry).

I want to turn to my experiences reimagining and planning a large-scale revision of Texas Tech's First-Year Writing program in order to make visible some of this administrative work and to highlight some of the ethical dynamics of my approach to program administration. My home discipline — rhetoric and writing studies — has had a long commitment to understanding program administration as intellectual and ethical work, and as an administrator-scholar I am in debt to much of this published intellectual work (for a small sampling of this scholarship, see Adler-Kassner, 2008; Brown & Enos, 2002; Dew, 2009; Horner, 2007; Ratcliffe & Rickly, 2010; Rose & Weiser, 2002; Strickland, 2011). Jeanne Gunner (2002) has argued that a "writing program is a social construct that helps establish and reproduce ideological values" and that writing program administrators (WPAs) have an ethical obligation to intervene in ideological structures in order to create ethical material practices and effects of a program (p. 9). I take Gunner's claim seriously, as I believe that administrative work helps to shape the work, values, and conditions for teaching and learning in a writing program.

In March 2017, the then-incoming Chair of the English department charged a committee with planning a transition away from the model of first-year writing that had been in place at Texas Tech for about 15

years. This previous approach, it had become apparent, was not efficacious for our students or our teachers. In recent years, anywhere from a quarter to half of students who took English 1301 and 1302 at Texas Tech in any semester either dropped, withdrew, or failed the courses. Students' experiences in the courses were so bad that many told their peers to take the courses elsewhere, and even academic advisors were encouraging advisees to enroll in 1301 and 1302 at a community college rather than at Texas Tech. Graduate students who taught in the program reported feeling under-prepared, over-worked, and intellectually unengaged. Further, the model wasn't economically sustainable due to costs for an in-house content management system and the appropriation of workload.

I joined this transition committee, and along with colleagues and fellow administrators, began to reimagine the program and plan to roll out what became pretty much a brand new First-Year Writing program in fall 2018. Radically revising a large-scale writing program in only a year is no simple task and requires a lot of planning, coordination, communication, research, and care. I can't cover the entire revision in the short space provided here, but I do want to highlight some of the ethical principles that guided my work as we labored to revise this program and design a new first-year writing experience for our students and teachers. I opened with the claim that program administration is an ethical endeavor, and I hope my claims below highlight some of the ethical dimensions I believe are central to writing program administration. Particularly, I focus on the following six principles:

- Program administration requires an ethic of care.
- Program administration requires an understanding that teaching and learning are primarily experiences of being in relationship with other people.
- Program administration requires listening to our students and teachers.
- Program administration is an ethical act of trust and collaboration.
- Program administration includes an ethical obligation to the professional development of teachers.
- Writing program administration requires developing a rhetorical curriculum that responds to the ethical problems of public deliberation.

First, **program administration requires an ethic of care.** Moral philosophy about the ethics of care is most commonly associated with

Carol Gilligan's (1982) *In a Different Voice*, in which she contrasted moral reasoning based on care with more traditional ethical paradigms based on rationality, like utilitarianism and human rights. Importantly for Gilligan and other feminist moral philosophers, an ethic of care is contextualized and situated: it does not start with moral rules or laws but rather starts with relationships, is driven by "an injunction to care" (p. 100), and requires working through "conflicting responsibilities" to others (p. 19).

Gilligan's work – and the work of subsequent feminists on the ethics of care – raises an important distinction for me between *caring about* and *caring for*. *Caring about* something is important (of course), but it doesn't necessarily lead to action and social change. *Caring for*, however, necessitates ethical action toward others. For example, I can care about the environment – passionately even – but do little to *care for* the environment: I can continue driving my gas-guzzling car, not recycling, littering, and so forth, but until I turn my affective and emotional attachments for the environment into action, I have done little to care for the environment. Caring for others or for a problem involves taking seriously one's responsibility to them. Similarly, a program administrator can care about student success and retention, fair labor practices, and the professional development of teachers, but do little to put care into these aspects of the program – that is, to care for and nurture the program, teachers, and students. As WPA scholar Carrie Leverenz (2010) has suggested, "an ethics of care demands more; it demands that care be the dominant term in all of our interactions with others" (p. 10). To me, care must be a controlling ideal for an administrator, and the rest of the principles that guide my ethics as a program administrator are largely driven by this ethic of care.

Second, we need to understand that **teaching and learning are primarily experiences of being in relationship with other people**. Philosopher Ron Scapp has observed that "We have lots of people who don't recognize that *being a teacher is being with people*" (qtd. in hooks, 1994, p. 165). Too often administrators, teachers, and students alike equate learning with digesting and regurgitating material – what Paulo Freire (2003) has famously called the "banking concept" of education – rather than a dynamic involving relationships. However, effective teaching – and consequently, efficacious learning – involves being in relation with students and developing relationships between and among students. In effect, teaching is an ethical endeavor – not solely because teachers are ethically obligated to teach their students, but also because teaching *is an ethic of relations*.

This principle guided our revisions of the First-Year Writing program. We reduced class size from 35 students to 25 students to give teachers a better opportunity to work with students one-on-one and to foster a community of learners in their classes. First-year writing is often a gateway course to the university, introducing students to the institution and the literacy practices necessary for navigating higher education. And at many large institutions like Texas Tech, it might be the only class first-year students take where teachers actually know and have personal relationships with them. Much of what students learn in first-year writing—reading critically and rhetorically; asking complex research questions; finding, evaluating, and incorporating sources into their writing; developing sophisticated arguments and reasoning; adapting writing for different audiences, purposes, and genres; planning, drafting, and revising writing; giving and receiving feedback on writing and revising based on that feedback—are necessary for future college success. Developing proficiency at these skills doesn't come from being lectured at or from skill and drill, but rather from guided practice with timely and useful feedback.

With the previous enrollment cap of 35 students and with classes meeting only once a week, developing a classroom learning community and developing relationships with and among students was a near impossibility. Our move to decrease class size and increase face-to-face contact hours (from 80 minutes once a week to two or three meetings a week) was driven by a belief that writing teachers need to be able to create a classroom community where students can get to know each other, develop trust with each other, and consequently learn from each other. Educational psychology since the days of L. S. Vygostky (1978) has argued for the importance of peer learning, and we believed that smaller class sizes and more frequent meetings would provide teachers with the space and time to create an environment to make peer learning possible.

I've only touched briefly here on the educational philosophy driving some of the programmatic revisions we enacted, but I hope this discussion helps to highlight the importance of teaching and learning as a matter of human relationships (and I will touch on this again when I turn to issues of public rhetoric and deliberation further below).

Third, **program administration requires listening to our students and to our teachers.** Too often, administrative work is conducted from a top-down approach that attempts to instill curricular,

programmatic, and ethical visions that don't necessarily align with the values, desires, and experiences of our students and teachers. When we began our programmatic revision, we started with the assumption that we should listen to students and teachers first. If students had been expressing dissatisfaction with the courses (by telling their peers to take the course elsewhere) and our graduate students were largely unhappy as teachers, then it was important to start with their experiences, beliefs, and values.

I'll just briefly touch on two ways that we have tried to listen to our students and teachers. First, it was important for us as an administrative team to understand how students were experiencing English 1301 and 1302 and what their perceptions were of recent programmatic changes. Consequently, we designed an IRB-approved study that involved administrators or graduate student researchers visiting class sections toward the end of the semester and holding brief, 20-minute focus group discussions with students. During these focus groups, we stressed to students that we were hoping to continually improve the program and learn from their experiences in order to continue to revise and refine the two-course sequence. In spring 2018, we visited dozens of classes that had piloted a new delivery model and assignment sequence and listened to students (and took copious notes). Over the summer, I used this information to guide some of the orientation and professional development for new teaching assistants, and we made tweaks and adjustments in assignment prompts and the pacing of the assignment sequence. At the end of the fall 2018 semester, we again held focus groups – this time in about half of the sections of English 1301 and 1302. With the entire program now completely revised, it was important to learn what was working and what wasn't working for students. Largely, we discovered that students felt they were learning from the classes, that they felt they could apply what they had learned in future classes, and that they appreciated the attention and care they received from their teachers. We also learned about policies that didn't seem to be working as well as we had hoped, assignment pacing that frustrated students, and other issues that we intend to address with revisions for future semesters.

Second, we wanted to learn from our graduate students about their experiences teaching in the program. Our research team began by interviewing graduate students about their past experiences and expectations for changes in the program as part of an IRB-approved study. (Our research team is still transcribing these interviews, a time-consuming task, so it's too early to draw from this data.) But

much of the listening to graduate students has been informal: holding meetings with instructors about how the courses are going and spending time during our practicum class for new teaching assistants to discuss pedagogical problems, curricular issues, labor concerns, and other aspects of teaching and their experiences. I've found that when we start by listening to teachers and students about their experiences, that they are more invested in the program.

Relatedly, **program administration is an ethical act of trust and collaboration.** The best program administration, I believe, involves trusting stakeholders and including them in decision-making. Put differently, program administration is less about *control* and more about *trust*, *leadership*, and building *investment*. WPA scholar Marcia Dickson (1993) has argued that being an effective and ethical WPA is not about "power . . . to control a writing program"; instead, it involves "the ability to step back and let the program grow through the concerted efforts of the members of the community rather than by insisting that it conform to rigid and crippling policy" (p. 153). Rather than design a program with a sole administrator, we have created an administrative team that includes graduate students serving as Assistant Directors. Responsibilities are shared, and many decisions are made through collaborative processes during our weekly administrative meetings. Further, we've incorporated our teachers into leadership positions, asking them to help design special sections of English 1302 for engineering students, serve as peer mentors for new teaching assistants, and more. We've also tried to give teachers more freedom in their classes than they had in the past, trusting them to make decisions about how best to teach writing for their particular students. This trust, of course, comes with plenty of support (teaching guides, regular meetings, professional development at the start of the semester, workshops throughout a semester, and a practicum course for new teaching assistants), but also gives our teachers a degree of autonomy in their classes.

Fifth, **program administration includes an ethical obligation to the professional development of teachers.** When we began planning our transition, we learned quickly from graduate students that they had not been receiving enough professional development and support as new teachers in the old program. Many felt like they had been "dumped" into their classes after only a one-day orientation, and while there were regular workshops throughout the semester in the past, many teaching assistants complained that these workshops hadn't been that useful. As we designed our new program, we placed professional development and the preparation of new teachers as a

central aspect of the redesign. We began by designing a week-long orientation for new teaching assistants (including paying them a stipend, since this was before the beginning of their contract date), requiring new teaching assistants to take a practicum course that could help guide them through their first few semesters teaching in the program, and developing a mentoring program. This mentoring program includes a mixture of peer mentoring and mentoring from experienced teachers. We designed a new delivery model (piloted in spring 2017) in which an experienced teacher taught English 1301 as a lecture once a week and first-year master's students taught discussion sections for the lecture twice a week. In this mentoring model, an experienced teacher leads a team of new graduate students, providing mentorship and guidance through regular meetings, class observations, and oversight of feedback on and evaluation of projects. For first-year PhD students, we designed a peer mentoring model in which a group of new teachers are paired with an experienced PhD student who helps them develop as teachers through regular meetings and observations. In this way, mentoring and professional development of new teachers has been distributed throughout the program (and our experienced teachers are further professionalized by providing mentorship to new teachers).

Lastly, and importantly, **writing program administration requires developing a rhetorical curriculum that responds to the ethical problems of public deliberation.** Since its inception in ancient Greece, rhetoric has been concerned with how to ethically and effectively conduct public deliberation. This concern has also been intimately tied to pedagogy, as Socrates, Plato, Aristotle, and Isocrates were primarily teachers of rhetoric as public deliberation. Isocrates in particular laid out a foundation for the relationship between rhetoric and pedagogy, arguing that rhetoric was an epistemic endeavor meant to discover and argue for the common good. That is, rhetoric was the study of how to solve practical problems and involved the discovery of probabilistic truths, and a rhetorical education involved both learning theories of persuasion and developing as a public speaker through guided practice (see Benoit, 1984). I, along with many rhetoric scholars and educational theorists, believe that education should be a site for practicing and preparation for democracy. This means preparing students to debate issues of public concern ethically, with care and charity for those they disagree with. In our increasingly polarized political climate, we've come to see political adversaries as enemies (and even as evil), as political foes to be defeated rather than fellow citizens we need to

work with. Our political-rhetorical climate has further been harmed by a paranoid sensibility toward truth, one that shows deep suspicion toward expertise and results in the heavy circulation of what we now commonly call “fake news.” This climate of enmity, suspicion, and misinformation must be confronted. Consequently, an ethical writing program needs a curricular foundation based in charitably listening to those we disagree with, in critical reading, in rhetorical analysis, in making arguments based in sound reasoning and solid research, and in an openness to changing one’s mind.

I want to ask the same question asked by rhetoric and writing scholar Don J. Kraemer (2012): “What public need does [first-year writing] address?” (p. 86). Kraemer observed that some students can be successful at university writing *without* taking first-year writing. What good, then, is first-year writing, and who is it for? For Kraemer, first-year writing’s mission lies “in the service of deliberative symbolic action for democratically civic ends” (p. 91). As Kraemer explained, through the study and practice of rhetoric, students may begin to understand how texts construct and affect readers, and consequently to reimagine argumentation. Patricia Roberts-Miller’s (2004) critique of argumentation as it is usually taught in first-year writing is useful here. She critiqued “dominant approaches to argumentation” in which a writer or speaker states “one’s opinion on policy issues” as a thesis and supports it through “listing one’s reasons” (p. 227). In contrast to this traditional view, Roberts-Miller outlined a rhetorical-ethical view of argumentation:

Deliberative democracy makes high demands of citizens. We must treat one another with empathy, attentiveness, and trust; we must take the time to invent and continually reinvent our ideas in the light of informed disagreement; we must care enough about our own views to try to persuade others of them, but not so much that we are unwilling to change them; we must listen with care to people who tell us we are wrong; we must behave with grace when other views prevail; we must argue with passion but without rancor, with commitment but without intransigence. (p. 187)

Guided by arguments like Kraemer's (2012) and Roberts-Miller's (2004), I believe first-year writing has a commitment to teaching ethical deliberation and argumentation. After all, as Robert P. Yagelski (2009) has claimed, "writing instruction, like schooling in general, should ultimately be about creating a better world" (p. 8). Here, I want to return to the idea I addressed above, that education is about being in relationship with others. A rhetoric and writing classroom should be a place to analyze and practice deliberation and argumentation. For students to be able to do so effectively, a teacher needs to be able to foster relationships with students, to foster relationships among students, and to foster relationships between students and public issues and texts. These relationships allow for a classroom to become what Rosa A. Eberly (2000) has called "a protopublic space, or a space where students can engage in the praxis of rhetoric" as they practice analyzing arguments and deliberating in a space that is semi-public and semi-private (p. 169).

I feel as though I've only touched the surface of some of the ethical principles that I believe should inform and guide writing program administration. These ethical principles informed many of the revisions of Texas Tech's First-Year Writing program in 2017-2018, some of which I've mentioned above (although quite briefly): new delivery models for the courses, smaller class size, new assignment sequences with new scaffolding and a commitment to peer feedback, new teacher preparation and professional development, a new distributed mentoring program for teaching assistants, and a new administrative model that includes graduate students. These changes were made quite quickly: we were first charged with beginning to plan a transition in spring 2017, and we had fully implemented a new version of the First-Year Writing program by August 2018. Such a rapid, large-scale revision wasn't possible without an ethic of care for our students and teachers, an ethic of collaboration and trust throughout the program, and an ethic of listening to the needs and experiences of our students and teachers. And mostly, these revisions weren't possible with the hard work, care, and compassion of the teachers in our program, who constantly astound me with their concern for students, their willingness to help students improve at writing, and the persistent compassion and care they put into their teaching.

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TITLE IX AND INTERCOLLEGIATE ATHLETICS— MASSIVE ADVANCEMENTS WITHOUT FULL COMPLIANCE

Angela Lumpkin, Department of Kinesiology and Sport Management

Title IX requires equal opportunity in all educational programs including athletics using only 37 words—“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance” as stated in the Education Amendments (to the Higher Education Act of 1965) enacted by Congress on June 23, 1972. Title IX, as it is best known, is not an affirmative action statute; it is an anti-discrimination statute. Title IX does not require equality, equal dollars, or quotas in determining compliance. Title IX prohibits discrimination on the basis of sex in educational institutions in ten areas. This work focuses on only one of these areas—intercollegiate athletics.

Title IX regulations, which have the force of law, were issued on July 21, 1975, with colleges having three years to comply with them. Most colleges complied with the programmatic implications of the law in good faith within a reasonable period of time. There were attempts in Congress, however, to gain an exemption for the revenue-producing sports of football and men’s basketball and also strong institutional resistance to compliance by intercollegiate athletic administrators. It is noteworthy that in February of 1976 the National Collegiate Athletic Association (NCAA) filed a lawsuit against the Department of Health, Education, and Welfare (HEW) challenging the validity of applying Title IX to intercollegiate athletic programs. It is noteworthy that the failures of these actions led the NCAA to begin offering national championships for women’s athletic teams for its member institutions in the early 1980s. These and other actions taken by the NCAA resulted in the demise of the Association for Intercollegiate Athletics for Women in 1982, which had been expanding intercollegiate athletic opportunities for females during the previous decade.

Because of complaints and concerns about the application of this legislation to intercollegiate athletic programs, on December 11, 1979, HEW and its Office of Civil Rights issued “A Policy Interpretation:

Title IX and Intercollegiate Athletics.” Section 106.41 of this Policy Interpretation stated, “No person shall on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, or no recipient shall provide athletics separately on such basis.”

This Policy Interpretation clarified how compliance with Title IX must be based on an assessment of an overall athletic program, not on a team-by-team comparison, in three areas: (1) financial assistance (i.e., grants-in-aid or athletic scholarships) must be available on a substantially proportional basis to male and female athletes; (2) male and female athletes must receive equivalent treatment, benefits, and opportunities in 11 program areas including provision of equipment and supplies, scheduling of games and practice times, travel and per diem allowance, opportunity to receive coaching and academic tutoring, assignment and compensation of coaches and tutors, provision of locker rooms, practice and competitive facilities, provision of medical and training facilities and services, provision of housing and dining facilities and services, publicity, recruitment of athletes, and support services for athletes; and (3) interests and abilities of male and female students must be equally effectively accommodated. This Policy Interpretation has been given deference by the courts, which means that while not law, it carries much weight in support of the law and its regulations.

Questions have abounded about how non-discriminatory practices in intercollegiate athletic programs can be enacted and enforced. For example, if an institution chooses to treat its sport teams significantly differently, such as classifying football and men’s basketball in Tier 1 with a maximum number of grants-in-aid, nationally competitive schedule, and worldwide recruiting, then an equivalent number of female athletes and their teams would have to be upgraded to Tier 1 status with equitable resources. Relative to equivalent treatment, benefits, and opportunities in 11 program areas, the Office of Civil Rights assesses compliance by “comparing the availability, quality and kinds of benefits, opportunities, and treatment afforded members of both sexes. Under this standard, identical benefits, opportunities, or treatment are not required, provided the overall effects of any differences is negligible” (Judge & O’Brien, 2012, p. 165). For example, equivalencies must exist in time of day when practices and competitive events are scheduled, modes of transportation and per diem allowances, availability of tutoring, conditioning facilities, and

locker rooms, and nature of coaching duties performed and compensation of coaches.

Equally effectively accommodating the interests and abilities of male and female students occurs when colleges meet any one part of the three-part test: (1) participation opportunities are substantially proportionate to the undergraduate student enrollment, which has been labeled as a “safe harbor” allowing institutions to establish they are providing nondiscriminatory participation opportunities; (2) there must have been a continuing practice of program expansion in response to developing interests and abilities of the under-represented sex; or (3) an institution must show that the interests and abilities of the members of the under-represented sex have been fully and effectively accommodated. A controversial issue associated with participation opportunities deals with roster management.

Institutions, for example, may set caps or limits on the number of male athletes who can “walk on” and participate in each varsity sport. Coaches of female teams may be required to include maximum numbers of athletes for all varsity sports. For example, in a study of Big 12 Conference institutions, the average numbers of female athletes on equestrian teams were 82, on the rowing teams were 79, and on the track and field teams were 104 (Lumpkin, 2005). It is questionable whether all of these females got meaningful opportunities to compete. Since the NCAA limits grants-in-aid on these teams to 15 in equestrian, 20 in rowing, and 18 in track and field, most members of these teams received no financial assistance.

Letters of clarification were issued in 1996, 1998, 2003, 2004, 2005, and 2008 and Dear Colleague letters were issued in 2010, 2011, 2013, 2014, 2015, and 2016 in support of the law (Carpenter & Acosta, 2005; Judge & O’Brien, 2012; National Collegiate Athletic Association, 2018). All of these letters clarified and reaffirmed Title IX, yet challenges have persisted, even though lawsuits are expensive and take a long time to adjudicate. Numerous Title IX lawsuits (Judge & O’Brien, 2012) have included unsuccessful challenges of program elimination and roster management in men’s sports and successful challenges in women’s sports dealing with effective accommodation of the interests and abilities of the under-represented sex, non-equivalent treatment issues, retaliation, employment, and sexual harassment. It should be mentioned that increasingly in this century, Title IX has been used to help protect students from sexual violence on college campuses, rather than as an anti-discrimination statute.

Anderson and Osborne's (2008) analysis of Title IX litigation suggested that between 1990 and 2008, few individuals believed this law provided legal redress for disparate treatment in intercollegiate athletics. Institutions must have an employee responsible for Title IX compliance, a complaint process, and grievance procedures, and the Office of Civil Rights receives and investigates complaints and has enforcement power. The potential receipt of punitive (monetary) damages and some courts' willingness to enforce remedies, and continuing lawsuits may mean claimants are more active in seeking relief from discriminatory treatment prohibited by Title IX. On the other hand, because females may fear losing some the competitive sport advancements they enjoy, they may be reluctant to question what many perceive as second-class status as athletes in comparison with males, such as inequities in participation opportunities, disparate programmatic support in facilities and travel, and grants-in-aid.

When the NCAA issued its first Gender Equity Task Force Report in 1993, women comprised 35% of the varsity athletes, received 30% of the athletic grant-in-aid dollars, were allocated 17% of the recruiting dollars, received 23% of the operating budget dollars, and had access to 37% of the participation opportunities on athletic teams. The NCAA's Gender Equity Task Force has continued to encourage gender equity in its member institutions, although Title IX is not, and never has been, applicable to this organization.

To monitor intercollegiate athletics, the United States Congress passed the Equity in Athletics Disclosure Act (EADA) in 1994 (effective in October 1996). This act requires institutions of higher education to provide data about their intercollegiate athletic programs and student financial aid programs. Data provided as required by EADA continues to demonstrate discriminatory treatment. As Lumpkin (2012) concluded in her examination of EADA data, "...findings provide evidence that institutions have not yet fully complied with Title IX" (p. 275).

While numerous football and basketball teams bring in revenue, most spend all these funds on their own teams. For example, in NCAA Division I football and men's basketball overall, 74% of the men's sport team budgets are allocated to these two sports, with this number increasing to 80% in the Football Bowl Subdivision (FBS) (Wilson, 2017). Among the 126 NCAA Division I member institutions over 100 have negative net generated revenues (i.e., expenses exceed revenues); none of the over 950 other NCAA-member institutions

have positive net generated revenues (Fulks, 2017). This means the primary revenue sources for almost all intercollegiate athletic programs of ticket sales, donations, broadcast rights fees, conference/NCAA distributions fail to cover expenses. As a result, intercollegiate athletic programs in Division I, Division II, and Division III rely heavily on student fees and institutional and state allocations to fund escalating costs.

In 2016-2017, NCAA Division I institutions spent 42% of total athletic expenditures on men's sports and only 21% on women's sports (the other 36% paid unallocated expenses and for coed sports). In recruiting, this difference in expenditures increased to 67% to 31%, while the gap narrowed to 51% to 45% for financial assistance or grants-in-aid (Wilson, 2017). In NCAA FBS institutions, these differences expanded—44% for men's sports to 18% for women's sports in total expenditures, 70% for recruiting in men's sports to 29% in women's sports, and 54% in men's sports to 41% in women's sports for grants-in-aid. In Football Championship Subdivision (FCS) institutions, differences persisted—41% for men's sports to 26% for women's sports in total expenditures, 65% for men's sports to 33% for women's sports in recruiting, and 54% for men's sports to 44% for women's sports in grants-in-aid. Only in Division I institutions without football were there greater equities in total expenses (35% in men's sports and 32% in women's sports). Men's sports received 56% of the recruiting resources to 42% for women's sports; athletes in women's sports received 55% of the grants-in-aid compared to only 41% for men's sports. In Division II total expenditures, recruiting, and grants-in-aid favored men's sports over women's sports by 9%, 23%, and 10% respectively. In Division III, total expenditures and funding of recruiting (grants-in-aid are not awarded) favored men's sports over women's sports by 8% and 23% respectively (Wilson, 2017). The NCAA's report on the status of females in its member institutions 45 years after the enactment of Title IX concluded, "This report shows that since Title IX was passed, men's intercollegiate sport participation opportunities have continued to increase, and men have continued to receive the majority of the resources in college athletics" (Wilson, 2017, p. 10).

Several questions remain about whether Title IX has been fully implemented and enforced. Does awarding grants-in-aid on a non-substantially proportional basis to male and female athletes violate this law? In whatever institution where this practice persists, Title IX requirements are not being met. Does providing one sex a higher level of overall financial support for its athletic program comply with

this law? The correct answer depends on whether equitable treatment, benefits, and opportunities are provided men's sports and women's sports with equity and non-discrimination evident. NCAA data have affirmed that men's sports continue to enjoy the overwhelming majority of resources. If one sex enjoys a greater number of sport participation opportunities while the interests and abilities of the other under-represented sex are not met, then sex discrimination in intercollegiate athletics continues to violate federal law. Even though competitive opportunities for the under-represented sex have increased dramatically since the passage of Title IX, men's competitive sport opportunities continue to exceed women's competitive sport opportunities.

To dispel a persistent myth, this question must be answered – Is Title IX the cause for the elimination of men's intercollegiate athletic teams, such as wrestling and gymnastics. Frequently, when a men's team is cut, compliance with Title IX is blamed, rather than budget cuts to reduce expenses. The elimination of a men's team is an institutional decision and not required by Title IX. Title IX also does not require an equal number of teams by sex. Since institutional support and student fees are the primary revenue sources for most intercollegiate athletic programs, what percentage of resources should be provided to each sex?

Just because no institution has ever lost federal financial assistance does not mean every educational institution fully complies with Title IX. As federal law, Title IX requires the elimination of discrimination on the basis of sex in all educational programs including intercollegiate athletics. The key question remains: Would males or females accept for themselves all aspects of the intercollegiate athletic program (grants-in-aid, treatment, benefits, and opportunities in 11 program areas, and participation opportunities) provided to individuals of the opposite sex? If the answer is yes, the likelihood of compliance with Title IX is high. If one sex would not accept the intercollegiate athletic program provided to the other sex, most likely full compliance with Title IX has not been achieved.

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A DEFENSE OF MORAL LUCK

Hossein Mohayeji Nasr Abadi B.A., Graduate Student,
Department of Philosophy

Abstract

In this paper, I will argue that philosophers who deny the existence of moral luck must pay a cost that has been widely neglected. Section I is dedicated to introducing the problem of moral luck. In section II, I will try to show that denying the existence of situational moral luck commits one to rejecting the intuition that there is a significant moral difference in the responsibility of those who merely plan a wrong from those who also execute their plans. I will also show that the structure of my argument allows us to pose challenging problems for moral luck opponents. Obviously, these are not enough to solve this difficult problem once and for all. The aim, here, is just to make the case against the denial of moral luck stronger. In the final section, some concluding remarks will be made.

Keywords

luck, moral luck, moral responsibility

I.

According to al-Subki (1284-1355 AD), Al-Ash‘arī (874-936 AD) asks his teacher to imagine three brothers; the first one is a good man, the second one is a bad man, and the third one dies when he is a boy. He then asks “Given that God is just, what is His reply if the third brother asks Him, ‘Why didn’t you let me live longer so that I could grow up to be a good man like my oldest brother?’” “God would say, ‘Because I knew you would become a bad man like your second brother,’” says the teacher. Al-Ash‘arī replies “Then, what if the second brother retorts, ‘Why didn’t I die before I became a bad man?’” The teacher stays silent. This difficulty led Al-Ash‘arī to embrace a position on morality that we may call Radical Divine Command Theory, denying any God-independent bases for morality and claiming that God does not comply with the rules of morality and justice but whatever he arbitrarily does and commands creates these rules. This might be one of the first diagnoses of the problem of moral luck.

According to what Hartman (2017) calls the Standard View, moral luck occurs when factors beyond an agent’s control make a moral

difference¹. But our intuitions about whether moral luck actually occurs seem to be in conflict. On the one hand, in our everyday moral practices, we evaluate people based on things that are heavily influenced by factors beyond their control and these evaluations seem intuitively correct. On the other hand, we intuitively hold that factors beyond someone's control cannot make a difference to her moral status. Imagine two equally reckless drivers who drive in the exact same way on a dark night, one of them (Driver₁) ends up killing a pedestrian and the other (Driver₂) harms no one. When considering this case, at first, our *moral luck intuition* encourages us to judge Driver₁ more blameworthy, but upon reflection and after realizing that what makes the difference between the two, i.e. the pedestrian's being in the wrong place at the wrong time, is due to the factors beyond their control, our *luck-free intuition*², according to which luck cannot make any moral differences, motivates us to judge them equally. From this conflict in our intuitions arises the *problem* of moral luck. Those who I call *moral luck opponents*, claim that in such cases we should judge agents equally because moral luck does not exist.

In this paper, I am only concerned with the possibility of luck's making a difference in moral responsibility³; responsibility in the sense that is mainly concerned with blameworthiness and praiseworthiness. As it is common in the literature I will presume that blameworthiness and praiseworthiness come in degrees. I will focus on the degree of blameworthiness, but one can justifiably extend the points of the arguments to the degree of praiseworthiness. Also, unless otherwise is indicated, I am relying on a commonsense understanding of responsibility and not committed to the truth of any specific theory of responsibility. Furthermore, I am assuming that people are responsible for at least some of their actions.

Nagel (1993, p. 60) identifies four different types of luck that may make moral differences (not all of the names are his, but they are probably the most common titles⁴):

¹ The Standard View of moral luck is usually accepted in the literature. Hartman (2017, p. 23-31) convincingly argues why we should preserve the Standard View. In this paper, I will stick to the Standard View.

² The terms Luck-free intuition and moral luck intuition are from Hartman (2017).

³ It is common in the literature (Latus 2005). For example, Zimmerman (1987; 2002) and Hartman (2017) do the same (cf. Statman 2005, pp. 422-424).

⁴ See Latus (2005).

Resultant Luck is “luck in the way one's actions and projects turn out.”

Circumstantial Luck is luck in “the kind of problems and situations one faces.”

Constitutive Luck is luck in “inclinations, capacities, and temperament” that one has.

Causal Luck is “luck in how one is determined by antecedent circumstances outside of the will's control.”

Also, let situational (moral) luck⁵ be defined as consisting of constitutive and/or circumstantial (moral) luck.

The most common example of resultant (moral) luck is the case of the aforementioned reckless drivers. Regarding this case, moral luck opponents claim that resultant luck has made no difference in drivers' blameworthiness and both are blameworthy to the same degree while those who think that resultant moral luck exists, claim that the Driver₁ is more blameworthy. The same case can be used to produce examples of circumstantial and constitutive (moral) luck. Consider one of the drivers, for example, Driver₂, who is blameworthy for driving recklessly in a specific manner. Now, if we compare him with first, a would-be reckless driver who fails to drive recklessly because his car is broken and second, another would-be reckless driver who also fails only because he happens to hate driving in the night, we will respectively arrive at examples of circumstantial and constitutive (moral) luck. Regarding both of these new cases, at first, we tend to judge Driver₂ more blameworthy, but as soon as we realize that the differences between her and other would-be reckless drivers are due to luck, our luck-free intuition forces us to judge them equally.

As some philosophers have pointed out (Brogaard (2003, pp. 362–364) and Herdova & Kearns (2015, p. 365)), one important point is that when we consider the drivers separately, as we most often do in our everyday pre-reflective moral practices we tend to judge them differently without facing any problems. But we are strongly disposed to make comparative moral evaluations. Probably because of “the enormous importance we assign, consciously and subconsciously, to our comparative status. We care very much not simply about how clever we are, but how clever we are in comparison to others, how beautiful we are in comparison to others,

⁵ The term is coined by Zimmerman (1987).

and also how blameworthy we are in comparison to others” (Statman 2005, p. 429). As soon as we start judging the drivers together and/or comparing them, the clash between the intuitions begins⁶. The same is true of all other cases of ordinary judgment of responsibility. By this, I mean every case of ordinary judgment of responsibility is at the same time a case of resultant, circumstantial and constitutive (moral) luck; we can see this by comparing it with other properly chosen cases. If we compare any person P who we judge to be responsible for some X with another person who fails to be so, simply because the result of his action has turned out differently due to luck or because of her different lucky (out-of-control) circumstances or constitution, we will respectively arrive at cases of resultant, circumstantial and constitutive (moral) luck. So, we can say that the problem of moral luck is ubiquitous and has a comparative nature.

Based on this ubiquity, attempts to deny the existence of moral luck will seemingly affect all of the ordinary judgments of responsibility. In what follows I will try to show that these attempts might turn out to be too costly and revisionary.

II.

As pointed out before, the problem of moral luck arises from a clash between two intuitions; i.e. moral luck intuition and luck-free intuition. Hartman (2017, p. 15-16) points out that in trying to solve this problem relying on either of these intuitions in order to strengthen our position is not a promising strategy, simply because the opponents can undermine our argument by relying on the other intuition⁷. One method to avoid this difficulty is to try to use intuitions from outside of the debate to generate arguments related to the debate. This is my strategy in this section.

We have a strong intuition concerning the difference between responsibility for merely planning a wrong action and responsibility for planning *and* executing it. Based on this intuition (call it I₁):

Supposing that conditions of moral
responsibility hold and everything else
being equal, a person who plans a wrong
and executes it is more blameworthy than a

⁶ Nagel (1993) seems to suggest the same point.

⁷ Domsy, a moral luck opponent himself, seems to think that sometimes this strategy is used to deny the existence of moral luck. (Domsy 2004, p. 446)

person who plans the same, but becomes repentant and does not execute the plan.

It is argued below that one of the costs of denying circumstantial moral luck is that one will have to reject this strong intuition.

Suppose Mike, Walter and Jesse are sitting in three identical train stations. There is an old lady near each of them who is going to get on the 11:00 AM train. At 10:50 AM Mike, Walter, and Jesse plan to rob their respective old ladies. Mike finds a good opportunity at 10:53 AM and executes his plan. Walter and Jesse find the opportunity at 10:56 AM. At this moment Jesse, who was completely determined to execute his plan until a moment ago, decides not to execute it, while Walter successfully steals the money. All three old ladies get on their trains at 10:57 AM and the trains leave. Suppose all other aspects of the three cases are exactly alike *to the extent possible*: what is going on the agents' minds, their constitutions etc. Let us respectively call the degree of Mike's, Walter's and Jesse's blameworthiness for what they have done B_M , B_W , and B_J . Intuitively:

$$(P_1) B_J < B_W$$

$$(P_2) B_M = B_W$$

So:

$$(C) B_J < B_M$$

Comparing Jesse with Mike⁸, if it wasn't for Jesse's finding an opportunity three minutes later than Mike, which is obviously beyond his control and circumstantially lucky for him, he would have executed his plan (because he became repentant around 10:56 AM) and B_J would have been equal to B_M . So, we have to accept the existence of circumstantial moral luck if we are to accept C.

The crucial point is that we can reconstruct the same argument for any case to which I_1 is applicable. It is enough to replace the new person with Mike (if she executes her plan) or Jesse (if she does not) and adjust what the characters involved in the *new* scenarios are going to do and the timings. So, we can justifiably generalize our conclusion: the opponent of circumstantial moral luck has to either completely reject I_1 (because P_1 is based on I_1) or reconsider her view

⁸ Or Jesse with himself as he would have been had he found the opportunity at 10:53 AM.

toward circumstantial moral luck (because C entails extant circumstantial moral luck). It needs pointing out that the argument is complicated for a reason. If Walter is removed, C must be asserted right away. This will give moral luck opponent too much room for objection, one has to go to some length for answering her objections and it is not obvious that she will be convinced at the end.

How can an opponent of moral luck avoid this? First, she can reject P_1 , but by doing so she is denying the truth of the I_1 ⁹. This way she will prove my point: denying the reality of circumstantial moral luck commits us to rejecting I_1 . Second, she may reject P_2 , contending that Walter is more blameworthy than Mike¹⁰ because he had more time and opportunity to change his mind. But, Walter's having more opportunity is due to factors beyond his control, factors that in this case amount to circumstantial luck. So, rejecting P_2 in this way presupposes that circumstantial luck can affect one's degree of blameworthiness. This means that it is not a viable option for circumstantial moral luck opponent. Therefore, the circumstantial moral luck opponent is faced with a dilemma: either to reject I_1 or accept circumstantial moral luck. I am not claiming that, faced with this dilemma, she will give up her position, but that there is a cost she must pay for holding her position.

But there is a possible objection. A moral luck opponent may object that, although Mike and Jesse can have identical constitutions, there must be some difference in Walter's and Jesse's constitution. After all, since they acted differently despite being in identical circumstances, there must be a difference in their dispositions or capacities etc., which means their constitutions are not identical. So, P_1 is false because some kind of constitutive luck is involved, not because I_1 is false. Below, two responses are offered for this objection.

First, even if one accepts that constitutive luck is making the difference between Walter and Jesse, still, the argument works for those who accept constitutive moral luck while rejecting circumstantial moral luck. As Hartman (2017, pp. 129-130) points out, "the luck-free intuition seems to be weakest in cases of constitutive luck. Philosophers who have the luck-free intuition in cases of

⁹ The opponent may object that she is thereby committed only to denying any application for I_1 in our actual world and probably other close possible worlds where people do not have enough control over their circumstances. But even if it is true, it suffices to prove my point about the cost of denying the existence of circumstantial moral luck.

¹⁰ If she contends that Mike is more blameworthy the argument still supports C.

constitutive luck [...] are fewer than the philosophers who fail to have it." So, the cost of this alleged reliance on constitutive luck, even if true, is not a decisive mark against the argument. But this way the argument is from constitutive moral luck to circumstantial moral luck and will accomplish less than what I need it to accomplish. So, I will provide a stronger response.

Our world is either deterministic or indeterministic. (As it is said in section I, by assumption, people are responsible for at least some of their actions. So, here, it is assumed that whichever of these options is true, it is compatible with moral responsibility.) If it is indeterministic the objection fails. Because it can coherently be assumed that while Walter's constitution is identical to Jesse's, they have, in a morally responsible way, acted differently. But if determinism is true, then the original argument may fail. Still, another argument is provided by Hartman (2017, pp. 53-55). If determinism is true, by definition, the conjunction of laws of nature and the state of the world at any given time determines everything that is happening or is going to happen, including what an agent does or fails to do. Laws of nature and the state of the world both are beyond agents' control and the latter includes, among other things, agents' circumstances and their constitution. Despite all these, based on the assumption, agents are responsible for at least some of their actions. But, since the luck involved in determinism is not only greater than the luck involved in situational luck but also includes it completely, then a fortiori agents are responsible for at least some of their actions despite situational luck¹¹. This argument can be used as a base to revive the original argument and make the case for circumstantial moral luck even stronger.

Here is another objection to the argument, which is made by Professor Zimmerman in a personal correspondence: In the thought experiment, there are at least *two* distinct occasions on which it seems that the agent may incur blameworthiness to some degree; the initial event of planning and then the subsequent event of executing the plan. It is not clear that these two occasions can be legitimately combined to arrive at some kind of *aggregate degree* of blameworthiness. The subsequent event may or may not occur, but if its (non)occurrence is a matter of luck, then it cannot influence the degree of blameworthiness.

¹¹ See also Hanna (2014, p. 16, n. 25)

Even if it is granted that the *aggregate degree* of blameworthiness is unjustifiable, this objection can be met. As long as the initial event of planning is considered, the degree of Walter's, Jesse's and Mike's blameworthiness are equal. So, what matters is the event of executing the plan and, focusing on it, I_1 can be rephrased in this way (call it I'_1):

Supposing that conditions of moral responsibility hold, execution of a plan for a wrong action adds to one's degree of blameworthiness.

Now, Let B'_M , B'_W , and B'_J respectively stand for the degree of Mike's, Walter's and Jesse's blameworthiness for what they have done *after* planning the robbery. Still, it is intuitively true that:

$$(P_3) B'_J < B'_W$$

$$(P_4) B'_M = B'_W$$

So:

$$(C') B'_J < B'_M$$

And the argument is revived and will work in the same way; the dilemma is still in place.

This leads me to a point that might be interesting. The structure of the argument, which is inspired by the way Al-Ash'arī presents the problem, seems to have potential to pose new problems for moral luck opponents. Apparently, if we compare three agents, instead of two as is more common in the literature, in a manner similar to the argument, we will arrive at cases that allow us to argue against the denial of moral luck in new ways. Roughly put, in order to arrive at such cases, this procedure should be carried out:

Start with a potential case of moral luck, which consists of two agents (A1 and A2) whose blameworthiness for some X is considered. If A1 is directly compared with A2, a moral luck opponent will claim that they are responsible for X to the same degree while those who hold that moral luck exists will deem A1 more responsible.

Now, add another person (A3) such that:

- A. Her constitution and circumstance are identical to A2's, but not to A1's. Like the relevant differences between

A1 and A2, the relevant differences between A1 and A3 are due to luck.

- B. Intuitively, she has more blameworthiness for X than A2 has, but not due to luck.
- C. She is as blameworthy for X as A1 is.

All other aspects of the cases must be exactly alike to the extent possible.

Now, considering all three agents together, it can be argued that since A₁ and A₃ are blameworthy to the same degree and A₃ is more blameworthy than A₂, then A₁ is more blameworthy than A₂. A moral luck opponent has to block this indirect route for showing that A₁ is more blameworthy than A₂. In doing so, she cannot deny that A₁ and A₃ are equally blameworthy because this will commit her to accepting moral luck (since the relevant difference between them is due to luck). Apparently, her only viable option is to deny the intuitive judgment that A₃ is more blameworthy than A₂ (call the intuition behind it I_x); this is a cost she has to pay. Also, if the argument can be generalized to cover every case to which I_x is applicable, a moral luck opponent has to completely reject I_x.

Whenever we can successfully complete the procedure, a moral luck opponent has to reject an intuitive judgment or an intuition. Even if the cost of denying each one of these judgments or intuitions is not high enough to pose a serious problem, the costs will accrue to a problematically large degree.

Let us quickly consider an example similar to what is discussed by Zimmerman (2002): Mike and Jesse are considering shooting a curmudgeon who has insulted them. Mike is angrier because of his different lucky temper (or because the curmudgeon has insulted him more severely). Mike decides to shoot her and successfully kills her, while Jesse decides not to shoot her. Since the difference in their tempers (or difference in severity of insults) is beyond their control, a moral luck opponent will claim that they are blameworthy to the same degree. Now, add Walter who is identical to Jesse and in a situation exactly like Jesse's acts like Mike. Walter and Mike are equally blameworthy. And, intuitively, Jesse is less blameworthy than Walter (note this is not due to luck). So, Jesse is less blameworthy than Mike. A moral luck opponent cannot avoid this conclusion by asserting that Walter is more blameworthy than Mike because their different tempers (or different severity of insults) are due to constitutive (or circumstantial) luck. She can only reject the claim that Walter is more blameworthy than Jesse. But this has a high cost. How

is it possible that two identical persons in identical situations are equally blameworthy when only one of them has committed homicide?

It is worth noting that this procedure has its own limitations. First, for cases of resultant moral luck, it is not clear that we can find the required third agent (A_3) to complete this procedure. But, as it is discussed in this chapter, at least sometimes, we can complete the procedure for the cases of situational moral luck. Second, an objection similar to what is discussed for the first argument of this chapter is apparently always available; that there must be some difference between A_2 and A_3 because they have acted differently despite being in identical circumstances. On the assumption that the world is indeterministic, the objection can be met, because we can coherently assume that while A_2 and A_3 (and their circumstances) are identical, they act differently in a morally responsible way. It is not clear that the objection can be met if it is assumed that the world is deterministic. Also, note that, on this assumption, an independent argument for the existence of moral luck is offered above. So, the procedure can still pose serious problems for opponents of situational moral luck, in spite of these limitations.

In the light of what is discussed above, it can now reasonably be held that attempts to deny the existence of situational moral luck are too costly. What is the possible explanation for this? As Jensen (1993, p. 135) points out “morality’s concerns with action-guiding” is an important feature of it. It seems impossible for morality to be action-guiding without being sensitive to what is going on in the actual world. For example, how can ascriptions of responsibility guide a moral agent in the actual world if her actual circumstance and constitution, that are always to some extent susceptible to luck, can never influence the degree of her blameworthiness and praiseworthiness? The answer seems to be “It cannot.” But, our moral intuitions which are formed to be, among other things, action-guiding are sensitive to agents’ actual constitutions and circumstances. They work like functions some of whose inputs, like one’s constitution and circumstance, are always lucky to a certain extent. Naturally, the outputs of these functions, which are often moral judgments, are partly determined by these lucky inputs. So, attempts to make moral responsibility, or morality at large, immune to luck will have to eliminate the influence of these lucky inputs by revising these intuitions. We can expect that these attempts are very likely to result in “a highly revisionist stance that may well imply abolishing the

practice of holding people responsible for their actions.”¹²
 “Moreover, even if we accept the existence of this kind of responsibility [...], we still need a different meaning of responsibility in order to evaluate the actions and decisions that moral agents perform in their everyday lives.”¹³ (To see what a full-blown luck-free account of moral responsibility looks like see Zimmerman (2002, 2015). Hanna (2014) and Hartman (2017, pp. 65-82) which show some of the unacceptable consequences and costs of such accounts.)

III.

In this paper, I tried to show some of the neglected costs of denying the existence of situational moral luck. I argued that attempts to deny the existence of circumstantial or constitutive moral luck will inevitably result in denying some of our strong intuitions and intuitive moral judgments. I also tried to show that the structure of my argument has the potential to pose new problems for a moral luck opponent. Many philosophers have provided strong arguments defending the existence of moral luck and showing the unacceptable costs of its denial (Hanna 2014, Hartman 2017, Schinkel 2009, Walker 1991 et al.). I hope this paper’s argument can make the case against the denial of moral luck stronger.

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